

(1) The bank's duties as trustee or custodian are essentially custodial or ministerial in nature, (2) the bank is required to invest the funds from such plans only (i) in its own time or savings deposits, or (ii) in any other assets at the direction of the customer provided the bank does not exercise any investment discretion or provided any investment advice with respect to such account assets, and (3) the bank's acceptance of such accounts without trust powers is not contrary to State law.

[41 FR 2375, Jan. 16, 1976, as amended at 50 FR 10754, Mar. 18, 1985]

PART 334—[RESERVED]

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AUTHORITY: Sec. 12(i), Securities Exchange Act of 1934, as amended (15 U.S.C. 781(i)).

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EFFECTIVE DATE NOTE: In part 335, the requirement that bank financial statements be

audited by independent public accountants becoming effective for periods ending after December 15, 1990 was published at 54 FR 53574, Dec. 29, 1989. See the List of CFR Sections Affected in the Finding Aids section of this volume for amendments to the various sections of this part.

Subpart A—General Provisions

§ 335.101 Scope of part.

This part is issued by the Federal Deposit Insurance Corporation (the *FDIC*) under section 12(i) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78) (the *Act*) and applies to all securities of an insured bank (including a foreign bank having an insured branch) (*foreign bank*) which is neither a member of the Federal Reserve System nor a District bank (*bank*) that are subject to the registration requirements of section 12(b) or section 12(g) of the Act. The Office of Management and Budget has reviewed and approved the recordkeeping and reporting required by this part (OMB Control No. 3064-0030).

[46 FR 25208, May 5, 1981, as amended at 46 FR 61642, Dec. 18, 1981; 54 FR 53574, Dec. 29, 1989]

§ 335.102 Definitions.

For the purposes of this part, including all forms and instructions promulgated for use in connection herewith, unless the context otherwise requires:

(a) The terms *exchange*, *director*, *person*, *security* and *equity security* have the meanings given them in section 3(a) of the Act.

(b) *Accountants report*. The term *accountant's report*, when used in regard to financial statements, means a document in which an independent public or certified public accountant indicates the scope of the audit (or examination) which he has made and sets forth his opinion regarding the financial statements taken as a whole, or an assertion to the effect that an overall opinion cannot be expressed. When an overall opinion cannot be expressed, the reasons therefor shall be stated.

(c) The term *affiliate* (whether referred to as an *affiliate* of, or a person *affiliated* with, a specified person) means a person that directly, or indirectly through one or more

intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(d) The term *amount*, when used with respect to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to shares, and the number of units if relating to any other kind of security.

(e) The term *associate*, when used to indicate a relationship with any person, means:

(1) Any corporation or organization (other than the bank or a subsidiary of the bank) of which such person is an officer or partner or is, directly or indirectly, either alone or together with one or more members of his immediate family, the beneficial owner of 10 percent or more of any class of equity securities,

(2) Any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as a trustee or in a similar fiduciary capacity, and

(3) Any relative or spouse of such person or any relative of such spouse, who has the same home as such person or who is a director or officer of the bank or any of its parents or subsidiaries.

(f) *Audit (or examination)*. The term *audit* (or *examination*), when used in regard to financial statements, means an examination of the statements by an accountant in accordance with generally accepted auditing standards for the purpose of expressing an opinion thereon.

(g) The terms *beneficial ownership*, *beneficially owned*, and the like, when used with respect to the reporting of ownership of the bank's equity securities in any statement or report required by this part, shall include, in addition to direct and indirect beneficial ownership by the reporting person, ownership of such securities:

(1) By the spouse (except where legally separated) and minor children of such reporting person, and

(2) By any other relative of the reporting person who has the same home as such person.

(h) *Call Report*. The term *Call Report* means the Consolidated Reports of Condition and Income for insured

banks (FFIEC forms 031, 032, 033 and 034).

(i) *Certified*. The term *certified*, when used in regard to financial statements, means examined and reported upon with an opinion expressed by an independent public or certified public accountant.

(j) The term *charter* includes articles of incorporation, declarations of trust, articles of association or partnership, or any similar instrument, as amended, effecting (either with or without filing with any governmental agency) the organization or creation of an incorporated or unincorporated person.

(k) The term *control* (including the terms *controlling*, *controlled by*, and *under common control with*) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(l) [Reserved]

(m) *Employee benefit plan*. For purposes of §§ 335.203 and 335.214, the term *employee benefit plan* means any purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive, pension or similar plan solely for employees, directors, trustees or officers, and the term *exempt employee benefit plan securities* means:

(1) Securities of the bank held by an employee benefit plan, as defined in this paragraph (m), where such plan is established by the bank or

(2) If notice regarding the current solicitation has been given pursuant to § 335.214 (a)(1)(ii)(C) or if notice regarding the current request for a list of names, addresses and securities positions of beneficial owners has been given pursuant to § 335.214(b)(3), securities of the bank held by an employee benefit plan, as defined in this paragraph (m), where such plan is established by an affiliate of the bank.

(n) *Entity that exercises fiduciary powers*. The term *entity that exercises fiduciary powers* means any entity that holds securities in nominee name or otherwise on behalf of a beneficial owner but does not include a clearing agency registered pursuant to section 17A of the Act or a broker or a dealer.

(o) The term *equity capital accounts* means capital stock, surplus, undivided profits, and reserve for contingencies and other capital reserves.

(p) The term *50-percent-owned person*, in relation to a specified person, means a person approximately 50 percent of whose outstanding voting securities is owned by the specified person either directly, or indirectly through one or more intermediaries.

(q) The term *fiscal year* means the annual accounting period or, if no closing date has been adopted, the calendar year ending on December 31.

(r)(1) For the purpose of determining whether the registration requirements of section 12(g)(1) of the Act are applicable, securities shall be deemed to be *held of record* by each person who is identified the owner of such securities on records of security holders maintained by or on behalf of the bank, subject to the following:

(i) In any case where the records of security holders have not been maintained in accordance with accepted practice, any additional person who would be identified as such an owner on such records if they had been maintained in accordance with accepted practices shall be included as a holder of record.

(ii) Securities identified as held of record by a corporation, a partnership, a trust whether or not the trustees are named, or other organization shall be included as so held by one person.

(iii) Securities identified as held of record by one or more persons as trustees, executors, guardians, custodians, or in other fiduciary capacities with respect to a single trust, estate, or account shall be included as held of record by one person.

(iv) Securities held by two or more persons as co-owners shall be included as held by one person.

(v) Each outstanding unregistered or bearer certificate shall be included as held of record by a separate person, except to the extent that the bank can establish that, if such securities were registered, they would be held of record, under the provisions of this paragraph, by a lesser number of persons.

(vi) Securities registered in substantially similar names, where the bank

has reason to believe because of the address or other indications that such names represent the same person, may be included as held of record by one person.

(2) Notwithstanding paragraph (r)(1) of this section: (i) Securities held subject to a voting trust, deposit agreement, or similar arrangement shall be included as held of record by the record holders of the voting trust certificates, certificates of deposit, receipts, or similar evidences of interest in such securities; *Provided, however,* That the bank may rely in good faith on such information as is received in response to its request from a nonaffiliated issuer of the certificates or interests.

(ii) If the bank knows or has reason to know that the form of holding securities of record is used principally to circumvent the provisions of section 12(g)(1) of the Act, the beneficial owners of such securities shall be deemed to be record owners thereof.

(s) The term *immediate family* includes a person's father, mother, spouse, brothers, sisters, sons and daughters, stepparents and stepchildren, and lineal ascendants and descendants. For the purpose of determining whether any of the foregoing relationships exist, a legally adopted child shall be considered a child by blood.

(t) The term *information statement* means the statement required by § 335.201(b), whether or not contained in a single document.

(u) *Last fiscal year.* The term *last fiscal year* of the bank means the last fiscal year of the bank ending prior to the date of the meeting for which proxies are to be solicited or an information statement is required to be distributed or, if the solicitation or information statement involves written authorizations or consents in lieu of a meeting, the earliest date they may be used to effect corporate action.

(v) The term *listed* means admitted to full trading privileges upon application by the bank and includes securities for which authority to add to the list on official notice of issuance has been granted.

(w) The term *majority-owned subsidiary* means a subsidiary more than 50 percent of whose outstanding securities representing the right, other than as

affected by events of default, to vote for the election of directors is owned by the subsidiary's parent and/or one or more of the parent's other majority-owned subsidiaries.

(x) The term *material*, when used to qualify a requirement for furnishing of information as to any subject, limits the information required to those matters as to which an average prudent investor ought reasonably to be informed.

(y) The term *officer or principal officer or executive officer* means Chairman of the Board of Directors, Vice Chairman of the Board, Chairman of the Executive Committee, President, Vice President (except as indicated in the next sentence), Cashier, Treasurer, Secretary, Comptroller, and any other person who participates in major policy-making functions of the bank. In some banks (particularly banks with officers bearing titles such as Executive Vice President, Senior Vice President, or First Vice President as well as a number of *Vice Presidents*), some or all *Vice Presidents* do not participate in major policy-making functions, and such persons are not officers for the purpose of this part.

(z) The term *option* means any option, warrant, or right other than those issued to security holders on a pro rata basis.

(aa) The term *parent* of a specified person is a person controlling such person directly, or indirectly through one or more intermediaries.

(bb) The term *plan* includes all plans, contracts, authorizations, or arrangements, whether or not set forth in any formal document.

(cc) The term *predecessor* means a person the major portion of the business and assets of which another person acquired in a single succession or in a series of related successions.

(dd) The terms *previously filed* and *previously reported* mean previously filed with, or reported in, a registration statement under section 12, a report under section 13, or a definitive proxy statement or similar statement under section 14 of the Act, which statement or report has been filed with the FDIC provided that information contained in any such document shall be deemed to have been previously filed

with or reported to an exchange only if such document is filed with such exchange.

(ee) The term *principal underwriter* means an underwriter in privity of contract with the issuer of the securities as to which he is underwriter.

(ff) The term *promoter* includes: (1) Any person who, acting alone or in conjunction with one or more other persons, directly or indirectly takes initiative in founding and organizing the bank;

(2) Any person who, in connection with the founding and organizing of the bank, directly or indirectly receives in consideration of services or property or both services and property ten percent or more of any class of securities of the bank or ten percent or more of the proceeds from the sale of any class of such securities. A person who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not, however, be deemed a promoter within the meaning of this paragraph if such person does not otherwise take part in founding and organizing the bank.

(gg) The term *proxy* includes every proxy, consent, or authorization within the meaning of section 14(a) of the Act. The consent or authorization may take the form of failure to object or to dissent.

(hh) The term *proxy statement* means the statement required by §335.201(a), whether or not contained in a single document.

(ii) *Qualified stock option, restricted stock option, and employee stock purchase plan.* The terms *qualified stock option, restricted stock option, and employee stock purchase plan* have the meanings given them in sections 422 through 424 of the Internal Revenue Code of 1986, as amended. For the purposes of this regulation, an option which meets all of the conditions of section 424(b) of the Internal Revenue Code of 1986 as amended, other than the date of issuance, shall be deemed to be a *restricted stock option*.

(jj) *Record date.* The term *record date* means the date as of which the record holders of securities entitled to vote at a meeting or by written consent or authorization shall be determined.

(kk) *Record holder.* For purposes of §§ 335.203 and 335.214 the term *record holder* means any broker, dealer, voting trustee, bank, association or other entity that exercises fiduciary powers which holds securities of record in nominee name or otherwise or as a participant in a clearing agency registered pursuant to section 17A of the Act.

(ll) *Respondent bank.* For purposes of §§ 335.203 and 335.214, the term *respondent bank* means any bank, association or other entity that exercises fiduciary powers which holds securities on behalf of beneficial owners and deposits such securities for safekeeping with another bank, association or other entity that exercises fiduciary powers.

(mm) The term *share* means a share of stock in a corporation or unit of interest in an unincorporated person.

(nn) The term *significant subsidiary* means: (1) A subsidiary or

(2) A subsidiary and its subsidiaries which meet any of the conditions described below based on

(i) The most recent annual financial statements, including consolidated financial statements, of such subsidiary which would be required to be filed if such subsidiary were required to file and

(ii) The most recent annual consolidated financial statements of the bank being filed:

(A) The parent's and its other subsidiaries' investments in and advances to, or their proportionate share (based on their equity interests) of the total assets (after intercompany eliminations) of, the subsidiary exceed five percent of the total assets of the parent and its consolidated subsidiaries.

(B) The parent's and its other subsidiaries' proportionate share (based on their equity interests) of the gross operating revenues (after intercompany eliminations) of the subsidiary exceeds five percent of the gross operating revenues of the parent and its consolidated subsidiaries.

(C) The parent's and its other subsidiaries' equity in the income before income taxes and extraordinary items of the subsidiary exceeds five percent of such income of the parent and its consolidated subsidiaries, provided that if such income of the parent and its consolidated subsidiaries is at least

five percent lower than the average of such income for the last five fiscal years such average income may be substituted in the determination.

(D) The investments in the subsidiary by its parent plus the parent's proportion of the investments in such subsidiary by the parent's other subsidiaries, if any, exceed 5 percent of the equity capital accounts of the bank. *Investments* refers to the amount carried on the books of the parent and other subsidiaries or the amount equivalent to the parent's proportionate share in the equity capital accounts of the subsidiary, whichever is greater.

(oo) The term *Small Business Issuer* shall be defined in the same manner as currently defined in 17 CFR 240.12b-2.

(pp) The terms *solicit* and *solicitation* mean:

(1) Any request for a proxy whether or not accompanied by or included in a form of proxy;

(2) Any request to execute or not to execute, or to revoke, a proxy; or

(3) The furnishing of a form of proxy or other communication to security holders under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy. The terms do not apply, however, to:

(i) The furnishing of a form of proxy to a security holder upon the unsolicited request of such security holder;

(ii) The performance by the bank of acts required by § 335.210;

(iii) The performance by any person of ministerial acts on behalf of a person soliciting a proxy; or

(iv) A communication by a security holder who does not otherwise engage in a proxy solicitation (other than a solicitation exempt under § 335.202) stating how the security holder intends to vote and the reasons therefore, provided that the communication:

(A) Is made by means of speeches in public forums, press releases, published or broadcast opinions, statements, or advertisements appearing in a broadcast media, or newspaper, magazine or other bona fide publication disseminated on a regular basis;

(B) Is directed to persons to whom the security holder owes a fiduciary duty in connection with the voting of

securities of a bank held by the security holder; or

(C) Is made in response to unsolicited requests for additional information with respect to a prior communication by the security holder made pursuant to this paragraph (oo)(3)(iv).

(qq) The term *subsidiary* means:

(1) Any corporation, business trust, association, or similar organization of which the bank, either directly or through one or more intermediaries, (i) owns beneficially a majority of the voting securities, (ii) holds a majority of the voting securities as trustee for the benefit of the holders of a class of stock of the bank, pro rata, or (iii) has the power to elect a majority of the directors, trustees, or other persons exercising similar functions except where such power (A) exists by reason of ownership or control of voting securities by the bank in a fiduciary capacity, or (B) was obtained in the course of securing or collecting a debt previously contracted in good faith; or

(2) Any affiliate controlled by such person directly, or indirectly through one or more intermediaries.

(rr) The term *succession* means the direct acquisition of the shares or assets comprising a going business, whether by merger, consolidation, purchase, or other direct transfer. The term does not include the acquisition of control of a business unless followed by the direct acquisition of its shares or assets. The terms *succeed* and *successor* have meanings correlative to the foregoing.

(ss) *Verified*. The term *verified* when used in regard to financial statements, has the same meaning as *certified*.

(tt) The term *voting securities* means the sum of all rights, other than as affected by the events of default, to vote for election of directors and/or the sum of all interests in an unincorporated person.

[46 FR 25208, May 5, 1981, as amended at 54 FR 53574, Dec. 29, 1989; 57 FR 58136, Dec. 9, 1992; 59 FR 67168, Dec. 29, 1994]

§ 335.103 Liability for forward-looking statements.

(a) A statement within the coverage of paragraph (b) of this section which is made by or on behalf of a bank, or by an outside reviewer retained by the bank, shall be deemed not to be a

fraudulent statement (as defined in paragraph (d) of this section), unless it is shown that such statement was made or reaffirmed without a reasonable basis or was disclosed other than in good faith.

(b) This section applies to (1) a forward-looking statement (as defined in paragraph (c) of this section) made in an annual report to shareholders meeting the requirements of §335.203 or in a document filed with the FDIC under the Act, (2) a statement reaffirming the forward-looking statement referred to in paragraph (b)(1) of this section subsequent to the date the document was filed or the annual report was made publicly available, (3) a forward-looking statement made prior to the date the document was filed or the date the annual report was made publicly available if such forward-looking statement is reaffirmed in a filed document or annual report made publicly available within a reasonable time after the making of such forward-looking statement, or (4) information relating to the effects of changing prices on the business enterprise presented voluntarily or pursuant to any *Management's discussion and analysis of financial condition and results of operations*, or any other supplementary financial information, and disclosed in a document filed with the FDIC, or in an annual report to shareholders meeting the requirements of §335.203.

(c) For the purpose of this section the term *forward-looking statement* shall mean and shall be limited to:

(1) A statement containing a projection of revenues, income (loss), earnings (loss) per share, capital expenditures, dividends, capital structure or other financial items;

(2) A statement of management's plans and objectives for future operations;

(3) A statement of future economic performance contained in management's discussion and analysis of financial condition and results of operations; or

(4) Disclosed statements of the assumptions underlying or relating to any of the statements described in paragraph (c) (1), (2), or (c)(3) of this section.

(d) For the purpose of this section the term *fraudulent statement* shall mean a statement which is an untrue statement of a material fact, a statement false or misleading with respect to any material fact, an omission to state a material fact necessary to make a statement not misleading, or which constitutes the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business, or an artifice to defraud, as those terms are used in the Act or the regulations issued thereunder.

(e) Notwithstanding any of the provisions of paragraphs (a) through (d) this shall apply only to forward-looking statements made by or on behalf of a bank if, at the time such statements are made or reaffirmed, the bank is subject to the reporting requirements of the Act and has filed its most recent annual report on Form F-2.

[46 FR 25208, May 5, 1981, as amended at 48 FR 55555, Dec. 14, 1983]

Subpart B—Shareholder Meetings

§ 335.201 Requirement of statement.

(a) *Proxy statements.* No solicitation of a proxy (See 12 CFR 335.102(gg) and (pp)) with respect to a security of a bank registered under section 12 of the Act shall be made unless each person solicited is concurrently furnished or has previously been furnished with a written proxy statement containing the information required by Form F-5.

(b) *Information statements.* If any bank having such a security outstanding fails to solicit proxies from the holders of any such security in a manner requiring the furnishing of a proxy statement, the bank shall transmit to all holders of record of such security a statement containing the information required by Form F-5A. The "information statement" required by the preceding sentence shall be transmitted:

(1) At least 20 calendar days prior to any annual or other meeting of the holders of such security at which the holders are entitled to vote or.

(2) In the case of corporate action taken with the written authorization or consent of security holders, at least 20 days prior to the earliest date on

which the corporate action may be taken.

The “information statement” shall be transmitted to every security holder of the class that is entitled to vote or give an authorization or consent in regard to any matter to be acted upon and from whom a proxy, authorization or consent is not solicited on behalf of the bank pursuant to section 14(a) of the Act: *Provided, however*, that in the case of a class of securities in unregistered or bearer form, such statements need be transmitted only to those security holders whose names are known to the bank.

(c) *Statements.* A proxy statement or an information statement where required by this paragraph is hereinafter sometimes referred to as a “Statement”.

(d) The provisions of paragraph (a) of this section shall not apply to a communication made by means of speeches in public forums, press releases, published or broadcast opinions, statements, or advertisements appearing in a broadcast media, newspaper, magazine or other bona fide publication disseminated on a regular basis, provided that:

(1) No form of proxy, consent or authorization or means to execute the same is provided to a security holder in connection with the communication; and

(2) At the time the communication is made, a definitive proxy statement is on file with the FDIC pursuant to §335.204(c).

[46 FR 25208, May 5, 1981, as amended at 54 FR 53575, Dec. 29, 1989; 59 FR 67168, Dec. 29, 1994]

§ 335.202 Exceptions.

The requirements of this subpart (except §§ 335.204(1), 335.206, and 335.210) shall not apply to the following:

(a) Any solicitation made otherwise than on behalf of the the bank where the total number of persons solicited is not more than 10.

(b) Any solicitation by a person in respect to securities carried in his name or in the name of his nominee (otherwise than as voting trustee) or held in his custody, if such person:

(1) Receives no commission or remuneration for such solicitation, directly or indirectly, other than reimbursement of reasonable expenses;

(2) Furnishes promptly to the person solicited a copy of all soliciting material with respect to the same subject matter or meeting received from all persons who will furnish copies thereof for such purpose and who will, if requested, defray the reasonable expenses to be incurred in forwarding such material; and

(3) In addition, does no more than: (i) Impartially instruct the person solicited to forward a proxy to the person, if any, to whom the person solicited desires to give a proxy, or (ii) impartially request from the person solicited instructions as to the authority to be conferred by the proxy and state that a proxy will be given if no instructions are received by a certain date.

(c) Any solicitation by a person with respect to securities of which he is the beneficial owner.

(d) Any solicitation through the medium of a newspaper advertisement that informs security holders of a source from which they may obtain copies of a proxy statement, form of proxy, and any other soliciting material and does no more than (1) name the bank; (2) state the reason for the advertisement; and (3) identify the proposal or proposals to be acted upon by security holders.

(e) The furnishing of proxy voting advice by any person (the “advisor”) to any other person with whom the advisor has a business relationship, if:

(1) The advisor renders financial advice in the ordinary course of his business;

(2) The advisor discloses to the recipient of the advice any significant relationship with the bank or any of its affiliates, or a shareholder proponent of the matter on which advice is given, as well as any material interest of the advisor in such matter;

(3) The advisor receives no special commission or remuneration for furnishing the proxy voting advice from any person other than a recipient of the advice and other persons who receive similar advice under this subsection; and

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(4) The proxy voting advice is not furnished on behalf of any person soliciting proxies or on behalf of a participant in an election subject to the provisions of § 335.220.

(f) Any solicitation by or on behalf of any person who does not, at any time during such solicitation, seek directly or indirectly, either on its own or another's behalf, the power to act as proxy for a security holder and does not furnish or otherwise request, or act on behalf of a person who furnishes or requests, a form of revocation, abstention, consent or authorization. *Provided, however,* that the exemption set forth in this paragraph shall not apply to:

(1) The bank or an affiliate or associate of the bank (other than an officer or director or any person serving in a similar capacity);

(2) An officer or director of the bank or any person serving in a similar capacity engaging in a solicitation financed directly or indirectly by the bank;

(3) An officer, director, affiliate or associate of a person that is ineligible to rely on the exemption set forth in this paragraph (other than persons specified in paragraph (b)(1)(i) of this section), or any person serving in a similar capacity;

(4) Any nominee for whose election as a director proxies are solicited;

(5) Any person soliciting in opposition to a merger, recapitalization, reorganization, sale of assets or other extraordinary transaction recommended or approved by the board of directors of the bank who is proposing or intends to propose an alternative transaction to which such person or one of its affiliates is a party;

(6) Any person who is required to report beneficial ownership of the bank's equity securities on a Form F-11 [§ 335.407], unless such person has filed a Form F-11 and has not disclosed pursuant to Item 4 thereto an intent, or reserved the right, to engage in a control transaction, or any contested solicitation for the election of directors;

(7) Any person who receives compensation from an ineligible person directly related to the solicitation of proxies, other than pursuant to § 335.203(c);

(8) Any person who, because of a substantial interest in the subject matter of the solicitation, is likely to receive a benefit from a successful solicitation that would not be shared pro rata by all other holders of the same class of securities, other than a benefit arising from the person's employment with the bank; and

(9) Any person acting on behalf of any of the foregoing in paragraphs (f) (1) through (8) of this section.

[46 FR 25208, May 5, 1981, as amended at 59 FR 67168, Dec. 29, 1994]

§ 335.203 Annual report to security holders to accompany statements.

(a) Any statement furnished on behalf of the bank that relates to an annual meeting (or special meeting in lieu of annual meeting) of security holders at which directors are to be elected shall be accompanied or preceded by an annual report to such security holders.

Note to Small Business Issuers: A "small business issuer", as defined under 17 CFR 240.12b-2 has the option of providing financial and other item disclosure in conformance with Regulation S-B of the Securities and Exchange Commission (17 CFR Part 228) in lieu of the disclosure requirements set forth by paragraphs (a)(1) and (a)(3) through (a)(8) of this section. If there is no comparable disclosure requirement in Regulation S-B, a small business issuer need not provide the information requested. The definition of "small business issuer", generally includes banks with annual revenues of less than \$25 million, whose voting stock does not have a public float of \$25 million or more.

(1) The report shall include, for the bank and its subsidiaries, consolidated balance sheets as of the end of each of the two most recent fiscal years, and statements of income, changes in capital accounts and changes in financial position and/or cash flows for each of the three most recent fiscal years, prepared and audited in substantial compliance with subpart F of this part. Any financial statement schedules (except schedule VI) or exhibits or separate financial statements which may otherwise be required in filings with the FDIC may be omitted.

NOTE: If the financial statements for a year prior to the most recently completed

fiscal year have been examined by a predecessor accountant, the separate report of the predecessor accountant may be omitted in the report to security holders provided the bank has obtained from the predecessor accountant a reissued report covering the prior period presented and the successor accountant clearly indicates in the scope paragraph of his report (a) that the financial statements of the prior period were examined by other accountants, (b) the date of their report, (c) the type of opinion expressed by the predecessor accountant, and (d) the substantive reasons therefor, if it was other than unqualified. It should be noted, however, that the separate report of any predecessor accountant may be required in filings with the FDIC. If, for instance, the financial statements in the annual report to security holders are incorporated by reference in a Form F-2, the separate report of a predecessor accountant shall be filed in part II or in part IV as a financial statement schedule.

(2) Financial statements and notes thereto shall be presented in roman type at least as large and as legible as 10-point modern type. If necessary for convenient presentation, the financial statements may be in roman type as large and as legible as 8-point modern type. All type shall be leaded at least 2 points.

(3) The report shall contain the information required by § 335.622(f)—Disagreements on accounting and financial disclosure matters, and § 335.622(g)—Disclosure of selected quarterly financial data in notes to the financial statements, unless such situation did not exist or the bank is otherwise exempt from making such disclosures.

(4)(i) The report shall contain Selected Financial Data in accordance with the provisions of item 6 of the Form F-2 (§ 335.312).

(ii) The report shall contain Management's Discussion and Analysis of the bank's financial condition and results of operations in accordance with the provisions of item 7 of the Form F-2 (§ 335.312). Item 7 deals with results of operations.

(5) The report shall contain a brief description of the business done by the bank and its subsidiaries during the most recent year which will, in the opinion of management, indicate the general nature and scope of the business of the bank and its subsidiaries. The report shall contain information

as comprehensive as that required by Schedule III of Format F-9E.

(6) The report shall contain information as comprehensive as that required by item 1(c) of Form F-2 regarding the bank's lines of business.

(7) The report shall identify each of the bank's directors and officers, and shall indicate the principal occupation or employment of each such person and the name and principal business of any organization by which such person is so employed. See the definition of "officers" at § 335.102(y).

(8) The report shall contain the market price of the bank's common stock and related security holder matters in accordance with the provisions of item 5 of Form F-2 (§ 335.312).

(9) The bank's proxy statement, or the report, shall contain an undertaking in bold face or otherwise reasonably prominent type to provide without charge to each person solicited, on the written request of any such person, a copy of the bank's annual report on Form F-2, including the financial statements and the schedules thereto required to be filed with the FDIC under § 335.310 for the bank's most recent fiscal year, and shall indicate the name and address of the person to whom such a written request is to be directed. In the discretion of management, a bank need not undertake to furnish without charge copies of all exhibits to its Form F-2, provided that the copy of the annual report on Form F-2 furnished without charge to requesting security holders is accompanied by a list briefly describing all the exhibits not contained therein and indicating that the bank will furnish any exhibit upon the payment of a specified reasonable fee which fee shall be limited to the issuer's reasonable expenses in furnishing the exhibit. If the bank's annual report to security holders complies with all of the disclosure requirements of Form F-2 and is filed with the FDIC in satisfaction of its Form F-2 filing requirements, the bank need not furnish a separate Form F-2 to security holders who receive a copy of such annual report.

NOTE: Pursuant to the undertaking required by paragraph (a)(9) of this section, a bank shall furnish a copy of its annual report on Form F-2 (§ 335.312) to a beneficial

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owner of its securities upon receipt of a written request from such person. Each request must set forth a good faith representation that, as of the record date for the solicitation requiring the furnishing of the annual report to security holders pursuant to paragraph (a) of this section, the person making the request was a beneficial owner of securities entitled to vote.

(10) Subject to the foregoing requirements, the report may be in a form deemed suitable by management and the information required by paragraphs (a) (4) through (9) of this section may be presented in an appendix or other separate section of the report, provided that the attention of security holders is called to such presentation.

Instruction. Banks are encouraged to utilize tables, schedules, charts, and graphic illustrations to present financial information in an understandable manner. Any presentation of financial information must be consistent with the data in the financial statements contained in the report and, if appropriate, should refer to relevant portions of the financial statements and notes thereto.

(11) This §335.203 shall not apply, however, to solicitations made on behalf of the bank before the financial statements are available if solicitation is being made at the time in opposition to the bank and if the bank's statement includes an undertaking in bold-face type to furnish such annual report to all persons being solicited at least 20 calendar days before the date of the meeting or, if the solicitation refers to a written consent or authorization in lieu of a meeting, at least 20 calendar days prior to the earliest date on which it may be used to effect corporation action.

(b) Three copies of each annual report sent to security holders under this section shall be sent to the FDIC not later than: (1) The date on which such report is first sent or given to security holders or (2) the date on which preliminary copies of the bank's statement are filed with the FDIC under §335.204 whichever date is later.

NOTE: To assist the staff, managements of banks are requested to indicate in a letter transmitting to the FDIC copies of their annual reports to security holders or in a separate letter at or about the time the annual report is furnished to the FDIC, whether the financial statements in the report reflect a change from the preceding year in any ac-

counting principles or practices or in the method of applying any such principles or practices.

Such annual report is not deemed to be "soliciting material" or to be "filed" with the FDIC or otherwise subject to this subpart or the liabilities of section 18 of the Act, except to the extent that the bank specifically requests that it be treated as a part of the proxy soliciting material or incorporates it in the proxy statement by reference.

[46 FR 25208, May 5, 1981, as amended at 48 FR 55555, Dec. 14, 1983; 54 FR 53575, Dec. 29, 1989; 57 FR 58136, Dec. 9, 1992; 59 FR 67169, Dec. 29, 1994]

§ 335.204 Material required to be filed.

(a) Three preliminary copies of each statement, form of proxy, and other item of soliciting material to be furnished to security holders concurrently therewith, shall be filed with the FDIC by the bank or any other person making a solicitation subject to this subpart at least ten calendar days (or 15 calendar days in the case of other than routine meetings, as defined below) prior to the date such item is first sent or given to any security holders, or such shorter period prior to that date as may be authorized. For the purposes of this paragraph, a routine meeting means a meeting with respect to which no one is soliciting proxies subject to this subpart other than on behalf of the bank and at which the bank intends to present no matters other than the election of directors, election of inspectors of election, and other recurring matters. In the absence of actual knowledge to the contrary, bank may assume that no other such solicitation of the bank's security holders is being made. In cases of annual meetings, one additional preliminary copy of the Statement, the form of proxy, and any other soliciting material, marked to show changes from the material sent or given to security holders with respect to the preceding annual meeting, shall be filed with the FDIC. If the changes are material, the bank shall file with the FDIC any explanatory comments which may be of assistance in the expeditious processing of the Statement.

Note 1: The filing of revised material does not recommence the ten day time period unless the revised material contains material

revisions or material new proposal(s) that constitute a fundamental change in the proxy material.

Note 2: The officials responsible for the preparation of the preliminary material should make every effort to verify the accuracy and completeness of the information required by the applicable rules. The preliminary material should be filed with the FDIC at the earliest practicable date.

(b) Three preliminary copies of any additional soliciting material, relating to the same meeting or subject matter, furnished to security holders subsequent to the proxy statement shall be filed with the FDIC at least two days (exclusive of Saturdays, Sundays, and Federal holidays) prior to the date copies of such material are first sent or given to security holders, or such shorter period prior to such date as may be authorized upon a showing of good cause therefor.

(c) Three copies of each statement, form of proxy, and other item of soliciting material, in the form in which such material is furnished to security holders, shall be filed with, or mailed for filing to, the FDIC not later than the date such material is first sent or given to any security holders. Three copies of such material shall at the same time be filed with, or mailed for filing to, each exchange upon which any security of the bank is listed.

NOTE: The Definitive Statement filed with the FDIC should be accompanied by a letter indicating any material changes which have been made therein, other than those made in response to the staff's comments, and should also be accompanied by a marked copy of the Definitive Statement indicating all changes made therein.

(d) If the solicitation is to be made in whole or in part by personal solicitation, three copies of all written instructions, or other material that discusses or reviews, or comments upon the merits of, any matter to be acted upon and is furnished to the individuals making the actual solicitation for their use directly or indirectly in connection with the solicitation shall be filed with the FDIC by the person on whose behalf the solicitation is made at least five days prior to the date copies of such material are first sent or given to the individuals, or such shorter period prior to that date as may be

authorized upon a showing of good cause therefor.

(e) All preliminary material filed pursuant to paragraph (a) or (b) of this section shall be accompanied by a statement of the date on which definitive copies therefor filed pursuant to paragraph (c) of this section are intended to be released to security holders. All definitive material filed pursuant to paragraph (c) of this section shall be accompanied by a statement of the date on which copies of such material have been released to security holders, or, if not released, the date on which copies thereof are intended to be released. All material filed pursuant to paragraph (d) of this section shall be accompanied by a statement of the date on which copies thereof are intended to be released to the individual who will make the actual solicitation.

(f)(1) All copies of preliminary proxy statements and forms of proxy filed pursuant to paragraph (a) of this section shall be clearly marked "Preliminary Copies", and shall be deemed immediately available for public inspection unless confidential treatment is obtained pursuant to paragraph (f)(2) of this section.

(2) If action is to be taken with respect to any matter specified in Item 12 of Form F-5, all copies of the preliminary proxy statement and form of proxy filed pursuant to paragraph (a) of this section shall be for the information of the FDIC only and shall not be deemed available for public inspection until filed with the FDIC in definitive form, provided that:

(i) The proxy statement does not relate to a matter or proposal subject to § 335.409; and

(ii) The filed material is marked "Confidential, For Use of the FDIC Only". In any and all cases, such material may be disclosed to any department or agency of the United States Government and to the Congress, and the FDIC may make such inquiries or investigation in regard to the material as may be necessary for an adequate review thereof by the FDIC.

(g) Copies of replies to inquiries from security holders requesting further information and copies of communications that do no more than request

that forms of proxy theretofore solicited be signed, dated, and returned need not be filed under this section.

(h) Notwithstanding the provisions of § 335.204 (a) and (b), § 335.205(b) and § 335.220(c), copies of soliciting material in the form of speeches, press releases, and radio or television scripts may, but need not, be filed with the FDIC prior to use or publication. Definitive copies, however, shall be filed with or mailed for filing to the FDIC as required by § 335.204(c) not later than the date such material is used or published. The provisions of § 335.204 (a) and (b), § 335.205(b) and § 335.220(c) shall apply, however, to any reprints or reproductions of all or any part of such material.

(i) Where any statement, form of proxy, or other material filed pursuant to this section is revised, two of the copies of such amendment or revised material filed under § 335.204(c) shall be marked to indicate clearly the changes. If the amendment or revision alters the text of the material, the changes in such text shall be indicated by means of underscoring or in some other appropriate manner.

(j) The date that proxy material is "filed" with the FDIC for purposes of paragraphs (a), (b), and (d) of this section, is the date of receipt by the FDIC not the date of mailing to the FDIC. In computing the advance filing period for preliminary copies of proxy soliciting material referred to in such paragraphs, the filing date of the preliminary material is to be counted as the first day of the period and definitive material should not be planned to be mailed or distributed to security holders until after the expiration of such period. Where additional time is required for final printing after receipt of comments, the preliminary proxy material should be filed as early as possible prior to the intended mailing date.

(k) Where preliminary copies of material are filed with the FDIC under this section the printing of definitive copies for distribution to security holders should be deferred until the comments of the FDIC's staff have been received and considered.

(l) Solicitations subject to § 335.202(f).
(1) Any person who:

(i) Engages in a solicitation pursuant to § 335.202(f); and

(ii) At the commencement of that solicitation owns beneficially securities of the class which is the subject of the solicitation with a market value of over \$5 million, shall furnish or mail to the FDIC, not later than three days after the date the written solicitation is first sent or given to any security holder, three copies of a statement containing the information specified in the Notice of Exempt Solicitation (Form F-6A, § 335.222) which statement shall attach as an exhibit all written soliciting materials. Three copies of an amendment to such statement shall be furnished or mailed to the FDIC, in connection with dissemination of any additional communications, not later than three days after the date the additional material is first sent or given to any security holder. Three copies of the Notice of Exempt Proxy Solicitation and amendments thereto shall, at the same time the materials are furnished or mailed to the FDIC, be furnished or mailed to each national securities exchange upon which any class of securities of the bank is listed and registered.

(2) Notwithstanding paragraph (1)(1) of this section, no such submission need be made with respect to oral solicitations (other than with respect to scripts used in connection with such oral solicitations), speeches delivered in a public forum, press releases, published or broadcast opinions, statements, and advertisements appearing in a broadcast media, or a newspaper, magazine or other bona fide publication disseminated on a regular basis.

[46 FR 25208, May 5, 1981, as amended 54 FR 53575, Dec. 29, 1989; 59 FR 67169, Dec. 29, 1994]

§ 335.205 Solicitation prior to furnishing required proxy statement.

(a) Notwithstanding the provisions of § 335.201, a solicitation (other than one subject to § 335.220) may be made prior to furnishing security holders a written proxy statement containing the information specified in Form F-5 with respect to such solicitation if:

(1) The solicitation is made in opposition to a prior solicitation or an invitation for tenders or other publicized activity which, if successful, could reasonably have the effect of defeating the action proposed to be taken at the meeting;

(2) No form of proxy is furnished to security holders prior to the time the written proxy statement required by § 335.201 is furnished to security holders: *Provided, however,* That this paragraph shall not apply where a proxy statement then meeting the requirements of Form F-5 has been furnished to security holders by or on behalf of the person making the solicitation;

(3) The identity of the participants in the solicitation (as defined in Instruction 3 to Item 3 of Form F-5 (§ 335.212)) and a description of their interests direct or indirect, by security holdings or otherwise, are set forth in each communication published, sent or given to security holders in connection with the solicitation; and

(4) A written proxy statement meeting the requirements of this regulation is sent or given to security holders solicited pursuant to this section at the earliest practicable date.

(b) Three copies of any soliciting material proposed to be sent or given to security holders prior to the furnishing of the written proxy statement required by § 335.201 shall be filed with the FDIC in preliminary form at least five business days prior to the date definitive copies of such material are first sent or given to security holders, or such shorter period as the FDIC may authorize upon a showing of good cause therefor.

[46 FR 25208, May 5, 1981, as amended at 59 FR 67169, Dec. 29, 1994]

§ 335.206 False or misleading statements.

(a) No solicitation or communication subject to this subpart B shall be made by means of any statement, form of proxy, notice of meeting, or other communication, written or oral, containing any statement that, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or that omits to state any material fact necessary in order to make the state-

ment therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter that has become false or misleading. Depending upon particular circumstances, the following may be misleading within the meaning of this section: Predictions as to specific future market values, material that directly or indirectly impugns character, integrity, or personal reputation, or directly or indirectly makes charges concerning improper, illegal, or immoral conduct or associations, without factual foundation; failure to so identify a statement, form of proxy, and other soliciting material as to clearly distinguish it from the soliciting material of any other person or persons soliciting for the same meeting or subject matter; claims made prior to a meeting regarding the results of a solicitation.

(b) The fact that a proxy statement, form of proxy, or other soliciting material has been filed with or reviewed by the FDIC or its staff shall not be deemed a finding by the FDIC that such material is accurate or complete or not false or misleading, or that the FDIC has passed upon the merits of or approved any statement therein or any matter to be acted upon by security holders. No representation contrary to the foregoing shall be made.

[46 FR 25208, May 5, 1981, as amended at 48 FR 55564, Dec. 14, 1983; 54 FR 53576, Dec. 29, 1989]

§ 335.207 Requirements as to proxy.

(a) The form of proxy:

(1) Shall indicate in bold-face type whether or not the proxy is solicited on behalf of the bank's board of directors or, if provided other than by a majority of the board of directors, shall indicate in bold face type the identity of the persons on whose behalf the solicitation is made;

(2) Shall provide a specifically designated blank space for dating the proxy; and

(3) Shall identify clearly and impartially each separate matter intended to be acted upon, whether or not related to or conditioned on the approval of other matters, and whether proposed by the bank or by security holders. No

reference need be made, however, to matters as to which discretionary authority is conferred under paragraph (c) of this section.

(b)(1) Means shall be provided in the form of proxy whereby the person solicited is afforded an opportunity to specify by boxes a choice between approval or disapproval of, or abstention with respect to each separate matter referred to therein as intended to be acted upon, other than elections to office. A proxy may confer discretionary authority with respect to matters as to which a choice is not so specified by the security holder if the form of proxy states in bold-faced type how the shares represented by the proxy are intended to be voted in each such case.

(2) A form of proxy which provides for the election of directors shall set forth the names of persons nominated for election as directors. Such form of proxy shall clearly provide any of the following means for security holders to withhold authority to vote for each nominee:

(i) A box opposite the name of each nominee which may be marked to indicate that authority to vote for such nominee is withheld; or

(ii) An instruction in bold-face type which indicates that the security holder may withhold authority to vote for any nominee by lining through or otherwise striking out the name of any nominee; or

(iii) Designated blank spaces in which the shareholder may enter the names of nominees with respect to whom the shareholder chooses to withhold authority to vote; or

(iv) Any other similar means, provided that clear instructions are furnished indicating how the shareholder may withhold authority to vote for any nominee.

The form of proxy also may provide a means for the security holder to grant authority to vote for the nominees set forth, as a group, provided that there is a similar means for the security holder to withhold authority to vote for the group of nominees. Any form of proxy which is executed by the security holder in such manner as not to withhold authority to vote for the election of any nominee shall be deemed to grant

authority, provided that the form of proxy so states in bold-face type.

Instructions. 1. Section 335.207(b)(2) does not apply in the case of a merger, consolidation or other plan if the election of directors is an integral part of the plan.

2. If applicable state law gives legal effect to votes cast against a nominee, then in lieu of, or in addition to, providing a means for security holders to withhold authority to vote, the bank should provide a similar means for security holders to vote against each nominee.

(c) A proxy may confer discretionary authority to vote with respect to any of the following matters:

(1) Matters which the persons making the solicitation do not know, a reasonable time before the solicitation, are to be presented at the meeting, if a specific statement to that effect is made in the proxy statement or form of proxy;

(2) Approval of the minutes of the prior meeting if such approval does not amount to ratification of the action taken at that meeting;

(3) The election of any person to any office for which a bona fide nominee is named in the proxy statement and nominee is subsequently unable to serve or for good cause refuses to serve;

(4) Any proposal omitted from the proxy statement and form of proxy under § 335.206 or § 335.211; and

(5) Matters incident to the conduct of the meeting.

(d)(1) No proxy shall confer authority:

(i) To vote for the election of any person to any office for which a bona fide nominee is not named in the proxy statement;

(ii) To vote at any annual meeting other than the next annual meeting (or any adjournment thereof) to be held after the date on which the proxy statement and form of proxy are first sent or given to security holders;

(iii) To vote with respect to more than one meeting (and any adjournment thereof) or more than one consent solicitation; or

(iv) To consent to or authorize any action other than the action proposed to be taken in the proxy statement or matters referred to in paragraph (c) of this section.

(2) A person shall not be deemed to be a bona fide nominee and he shall not be

named as such unless he has consented to being named in the proxy statement and to serve if elected. *Provided, however,* that nothing in this section shall prevent any person soliciting in support of nominees who, if elected, would constitute a minority of the board of directors, from seeking authority to vote for nominees named in the bank's proxy statement, so long as the soliciting party:

(i) Seeks authority to vote in the aggregate for the number of director positions then subject to election;

(ii) Represents that it will vote for all the bank nominees, other than those bank nominees specified by the soliciting party;

(iii) Provides the security holder an opportunity to withhold authority with respect to any other bank nominee by writing the name of that nominee on the form of proxy; and

(iv) States on the form of proxy and in the proxy statement that there is no assurance that the bank's nominees will serve if elected with any of the soliciting party's nominees.

(e) The proxy statement or form of proxy shall provide, subject to reasonable specified conditions, that the shares represented by the proxy will be voted and that where the person solicited specifies by means of a ballot provided under paragraph (b) of this section a choice with respect to any matters to be acted upon, the shares will be voted in accordance with the specifications so made.

(f) No person conducting a solicitation subject to this subpart B shall deliver a form of proxy, consent or authorization to any security holder unless the security holder concurrently receives, or has previously received, a definitive proxy statement that has been filed with, or mailed for filing to, the FDIC pursuant to § 335.204(c).

[46 FR 25208, May 5, 1981, as amended at 54 FR 53576, Dec. 29, 1989; 59 FR 67169, Dec. 29, 1994]

§ 335.208 Prohibition of certain solicitations.

No person making a solicitation that is subject to this subpart B shall solicit:

(a) Any undated or postdated proxy; or

(b) Any proxy that provides that it shall be deemed to be dated as of any date subsequent to the date on which it is signed by the security holder.

§ 335.209 Presentation of information in statement.

(a) The information included in the Statement shall be clearly presented and the statements made shall be divided into groups according to subject matter and the various groups of statements shall be preceded by appropriate headings. The order of items in the form need not be followed. Where practicable and appropriate, the information shall be presented in tabular form. All amounts shall be stated in figures. Information required by more than one applicable item need not be repeated. No statement need be made in response to any item that is inapplicable.

(b) Any information required to be included in the Statement as to terms of securities or other subject matter that from a standpoint of practical necessity must be determined in the future may be stated in terms of present knowledge and intention. To the extent practicable, the authority to be conferred concerning each such matter shall be confined within limits reasonably related to the need for discretionary authority. Subject to the foregoing, information that is not known to the persons on whose behalf the solicitation is to be made and is not reasonably within the power of such persons to ascertain or procure may be omitted, if a brief statement of the circumstances rendering such information unavailable is made.

(c) There may be omitted from a proxy statement any information contained in any other proxy soliciting material that has been furnished to each person solicited in connection with the same meeting or subject matter if a clear reference is made to the particular document containing the information.

(d) All printed Statements shall be set in roman type at least as large as 10-point modern type except that to the extent necessary for convenient presentation financial statements and other statistical or tabular matter may be set in roman type at least as large

as 8-point modern type. All type shall be leaded at least 2 points.

(e) All proxy statements shall disclose on the first page thereof the complete mailing address, including zip code, of the principal executive offices of the bank and the approximate date on which the proxy statement and form of proxy are first sent or given to security holders. If action is to be taken by written consent, state the date by which consents are to be submitted if state law requires that such a date be specified or if the person soliciting intends to set a date.

(f) All proxy statements shall disclose, under an appropriate caption, the date by which proposals of security holders intended to be presented at the next annual meeting must be received by the bank for inclusion in the bank's proxy statement and form of proxy relating to that meeting, such date to be calculated in accordance with the provisions of § 335.211(a)(3)(i). If the date of the next annual meeting is subsequently advanced by more than 30 calendar days or delayed by more than 90 calendar days from the date of the annual meeting to which the proxy statement relates, the bank shall, in a timely manner, inform security holders of such change, and the date by which proposals of security holders must be received, by any means reasonably calculated to so inform them.

[46 FR 25208, May 5, 1981, as amended at 54 FR 53576, Dec. 29, 1989]

§ 335.210 Obligations of banks to provide a list of, or mail soliciting material to, security holders.

(a) If the bank has made or intends to make a proxy solicitation in connection with a security holder meeting, upon the written request by any record or beneficial holder of securities of the class entitled to vote at the meeting to provide a list of security holders or to mail the requesting security holder's materials, regardless of whether the request references this section, the bank shall:

(1) Deliver to the requesting security holder within five business days after receipt of the request:

(i) Notification as to whether the bank has elected to mail the security holder's soliciting materials or provide

a security holder list if the election under paragraph (b) of this section is to be made by the bank;

(ii) A statement of the approximate number of record holders and beneficial holders, separated by type of holder and class, owning securities in the same class or classes as holders which have been or are to be solicited on management's behalf, or any more limited group of such holders designated by the security holder if available or retrievable under the bank's or its transfer agent's security holder data systems; and

(iii) The estimated cost of mailing a proxy statement, form of proxy or other communication to such holders, including to the extent known or reasonably available, the estimated costs of any bank, broker, and similar person through whom the bank has solicited or intends to solicit beneficial owners in connection with the security holder meeting or action;

(2) Perform the acts set forth in either paragraphs (a)(2)(i) or (a)(2)(ii) of this section, at the bank's or requesting security holder's option, as specified in paragraph (b) of this section:

(i) Mail copies of any proxy statement, form of proxy or other soliciting material furnished by the security holder to the record holders, including banks, brokers, and similar entities, designated by the security holder. A sufficient number of copies must be mailed to the banks, brokers and similar entities for distribution to all beneficial owners designated by the security holder. The bank shall mail the security holder material with reasonable promptness after tender of the material to be mailed, envelopes or other containers therefor, postage or payment for postage and other reasonable expenses of effecting such mailing. The bank shall not be responsible for the content of the material; or

(ii) Deliver the following information to the requesting security holder within five business days of receipt of the request: A reasonably current list of the names, addresses and security positions of the record holders, including banks, brokers and similar entities, holding securities in the same class or classes as holders which have been or are to be solicited on management's

behalf, or any more limited group of such holders designated by the security holder if available or retrievable under the bank's or its transfer agent's security holder data systems; the most recent list of names, addresses and security positions of beneficial owners as specified in §335.214(b), in the possession, or which subsequently comes into the possession, of the bank. All security holder list information shall be in the form requested by the security holder to the extent that such form is available to the bank without undue burden or expense. The bank shall furnish the security holder with updated record holder information on a daily basis or, if not available on a daily basis, at the shortest reasonable intervals, *provided, however*, the bank need not provide beneficial or record holder information more current than the record date for the meeting or action.

(b) If the bank is soliciting or intends to solicit with respect to a proposal that is subject to §335.409, the requesting security holder shall have the option set forth in paragraph (a)(2) of this section. With respect to all other requests pursuant to this section, the bank shall have the option to either mail the security holder's material or furnish the security holder list as set forth in paragraph (a)(2) of this section.

(c) At the time of a list request, the security holder making the request shall:

(1) If holding the bank's securities through a nominee, provide the bank with a statement by the nominee or other independent third party, or a copy of a current filing made with the FDIC and furnished to the bank, confirming such holder's beneficial ownership; and

(2) Provide the bank with an affidavit, declaration, affirmation or other similar document provided for under applicable state law identifying the proposal or other corporate action that will be the subject of the security holder's solicitation or communication and attesting that:

(i) The security holder will not use the list information for any purpose other than to solicit security holders with respect to the same meeting or action by consent or authorization for which the bank is soliciting or intends

to solicit or to communicate with security holders with respect to a solicitation commenced by the bank; and

(ii) The security holder will not disclose such information to any person other than a beneficial owner for whom the request was made and an employee or agent to the extent necessary to effectuate the communication or solicitation.

(d) The security holder shall not use the information furnished by the bank pursuant to paragraph (a)(2)(ii) of this section for any purpose other than to solicit security holders with respect to the same meeting for which the bank is soliciting or intends to solicit or to communicate with security holders with respect to a solicitation commenced by the bank; or disclose such information to any person other than an employee, agent, or beneficial owner for whom a request was made to the extent necessary to effectuate the communication or solicitation. The security holder shall return the information provided pursuant to paragraph (a)(2)(ii) of this section and shall not retain any copies thereof or of any information derived from such information after the termination of the solicitation.

(e) The security holder shall reimburse the reasonable expenses incurred by the bank in performing the acts requested pursuant to paragraph (a) of this section.

[59 FR 67170, Dec. 29, 1994]

§335.211 Proposals of security holders.

(a) If any security holder of the bank notifies the bank of his intention to present a proposal for action at a forthcoming meeting of the bank's security holders, the bank shall set forth the proposal in its proxy statement or information statement. If management issues a proxy statement, it shall identify the proposal in its form of proxy and provide means by which security holders can make the specification required by §335.207(b). If the bank issues an information statement under §335.201(b), it shall identify the proposal and indicate the disposition it proposes to make at the meeting. The bank however, need not include a proposal in its information statement if such proposal is submitted less than 60

days in advance of a day corresponding to the date of mailing a proxy statement or information statement in connection with the last annual meeting of security holders. Notwithstanding the foregoing, the banks shall not be required to include the proposal in its proxy statement or form of proxy unless the security holder (hereinafter, the "proponent") has complied with the requirements of this paragraph and paragraphs (b) and (c) of this section:

(1) *Eligibility.* At the time he submits the proposal, the proponent shall be a record or beneficial owner of a security entitled to be voted at the meeting on his proposal, and he shall continue to own security through the date on which the meeting is held. If the bank requests documentary support for a proponent's claim that he is a beneficial owner of a voting security of the bank, the proponent shall furnish appropriate documentation within 10 business days after receiving the request. In the event the bank includes the proponent's proposal in its proxy soliciting materials for the meeting and the proponent fails to comply with the requirement that he continuously be a voting security holder through the meeting date, the bank shall not be required to include any proposals submitted by the proponent in its proxy soliciting materials for any meeting held in the following two calendar years.

(2) *Notice.* The proponent shall notify the management in writing of his intention to appear personally at the meeting to present his proposal for action. The proponent shall furnish the requisite notice at the time he submits the proposal, except that if he was unaware of the notice requirement at that time he shall comply with it within 10 business days after being informed of it by the bank. If the proponent, after furnishing in good faith the notice required by this provision, subsequently determines that he will be unable to appear personally at the meeting, he shall arrange to have another security holder of the bank present his proposal on his behalf at the meeting. In the event the proponent or his proxy fails, without good cause, to present the proposal for action at the meeting, the bank shall not be required to include any proposals

submitted by the proponent in its proxy soliciting materials for any meeting, held in the following two calendar years.

(3) *Timeliness.* The proponent shall submit his proposal sufficiently far in advance of the meeting so that it is received by the bank within the following time periods:

(i) *Annual meetings.* A proposal to be presented at an annual meeting shall be received by the bank at the bank's principal executive offices not less than 90 days in advance of a date corresponding to the date of the bank's proxy statement released to security holders in connection with the previous year's annual meeting of security holders, except that if no annual meeting was held in the previous year or the date of the annual meeting has been changed by more than 30 calendar days from the date of the previous year's annual meeting a proposal shall be received by the management a reasonable time before the solicitation is made.

(ii) *Other meetings.* A proposal to be presented at any meeting other than an annual meeting shall be received a reasonable time before the solicitation is made.

NOTE: In order to curtail controversy as to the date on which a proposal was received by the management, it is suggested that proponents submit their proposals by Certified Mail-Return Receipt Requested.

(4) *Number and length of proposals.* The proponent may submit a maximum of two proposals of not more than 300 words each for inclusion in the management's proxy materials for a meeting of security holders. If the proponent fails to comply with either of these requirements, or if he fails to comply with the 200-word limit on supporting statements mentioned in paragraph (b) of this section, he shall be provided the opportunity by the bank to reduce, within 10 business days, the items submitted by him to the limits required by this section.

(b) If the bank opposes any proposal received from a proponent, it shall also, at the request of the proponent, include in its proxy statement a statement of the proponent of not more

than 200 words in support of the proposal, which statement shall not include the name and address of the proponent. The statement and request of the proponent shall be furnished to the bank at the time that the proposal is furnished, and the bank shall not be responsible for such statement. The proxy statement shall also include either the name and address of the proponent or a statement that such information will be furnished by the bank or by the FDIC to any person, orally or in writing as requested, promptly upon the receipt of any oral or written request therefor. If the name and address of the proponent are omitted from the proxy statement, they shall be furnished to the FDIC at the time of filing the management's preliminary proxy material under § 335.204.

(c) The bank may omit a proposal and any statement in support thereof from its proxy statement and form of proxy under any of the following circumstances:

(1) If the proposal is, under applicable law, not a proper subject for action by security holders;

NOTE: A proposal that may be improper under applicable law when framed as a mandate or directive may be proper when framed as a recommendation or request.

(2) If the proposal would, if implemented, require the bank to violate any State law or Federal law of the United States, or any law of any foreign jurisdiction, to which the bank is subject;

(3) If the proposal or the supporting statement is contrary to any of the FDIC's proxy rules and regulations, including § 335.206 which prohibits false or misleading statements in proxy soliciting materials;

(4) If the proposal relates to the enforcement of a personal claim or the redress of a personal grievance against the bank, or any other person;

(5) If the proposal deals with a matter that is not significantly related to the bank's business;

(6) If the proposal deals with a matter that is beyond the bank's power to effectuate;

(7) If the proposal deals with a matter relating to the conduct of the ordinary business operations of the bank;

(8) If the proposal relates to an election to office;

(9) If the proposal is counter to a proposal to be submitted by the management at the meeting;

(10) If the proposal has been rendered moot;

(11) If the proposal is substantially duplicative of a proposal previously submitted to the bank by another proponent, which proposal will be included in the bank's proxy materials for the meeting;

(12) If substantially the same proposal has previously been submitted to security holders in the bank's proxy statement and form of proxy relating to any annual or special meeting of security holders held within the preceding 5 calendar years, it may be omitted from the bank's proxy materials relating to any meeting of security holders held within 3 calendar years after the latest such previous submission:

Provided, That: (i) If the proposal was submitted at only one meeting during such preceding period, it received less than 3 percent of the total number of votes cast in regard thereto; or

(ii) If the proposal was submitted at only two meetings during such preceding period, it received at the time of its second submission less than 6 percent of the total number of votes cast in regard thereto; or

(iii) If the proposal was submitted at three or more meetings during such preceding period, it received at the time of its latest submission less than 10 percent of the total number of votes cast in regard thereto; and

(13) If the proposal relates to specific amounts of cash or stock dividends.

(d) Whenever the bank asserts, for any reason, that a proposal and any statement in support thereof received from a proponent may properly be omitted from its proxy statement and form of proxy, it shall file with the FDIC not later than 50 days prior to the date the preliminary copies of the proxy statement and form of proxy are filed under § 335.204, or such shorter period prior to such date as the FDIC or its staff may permit, three copies of the following items:

(1) The proposal;

(2) Any statement in support thereof as received from the proponent;

(3) A statement of the reasons why the bank deems omission to be proper in the particular case; and

(4) Where such reasons are based on matters of law, a supporting opinion of counsel. The bank shall at the same time, if it has not already done so, notify the proponent of its intention to omit the proposal from its proxy statement and form of proxy and shall forward to him a copy of the statement of reasons why the bank deems the omission of the proposal to be proper and a copy of the supporting opinion of counsel.

(e) If the bank intends to include in the proxy statement a statement in opposition to a proposal received from a proponent, it shall—not later than ten calendar days prior to the date the preliminary copies of the proxy statement and form of proxy are filed under §335.204, or, in the event that the proposal must be revised to be includable, not later than five calendar days after receipt by the bank of the revised proposal—promptly forward to the proponent a copy of the statement in opposition to the proposal. In the event the proponent believes that the statement in opposition contains materially false or misleading statements within the meaning of §335.206 and the proponent wishes to bring this matter to the attention of the FDIC, the proponent should promptly provide the staff with a letter setting forth the reasons for this view and at the same time promptly provide the bank with a copy of such letter.

§335.212 Form for proxy statement (Form F-5).

FORM F-5—Proxy Statement

GENERAL INSTRUCTIONS

Each proxy statement shall, to the extent applicable, include the information called for under each of the items below. In the preparation of the statement, particular attention should be given to the definitions in §335.102.

This form is not to be used as a blank form to be filled in nor is it intended to prescribe a form for presentation of material in the statement. Its purpose is solely to prescribe the information required to be set forth in the statement; any additional information that the bank or the soliciting persons deem appropriate may be included.

Except as otherwise specifically provided, where any item calls for information for a

specified period in regard to directors, officers or other persons holding specified positions or relationships, the information shall be given in regard to any person who held any of the specified positions or relationships at any time during the period. However, information need not be included for any portion of the period during which such person did not hold any such position or relationship provided a statement to that effect is made.

Note to Small Business Issuers: a "small business issuer", as defined under 17 CFR 240.12b-2 has the option of providing financial and other item disclosure in conformance with Regulation S-B of the Securities and Exchange Commission (17 CFR Part 228) in lieu of the disclosure requirements set forth in this section by Item 4, paragraph (b)(1)(xi); Item 5, paragraph (d); Item 6, paragraphs (a) through (d); Item 7, paragraphs (a) and (c); Item 8, paragraph (c); Item 10, paragraph (b); Item 12, paragraphs (a)(3)(vi), (a)(5), (a)(6), (a)(7), (b)(1) through (b)(8), (c)(1) through (c)(4), and (e); and Item 13. If there is no comparable disclosure requirement in Regulation S-B, a small business issuer need not provide the information requested. The definition of "small business issuer", generally includes banks with annual revenues of less than \$25 million, whose voting stock does not have a public float of \$25 million or more.

INFORMATION REQUIRED IN STATEMENT

Item 1—Revocability of Proxy.

State whether the person giving the proxy has the power to revoke it. If the right of revocation before the proxy is exercised, is limited or is subject to compliance with any formal procedure, briefly describe such limitation or procedure.

Item 2—Dissenters' Rights of Appraisal.

Outline briefly the rights of appraisal or similar rights of dissenters with respect to any matter to be acted upon and indicate any statutory procedure required to be followed by dissenting security holders in order to perfect such rights. Where such rights may be exercised only within a limited time after the date of the adoption of a proposal, the filing of a charter amendment or other similar act, state whether the person solicited will be notified of such date.

Instruction. Indicate whether a security holder's failure to vote against a proposal will constitute a waiver of his appraisal or similar rights and whether a vote against a proposal will be deemed to satisfy any notice requirements under State law with respect to appraisal rights. If the State law is unclear, state what position will be taken in regard to those matters.

Item 3—Persons Making the Solicitation.

(a) Solicitations not subject to § 335.220.

(1) If the solicitation is made by the bank, so state. Give the name of any director of the bank who has informed the bank in writing that he intends to oppose any action intended to be taken by the bank and indicate the action which he intends to oppose.

(2) If the solicitation is made otherwise than by the bank, so state and give the names of the participants in the solicitation, as defined in paragraphs (a)(iii), (iv), (v) and (vi) of Instruction 3 to this item.

(3) If the solicitation is to be made otherwise than by the use of the mails, describe the methods to be employed. If the solicitation is to be made by specially engaged employees or paid solicitors, state: (i) The material features of any contract or arrangement for such solicitation and identify the parties, and (ii) the cost or anticipated cost thereof.

(4) State the names of the persons by whom the cost of solicitation has been or will be borne, directly or indirectly.

(b) Solicitations subject to § 335.220.

(1) State by whom the solicitation is made and describe the methods employed and to be employed.

(2) If regular employees of the bank or any other participants in a solicitation have been or are to be employed to solicit security holders, describe the class or classes of employees to be so employed, and the manner and nature of their employment for such purpose.

(3) If specially engaged employees, representatives, or other persons have been or are to be employed to solicit security holders, state: (i) The material features of any contract or arrangement for such solicitation and identify the parties, (ii) the cost or anticipated cost thereof, and (iii) the approximate number of such employees or employees of any other person (naming such other person) who will solicit security holders.

(4) State the total amount estimated to be spent and the total expenditures to date for, in furtherance of, or in connection with the solicitation of security holders.

(5) State by whom the cost of the solicitation will be borne. If such cost is to be borne initially by any person other than the bank, state whether reimbursement will be sought from the bank, and if so, whether the question of such reimbursement will be submitted to a vote of security holders.

(6) If any such solicitation is terminated pursuant to a settlement between the bank and any other participant in such solicitation, describe the terms of such settlement, including the cost or anticipated cost thereof to the bank.

Instructions. 1. With respect to solicitations subject to § 335.220, costs and expenditures within the meaning of this item 3 shall include fees for attorneys, accountants, public relations or financial advisers, solicitors, ad-

vertising, printing, transportation, litigation and other costs incidental to the solicitation, except that the bank may exclude the amount of such costs represented by the amount normally expended for a solicitation for an election of directors in the absence of a contest, and costs represented by salaries and wages of regular employees and officers, provided a statement to that effect is included in the proxy statement.

2. The information required under paragraph (6) of item 3(b) should be included in any amended or revised proxy statement or other soliciting materials relating to the same meeting or subject matter furnished to security holders by the bank subsequent to the date of settlement.

3. For purposes of this Item 3 and Item 4 of this Form F-5:

(a) The terms *participant* and *participant in a solicitation* include the following:

(i) The bank;

(ii) Any director of the bank, and any nominee for whose election as a director proxies are solicited;

(iii) Any committee or group which solicits proxies, any member of such committee or group, and any person whether or not named as a member who, acting alone or with one or more other persons, directly or indirectly takes the initiative, or engages, in organizing, directing, or arranging for the financing of any such committee or group;

(iv) Any person who finances or joins with another to finance the solicitation of proxies, except persons who contribute not more than \$500 and who are not otherwise participants;

(v) Any person who lends money or furnishes credit or enters into any other arrangements, pursuant to any contract or understanding with a participant, for the purpose of financing or otherwise inducing the purchase, sale, holding or voting of securities of the bank by any participant or other persons, in support of or in opposition to a participant; except that such terms do not include a bank, broker or dealer who, in the ordinary course of business, lends money or executes orders for the purchase or sale of securities and who is not otherwise a participant; and

(vi) Any person who solicits proxies.

(b) The terms *participant* and *participant in a solicitation* do not include:

(i) Any person or organization retained or employed by a participant to solicit security holders and whose activities are limited to the duties required to be performed in the course of such employment;

(ii) Any person who merely transmits proxy soliciting material or performs other ministerial or clerical duties;

(iii) Any person employed by a participant in the capacity of attorney, accountant, or advertising, public relations or financial adviser, and whose activities are limited to the

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duties required to be performed in the course of such employment;

(iv) Any person regularly employed as an officer or employee of the bank or any of its subsidiaries who is not otherwise a participant; or

(v) Any officer or director of, or any person regularly employed by, any other participant, if such officer, director or employee is not otherwise a participant.

Item 4—Interest of Certain Persons in Matters To Be Acted Upon.

(a) Solicitations not subject to §335.220. Describe briefly any substantial interest, direct or indirect, by security holdings or otherwise, of each of the following persons in any matter to be acted upon, other than elections to office:

(1) If the solicitation is made on behalf of the bank each person who has been a director or officer of the bank at any time since the beginning of the last fiscal year.

(2) If the solicitation is made otherwise than on behalf of the bank, each participant in the solicitation, as defined in paragraphs (a)(iii), (iv), (v), and (vi) of Instruction 3 to Item 3 of this Form F-5.

(3) Each nominee for election as a director of the bank.

(4) Each associate of the foregoing persons.

Instruction. Except in the case of a solicitation subject to subpart B made in opposition to another solicitation subject to subpart B, this subitem (a) shall not apply to any interest arising from the ownership of securities of the bank where the security holder receives no extra or special benefit not shared on a pro rata basis by all other holders of the same class.

(b) Solicitations subject to §335.220.

(1) Describe briefly any substantial interest, direct or indirect, by security holdings or otherwise, of each participant as defined in paragraphs (a)(ii), (iii), (iv), (v) and (vi) of Instruction 3 to Item 3 of this Form F-5, in any matter to be acted upon at the meeting, and include with respect to each participant the following information, or a fair and accurate summary thereof:

(i) Name and business address of the participant.

(ii) The participant's present principal occupation or employment and the name, principal business and address of any corporation or other organization in which such employment is carried on.

(iii) State whether or not, during the past ten years, the participant has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) and, if so, give dates, nature of conviction, name and location of court, and penalty imposed or other disposition of the case. A negative answer need not be included in the proxy statement or other soliciting material.

(iv) State the amount of each class of securities of the bank which the participant owns beneficially, directly or indirectly.

(v) State the amount of each class of securities of the bank which the participant owns of record but not beneficially.

(vi) State with respect to all securities of the bank purchased or sold within the past two years, the dates on which they were purchased or sold and the amount purchased or sold on each such date.

(vii) If any part of the purchase price or market value of any of the shares specified in paragraph (b)(1)(vi) of this item is represented by funds borrowed or otherwise obtained for the purpose of acquiring or holding such securities, so state and indicate the amount of the indebtedness as of the latest practicable date. If such funds were borrowed or obtained otherwise than pursuant to a margin account or bank loan in the regular course of business of a bank, broker or dealer, briefly describe the transaction, and state the names of the parties.

(viii) State whether or not the participant is, or was within the past year, a party to any contract, arrangements or understandings with any person with respect to any securities of the bank, including, but not limited to joint ventures, loan or option arrangements, puts or calls, guarantees against loss or guarantees of profit, division of losses or profits, or the giving or withholding of proxies. If so, name the parties to such contracts, arrangements or understandings and give the details thereof.

(ix) State the amount of securities of the bank owned beneficially, directly or indirectly, by each of the participant's associates and the name and address of each such associate.

(x) State the amount of each class of securities of any parent or subsidiary of the bank which the participant owns beneficially, directly or indirectly.

(xi) Furnish for the participant and associates of the participant the information required by §335.212, Item 7(c).

(xii) State whether or not the participant or any associates of the participant have any arrangement or understanding with any person—

(A) With respect to any future employment by the bank or its affiliates; or

(B) With respect to any future transactions to which the bank or any of its affiliates will or may be a party. If so, describe such arrangement or understanding and state the names of the parties thereto.

(2) With respect to any person, other than a director or executive officer of the bank acting solely in that capacity, who is a party to an arrangement or understanding pursuant to which a nominee for election as director is proposed to be elected, describe any

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substantial interest, direct or indirect, by security holdings or otherwise, that such person has in any matter to be acted upon at the meeting, and furnish the information called for by paragraphs (b)(1) (xi) and (xii) of this item.

Instruction: For purposes of this Item 4, beneficial ownership shall be determined in accordance with §335.403.

Item 5—Voting Securities and Principal Holders Thereof.

(a) As to each class of voting securities of the bank entitled to be voted at the meeting (or by written consents or authorizations if no meeting is held) state the number of shares outstanding and the number of votes to which each class is entitled.

(b) Give the date as of which the record of security holders entitled to vote at the meeting will be determined. If the right to vote is not limited to security holders of record on that date, indicate the conditions under which other security holders may be entitled to vote.

(c) If action is to be taken with respect to the election of directors and if the persons

solicited have cumulative voting rights: (1) Make a statement that they have these rights, (2) briefly describe these rights, (3) state briefly the conditions precedent to their exercise, and (4) if discretionary authority to cumulate votes is solicited, so indicate.

(d)(1) Furnish the following information, as of the most recent practicable date, substantially in the tabular form indicated, with respect to any person (including any "group" as that term is used in section 13(d)(3) of the Act) who is known to the bank to be the beneficial owner of more than five percent of any class of the bank's voting securities. The address given in column (2) may be a business, mailing or residence address. Show in column (3) the total number of shares beneficially owned and in column (4) the percentage of class so owned. Of the number of shares shown in column (3), indicate by footnote or otherwise the amount known to be shares with respect to which such listed beneficial owner has the right to acquire beneficial ownership as specified in §335.403(d)(1).

(1)	(2)	(3)	(4)
Title of class	Name and address of beneficial owner	Amount and nature of beneficial ownership	Percent of class

(2) *Security ownership of management.* Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, as to each class of equity securities of the bank or any of its parents or subsidiaries other than directors' qualifying shares, beneficially owned by all directors and nominees, naming them, each of the named executive officers as defined in 17 CFR 229.402(a)(3), and direc-

tors and executive officers of the bank as a group, without naming them. Show in column (3) the total number of shares beneficially owned and in column (4) the percent of class so owned. Of the number of shares shown in column (3), indicate, by footnote or otherwise, the amount of shares with respect to which such persons have a right to acquire beneficial ownership as specified in §335.403(d)(1).

(1)	(2)	(3)	(4)
Title of class	Name of beneficial owner	Amount and nature of beneficial ownership	Percent of class

(e) If, to the knowledge of the persons on whose behalf the solicitation is made, a change in control of the bank has occurred since the beginning of its last fiscal year, state the name of the person(s) who acquired such control, the amount and the source of the consideration used by such person or persons; the basis of the control, the date and a

description of the transaction(s) which resulted in the change of control and the percentage of voting securities of the bank now beneficially owned directly or indirectly by the person(s) who acquired control; and the identity of the person(s) from whom control was assumed. If the source or any part of the

consideration used is a loan made in the ordinary course of business by a bank as defined by section 3(a)(6) of the Act, the identity of the bank shall be omitted provided a request for confidentiality has been made under section 13(d)(1)(B) of the Act by the person(s) who acquired control. In lieu thereof, the material shall indicate that the identity of the bank has been so omitted and filed separately with the FDIC.

Instructions. 1. State the terms of any loans or pledges obtained by the new control group for the purpose of acquiring control, and the names of the lenders or pledgees.

2. Any arrangements or understandings among members of both the former and new control groups and their associates with respect to election of directors or other matters shall be described.

(f) Describe any arrangements, known to the bank including any pledge by any person of securities of the bank or any of its parents, the operation of which may at a subsequent date result in a change in control of the bank.

Instructions to Item 5. 1. The percentages are to be calculated on the basis of the amount of outstanding securities, excluding securities held by or for the account of the bank or its subsidiaries, plus securities deemed outstanding pursuant to § 335.403(d)(1). For purposes of paragraph (2), if the percentage of shares beneficially owned by any director or nominee, or by all directors and officers of the bank as a group does not exceed one percent of the class so owned, the bank may, in lieu of furnishing a precise percentage, indicate this fact by means of an asterisk and explanatory footnote or other similar means.

2. For the purpose of this Item, beneficial ownership shall be determined in accordance with § 335.403. Include such additional subcolumns or other appropriate explanation of column (3) necessary to reflect amounts as to which the beneficial owner has (A) sole voting power, (B) shared voting power, (C) sole investment power, or (D) shared investment power.

3. The bank shall be deemed to know the contents of any statements filed with the FDIC pursuant to section 13(d) or 13(g) of the Exchange Act. When applicable, a bank may rely upon information set forth in the statements unless the bank knows or has reason to believe that such information is not complete or accurate or that a statement or amendment should have been filed and was not.

4. For purposes of furnishing information pursuant to paragraph (d)(1), the bank may indicate the source and date of such information.

5. Where more than one beneficial owner is known to be listed for the same securities, appropriate disclosure should be made to avoid confusion. For purposes of paragraph

(2), in computing the aggregate number of shares owned by directors and officers of the bank as a group, the same shares shall not be counted more than once.

6. Paragraph (f) of this Item does not require a description of ordinary default provisions contained in the charter, trust indentures or other governing instruments relating to securities of the bank.

7. Where the holder(s) of voting securities reported pursuant to paragraph (1) hold more than five percent of any class of voting securities of the bank pursuant to any voting trust or similar agreement, state the title of such securities, the amount held or to be held pursuant to the trust or agreement (if not clear from the table) and the duration of the agreement. Give the names and addresses of the voting trustees and outline briefly their voting rights and other powers under the trust or agreement.

Item 6—Directors and Principal Officers.

If action is to be taken with respect to election of directors, furnish the following information, in tabular form to the extent practicable, with respect to each person nominated for election as a director and each person whose term of office will continue after the meeting. However, if the solicitation is made on behalf of persons other than the bank the information required need be furnished only as to nominees of the persons making the solicitation.

(a) *Identification of directors.* List the names and ages of all directors of the bank, and all persons nominated or chosen to become directors; indicate all positions and offices with the bank held by each such person; state the term of office as director and any period(s) during which the person has served as such; briefly describe any arrangement or understanding between the person and any other person or persons (naming such person(s)) pursuant to which the person was or is to be selected as a director or nominee.

Instructions. 1. Do not include arrangements or understandings with directors or officers of the bank acting solely in their capacities as such.

2. No nominee or person chosen to become a director or who has not consented to act as one should be named in response to this item. In this regard, see § 335.207.

3. No information need be given respecting any director whose term of office as a director will not continue after the meeting to which the statement relates.

4. In connection with action to be taken concerning the election of directors, if fewer nominees are named than the number fixed by or under the governing instruments, state the reasons for this procedure and that the proxies cannot be voted for a greater number of persons than the number of nominees named.

(b) *Family relationships.* State the nature of any family relationship between any director, principal officer, or person nominated or chosen by the bank to become a director or principal officer.

Instruction. The term *family relationship* means any relationship by blood, marriage, or adoption, not more remote than first cousin.

(c) *Business experience.* (1) Give a brief account of the business experience during the past five years of each director or person nominated or chosen to become a director; including the person's principal occupations and employment during that period and the name and principal business of any corporation or other organization in which such occupations and employment were carried on.

(2) *Directorships.* Indicate any other directorships held by each director or person nominated or chosen to become a director in any company with a class of securities registered under section 12 of the Act.

(d) *Involvement in certain legal proceedings.* Describe any of the following events which occurred during the past five years and which are material to an evaluation of the ability or integrity of any director or person nominated to become a director of the bank:

(1) A petition under the Bankruptcy Act or any State insolvency law was filed by or against, or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of the person, or any partnership in which the person was a general partner at or within two years before the time of filing, or any corporation or business association of which the person was a principal officer at or within two years before the time of the filing;

(2) The person was convicted in a criminal proceeding or is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses);

(3) The person was the subject of any order, judgment, or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction permanently or temporarily enjoining the person from, or otherwise limiting the following activities:

(i) Acting as an investment adviser, underwriter, broker or dealer in securities, or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company, or engaging in or continuing any conduct or practice in connection with such activity;

(ii) Engaging in any type of business practice; or

(iii) Engaging in any type of activity in connection with the purchase or sale of any security or in connection with any violation of Federal or State securities laws;

(4) The person was the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any Federal or State authority barring, suspending or

otherwise limiting for more than 60 days the right of the person to engage in any activity described in paragraph (d)(3) of this item, or to be associated with persons engaged in any such activity;

(5) The person was found by a court of competent jurisdiction in a civil action or by a government authority to have violated any Federal or State securities law, and the judgment in the civil action or finding by the government authority has not been subsequently reversed, suspended, or vacated.

Instructions. 1. For purposes of computing the five-year period referred to in this paragraph, the date of a reportable event shall be deemed the date on which the final order, judgment or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees have lapsed. With respect to bankruptcy petitions, the computation date shall be the date of filing for uncontested petitions or the date upon which approval of a contested petition became final.

2. If any event specified in this paragraph (d) has occurred and information in regard thereto is omitted on the ground that it is not material, the bank may furnish to the FDIC, at the time preliminary materials are filed under §335.204 as supplemental information and not as part of the proxy statement materials to which the omission relates, a description of the event and a statement of the reasons for the omission of information in regard thereto.

3. The bank is permitted to explain any mitigating circumstances associated with events reported pursuant to this paragraph.

4. No information need be given respecting any director whose term of office as a director will not continue after the meeting to which the statement relates.

(e) *Certain business relationships.* Describe any of the following relationships regarding directors or nominees for director that exist, or have existed during the bank's last fiscal year, indicating the identity of the entity with which the bank has such a relationship, the name of the nominee or director affiliated with such entity and the nature of such nominee's or director's affiliation, the relationship between such entity and the bank and the amount of the business done between the bank and the entity during the bank's last full fiscal year or proposed to be done during the bank's current fiscal year:

(1) If the nominee or director is, or during the last fiscal year has been a principal officer of, or owns, or during the last fiscal year has owned, of record or beneficially in excess of a ten percent equity interest in, any business or professional entity that has made during the bank's last full fiscal year, or proposes to make during the bank's current fiscal year, payments to the bank or its subsidiaries for property or services in excess of five percent of (i) the bank's consolidated

gross revenues for its last full fiscal year, or (ii) the other entity's consolidated gross revenues for its last full fiscal year;

(2) If the nominee or director is, or during the last fiscal year has been, a principal officer of, or owns, or during the last fiscal year has owned, of record or beneficially in excess of a ten percent equity interest in, any business or professional entity to which the bank or its subsidiaries has made during the bank's last full fiscal year, or proposes to make during the bank's current fiscal year, payments for property or services in excess of five percent of (i) the bank's consolidated gross revenues for its last full fiscal year, or (ii) the other entity's consolidated gross revenues for its last full fiscal year;

(3) If the nominee or director is, or during the last fiscal year has been, a principal officer of, or owns, or during the last fiscal year has owned, of record or beneficially in excess of a ten percent equity interest in, any business or professional entity to which the bank or its subsidiaries was indebted at the end of the bank's last full fiscal year in an aggregate amount in excess of five percent of the bank's total consolidated assets at the end of such fiscal year;

(4) If the nominee or director is, or during the last fiscal year has been, a member of, or of counsel to, a law firm that the bank has retained during the last fiscal year or proposes to retain during the current fiscal year; *Provided, however,* that the dollar amount of fees paid to a law firm by the bank need not be disclosed if such amount does not exceed five percent of the law firm's gross revenues for that firm's last full fiscal year;

(5) If the nominee or director is, or during the last fiscal year has been, a partner or principal officer of any investment banking firm that has performed services for the bank, other than as a participating underwriter in a syndicate, during the last fiscal year or that the bank proposes to have perform services during the current year; *Provided, however,* that the dollar amount of compensation received by an investment banking firm need not be disclosed if such amount does not exceed five percent of the investment banking firm's consolidated gross revenues for that firm's last full fiscal year; or

(6) Any other relationships that the bank is aware of between the nominee or director and the bank that are substantially similar in nature and scope to those relationships listed in paragraph (b) (1) through (5).

Instructions to Paragraph (e) of Item 6

1. In order to determine whether payments or indebtedness exceed five percent of the consolidated gross revenues of any entity, other than the bank, it is appropriate to rely on information provided by the nominee or director.

2. In calculating payments for property and services the following may be excluded:

A. Payments where the rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority;

B. Payments that arise solely from the ownership of securities of the bank and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received; or

C. Payments made or received by subsidiaries other than significant subsidiaries as defined in § 335.102(nn), provided that all such subsidiaries making or receiving payments, when considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as defined in § 335.102(nn).

3. In calculating indebtedness the following may be excluded:

A. Debt securities that have been publicly offered, admitted to trading on a national securities exchange, or quoted on the automated quotation system of a registered securities association;

B. Amounts due for purchases subject to the usual trade terms; or

C. Indebtedness incurred by subsidiaries other than significant subsidiaries as defined in § 335.102(nn), provided that all such subsidiaries incurring indebtedness, when considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as defined in § 335.102(nn).

4. No information called for by paragraph (e) need be given respecting any director who is no longer a director at the time of filing the registration statement or report containing such disclosure. If such information is being presented in a proxy or information statement, no information need be given respecting any director whose term of office as a director will not continue after the meeting to which the statement relates.

NOTE: In the FDIC's view, where significant business or personal relationships exist between the director or nominee and the bank or its management, including, but not limited to, those as to which disclosure would be required pursuant to this item 6(e), characterization of a director or nominee by any "label" connoting a lack of relationship to the bank and its management may be materially misleading.

(f) *Committees.* (1) State whether or not the bank has standing audit, nominating and compensation committees of the board of directors, or committees performing similar functions. If the bank has such committees, however designated, identify each committee member, state the number of committee meetings held by each committee during the

last fiscal year and describe briefly the functions performed by such committees.

(2) If the bank has a nominating or similar committee, state whether the committee will consider nominees recommended by shareholders and, if so, describe the procedures to be followed by shareholders in submitting such recommendations.

(g) *Director attendance.* State the total number of meetings of the board of directors (including regularly scheduled and special meetings) which were held during the last full fiscal year. Name each incumbent director who during the last full fiscal year attended fewer than 75 percent of the aggregate of: (1) The total number of meetings of the board of directors (held during the period for which he has been a director) and (2) the total number of meetings held by all committees of the board on which he served (during the periods that he served).

(h) *Director resignations.* If a director has resigned or declined to stand for re-election to the board of directors since the date of the last annual meeting of shareholders because of a disagreement with the bank on any matter relating to the bank's operations, policies or practices, and if the director has furnished the bank with a letter describing such disagreement and requesting that the matter be disclosed, the bank shall state the date of resignation or declination to stand for re-election and summarize the director's description of the disagreement.

If the bank believes that the description provided by the director is incorrect or incomplete, it may include a brief statement presenting its views of the disagreement.

Item 7—Compensation and Other Transactions With Management and Others.

Furnish the information called for by this item if action is to be taken with respect to: (i) The election of directors, (ii) any bonus, profit sharing or other compensation plan, contract or arrangement in which any director, nominee for election as a director, or officer of the bank will participate, (iii) any pension or retirement plan in which any such person will participate, or (iv) the granting or extension to any such person of any options, warrants or rights to purchase any securities, other than warrants or rights issued to security holders, as such, on a pro rata basis. However, if the solicitation is made on behalf of persons other than the management, the information required need be furnished only as to nominees for election as directors and as to their associates.

(a) *Compensation of directors and executive officers.* Furnish the information required by the applicable and currently effective SEC regulations contained in Item 8 of SEC Schedule 14A (17 CFR 240.14a-101, Item 8).

(b) *Indebtedness of management.* (1) State as to each of the following specified persons ("specified persons"), who was indebted to

the bank at any time since the beginning of its last fiscal year:

(i) The largest aggregate amount of indebtedness (in dollar amounts, and as a percentage of total equity capital accounts at the time), including extensions of credit or overdrafts, endorsements and guarantees outstanding at any time during that period;

(ii) The amount thereof outstanding as of the latest practicable date;

(iii) The nature of the indebtedness and of the transaction in which it was incurred; and

(iv) The rate of interest paid or charged:

(A) Each director or principal officer of the bank;

(B) Each nominee for election as a director;

(C) Each security holder who is known to the bank to own of record or beneficially more than five percent of any class of the bank's voting securities ("principal security holder"); and

(D) Each associate of any such director, principal officer, nominee or principal security holder.

Instructions. 1. Include the name of each person whose indebtedness is described and the nature of the relationship by reason of which the information is required to be given.

2. Generally, no information need be given under this item 7(f) unless any of the following are present:

(a) The extension(s) of credit were not made on substantially the same terms, including interest rates, collateral and repayment terms as those prevailing at the time for comparable transactions with other than the specified persons.

(b) The extension(s) of credit were not made in the ordinary course of business.

(c) The extension(s) of credit have involved or presently involve more than a normal risk of collectibility or other unfavorable features including the restructuring of an extension of credit, or a delinquency as to payment of interest or principal.

(d) The aggregate amount of extensions of credit outstanding at any time from the beginning of the last fiscal year to date to a person specified in (A), (B), and (C) of this paragraph (f)(1) together with the person's associates, exceeded 10% of the equity capital accounts of the bank at the time or \$5 million, whichever is less.

NOTE: For purposes of this instruction 2(d) only: (1) The information called for by paragraphs (f)(1)(iii) and (iv) of this item 7 need not be furnished; (2) A principal security holder shall mean each security holder known to the bank to own of record or beneficially more than ten (10) percent of any class of the bank's voting securities; and (3) The name of any associate need not be furnished.

(2) If aggregate extensions of credit to the specified persons as a group exceeded 20 percent of the equity capital accounts of the bank at any time since the beginning of the last fiscal year:

(i) The aggregate amount of such extensions of credit shall be disclosed, and

(ii) A statement shall be included, to the extent applicable, that the bank has had and expects to have in the future, banking transactions in the ordinary course of its business with directors, officers, principal stockholders, and their associates, on substantially the same terms, including interest rates and collateral on loans, as those prevailing at the same time for comparable transactions with others and did not involve more than the normal risk of collectibility or present other unfavorable features.

(3) If any indebtedness required to be described arose under section 16(b) of the Act and had not been discharged by payment, state the amount of any profit realized, that such profit will inure to the benefit of the bank and whether suit will be brought or other steps taken to recover such profit. If in the opinion of counsel a question reasonably exists as to the recoverability of such profit, it will suffice to state all facts necessary to describe the transaction, including the prices and number of shares involved.

(c) *Transactions with management.* Describe briefly any transactions since the beginning of the bank's last fiscal year or any presently proposed transactions, to which the bank was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his relationship to the bank, the nature of his interest in the transaction and, where practicable, the amount of such interest:

(1) Any director or principal officer of the bank;

(2) Any nominee for election as a director;

(3) Any security holder who is known to the bank to own of record or beneficially more than five percent of any class of the bank's voting securities; and

(4) Any associate of any of the foregoing persons.

Instructions. 1. No information need be given in response to this item 7(g) as to any compensation or other transaction reported in response to item 7(a), (b), (c), (d), (e) or (f), or as to any transaction with respect to which information may be omitted under General Instructions to Paragraphs (a) through (e) of item 7.

2. No information need be given in answer to this item 7(g) as to any transaction where:

(a) The rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier, or public utility, at rates or charges

fixed in conformity with law or governmental authority;

(b) The transaction involves services as a bank depository of funds, transfer agent, registrar, trustee under a trust indenture, or similar services;

(c) The amount involved in the transaction or series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments, does not exceed \$60,000; or

(d) The interest of the specified person arises solely from the ownership of securities of the bank and the specified person receives no extra or special benefit not shared on a pro rata basis by all holders of securities of the class.

3. It should be noted that this item calls for disclosure of indirect, as well as direct, material interests in transactions. A person who has a position or relationship with a firm, corporation, or other entity, which engages in a transaction with the bank or its subsidiaries may have an indirect interest in such transaction by reason of such position or relationship. However, a person shall be deemed not to have a material indirect interest in a transaction within the meaning of this item 7(g) where:

(a) The interest arises only: (i) From such person's position as a director of another corporation or organization (other than a partnership) which is a party to the transaction, or (ii) from the direct or indirect ownership by such person and all other persons specified in paragraphs (1) through (4) above, in the aggregate, of less than a 10 percent equity interest in another person (other than a partnership) which is a party to the transaction, or (iii) from both such position and ownership;

(b) The interest arises only from such person's position as a limited partner in a partnership in which he and all other persons specified in (1) through (4) above had an interest of less than 10 percent; or

(c) The interest of such person arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest), or a creditor interest in another person which is a party to the transaction with the bank or any of its subsidiaries and the transaction is not material to such other person.

4. The amount of the interest of any specified person shall be computed without regard to the amount of the profit or loss involved in the transaction. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction shall be indicated.

5. In describing any transaction involving the purchase or sale of assets by or to the bank or any of its subsidiaries, otherwise than in the ordinary course of business, state the cost of the assets to the purchaser and,

if acquired by the seller within two years prior to the transaction, the cost thereof to the seller. Indicate the principle followed in determining the bank's purchase or sale price and the name of the persons making such determination.

6. Include the name of each person whose interest in any transaction is described and the nature of the relationship by reason of which such interest is required to be described. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transactions shall be indicated.

7. Information shall be furnished in answer to this item with respect to transactions not excluded above which involve remuneration from the bank or its subsidiaries, directly or indirectly, to any of the specified persons for services in any capacity unless the interest of such persons arises solely from the ownership individually and in the aggregate of less than 10 percent of any class of equity securities of another corporation furnishing the services to the bank.

8. The foregoing instructions specify certain transactions and interests as to which information may be omitted in answering this item. There may be situations where, although the foregoing instructions do not expressly authorize nondisclosure, the interest of a specified person in the particular transaction or series of transactions is not a material interest. In that case, information regarding such interest and transaction is not required to be disclosed in response to this item. The materiality of any interest or transaction is to be determined on the basis of the significance of the information to investors in light of all of the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction to each other and the amount involved in the transaction are among the factors to be considered in determining the significance of the information to investors.

(d) *Legal proceedings.* Briefly describe any material legal proceeding to which any director, any nominee for election as a director, principal officer of the bank, any owner of record or beneficially of more than five (5) percent of any class of voting securities of the bank, or any associate of any such director, nominee, officer or security holder is a party adverse to the bank.

Item 8—Relationship With Independent Public Accountants.

If the solicitation is made on behalf of management of the bank and relates to a meeting of security holders at which directors are to be elected, auditors are to be selected or approved, or financial statements are included pursuant to item 13, furnish the following information describing the bank's

relationship with its independent public accountants:

(a) The name of the principal accountant selected or being recommended to shareholders for election, approval or ratification for the current year. If no accountant has been selected or recommended, so state and briefly describe the reasons therefor.

(b) The name of the principal accountant for the fiscal year most recently completed if different from the accountant selected or recommended for the current year or if no accountant has yet been selected or recommended for the current year.

(c) If a change or changes in accountants have taken place since the date of the proxy statement for the most recent annual meeting of shareholders, and if in connection with such change(s) a disagreement between the accountant and bank has been reported on Form F-3 or in the accountant's letter filed as an exhibit thereto, the disagreement shall be described. Prior to submitting the preliminary proxy material to the FDIC which contains or amends such description, the bank shall furnish the description of the disagreement to any accountant with whom a disagreement has been reported. If that accountant believes that the description of the disagreement is incorrect or incomplete, he may include a brief statement, ordinarily expected not to exceed 200 words, in the proxy statement presenting his view of the disagreement. This statement shall be submitted to the bank within 10 business days of the date the accountant received the bank's description.

(d) The proxy statement shall indicate whether or not representatives of the principal accountants for the current year and for the most recently completed fiscal year are expected to be present at the stockholders' meeting with the opportunity to make a statement if they desire to do so and whether or not such representatives are expected to be available to respond to appropriate questions.

(e) If any change in accountants has taken place since the date of the proxy statement for the most recent annual meeting of shareholders, state whether such change was recommended or approved by

(1) Any audit or similar committee of the board of directors, if the bank has such a committee; or

(2) The board of directors, if the bank has no such committee.

Item 9—Compensation Plans.

If action is to be taken with respect to any plan pursuant to which cash or noncash compensation may be paid or distributed, furnish the following information:

(a) *Plans subject to security holder action.*

(1) Describe briefly the material features of the plan being acted upon, identify each

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class of persons who will be eligible to participate therein, indicate the approximate number of persons in each such class, and state the basis of such participation.

(2)(i) In the tabular format specified below, disclose the benefits or amounts that will be received by or allocated to each of the following under the plan being acted upon, if such benefits or amounts are determinable:

NEW PLAN BENEFITS

PLAN NAME

Name and position	Dollar value (\$)	No. of units
CEO
A
B
C
D
Executive Group
Non-Executive Director Group
Non-Executive Officer Employee Group

Instruction to New Plan Benefits Table

Additional columns should be added for each plan with respect to which security holder action is to be taken.

(ii) The table required by paragraph (a)(2)(i) of this item shall provide information as to the following persons:

(A) Each person (stating name and position) specified in 17 CFR 229.402(a)(3);

(B) All current executive officers as a group;

(C) All current directors who are not executive officers as a group; and

(D) All employees, including all current officers who are not executive officers, as a group.

(iii) If the benefits or amounts specified in paragraph (a)(2)(i) of this item are not determinable, state the benefits or amounts which would have been received by or allocated to each of the following for the last completed fiscal year if the plan had been in effect, if such benefits or amounts may be determined, in the table specified in paragraph (a)(2)(i) of this item:

(A) Each person (stating name and position) specified in 17 CFR 229.402(a)(3);

(B) All current executive officers as a group;

(C) All current directors who are not executive officers as a group; and

(D) All employees, including all current officers who are not executive officers, as a group.

(3) If the plan to be acted upon can be amended, otherwise than by a vote of security holders, to increase the cost thereof to the bank or to alter the allocation of the benefits as between the persons and groups specified in paragraph (a)(2) of this item,

state the nature of the amendments which can be so made.

(b) *Additional information regarding specified plans subject to security holder action.*

(1) With respect to any pension or retirement plan submitted for security holder action, state:

(i) The approximate total amount necessary to fund the plan with respect to past services, the period over which such amount is to be paid and the estimated annual payments necessary to pay the total amount over such period; and

(ii) The estimated annual payment to be made with respect to current services. In the case of a pension or retirement plan, information called for by paragraph (a)(2) of this item may be furnished in the format specified by 17 CFR 229.402(f)(1).

(2)(i) With respect to any specific grant of or any plan containing options, warrants or rights submitted for security holder action, state:

(A) The title and amount of securities underlying such options, warrants or rights;

(B) The prices, expiration dates and other material conditions upon which the options, warrants or rights may be exercised;

(C) The consideration received or to be received by the bank or subsidiary for the granting or extension of the options, warrants or rights;

(D) The market value of the securities underlying the options, warrants, or rights as of the latest practicable date; and

(E) In the case of options, the federal income tax consequences of the issuance and exercise of such options to the recipient and the bank; and

(ii) State separately the amount of such options received or to be received by the following persons if such benefits or amounts are determinable:

(A) Each person (stating name and position) specified in 17 CFR 229.402(a)(3);

(B) All current executive officers as a group;

(C) All current directors who are not executive officers as a group;

(D) Each nominee for election as a director;

(E) Each associate of any of such directors, executive officers or nominees;

(F) Each other person who received or is to receive 5 percent of such options, warrants or rights; and

(G) All employees, including all current officers who are not executive officers, as a group.

Instructions to Item 9.

1. The term *plan* as used in this item means any plan as defined in 17 CFR 229.402(a)(7)(ii).

2. If action is to be taken with respect to a material amendment or modification of an existing plan, the item shall be answered

with respect to the plan as proposed to be amended or modified and shall indicate any material differences from the existing plan.

3. If the plan to be acted upon is set forth in a written document, three copies thereof shall be filed with the FDIC at the time copies of the proxy statement and form of proxy are first filed pursuant to § 335.204(a).

4. Paragraph (b)(2)(ii) of this item does not apply to warrants or rights to be issued to security holders as such on a pro rata basis.

Item 10—Authorization or Issuance of Securities Otherwise than for Exchange.

If action is to be taken with respect to the authorization or issuance of any securities otherwise than in exchange for outstanding securities of the bank, furnish the following information:

(a) State the title and amount of securities to be authorized or issued.

(b) Furnish a description of the material provisions of the securities such as would be required in a registration statement filed pursuant to this part. If the terms of the securities cannot be stated or estimated with respect to any or all of the securities to be authorized, because no offering thereof is contemplated in the proximate future, and if no further authorization by security holders for the issuance thereof is to be obtained, it should be stated that the terms of the securities to be authorized, including dividend or interest rates, conversion prices, voting rights, redemption prices, maturity dates, and similar matters will be determined by the board of directors. If the securities are additional shares of common stock of a class outstanding, the description may be omitted except for a statement of the preemptive rights, if any. Where the statutory provisions with respect to preemptive rights are so indefinite or complex that they cannot be stated in summarized form, it will suffice to make a statement in the form of an opinion of counsel as to the existence and extent of such rights.

(c) Describe briefly the transaction in which the securities are to be issued, including a statement as to: (1) The nature and approximate amount of consideration received or to be received by the bank, and (2) the approximate amount devoted to each purpose so far as determinable, for which the net proceeds have been or are to be used. If it is impracticable to describe the transaction in which the securities are to be issued, state the reason, indicate the purpose of the authorization of the securities, and state whether further authorization for the issuance of the securities by a vote of security holders will be solicited prior to such issuance.

(d) If the securities are to be issued otherwise than in a general public offering for cash, state the reasons for the proposed authorization or issuance and the general ef-

fect thereof upon the rights of existing security holders.

Item 11—Modification or Exchange of Securities.

If action is to be taken with respect to the modification of any class of securities of the bank, or the issuance or authorization for issuance of securities of the bank in exchange for outstanding securities of the bank, furnish the following information:

(a) If outstanding securities are to be modified, state the title and amount thereof. If securities are to be issued in exchange for outstanding securities, state the title and amount of securities to be so issued, the title and amount of outstanding securities to be exchanged therefor, and the basis of the exchange.

(b) Describe any material differences between the outstanding securities and the modified or new securities in respect of any of the matters concerning which information would be required in the description of the securities in a registration statement filed under to this part.

(c) State the reasons for the proposed modification or exchange, and the general effect thereof upon the rights of existing security holders.

(d) Furnish a brief statement as to arrears in dividends or as to defaults in principal or interest in respect to the outstanding securities which are to be modified or exchanged and such other information as may be appropriate in the particular case to disclose adequately the nature and effect of the proposed action.

(e) Outline briefly any other material features of the proposed modification or exchange.

Instruction. If the existing security is presently listed and registered on a national securities exchange, state whether it is intended to apply for listing and registration of the new or reclassified security on such exchange or any other exchange. If it is not intended to make such application, state the effect of the termination of such listing and registration.

Item 12—Mergers, Consolidations, Acquisitions and Similar Matters.

If action is to be taken with respect to any transaction involving (i) the merger or consolidation of the bank into or with any other person or of any other person into or with the bank, (ii) the acquisition by the bank or any of its security holders of securities of another person, (iii) the acquisition by the bank of any other going business or of the assets thereof, (iv) the sale or other transfer of all or any substantial part of the assets of the bank, or (v) the liquidation or dissolution of the bank, furnish the following information:

Federal Deposit Insurance Corporation

§ 335.212

(a) *Information about the transaction.* Furnish the following information concerning the bank and (unless otherwise indicated) each other person: which is to be merged into the bank or into or with which the bank is to be merged or consolidated; the business or assets of which are to be acquired; which is the issuer of securities to be acquired by the bank in exchange for all or a substantial part of the bank's assets; or which is the issuer of securities to be acquired by the bank or its security holders:

(1) The name, complete mailing address (including ZIP Code) and telephone number (including the area code) of the principal executive offices.

(2) A brief description of the general nature of the business conducted by the other person.

(3) A summary of the material features of the proposed transaction. If the transaction is set forth in a written document, file three copies thereof with the FDIC at the time preliminary copies of the proxy statement and form of proxy are filed pursuant to §335.204. The summary shall include, where applicable:

(i) A brief summary of the terms of the transaction agreement;

(ii) The reasons for engaging in the transaction;

(iii) An explanation of any material differences in the rights of security holders of the bank as a result of this transaction;

(iv) A brief statement as to the accounting treatment of the transaction;

(v) The federal income tax consequences of the transaction; and

(vi) The information required in the description of securities in a registration statement (Form F-1, Item 13) filed under this part, for a security being issued in connection with the transaction if the security holders entitled to vote or give an authorization or consent with regard to the transaction will receive such securities, unless: (i) the issuer of the securities is not a bank and would meet the requirements for use of the SEC's Form S-3 and elects to furnish information required by Item 14(b)(1) of the SEC's Schedule 14A (17 CFR 240.14a-101); (ii) capital stock is to be issued and (iii) securities of the same class are registered under section 12 of the Exchange Act and either (a) are listed for trading or admitted to unlisted trading privileges on a national securities exchange; or (b) are securities for which bid and offer quotations are reported in an automated quotations system operated by a national securities association.

(4) A brief statement as to dividends in arrears or defaults in principal or interest in respect of any securities of the bank or of such other person and as to the effect of the transaction thereon and such other information as may be appropriate in the particular

case to disclose adequately the nature and effect of the proposed action.

(5) Furnish in comparative columnar form on a historical and (if material) pro-forma basis the selected financial data for the bank referred to below, for

(a) Each of the last five fiscal years of the bank (or for the life of the bank and its predecessors, if less), and

(b) Any additional fiscal years necessary to keep the information from being misleading.

Instructions to paragraph (a)(5)

1. The purpose of the selected financial data shall be to supply in a convenient and readable format selected financial data which highlight certain significant trends in the bank's financial condition and results of operations.

2. The following items shall be included in the table of financial data: net interest income; other operating income; provision for loan and lease losses; income (loss) from continuing operations; income (loss) from continuing operations per common share; total assets; long-term obligations and redeemable preferred stock and cash dividends declared per common share. Banks may include additional items which they believe would enhance an understanding of and would highlight other trends in their financial condition and results of operations.

Briefly describe, or cross-reference to a discussion thereof, factors such as accounting changes, business combinations or dispositions of business operations, that materially affect the comparability of the information reflected in selected financial data. Discussion of, or reference to, any material uncertainties should also be included where such matters might cause the data reflected herein not to be indicative of the bank's future financial condition or results of operations.

3. All references to the bank in the table of selected financial data and in this Item shall mean the bank and its subsidiaries consolidated.

4. If interim period financial statements are included, or are required to be included, banks should consider whether any or all of the selected financial data need to be updated for such interim periods to reflect a material change in the trends indicated; where such updating information is necessary, banks shall provide the information on a comparative basis unless not necessary to an understanding of such updating information.

(6) In comparative columnar form, historical and pro forma per share data of the bank and historical and equivalent pro forma per share data of the other person for the following information items:

(i) Book value per share as of the date selected financial data is presented;

(ii) Cash dividends declared per share for the periods for which selected financial data is presented; and

(iii) Income (loss) per share for the periods for which selected financial data is presented.

Instruction to paragraphs (a)(5) and (a)(6)

For a business combination accounted for as a purchase, the financial information required by paragraphs (a)(5) and (a)(6) shall be presented only for the most recent fiscal year and interim period. For a business combination accounted for as a pooling, the financial information required by paragraphs (a)(5) and (a)(6) (except for information with regard to book value) shall be presented for the most recent three fiscal years and interim period. For a business combination accounted for as a pooling, information with regard to book value shall be presented as of the end of the most recent fiscal year and interim period. Equivalent pro forma per share amounts shall be calculated by multiplying the pro forma income (loss) per share before non-recurring charges or credits directly attributable to the transaction, pro forma book value per share, and the pro forma dividends per share of the bank by the exchange ratio so that the per share amounts are equated to the respective values for one share of the other person.

(7) Pro forma financial information with respect to the transaction, in accordance with § 335.628.

(8) A statement as to whether any federal or state regulatory requirements must be complied with or approval must be obtained in connection with the transaction and if so the status of such compliance or approval.

(9) If a report, opinion or appraisal materially relating to the transaction has been received from an outside party, and such report, opinion or appraisal is referred to in the proxy statement, furnish the same information as would be required by Item 9(b) (1) through (6) of the SEC's Schedule 13E-3 (§ 240.13e-100 of 17 CFR).

(10) A description of any past, present or proposed material contracts, arrangements, understandings, relationships, negotiations for transactions during the periods for which financial statements are presented or incorporated by reference pursuant to this Item between the other person or its affiliates and the bank or its affiliates such as those concerning a merger, consolidation or acquisition; a tender offer or other acquisition of securities; an election of directors; or a sale or other transfer of a material amount of assets.

(11) As to each class of securities of the bank or of the other person which is admitted to trading on a national securities exchange or with respect to which a market otherwise exists, and which will be materially affected by the transaction, state the

high and low sale prices (or in the absence of trading in a particular period, the range of the bid and asked prices) as of the date preceding public announcement of the proposed transaction, or if no such public announcement was made, as of the day preceding the day the agreement or resolution with respect to the action was made.

(12) A statement as to whether or not representatives of the principal accountants for the current year and for the most recently completed fiscal year

(i) Are expected to be present at the security holders' meeting;

(ii) Will have the opportunity to make a statement if they desire to do so; and

(iii) Are expected to be available to respond to appropriate questions.

(b) *Information about the bank and other persons.* Furnish the information specified below for the bank and for other persons designated in paragraph (a) of this Item, if applicable (hereinafter all references to the bank should be read to include a reference to such other person unless the context otherwise indicates):

(1) Information required by Item 1 of Form F-2 (§ 335.312 of this part), description of business;

(2) Information required by Item 2 of Form F-2 (§ 335.312 of this part) description of property;

(3) Information required by Item 3 of Form F-2 (§ 335.312 of this part), legal proceedings;

(4) Information required by Item 5 of Form F-2 (§ 335.312 of this part), market price of and dividends on the bank's common equity and related stockholder matters;

(5) Financial statements meeting the requirements of subpart F of this part (12 CFR 335.601 *et seq.*), including financial information required with respect to transactions other than that as to which action is to be taken as described in this proxy statement;

(6) Item 6 of Form F-2 (§ 335.312 of this part), selected financial data;

(7) Item 8 of Form F-2 (§ 335.312 of this part), financial statements and supplementary data;

(8) Item 7 of Form F-2 (§ 335.312 of this part), management's discussion and analysis of financial condition and results of operations; and

(9) Items 4, 5, 6, 7 and 8 of this Form F-5.

(c) If the other person is not subject to the reporting requirements of either section 13(a) or 15(d) of the Exchange Act, furnish:

(1) The financial statements that would have been required to be included in an annual report to security holders pursuant to § 335.203 of this part had the company been required to furnish such a report: *Provided, however,* That the balance sheet for the year preceding the latest full fiscal year and the

income statements for the two years preceding the latest full fiscal year need not be audited if they have not previously been audited. In any case, such financial statements need be audited only to the extent practicable.

(2) The quarterly financial and other information that would have been required had the company been required to file Form F-4 (§335.331 of this part) for the most recent quarter for which such a report would have been on file at the time the proxy statement is mailed or for a period ending as of a more recent date.

(3) A brief description of the business done by the company which indicates the general nature and scope of the business.

(4) The information required by paragraphs (b)(4) and (6) through (8) of this Item 12 and the information required by items 4, 5, 6, 7 and 8 of this Form F-5.

(5) Schedule VI—Allowance for Possible Loan and Lease Losses.

(d) *Additional method of incorporation by reference.* In lieu of the provision of information about the bank and other persons required in paragraph (b) of this Item, the bank may incorporate by reference into the proxy statement the information required by this Item if it is contained in an annual report sent to security holders pursuant to the requirement of §335.203 of this part with respect to the same meeting or solicitation of consents or authorizations as that to which the proxy statement relates, provided such information substantially meets the requirements of the appropriate portions of paragraph (b)(3) of this Item.

(e) *Certain nonbank persons.* Where a party to the transaction (other than the bank) is eligible to use SEC Form S-2 or S-3, the bank may comply with this Item by providing the information for the other party that would be required by SEC Schedule 14A (17 CFR 240.14a-101).

Instructions to Item 12. 1. One copy of the definitive proxy statement filed with the FDIC shall include a manually signed copy of the accountant's report. If the financial statements are incorporated by reference, a manually signed copy of the accountant's report shall be filed with the definitive proxy statement.

2. Any or all of the required financial statements and related information which are not material for the exercise of prudent judgment in regard to the matter to be acted upon may be omitted.

3. If the bank or any of its securities or assets is to be acquired by other persons, the information regarding the other persons that is required by this item, other than information required by paragraphs (a) (1) through (3) and (a) (9) through (11) of this Item, need be provided only to the extent that: (1) The bank or its security holders who are entitled to vote or give an authorization or consent

with regard to the action will become or remain security holders of the other persons; or (2) such information is otherwise material to an informed voting decision.

4. If the plan being voted on involves only the bank and one or more of its totally held subsidiaries and does not involve a liquidation of the bank or a spin-off, the information required by this Item, other than information required by paragraphs (a) (1) through (4) and (a) (8) through (11) of this Item, may be omitted.

Item 13—Financial Statements.

(a) If action is to be taken with respect to any matter specified in items 10, 11, or 12 above, furnish audited financial statements of the bank and its subsidiaries such as would be required in a registration statement filed under this part. In addition, the latest available interim date balance sheet and statement of income for the interim period between the end of the last fiscal year and the interim balance sheet date, and comparable prior period, shall be furnished. All schedules, except schedule VI—Allowance for Possible Loan and Lease Losses may be omitted.

(b) If action is to be taken with respect to any matter specified in item 12, furnish for each person specified therein, other than the bank, financial statements such as would be required in a registration statement filed under this part. In addition, the latest available interim date balance sheet and statement of income for the interim period between the end of the last fiscal year and the interim balance sheet date, and comparable prior period, shall be furnished. However, the following may be omitted:

(1) All schedules, except schedule VI—Allowance for Possible Loan and Lease Losses; and

(2) Statements for a subsidiary, all of the stock of which is owned by the bank, that is included in the consolidated statement of the bank and its subsidiaries. Such statements shall be audited, if practicable.

(c) Notwithstanding the provisions of this Item, any or all of the information required by paragraph (a) of this Item, not material for the exercise of prudent judgment in regard to the matter to be acted upon may be omitted. In the usual case the information is deemed material to the exercise of prudent judgment where the matter to be acted upon is the authorization or issuance of a material amount of senior securities, but the information is not deemed material where the matter to be acted upon is the authorization or issuance of common stock, otherwise than in an exchange, merger, consolidation, acquisition or similar transaction, the authorization of preferred stock without present intent to issue or the authorization of preferred stock for cash in an amount constituting fair value.

(d) The statement may incorporate by reference any financial statements contained in an annual report sent to security holders under § 335.203 with respect to the same meeting as that to which the statements relate, provided such financial statements substantially meet the requirements of this item.

Item 14—Action With Respect to Reports.

If action is to be taken with respect to any report of the bank or of its directors, officers, or committees or any minutes of meetings of its security holders, furnish the following information:

(a) State whether or not such action is to constitute approval or disapproval of any of the matters referred to in such reports or minutes.

(b) Identify each of such matters which it is intended will be approved or disapproved, and furnish the information required by the appropriate item or items of this schedule with respect to each such matter.

Item 15—Matters Not Required To Be Submitted.

If action is to be taken with respect to any matter which is not required to be submitted to a vote of security holders, state the nature of such matter, the reasons for submitting it to a vote of security holders and what action is intended to be taken by the management in the event of a negative vote on the matter by the security holders.

Item 16—Amendment of Charter; Bylaws; or Other Documents.

If action is to be taken with respect to any amendment of the bank's charter, bylaws, or other documents as to which information is not required above, state briefly the reasons for and general effect of such amendment.

Instruction. Where the matter to be acted upon is the classification of directors state whether vacancies which occur during the year may be filled by the board of directors to serve only until the next annual meeting or may be so filled for the remainder of the full term.

Item 17—Other Proposed Action.

If action is to be taken with respect to any matter not specifically referred to above, describe briefly the substance of each such matter in substantially the same degree of detail as is required by items 5 to 18, inclusive, above.

Item 18. Voting Procedures

As to each matter which is to be submitted to a vote of security holders, furnish the following information:

(a) State the vote required for approval or election, other than for the approval of auditors.

(b) Disclose the method by which votes will be counted, including the treatment and effect of abstentions and broker non-votes under applicable state law as well as bank charter and by-law provisions.

Item 19—Acquisition or Disposition of Property.

If action is to be taken with respect to the acquisition or disposition of any property, furnish the following information:

(a) Describe briefly the general character and location of the property.

(b) State the nature and amount of consideration to be paid or received by the issuer or any subsidiary. To the extent practicable, outline briefly the facts bearing upon the question of the fairness of the consideration.

(c) State the name and address of the transferor or transferee, as the case may be, and the nature of any material relationship of such person to the issuer or any affiliate of the issuer.

(d) Outline briefly any other material features of the contract or transaction.

Item 20—Restatement of Accounts.

If action is to be taken with respect to the restatement of any asset, capital, or surplus account of the bank, furnish the following information:

(a) State the nature of the restatement and the date as of which it is to be effective.

(b) Outline briefly the reasons for the restatement and for the selection of the particular effective date.

(c) State the name and amount of each account (including any reserve accounts) affected by the restatement and the effect of the restatement thereon. Tabular presentation of the amounts shall be made when appropriate, particularly in the case of recapitalizations.

(d) To the extent practicable, state whether and the extent, if any, to which the restatement will, as of the date thereof, alter the amount available for distribution to the holders of equity securities.

Item 21—Compliance with Section 16(a) of the Exchange Act.

Every bank having a class of equity securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78j) shall:

(a) Based solely upon a review of Forms F-7 (§ 335.420) and F-8 (§ 335.421) and amendments thereto furnished to the bank during its most recent fiscal year, and Forms F-8A (§ 335.422) and amendments thereto furnished to the bank with respect to its most recent fiscal year, and any written representation referred to in paragraph (b)(2)(i) of this item:

(1) Identify each person who, at any time during the fiscal year, was a director, officer, beneficial owner of more than 10 percent of any class of equity securities of a bank registered pursuant to section 12 of the Exchange Act, ("reporting person") that failed

to file on a timely basis, as disclosed in the above Forms, reports required by section 16(a) of the Exchange Act during the most recent fiscal year or prior fiscal years.

(2) For each such person, set forth the number of late reports, the number of transactions that were not reported on a timely basis, and any known failure to file a required Form.

Note: The disclosure requirement is based on a review of the forms submitted to the bank during and with respect to its most recent fiscal year, as specified above. Accordingly, a failure to file timely need only be disclosed once. For example, if in the most recently concluded fiscal year a reporting person filed a Form F-8 disclosing a transaction that took place in the prior fiscal year, and should have been reported in that year, the bank should disclose that late filing and transaction pursuant to this item 21 with respect to the most recently concluded fiscal year, but not in material filed with respect to subsequent years.

(b) With respect to the disclosure required by paragraph (a) of this item:

(1) A form received by the bank within three calendar days of the required filing date may be presumed to have been filed with the FDIC by the required filing date.

(2) If the bank: (i) Receives a written representation from the reporting person that no Form F-8A is required; and (ii) Maintains the representation for two years, making a copy available to the FDIC or its staff upon request, the bank need not identify such reporting person pursuant to paragraph (a) of this section as having failed to file a Form F-8A with respect to that fiscal year.

[46 FR 25208, May 5, 1981, as amended at 48 FR 55556, Dec. 14, 1983; 54 FR 53576, Dec. 29, 1989; 57 FR 4702, Feb. 7, 1992; 57 FR 58136, Dec. 9, 1992; 59 FR 67171, Dec. 29, 1994]

§ 335.213 Form for information statement (Form F-5A).

FORM F-5A

INFORMATION STATEMENT

NOTE: Where any item, other than item 5, calls for information with respect to any matter to be acted upon at the meeting, such item need be answered only with respect to proposals to be made by the bank.

Except as otherwise specifically provided, where any item calls for information for a specified period in regard to directors, officers or other persons holding specified positions or relationships, the information shall be given in regard to any person who held any of the specified positions or relationships at any time during the period. However, information need not be included for any portion of the period during which such person did not hold any such position or re-

lationship provided a statement to that effect is made.

Small Business Issuers: A "small business issuer", as defined under 17 CFR 240.12b-2 has the option of providing financial and other item disclosure in conformance with Regulation S-B of the Securities and Exchange Commission (17 CFR Part 228) in lieu of the following referenced disclosure requirements set forth in § 335.212 Item 4(b)(1)(xi); Item 5, paragraph (d); Item 6, paragraphs (a) through (d); Item 7, paragraphs (a) and (c); Item 8, paragraph (c); Item 10, paragraph (b); Item 12, paragraphs (a)(3)(vi), (a)(5), (a)(6), (a)(7), (b)(1) through (b)(8), (c)(1) through (c)(4), and (e); and Item 13. If there is no comparable disclosure requirement in Regulation S-B, a small business issuer need not provide the information requested. The definition of "small business issuer", generally includes banks with annual revenues of less than \$25 million, whose voting stock does not have a public float of \$25 million or more.

Item 1. Information required by items of Form F-5 (12 CFR 335.212). Furnish the information called for by all of the items of Form F-5 (12 CFR 335.212) (other than items 1, 3, and 4 thereof) which would be applicable to any matter to be acted upon at the meeting if proxies were to be solicited in connection with the meeting.

Item 2. Statement that proxies are not solicited. The following statement shall be set forth on the first page of the information statement in bold-face type:

WE ARE NOT ASKING YOU FOR A PROXY AND YOU ARE REQUESTED NOT TO SEND US A PROXY

Item 3. Date, time and place of meeting. State the date, time and place of the meeting of security holders, unless that information is otherwise disclosed in material furnished to security holders with the information statement.

Item 4. Interest of certain persons in or opposition to matters to be acted upon. (a) Describe briefly any substantial interest, direct or indirect, by security holdings or otherwise, of each of the following persons in any matter to be acted upon, other than elections to office:

(1) Each person who has been a director or officer of the bank at any time since the beginning of the last fiscal year.

(2) Each nominee for election as a director of the bank.

(3) Each associate of the foregoing persons.

(b) Give the name of any director of the bank who has informed the bank in writing that he intends to oppose any action to be taken by the bank at the meeting and indicate the action which he intends to oppose.

Item 5. Proposals by security holders. If any security holder entitled to vote at the meeting has submitted to the bank a reasonable time before the information statement is to

be transmitted to security holders a proposal, other than elections to office, which is accompanied by notice of his intention to present the proposal for action at the meeting, make a statement to that effect, identify the proposal and indicate the disposition proposed to be made of the proposal by the bank at the meeting.

Instructions. 1. This item need not be answered as to any proposal submitted with respect to an annual meeting if the proposal is submitted less than 60 days in advance of a day corresponding to the date of mailing a proxy statement or information statement in connection with the last annual meeting of security holders.

2. If the bank intends to rule a proposal out of order, the FDIC shall be so advised at the time preliminary copies of the information statement are filed with the FDIC, together with a statement of the reasons why the proposal is not deemed to be a proper subject for action by security holders.

[46 FR 25208, May 5, 1981, as amended at 59 FR 67173, Dec. 29, 1994]

§335.214 Obligation of banks in communicating with beneficial owners.

(a) If the bank knows that securities of any class entitled to vote at a meeting are held of record by a broker, dealer, bank, association or other entity that exercises fiduciary powers in nominee name or otherwise, the bank shall:

(1) By first class mail or other equally prompt means:

(i) Inquire of each such record holder:

(A) Whether other persons are the beneficial owners of such securities, and if so, the number of copies of the proxy and other soliciting material (or if applicable, the number of copies of the information statement) necessary to supply such material to such beneficial owners.

(B) In the case of an annual (or special meeting in lieu of the annual) meeting, or written consents in lieu of such meeting, at which directors are to be elected, the number of copies of the annual report to security holders necessary to supply such report to beneficial owners to whom such reports are to be distributed by such record holder or its nominee and not by the bank; and

(C) If the record holder has an obligation under 17 CFR 240.14b-1(b)(3) or 17 CFR 240.14b-2(b)(4) (ii) and (iii), whether an agent has been designated to act on its behalf in fulfilling such obliga-

tion and, if so, the name and address of such agent; and

(D) Whether it holds the bank's securities on behalf of any respondent bank and, if so, the name and address of each such respondent bank; and

(ii) Indicate to each such record holder:

(A) Whether the bank, pursuant to paragraph (c) of this section, intends to distribute the annual report to security holders to beneficial owners of its securities whose names, addresses and securities positions are disclosed pursuant to 17 CFR 240.14b-1(b)(3) and 17 CFR 240.14b-2(b)(4)(ii) and (iii);

(B) The record date; and

(C) At the option of the bank, any employee benefit plan established by an affiliate of the bank that holds securities of the bank that the bank elects to treat as exempt employee benefit plan securities;

(2) Upon receipt of a record holder's or respondent bank's response indicating, pursuant to 17 CFR 240.14b-2(b)(1)(i), the names and addresses of its respondent banks, within one business day after the date such response is received, make an inquiry of and give notification to each such respondent bank in the same manner required by paragraph (a)(1) of this section; *Provided, however,* the inquiry required by paragraphs (a)(1) and (2) of this section shall not cover beneficial owners of exempt employee benefit plan securities;

(3)(i) Make the inquiry required by paragraph (a)(1) of this section:

(A) If the bank intends to solicit proxies, consents or authorizations:

(1) At least 20 business days prior to the record date of the meeting of security holders; or

(2) If such inquiry is impracticable 20 business days prior to the record date of a special meeting, as many days before the record date as practicable; or

(3) If consents or authorizations are solicited, and such inquiry is impracticable 20 days before the earliest date on which they may be used to effect corporate action, as many days before that date as is practicable; or

(4) At such later time as the rules of a national securities exchange on which the class of securities in question is listed may permit for good cause shown; or

(B) If the bank does not intend to solicit proxies, consents or authorizations, the earlier of:

(1) At least 20 business days prior to the record date of the meeting of security holders or the record date of written consents in lieu of a meeting; or

(2) At least 20 business days prior to the date the information statement is required to be sent or given pursuant to § 335.201(b).

(i) *Provided, however*, that if a record holder or respondent bank has informed the bank that a designated office(s) or department(s) is to receive such inquiries, the inquiry shall be made to such designated office(s) or department(s);

(4) Supply in a timely manner, each record holder and respondent bank of whom the inquiries required by paragraphs (a)(1) and (a)(2) of this section are made with copies of the proxy, other proxy soliciting material (or if applicable, copies of the information statement), and/or the annual report to security holders, in such quantities, assembled in such form and at such place(s), as the record holder may reasonably request in order to send such material to each beneficial owner of securities who is to be furnished with such material by the record holder or respondent bank; and

(5) Upon the request of any record holder or respondent bank that is supplied with proxy soliciting material, information statements, and/or annual reports to security holders pursuant to paragraph (a)(4) of this section, pay its reasonable expenses for completing the mailing of such material to beneficial owners.

NOTE 1: If the bank's list of security holders indicates that some of its securities are registered in the name of a clearing agency registered pursuant to section 17A of the Act (e.g., "Cede & Co.," nominee for the Depository Trust Company), the bank shall make appropriate inquiry of the clearing agency and thereafter of the participants in such clearing agency who may hold on behalf of a beneficial owner or respondent bank, and shall comply with the above paragraph with respect to any such participant (see 17 CFR 240.14a-1(i)).

NOTE 2: The attention of banks is called to the fact that each broker, dealer, bank, association or other entity that exercises fiduciary powers has an obligation under 17 CFR

240.14b-1 and 17 CFR 240.14b-2 (except as provided therein with respect to employee benefit plan securities held in nominee name) and, with respect to brokers and dealers, applicable self-regulatory requirements to obtain and forward, within the time periods prescribed therein: Proxies (or in lieu thereof requests for voting instructions) and proxy soliciting materials (or if applicable, copies of the information statement) to beneficial owners on whose behalf it holds securities; and annual reports to security holders to beneficial owners on whose behalf it holds securities, unless the bank has notified the record holder or respondent bank that it has assumed responsibility to mail such material to beneficial owners whose names, addresses and securities positions are disclosed pursuant to 17 CFR 240.14b-1(b)(3) and 17 CFR 240.14b-2(b)(4)(ii) and (iii).

NOTE 3: The attention of banks is called to the fact that banks have an obligation, pursuant to paragraph (d) of this section, to cause proxies (or in lieu thereof requests for voting instructions), proxy soliciting material (or if applicable, copies of the information statement) and annual reports to security holders to be furnished, in a timely manner, to beneficial owners of exempt employee benefit plan securities.

NOTE 4: The requirement for sending an annual report to security holders of record having the same address will be satisfied by sending at least one report to a holder of record at that address provided that those holders of record to whom the report is not sent agree thereto in writing. This procedure is not available, however, where banks, associations, other entities that exercise fiduciary powers, brokers, dealers and other persons hold securities in nominee accounts or "street names" on behalf of beneficial owners, and such persons are not relieved of any obligation to obtain or send such annual report to the beneficial owners.

(b) Any bank requesting pursuant to 17 CFR 240.14b-1(b)(3) and 17 CFR 240.14b-2(b)(4) (ii) and (iii) a list of names, addresses and securities positions of beneficial owners of its securities who either have consented or have not objected to disclosure of such information shall:

(1) By first class mail or other equally prompt means, inquire of each record holder and each respondent bank identified to the bank pursuant to 17 CFR 240.14b-2(b)(4)(i) whether such record holder or respondent bank holds the bank's securities on behalf of any respondent banks and, if so, the name and address of each such respondent bank;

(2) Request such list to be compiled as of a date no earlier than five business days after the date of bank's request is received by the record holder or respondent bank; *Provided, however*, that if the record holder or respondent bank has informed the bank that a designated office(s) or department(s) is to receive such requests, the request shall be made to such designated office(s) or department(s);

(3) Make such request to the following persons that hold the bank's securities on behalf of beneficial owners: all brokers, dealers, banks, associations and other entities that exercise fiduciary powers; *Provided, however*, such request shall not cover beneficial owners of exempt employee benefit plan securities as defined in 17 CFR 240.14a-1(d)(1); and, at the option of the bank, such request may give notice of any employee benefit plan established by an affiliate of the bank that holds securities of the bank that the bank elects to treat as exempt employee benefit plan securities;

(4) Use the information furnished in response to such request exclusively for purposes of corporate communications; and

(5) Upon the request of any record holder or respondent bank to whom such request is made, pay the reasonable expenses, both direct and indirect, of providing beneficial owner information.

NOTE: A bank will be deemed to have satisfied its obligations under paragraph (b) of this section by requesting consenting and non-objecting beneficial owner lists from a designated agent acting on behalf of the record holder or respondent bank and paying to that designated agent the reasonable expenses of providing the beneficial owner information.

(c) A bank, at its option, may mail its annual report to security holders to the beneficial owners whose identifying information is provided by record holders and respondent banks, pursuant to 17 CFR 240.14b-1(b)(3) and 17 CFR 240.14b-2(b)(4) (ii) and (iii), provided that such bank notifies the record holders and respondent banks, at the time it makes the inquiry required by paragraph (a) of this section, that the bank will mail the annual report to se-

curity holders to the beneficial owners so identified.

(d) If a bank furnishes information statements to, or solicits proxies, consents or authorizations from record holders and respondent banks who hold securities on behalf of beneficial owners, the bank shall cause proxies (or in lieu thereof requests for voting instructions), proxy soliciting material (or if applicable, copies of the information statement) and annual reports to security holders to be furnished, in a timely manner, to beneficial owners of exempt employee benefit plan securities.

[54 FR 53586, Dec. 29, 1989, as amended at 59 FR 67173, Dec. 29, 1994]

§335.220 Special provisions applicable to election contests.

(a) *Solicitations to which the section applies.* This section applies to any solicitation subject to this subpart B by any person or group of persons for the purpose of opposing a solicitation subject to this subpart B by any other person or group of persons with respect to the election or removal of directors at any annual or special meeting of security holders.

(b) *Solicitations prior to furnishing required statement.* Notwithstanding the provisions of §335.201 a solicitation subject to §335.220 may be made prior to furnishing security holders a written statement containing the information specified in Form F-5 with respect to such solicitation: *Provided, That—*

(1) No form of proxy is furnished to security holders prior to the time the written proxy statement required by §335.201 is furnished to security holders: *Provided, however*, that this paragraph (b)(1) shall not apply where a proxy statement then meeting the requirements of Form F-5 has been furnished to security holders by or on behalf of the person making the solicitation;

(2) The identity of the participants in the solicitation (as defined in Instruction 3 of Item 3 of Form F-5 (§335.212)) and a description of their interests, direct or indirect, by security holdings or otherwise, are set forth in each communication published, sent or given to security holders in connection with the solicitation;

(3) A written proxy statement meeting the requirements of this Subpart B is sent or given to security holders solicited pursuant to this paragraph (b) at the earliest practicable date.

(c) *Solicitations prior to furnishing required statement—filing requirements.* Three copies of any soliciting material proposed to be sent or given to security holders prior to the furnishing of the proxy statement required by § 335.201 shall be filed with the FDIC in preliminary form, at least five business days prior to the date copies of such material are first sent or given to security holders, or such shorter period as the FDIC may authorize upon a showing of good cause therefor.

(d) *Application of this section to annual report.* Notwithstanding the provisions of § 335.203 three copies of any portion of the annual report referred to in that section that comments upon or refers to any solicitation subject to this section, or to any participant in any such solicitation, other than the solicitation by the management, shall be filed with the FDIC as proxy material subject to this subpart B. Such portion of the annual report shall be filed with the FDIC in preliminary form at least five business days prior to the date copies of this report are first sent or given to security holders.

(e) *Application of § 335.204.* The provisions of § 335.204(c) through (f) shall apply, to the extent pertinent, to soliciting material subject to paragraphs (c) and (d) of this section.

(f) *Use of reprints or reproductions.* In any solicitation subject to this section, soliciting material that includes, in whole or in part, any reprints or reproductions of any previously published material shall:

(1) State the name of the author and publication, the date of prior publication, and identify any person who is quoted without being named in the previously published material.

(2) Except in the case of a public official document or statement, state whether or not the consent of the author and publication has been obtained to the use of the previously published material as proxy soliciting material.

(3) If any participant using the previously published material, or anyone on his behalf, paid, directly or indi-

rectly, for the preparation or prior publication of the previously published material, or has made or proposes to make any payments or give any other consideration in connection with the publication or republication of such material, state the circumstances.

[46 FR 25208, May 5, 1981, as amended at 48 FR 55564, Dec. 14, 1983; 54 FR 53587, Dec. 29, 1989; 59 FR 67174, Dec. 29, 1994]

§ 335.221 Form for statement in election contests (Form F-6).

FORM F-6

STATEMENT IN ELECTION CONTEST

GENERAL INSTRUCTIONS

All items shall be answered but the text of any item may be omitted provided the answers thereto are prepared in the manner specified in § 335.361. If an item is inapplicable or the answer is in the negative, so state. The information called for by items 2(a) and 3(a) or a fair summary thereof is required to be included in all preliminary soliciting material by § 335.220.

Item 1—Bank, State the name and address of the bank.

Item 2—Identity and Background of Participant.

(a) State the following:

(1) Your name and business address.

(2) Your present principal occupation or employment and the name, principal business, and address of any corporation or other organization in which such employment is carried on.

(b) State the following:

(1) Your residence address.

(2) Information as to all material occupations, positions, offices, or employments during the last ten years, giving starting and ending dates of each and the name, principal business, and address of any business corporation or other business organization in which each such occupation, position, office, or employment was carried on.

(c) State whether or not you are or have been a participant in any other proxy contest involving the bank or other corporations within the past ten years. If so, identify the principals, the subject matter and your relationship to the parties and the outcome.

(d) State whether or not, during the past ten years, you have been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) and, if so, give dates, nature of conviction, name and location of court, and penalty imposed or other disposition of the case. A negative answer to this subitem need not be included in

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the statement or other proxy soliciting material.

Item 3—Interests in Securities of the Bank.

(a) State the amount of each class of securities of the bank that you own beneficially, directly, or indirectly.

(b) State the amount of each class of securities of the bank that you own of record but not beneficially.

(c) State with respect to the securities specified in (a) and (b) the amounts acquired within the past two years, the dates of acquisition and the amounts acquired on each date.

(d) If any part of the purchase price or market value of any of the shares specified in paragraph (c) is represented by funds borrowed or otherwise obtained for the purpose of acquiring or holding such securities, so state and indicate the amount of the indebtedness as of the latest practicable date. If such funds were borrowed or obtained otherwise than under a margin account or bank loan in the regular course of business of a bank, broker, or dealer, briefly describe the transaction, and state the names of the parties.

(e) State whether or not you are a party to any contracts, arrangements or understandings with any person with respect to any securities of the bank, including but not limited to joint ventures, loan or option arrangements, puts or calls, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. If so, name the persons with whom such contracts, arrangements, or understandings exist and give the details thereof.

(f) State the amount of securities of the bank owned beneficially, directly, or indirectly by each of your associates and the name and address of each such associate.

(g) State the amount of each class of securities of any parent or subsidiary of the bank which you own beneficially, directly, or indirectly.

Item 4—Further Matters.

(a) Describe the time and circumstances under which you became a participant in the solicitation and state the nature and extent of your activities or proposed activities as a participant.

(b) Furnish for yourself and your associates the information required by item 7 of Form F-5 (§ 335.212).

(c) State whether or not you or any of your associates have any arrangement or understanding with any person:

(1) With respect to any future employment by the bank or its affiliates; or

(2) With respect to any future transactions to which the bank or any of its affiliates will or may be a party. If so, describe such ar-

rangement or understanding and state the names of the parties thereto.

(d) State the total amount contributed and proposed to be contributed by you in furtherance of the solicitation, directly or indirectly, if such amount exceeds or will exceed \$500 in the aggregate.

Item 5—Signature.

The statement shall be dated and signed in the following manner:

I certify that the statements made in this statement are true, complete, and correct, to the best of my knowledge and belief.

(Signature of participant or authorized representative)

Date _____

Instruction. If the statement is signed on behalf of participant by the latter's authorized representative, evidence of the representative's authority to sign on behalf of such participant shall be filed with the statement.

[46 FR 25208, May 5, 1981, as amended at 48 FR 55556, Dec. 14, 1983]

§ 335.222 Notice of Exempt Solicitation to be included in statements submitted by or on behalf of a person pursuant to § 335.204(l) (Form F-6A).

FORM F-6A—NOTICE OF EXEMPT SOLICITATION

1. Name and address of the Bank: _____

2. Name of person relying on exemption: _____

3. Address of person relying on exemption: _____

4. Written materials. Attach written material required to be submitted pursuant to § 335.204(l).

[59 FR 67174, Dec. 29, 1994]

Subpart C—Bank Reporting

§ 335.301 Requirement of registration statement.

Securities of a bank (other than a foreign bank) shall be registered under the provisions of either section 12(b) or section 12(g) of the act by filing a statement in conformity with the requirements of Form F-1 (or Form F-10, in the case of registration of an additional class of securities). Securities of a foreign bank shall be registered in conformity with applicable requirements of SEC Form 20-F (17 CFR 249.220f). No registration shall be required under the provisions of section

12(b) or section 12(g) of the act of any warrant or certificate evidencing a right to subscribe to or otherwise acquire a security of a bank if such warrant or certificate by its terms expires within 90 days after the issuance thereof.

Note to Small Business Issuers: a "small business issuer", as defined under 17 CFR 240.12b-2 has the option of providing the disclosure required by SEC Form 10-SB, optional form for the registration of securities of a small business issuer (17 CFR 249.210b), in lieu of the disclosure requirements set forth in Form F-1 (§335.309a). The definition of "small business issuer", generally includes banks with annual revenues of less than \$25 million, whose voting stock does not have a public float of \$25 million or more.

[46 FR 25208, May 5, 1981, as amended at 59 FR 67174, Dec. 29, 1994]

§335.302 Registration of securities of successor bank.

(a) Where in connection with a succession by merger, consolidation, exchange of securities or acquisition of assets, equity securities of a bank, holders of any class of equity securities not previously registered under section 12 of the act, are issued to the holders of any class of equity securities of another bank which is registered under section 12(g) of the act, the class of securities so issued shall be deemed to be registered under section 12(g) of the act unless upon consummation of the succession such class is exempt from such registration or all securities of such class are held of record by less than 300 persons.

(b) Where in connection with a succession by merger, consolidation, exchange of securities or acquisition of assets, equity securities of a bank, which are not registered under section 12 of the act, are issued to the holders of any class of equity securities of another issuer which is required to file a registration statement under section 12(g) of the act but has not yet done so, the duty to file such statement shall be deemed to have been assumed by the bank whose class of securities is so issued and such bank shall file a registration statement under section 12(g) of the act with respect to such class within the period of time the predecessor bank would have been required

to file such a statement, or within such extended period of time as the FDIC may authorize upon application under §335.358 unless upon consummation of the succession such class is exempt from such registration or all securities of the class are held of record by less than 300 persons.

§335.303 Registration effective as to class or series.

Depending upon whether the security is to be listed on an exchange, registration shall become effective as provided in section 12(d) or section 12(g)(1) of the act as to the entire class of such security, then or thereafter authorized. If, however, a class of security is issuable in two or more series with different terms, each such series shall be deemed a separate class for the purposes of this paragraph.

§335.304 Acceleration of effectiveness of registration.

A request for acceleration of the effective date of registration shall be made in writing by either the bank, an exchange, or both and shall briefly describe the reasons therefor.

§335.305 Exchange certification.

(a) Certification that a security has been approved by an exchange for listing and registration under section 12(d) of the act shall be made by the governing committee or other corresponding authority of the exchange.

(b) The certification shall specify: (1) The approval of the exchange for listing and registration; (2) the title of the security so approved; (3) the date of filing with the exchange of the registration statement and of any amendments thereto; and (4) any conditions imposed on such certification. The exchange shall promptly notify the FDIC of the partial or complete satisfaction of any such conditions.

(c) The certification may be made by telegram but in such case shall be confirmed in writing. All certifications in writing and all amendments thereto shall be filed with the FDIC in duplicate and at least one copy shall be manually signed by the appropriate exchange authority.

(d) The date of receipt by the FDIC of the certification approving a security

for listing and registration shall be the date on which the certification is actually received by the FDIC, or the date on which the registration statement to which the certification relates is actually received by the FDIC, whichever date is later.

(e) If an amendment to the registration statement is filed with the exchange and with the FDIC after the receipt by the FDIC of the certification of the exchange approving the security for listing and registration, the certification, unless withdrawn, shall be deemed made with reference to the statement as amended.

(f) An exchange may, by notice to the FDIC, withdraw its certification prior to the time that the registration to which it relates first becomes effective pursuant to paragraph (b) of this section.

(g) An exchange may suspend from trading a bank security listed and registered thereon in accordance with its rules. Suspension of trading shall not terminate the registration of any bank security.

§ 335.306 When securities are deemed to be registered.

A class of securities with respect to which a registration statement has been filed under section 12 of the act shall be deemed to be registered for the purposes of sections 13, 14 and 16 of the act and the regulations in this part only when such registration statement has become effective as provided in section 12, and securities of said class shall not be subject to sections 13, 14 and 16 of the act until such registration statement has become effective as provided in section 12.

§ 335.307 Exemptions for American depository receipts and certain foreign securities.

(a)(1) Securities of any class issued by any foreign bank shall be exempt from section 12(g) of the act if the class has fewer than 300 holders resident in the United States. This exemption shall continue until the next fiscal year end at which the bank has a class of equity securities held by 300 or more persons resident in the United States. For the purpose of determining whether a security is exempt under this para-

graph, securities held of record by persons resident in the United States shall be determined as provided in § 335.102(l) except that securities held of record by a broker, dealer or bank or nominee for any of them in the United States for the accounts of customers resident in the United States shall be counted as held in the United States by the number of separate accounts for which the securities are held. The bank may rely in good faith on information as to the number of such separate accounts supplied by all owners of the class of its securities which are brokers, dealers or banks in the United States or a nominee for any of them.

(2) Registration of any class of security by a foreign bank under section 12(g) of the act shall be terminated ninety days, or such shorter period as the FDIC may determine, after the bank files a certification with the FDIC that the number of holders resident in the United States of such class of security is reduced to less than 300 persons. Termination of registration shall be deferred pending final determination on the question of denial.

(b)(1) Securities of any foreign private bank shall be exempt from section 12(g) of the act if the bank, or a government official or agency of the country of the bank's domicile or in which it is incorporated or organized.

(i) Shall furnish to the FDIC whatever information in each of the following categories (*required public information*) the bank during its last fiscal year (A) has made public under the law of the country of its domicile or in which it is incorporated or organized, (B) has filed with a stock exchange on which its securities are traded and which was made public by such exchange, or (C) has distributed to its security holders;

(ii) Shall furnish to the FDIC a list identifying the required public information and stating when and by whom it is required to be made public, filed with any such exchange or distributed to security holders;

(iii) Shall furnish to the FDIC, during each subsequent fiscal year, whatever required public information is made public, promptly after such information is made public; and

(iv) Shall furnish to the FDIC a revised list reflecting any changes in the kind of required public information promptly after the end of any fiscal year in which any changes occur.

(2) The required public information shall be furnished on or before the date on which a registration statement under section 12(g) of the act would otherwise be required to be filed.

(3) The required public information is that about which investors ought reasonably to be informed with respect to the bank and its subsidiaries concerning: The financial condition or results of operations; changes in business; acquisitions or dispositions of assets; issuance, redemption or acquisitions or their securities; changes in management or control, the granting of options or the payment of other compensation to directors or officers' transactions with directors, officers or principal security holders; and any other information about which investors ought reasonably to be informed.

(4) Only one complete copy of any information or document need be furnished under paragraph (b)(1) of this section. If the bank has prepared or caused to be prepared an English translation or substantially equivalent English version of any information or document which would otherwise be furnished, such translation or version shall be furnished and the information or document in the original language need not be furnished. Such information and documents need not be under cover of any prescribed form and shall not be deemed to be *filed* with the FDIC or otherwise subject to the liabilities of section 18 of the act.

(5) The furnishing of any information or document under paragraph (b) of this section shall not constitute an admission for any purpose that the bank is subject to the act.

(c) American Depository Receipts for the securities of any foreign bank shall be exempt from section 12(g) of the act.

(d) Securities of any foreign private bank, other than a North American bank, which has any class of securities registered on a national securities exchange under section 12(b) of the act or any foreign private bank which is required to file reports under section

15(d) of the act shall be exempt from section 12(g) of the act.

(e) The exemptions provided by paragraphs (b) and (d) of this section shall not be available for any class of securities if at the end of the last fiscal year of the bank (1) more than 50 per cent of the outstanding voting securities of such issuer are held of record either directly or through voting trust certificates or depository receipts by residents of the United States and (2) the business of such bank is administered principally in the United States or 50 per cent or more of the members of its Board of Directors are residents of the United States. For the purpose of this paragraph the term *resident*, as applied to security holders, shall mean any person whose address appears on the records of the bank, the voting trustee or the depository as being located in the United States.

(f) The exemption provided by paragraph (b)(1) of this section shall not be available for securities of any foreign bank which within 1 year prior to the date as of which registration of such securities under section 12(g) of the act is required, has had the same or any other class of securities registered under section 12 of the act, nor shall such exemption be available for securities the registration of which under section 12(g) of the act is required as a result of the termination of an exemption under paragraph (d) of this section.

[46 FR 25208, May 5, 1981, as amended at 54 FR 53587, Dec. 29, 1989]

§335.308 Reports of foreign private banks.

(a) Every foreign private bank which is subject to §335.310 shall make reports on Form F-4A, except that this rule shall not apply to issuers of American depository receipts for securities of any foreign bank.

(b) Such reports shall be transmitted promptly after the information required by Form F-4A is made public by the bank, by the country of its domicile or under the laws of which it was incorporated or organized, or by a foreign securities exchange with which the bank has filed the information.

(c) Reports furnished under this section shall not be deemed to be *filed*

with the FDIC or otherwise subject to the liabilities of section 18 of the act.

§ 335.309a Form for registration of securities of a bank under section 12(b) or section 12(g) of the Securities Exchange Act of 1934 (Form F-1).

FORM F-1

FORM FOR REGISTRATION OF SECURITIES OF A BANK UNDER SECTION 12(b) OR SECTION 12(g) OF THE SECURITIES EXCHANGE ACT OF 1934

FDIC Certificate No. _____

(Exact name of bank as specified in charter) _____
 (Address of principal office) _____
 (IRS Employer Identification No.) _____
 (Bank's telephone number, including area code) _____

Title of each class of securities being registered under section 12(b) of the Act:¹

Title of class _____
 Name of each exchange on which class is being registered _____

Title of each class of securities being registered under section 12(g) of the Act:¹

Indicate by check mark if the bank, as a "small business issuer" as defined under 17 CFR 240.12b-2, is providing alternative disclosures as permitted for small business issuers in this Form F-1. []

GENERAL INSTRUCTIONS

Form F-1 shall be used for registration under section 12 (b) or (g) of the Securities Exchange Act of 1934 of classes of securities of issuers that are State nonmember banks. This form is not to be used as a blank form to be filled in but only as a guide in the preparation of a registration statement. Particular attention should be given to the definitions in §335.102 and the general requirements in subpart C of this part. Unless otherwise stated, the information required shall be given as of a date reasonably close to the date of filing the statement. The statement shall contain the numbers and captions of all items, but the text of the items may be omitted if the answers with respect thereto are prepared in the manner specified in §335.361. Attention is directed to §335.350 which states: "In addition to the information expressly required to be included in a statement or report, 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."

Section 335.359 requires that three copies of each registration statement (including financial statements) and two copies of each exhibit and each other document filed as a

¹If none, so state.

part thereof, shall be filed with the FDIC. At least one complete copy of the registration statement, including financial statements, exhibits and all other papers and documents filed as a part thereof, shall be filed with each exchange on which any class of securities is to be registered. At least one complete copy of the registration statement filed with the FDIC and one such copy filed with each exchange shall be manually signed. Copies not manually signed shall bear typed or printed signatures.

Attention is directed to §335.353 which provides for the incorporation by reference of information contained in certain documents in answer or partial answer to any item of a registration statement.

INFORMATION REQUIRED IN REGISTRATION STATEMENT

Item 1—Business

(a) State the year in which the bank was organized. If organized as a national bank, state the year of conversion into a State bank. Indicate the approximate number of holders of record of each class of equity securities of the bank.

(b) Describe briefly the business done and intended to be done by the bank and the general development of such business during the preceding five years, or such shorter period as the bank may have been engaged in business. Information should be furnished as to any mergers, consolidations, or other acquisitions of assets of any other person that were consummated during such period. State the number of banking offices in each city (county) in the United States in which the bank has offices and the number of banking offices located in each foreign country or jurisdiction. In describing the business done by the bank, the business of its subsidiaries should be included only insofar as the same is important to an understanding of the character and development of the business conducted by the total enterprise. The description shall include information as to matters such as the following:

(1) Competitive conditions in the industry and the competitive position of the bank if known or reasonably available to the bank. If several services are involved, separate consideration shall be given to the principal services or classes of services.

(2) If a material portion of the bank's deposits has been obtained from a single person or a few persons (including Federal, State and local governments and agencies thereunder), the loss of any of one or more of which would have a materially adverse effect on the business of the bank, or if a material portion of the bank's loans is concentrated within a single industry or group of related industries, a description of such customers, their other relationships, if any, to the bank,

and material facts regarding their importance to the business of the bank;

(3) The principal services rendered by the bank, the principal markets for, and methods of distribution of, such services, including any significant changes in the kinds of services rendered, or in the market or methods of distribution, during the past three fiscal years.

(4) The importance to the bank and the duration and effect of all material patents, trademarks, licenses, franchises and concessions held.

(5) (a) The estimated dollar amount spent during each of the last two fiscal years on material research activities relating to the development of new services or the improvement of existing bank services.

(b) In addition to the description of the business done and intended to be done required by paragraph 1(b) and without limiting that requirement, if there has been a public announcement of, or if information otherwise has become public about, a new line of business requiring the investment of a material amount of total assets, a description of the status of such product or line (*e.g.*, whether in the planning stage).

(c) Where material, state the approximate number of employees engaged full-time in each of the activities described in (a) above during each fiscal year and in (b) above.

NOTE: Item 1(b)(5)(b) requires a description of the status of service development in addition to the description of the business done and intended to be done required by paragraph 1(a). Item 1(b)(5)(b) is not intended to require disclosure of otherwise non-public corporate information the disclosure of which would adversely affect the bank's competitive position. Subparagraph (a) requires disclosure of financial information relating to research and development activities. Subparagraph (b) is intended to elicit additional specific information only where there has been a public announcement or where information has otherwise become public concerning a new product or line of business requiring the investment of a material amount of total assets.

(6) The number of persons employed by the bank.

(7) The extent to which the business of the bank or a material portion thereof is or may be seasonal.

(8) Present in tabular form, for each of the three years for which a statement of income is being furnished, ratios of the bank's net income to the following items: (a) average equity capital accounts, and (b) average daily total deposits. Ratios for such periods of average daily loans to average daily deposits should also be included.

Instructions: 1. If the bank proposes to enter, or has recently entered or introduced, a new line of business requiring the invest-

ment of a material amount of its total assets, provide as supplemental information at the time of filing of the registration statement, but not as a part thereof, a copy of any studies conducted or performed by or for the bank relating to such business, and a statement as to the actual or proposed use of such study. Where material, disclosure of the absence of such a study is required.

2. Positive and negative factors pertaining to the competitive position of the bank, to the extent that they exist, should be explained, if known or reasonably available to the bank. An estimate of the number of competitors should be included, and, where material, the particular markets in which the bank competes should be identified. Where one or a small number of competitors are dominant, they should be identified.

3. Where material to understanding the bank's business, the bank's and industry practices and conditions as they relate to liquidity should be explained (*e.g.*, where the bank's business is highly seasonal).

4. The description shall not relate to the powers and objects specified in the charter, but to the actual business done and intended to be done. Include the business of subsidiaries and affiliates of the bank insofar as is necessary to understand the character and development of the business conducted by the bank.

5. In describing developments, information shall be given as to matters such as the following: The nature and results of any other material reorganization, readjustment, or succession of any of the bank's significant subsidiaries; the acquisition or disposition of any material amount of assets otherwise than in the ordinary course of business; and any material changes in the mode of conducting the business.

6. Appropriate disclosure shall also be made as to the material effects that compliance with Federal, State and local provisions which have been enacted or adopted regulating the discharge of materials into the environment, or otherwise relating to the protection of the environment, may have upon the capital expenditures, earnings and competitive position of the bank and its subsidiaries.

7. The business of a predecessor or predecessors shall be deemed to be the business of the bank for the purpose of this item.

8. Appropriate disclosure shall be made with respect to any material portion of the business which may be subject to termination at the election of any person (*e.g.*, depositors).

NOTE: The following instruction (9) applies only to banks filing a registration statement on Form F-1 for the first time, who (including predecessors) have not received revenues from operations for each of the three fiscal years immediately prior to the filing of the registration statement.

9. Describe, if formulated, the bank's plan of operation for the remainder of the fiscal year, if the registration statement is filed prior to the end of the bank's second fiscal quarter. Describe, if formulated, the bank's plan of operation for the remainder of the fiscal year and for the first six months of the next fiscal year, if the registration statement is filed subsequent to the end of the second fiscal quarter. If such information is not available, the reasons for its not being available shall be stated. Disclosure relating to any plan must include such matters as:

(a) The bank's opinion as to whether it will have to raise additional funds within the next year in order to meet its capital requirements. The basis of such opinion must be stated. Where such statement is based on a cash budget, such budget will be furnished to the FDIC as supplemental information, but need not be filed as a part of the Form F-1.

(b) Any anticipated material acquisition of property and equipment and the capacity thereof.

(c) Any anticipated material changes in number of employees.

(d) Other material areas which may be peculiar to the bank's business.

(c)(1) *Information as to lines of business.* If the bank and its subsidiaries are engaged in any line of business in addition to normal commercial or mutual savings bank activities, state, for each of the bank's last five fiscal years, or for each fiscal year the bank has been engaged in business, whichever period is less, the approximate amount or percentage of: (i) Total revenues, and (ii) income (or loss) before income taxes and extraordinary items, attributable to each line of business which during either of the last two fiscal years accounted for:

(A) 10 percent or more of the total revenues,

(B) 10 percent or more of income before taxes and extraordinary items computed without deduction of loss resulting from operations of any line of business, or

(C) A loss which equalled or exceeded 10 percent of the amount of income specified in (b) of this paragraph (c)(1); provided, that if total revenues did not exceed \$50,000,000 during either of the past two fiscal years, the percentages specified in (A), (B) and (C) of this paragraph (c)(1) shall be 15 percent, instead of 10 percent.

If it is impracticable to state the contribution to income (or loss) before income taxes and extraordinary items for any line of business, state the contribution thereof to the results of operations most closely approaching such income, together with a brief explanation of the reasons why it is not practicable to state the contribution to such income or loss.

(d) If the bank and its subsidiaries engage in material operation in foreign countries, or

if a material portion of revenues is derived from customers in foreign countries, appropriate disclosure shall be made with respect to the importance of that part of the business to the bank and the risks attendant thereto. Insofar as practicable, furnish information with respect to volume and profitability of such operations.

(e) The FDIC may, upon written request of the bank, and where consistent with the protection of investors, permit the omission of any of the information herein required or the furnishing in substitution thereof of appropriate information of comparable character. The FDIC may also require the furnishing of other information in addition to, or in substitution for, the information herein required in any case where such information is necessary or appropriate for an adequate description of the business done or intended to be done.

Item 2—Selected Financial Data; Management's Discussion and Analysis of Financial Condition and Results of Operations, and Other Statistical Disclosure

Furnish in comparative columnar form a summary of selected financial data for the bank for:

(a) Each of the last five fiscal years of the bank (or for the life of the bank and its predecessors, if less), and

(b) Any additional fiscal years necessary to keep the summary from being misleading.

Instructions

1. The purpose of the summary of selected financial data shall be to supply in a convenient and readable format selected data which highlight significant trends in the bank's financial condition and results of operations.

2. The following items shall be included in the table of financial data: Net interest income; other operating income; provision for loan and lease losses; income (loss) from continuing operations; income (loss) from continuing operations per common share; total assets; long term obligations and redeemable preferred stock and cash dividends declared per common share. Banks may include additional items which they believe would enhance an understanding of and would highlight other trends in their financial condition and results of operations. Briefly describe, or cross reference to a discussion thereof, factors such as accounting changes, business combinations or dispositions of business operations, that materially affect the comparability of the selected financial data. Discuss any material uncertainties which might cause the data not to be indicative of the bank's future financial condition or results of operations.

3. Those banks which provide five-year summary information in accordance with

SFAS 89* may combine such information with the selected financial data appearing pursuant to this item.

4. All references to the bank in the summary and in these instructions shall mean the bank and its consolidated subsidiaries.

5. In addition, (a) if debt securities are registered under section 12 of the Act, the bank may, at its option, show in tabular form for each fiscal year the ratio of earnings to fixed charges. If appropriate, the ratio of earnings to fixed charges for such periods shall also be shown on a total enterprise basis in a position of equal prominence with the ratio for the bank or the bank and its consolidated subsidiaries.

(b) Earnings shall be computed after all operating and income deductions except fixed charges and taxes based on income or profits and after eliminating undistributed income of unconsolidated subsidiaries and 50 percent or less owned persons.

(c) The term *fixed charges* shall mean (i) interest and amortization of debt discount and expense and premium on all indebtedness; (ii) such portion of rentals as can be demonstrated to be representative of the interest factor in the particular case; and (iii) in case consolidated figures are used, preferred stock dividend requirements of consolidated subsidiaries, excluding in all cases items eliminated in consolidation.

6. Discuss the bank's financial condition, changes in financial condition and results of operations. The discussion shall provide information as specified in instructions 7, 8, 9, 10, and 11 to this item 2 with respect to liquidity, capital resources, and results of operations, and should also provide such other information which the bank believes to be necessary to an understanding of its financial condition, changes in financial condition and results of operations. Discussions of liquidity and capital resources may be combined whenever the two topics are inter-related. Where in the bank's judgment a discussion of segment information or of other subdivisions of the bank's business would be appropriate to an understanding of such business, the discussion would focus on each relevant, reportable segment or other subdivision of the business and on the bank as a whole.

7. Identify any known trends or any known demands, commitments, events or uncertainties which will result in or which are reasonably likely to result in the bank's liquidity increasing or decreasing in any material way. If a material deficiency is identified, indicate the course of action which the bank has taken or proposes to take to remedy the

deficiency. Identify and separately describe internal and external sources of liquidity, and briefly discuss any material unused sources of liquid assets.

8. Describe the bank's material commitments for capital expenditures as of the end of the latest fiscal period, and indicate the general purpose of such commitments and the anticipated source of funds needed to fulfill such commitments. Also, describe any known material trends, favorable or unfavorable, in the bank's capital resources. Indicate any expected material changes in the mix and the relative cost of such resources. This discussion should consider changes between equity, debt and any off-balance sheet financing arrangement.

9. Describe any unusual or infrequent events or transactions or any significant economic changes which materially affected the amount of reported income from continuing operations and, in each case, indicate the extent to which income was so affected. In addition, describe any other significant components of revenues or expense which, in the bank's judgment, should be described in order to understand the bank's results of operations.

10. Describe any known trends or uncertainties which have had or which the bank reasonably expects will have a material favorable or unfavorable impact on revenues or income from continuing operations. If the bank knows of events which will cause a material change in the relationship between costs and revenues (such as known future increases in costs of labor) the change in the relationship should be disclosed.

11. To the extent that the financial statements disclose material increases in revenues, provide a narrative discussion of the extent to which such increases are attributable to increases in prices or to increases in the volume or amount of services being sold or to the introduction of services.

12. Set forth the same information as is required to be furnished by Instruction 7 to Item 7 of Form F-2 at § 335.312.

13. The bank's discussion and analysis shall be of the financial statement and of other statistical data which the bank believes will enhance a reader's understanding of its financial condition, changes in financial condition, cash flows and results of operations. Generally, the discussion should cover the three-year period covered by the financial statements and should utilize year-to-year comparisons or any other formats which in the bank's judgment enhance a reader's understanding. However, where trend information is relevant, reference to the five-year selected financial data appearing in Item 6 of a Form F-2 may be necessary.

14. The purpose of the discussion and analysis should be to provide to investors and

*SFAS 89—Statement of Financial Accounting Standards No. 89, Financial Reporting and Changing Prices, published by the Financial Accounting Standards Board.

other users information relevant to an assessment of the financial condition and results of operations of the bank as determined by evaluating the amounts and certainty of cash flows from operations and from outside sources. The information provided in this item 2 need only include that which is available to the bank without undue effort or expense but which does not clearly appear in the bank's financial statements.

15. The discussion and analysis should specifically focus on material events and uncertainties known to management which would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. This would include description and amounts of (a) matters which would have an impact on future operations and have not had an impact in the past, and (b) matters which have had an impact on reported operations and are not expected to have an impact upon future operations.

16. Where the consolidated financial statements reveal material changes from year to year in one or more line items, the causes for the changes should be described to the extent necessary to an understanding of the bank's businesses as a whole; *provided, however*, if the causes for a change in one line item also relate to other line items, no repetition is required and a line-by-line analysis of the financial statements as a whole is not required or generally appropriate. Banks need not recite the amounts of changes from year to year which are readily computable from the financial statements. The discussion should not merely repeat numerical data contained in the consolidated financial statements.

17. The term *liquidity* refers to the ability of a bank to generate adequate amounts of cash to meet the bank's needs for cash. Except where it is otherwise clear from the discussion, the bank should indicate those balance sheet conditions or income or cash flow items which the bank believes may be indicators of its liquidity condition. Liquidity generally should be discussed on both a long-term and short-term basis. The issue of liquidity should be discussed in the context of the bank's own business or businesses.

18. Banks are encouraged, but not required, to supply forward-looking information. This is to be distinguished from presently-known data which will impact upon future operating results, such as known future increases in costs of labor. This latter data may be required to be disclosed. Any forward-looking information supplied is expressly covered by the safe harbor rule for projections. See §335.103.

19. Foreign private banks should also discuss briefly any pertinent governmental economic, fiscal, monetary, or political policies or factors which have materially affected or could materially affect, directly or indi-

rectly, company operations or investments by United States nationals.

Item 3—Properties

State briefly the location and general character, individually or by categories, of (a) properties held in fee, or leased, by the bank and its subsidiaries, in which the banking offices are located, indicating any major encumbrances with respect thereto, and (b) other physical properties of material value that are owned or leased by the bank or its subsidiaries. State the expiration dates of material leases. In the event aggregate annual rentals paid during the bank's last fiscal year exceeded five percent of its operating expenses, state the amount of such rentals and the average term of the leases pursuant to which such rentals were paid.

Instructions. What is required is information essential to an investor's appraisal of the securities to be registered. Such information should be furnished as will reasonably inform investors as to the suitability, adequacy and extent of utilization of the facilities used in the enterprise. Detailed descriptions of the physical characteristics of individual properties or legal descriptions by metes and bounds are not required and should not be given.

Item 4—Parents and Subsidiaries

(a) Furnish a list or diagram of all parents and subsidiaries of the bank and as to each person named indicate the percentage of voting securities owned, or other basis of control, by its immediate parent, if any.

Instructions. 1. The list or diagram shall include the bank and shall be so prepared as to show clearly the relationship of each person named to the bank and to the other persons named. If any person is controlled by means of the direct ownership of its securities by two or more persons, so indicate by appropriate cross reference.

2. Designate by appropriate symbols: (a) Subsidiaries for which separate financial statements are filed; (b) subsidiaries included in consolidated financial statements; (c) subsidiaries included in group financial statements filed for unconsolidated subsidiaries; and (d) other subsidiaries, including briefly why financial statements of such subsidiaries are not filed.

3. Indicate the name of the State or other jurisdiction in which each subsidiary was incorporated or organized.

4. The names of particular subsidiaries may be omitted if the unnamed subsidiaries, considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary.

5. If the bank owns directly or indirectly approximately 50 percent of the voting securities of any person and approximately 50

percent of the voting securities of such person are owned directly or indirectly by another single interest, or if the bank takes up the equity in undistributed earnings of any other unconsolidated person, such person shall be deemed to be a subsidiary for the purpose of this item.

NOTE: If any person is controlled by means of the direct ownership of its securities by two or more persons listed in response to this item, so indicate by appropriate cross reference.

(b) Describe any contractual arrangement known to the bank, including any pledge of securities of the bank or any of its parents the operation of the terms of which may at a subsequent date result in a change of control of the bank.

Instruction. This paragraph does not require a description of ordinary default provisions contained in the charter, trust indentures or other governing instruments relating to securities of the bank.

Item 5—Security Ownership of Certain Beneficial Owners and Management

Set forth the same information as is required to be furnished by items 5 (d)(1), (d)(2), and (f) of Form F-5 at § 335.212.

NOTE: The information required by item 5 (d)(2) of Form F-5 need not be included for any nominee for election as a director.

Item 6—Directors and Principal Officers

(a) *Directors.* Set forth the same information as is required to be furnished by item 6(a) of Form F-5 at § 335.212 except with respect to any nominee for election as a director.

(b) *Principal officers.* List the names and ages of all principal officers of the bank and all persons chosen to become principal officers; indicate all positions and offices with the bank held by each such person; state the person's term of office as officer and the period during which the person has served as such and briefly describe any arrangement or understanding between the person and any other person under which the person was selected as an officer.

Instructions. 1. Do not include arrangements or understandings with directors or officers of the bank acting solely in their capacities as such.

2. No person chosen to become a principal officer who has not consented to act as such should be named in response to this item.

(c) *Significant employees.* Where the bank employs persons such as special consultants who are not principal officers, but who make or are expected to make significant contributions to the business of the bank, such persons should be identified and their background disclosed to the same extent as in the case of principal officers.

(d) *Business experience.* (1) Give a brief account of the business experience during the past five years of each director, person chosen to become a director or principal officer, and each person named in answer to paragraph (c) of this item, including the person's principal occupations and employment during that period and the name and principal business of any corporation or other organization in which such occupations and employment were carried on. When a principal officer or person named in response to paragraph (c) of this item has been employed by the bank or a subsidiary of the bank for less than five years, a brief explanation should be included as to the nature of the responsibilities undertaken by the individual in prior positions to provide adequate disclosure of his prior business experience. The requirement is information relating to the level of the person's professional competence which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

(2) *Directorships.* Indicate any other directorships held by each director or person nominated or chosen to become a director in any company with a class of securities registered pursuant to section 12 of the Act.

(e) *Family relationships and involvement in certain legal proceedings.* Set forth the same information as is required to be furnished by items 6(b) and (d) of Form F-5 at § 335.212 for each director, principal officer, person chosen to become a director or principal officer, and each person named in answer to paragraph (c).

Item 7—Compensation of Directors and Executive Officers

Set forth the same information as is required to be furnished by item 7(a) of Form F-5 (§ 335.212).

Item 8—Interest of Management and Others in Certain Transactions

Set forth the same information for the past three years, as is required to be furnished by items 7(b), (c) and (d) of Form F-5 (§ 335.212).

NOTE: The information required by items 7(b), (c) and (d) of Form F-5 need not be included for any nominee for election as a director.

Item 9—Legal Proceedings

Briefly describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the bank or any of its subsidiaries is a party or of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties

thereto, a description of the factual basis alleged to underlie the proceeding and the relief sought. Include similar information as to any such proceedings known to be contemplated by governmental authorities.

Instructions. 1. Notwithstanding instruction 2 to this item, administrative or judicial proceedings arising under section 8 of the Federal Deposit Insurance Act shall be deemed material and shall be described.

2. No information need be given with respect to any proceeding which involves primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10 percent of the equity capital accounts of the bank and its subsidiaries on a consolidated basis. However, if any proceeding presents in large degree the same issues as other proceedings pending or known to be contemplated, the amount involved in such other proceedings shall be included in computing such percentage.

3. Any material proceedings to which any director, officer or affiliate of the bank, any owner of record or beneficially of more than 5 percent of any class of voting securities of the bank, or any associate of any such director, officer or security holder is a party adverse to the bank or any of its subsidiaries or has a material interest adverse to the bank or any of its subsidiaries, also shall be described.

4. Notwithstanding the foregoing, if a receiver, fiscal agent or similar officer has been appointed for the bank or its parent, in a proceeding under the Bankruptcy Act or in any other proceeding under State or Federal law in which a court or governmental agency has assumed jurisdiction over substantially all of the assets or business of the bank or its parent, or if such jurisdiction has been assumed by leaving the existing directors and officers in possession but subject to the supervision and orders of a court or governmental body, identify the proceeding, the court or governmental body, the date jurisdiction was assumed, the identity of the receiver, fiscal agency or similar officer and the date of the person's appointment.

5. Discuss the extent of insurance coverage if appropriate to the type of proceeding.

Item 10—Number of Equity Security Holders

State in the tabular form indicated below, the approximate number of holders of record of each class of equity securities of the bank as of the end of the last fiscal year.

(1)	(2)
Title of class	Number of record holders
.....

Instructions. 1. Attention is directed to the definitions of the term *equity security* in sec-

tion 3(a)(11) of the Act and to the definition of the term *held of record* in §335.102(p)(1).

2. Information need not be given with respect to the number of holders of *restricted stock options, qualified stock options*, or options granted pursuant to a plan qualified as an *employee stock purchase plan*, as those terms are defined in sections 422 through 424 of the Internal Revenue Code of 1986, as amended.

Item 11—Nature of Trading Market

As to each class of securities to be registered under section 12(g) of the Act, state briefly the nature of the trading market, if any, in such securities, including the names of the principal market makers and the reported high and low bid prices for each quarterly period during the past three years.

Instruction. In furnishing high and low bid prices the bank may rely on quotations published in publications of national circulation, provided the source of the information is identified. If the principal market makers are not known, it will suffice to name three market makers which are believed to be actively engaged in making a market in the securities.

Item 12—Recent Sales of Securities

Furnish the following information as to all securities of the bank sold by the bank within the past three years, or presently proposed to be sold. Include reacquired securities, securities issued in exchange for property, services, or other securities, and new securities resulting from the modification of outstanding securities.

(a) Give the date of sale, title, and amount of securities sold.

(b) Give the names of the principal underwriters, if any. As to any securities sold privately, name the persons or identify the class of persons to whom the securities were sold.

(c) As to securities sold for cash, state the aggregate offering price and the aggregate underwriting discounts or commissions. As to any securities sold otherwise than for cash, state the nature of the transaction and the nature and aggregate amount of consideration received by the bank.

(d) Give a reasonably itemized statement of the purposes, so far as determinable, for which the net proceeds have been or are to be used and the approximate amount to be used for each purpose.

Instructions. 1. Information need not be set forth as to notes, drafts, bills of exchange, or bank acceptances that mature not later than 12 months from the date of issuance.

2. If the sales were made in a series of transactions, the information may be given by such totals and periods as will reasonably convey the information required.

Item 13—Securities Being Registered

(a) *Capital stock.* If capital stock is to be registered, state the title of the class and describe such of the matters listed in paragraphs (a) (1) through (5) as are relevant. A complete legal description of the securities need not be given.

(1) Outline briefly: (i) Dividend rights; (ii) terms of conversion; (iii) sinking fund provisions; (iv) redemption provisions; (v) voting rights, including any provisions specifying the vote required by security holders to take action; (vi) any classification of the Board of Directors, and the impact of such classification where cumulative voting is permitted or required; (vii) liquidation rights; (viii) pre-emption rights; and (ix) liability to further calls or to assessment by the bank and for liabilities of the bank imposed on its stockholders under state statutes (e.g., to laborers, servants or employees of the bank), unless such disclosure would be immaterial because the financial resources of the bank or other factors make it improbable that liability under such state statutes would be imposed; (x) any restriction on alienability of the securities to be registered; and (xi) any provision discriminating against any existing or prospective holder of such securities as a result of such security holder owning a substantial amount of securities.

(2) If the rights of holders of such stock may be modified otherwise than by a vote of a majority or more of the shares outstanding, voting as a class, so state and explain briefly.

(3) If preferred stock is to be registered, describe briefly any restriction on the repurchase or redemption of shares by the bank while there is any arrearage in the payment of dividends or sinking fund installments. If there is no such restriction, so state.

(4) If the rights evidenced by, or amounts payable with respect to, the shares to be registered are, or may be, materially limited or qualified by the rights of any other authorized class of securities, include the information regarding such other securities as will enable investors to understand such limitations or qualifications. No information need be given, however, as to any class of securities all of which will be retired, provided appropriate steps to ensure such retirement will be completed prior to or upon delivery by the bank of the shares.

(5) Describe briefly or cross-reference to a description in another part of the document, any provision of the bank's charter or by-laws that would have an effect of delaying, deferring or preventing change in control of the bank and that would operate only with respect to an extraordinary corporate transaction involving the bank [or any of its subsidiaries], such as a merger, reorganization, tender offer, sale or transfer of substantially all of its assets, or liquidation. Provisions

and arrangements required by law or imposed by governmental or judicial authority need not be described or discussed pursuant to this paragraph (a)(5). Provisions or arrangements adopted by the bank to effect, or further, compliance with laws or governmental or judicial mandate are not subject to the immediately preceding sentence where such compliance did not require the specific provisions or arrangements adopted.

(b) *Debt securities.* If debt securities are to be registered, state the title of such securities, the principal amount being offered, and, if a series, the total amount authorized and the total amount outstanding as of the most recent practicable date; and describe the matters listed in paragraphs (b) (1) through (10) as are relevant. A complete legal description of the securities need not be given. For purposes solely of this Item, debt securities that differ from one another only as to the interest rate or maturity shall be regarded as securities of the same class. Outline briefly:

(1) Provisions with respect to maturity, interest, conversion, redemption, amortization, sinking fund, or retirement;

(2) Provisions with respect to the kind and priority of any lien securing the securities, together with a brief identification of the principal properties subject to such lien;

(3) Provisions with respect to the subordination of the rights of holders of the securities to other security holders or creditors of the bank. Where debt securities are designated as subordinated in accordance with Instruction 1 to this Item, set forth the aggregate amount of outstanding indebtedness as of the most recent practicable date that by the terms of such debt securities would be senior to such subordinated debt and describe briefly any limitation on the issuance of such additional senior indebtedness or state that there is no such limitation;

(4) Provisions restricting the declaration of dividends or requiring the maintenance of any asset ratio or the creation or maintenance of reserves;

(5) Provisions restricting the incurrence of additional debt or the issuance of additional securities; in the case of secured debt, whether the securities being registered are to be issued on the basis of unbonded bondable property, the deposit of cash or otherwise; as of the most recent practicable date, the approximate amount of unbonded bondable property available as a basis for the issuance of bonds; provisions permitting the withdrawal of cash deposited as a basis for the issuance of bonds; and provisions permitting the release or substitution of assets securing the issue; *Provided, however,* That provisions permitting the release of assets upon the deposit of equivalent funds or the pledge of equivalent property, the release of property no longer required in the business, obsolete property, or property taken by eminent

domain or the application of insurance moneys, and other similar provisions need not be described;

(6) The general type of event that constitutes a default and whether or not any periodic evidence is required to be furnished as to the absence of default or as to compliance with the terms of the indenture;

(7) Provisions relating to modification of the terms of the security or the rights of security holders;

(8) If the rights evidenced by the securities to be registered are, or may be, materially limited or qualified by the rights of any other authorized class of securities, the information regarding such other securities as will enable investors to understand the rights evidenced by the securities to the extent not otherwise disclosed pursuant to this Item; no information need be given, however, as to any class of securities all of which will be retired, provided appropriate steps to ensure such retirement will be completed prior to or upon delivery by the bank;

(9) If debt securities are to be offered at a price such that they will be deemed to be offered at an "original issue discount" as defined in paragraph (a) of section 1273 of the Internal Revenue Code (26 U.S.C. 1273), or if a debt security is sold in a package with another security and the allocation of the offering price between the two securities may have the effect of offering the debt security at such an original issue discount, the tax effects thereof pursuant to sections 1271 through 1278;

(10) The name of the trustee(s) and the nature of any material relationship with the bank or with any of its affiliates; the percentage of securities of the class necessary to require the trustee to take action; and what indemnification the trustee may require before proceeding to enforce the lien.

(c) *Warrants and rights.* If the securities described are to be offered pursuant to warrants or rights state:

(1) The amount of securities called for by such warrants or rights;

(2) The period during which and the price at which the warrants or rights are exercisable;

(3) The amount of warrants or rights outstanding;

(4) Provisions for changes to or adjustments in the exercise price; and

(5) Any other material terms of such rights or warrants.

(d) *Other securities.* If securities other than capital stock, debt, warrants or rights are to be registered, include a brief description (comparable to that required in paragraphs (a), (b) and (c) of this Item 13) of the rights evidenced thereby.

(e) *Market information for securities other than common equity.* If securities other than common equity are to be registered and there is an established public trading market

for the securities, provide market information with respect to the securities comparable to that required by Item 12 of this Form F-1.

Instructions to Item 13

1. Wherever the title of securities is required to be stated, there shall be given such information as will indicate the type and general character of the securities, including the following:

A. In the case of shares, the par or stated value, if any; the rate of dividends, if fixed, and whether cumulative or non-cumulative; a brief indication of the preference, if any; and if convertible or redeemable, a statement to that effect;

B. In the case of debt, the rate of interest; the date of maturity or, if the issue matures serially, a brief indication of the serial maturities, such as "maturing serially from 1955 to 1960"; if the payment of principal or interest is contingent, an appropriate indication of such contingency; a brief indication of the priority of the issue; and, if convertible or callable, a statement to that effect; or

C. In the case of any other kind of security, appropriate information of comparable character.

2. Where convertible securities or stock purchase warrants are being registered that are subject to redemption or call, the description of the conversion terms of the securities or material terms of the warrants shall disclose:

A. Whether the right to convert or purchase the securities will be forfeited unless it is exercised before the date specified in a notice of the redemption or call;

B. The expiration or termination date of the warrants;

C. The kinds, frequency and timing of notice of the redemption or call, including the cities or newspapers in which notice will be published (where the securities provide for a class of newspapers or group of cities in which the publication may be made at the discretion of the bank, the bank should describe such provision); and

D. In the case of bearer securities, that investors are responsible for making arrangements to prevent loss of the right to convert or purchase in the event of redemption of call, for example, by reading the newspapers in which the notice of redemption or call may be published.

Item 14—Indemnification of Directors and Officers

State the general effect of any charter provision, bylaw, contract, arrangement, or statute under which any director or officer of the bank is insured or indemnified in any manner against any liability that he may incur in this capacity as such.

Federal Deposit Insurance Corporation

§ 335.309a

Item 15—Applicability of State Laws

Describe briefly the manner in which the laws of the State where the bank is located may materially affect such matters as the following:

- (a) De novo branching, banking facilities, and mergers;
(b) Interest rate ceilings; and
(c) Bank holding companies.

Item 16—Financial Statements and Exhibits

List all financial statements and exhibits filed as part of the registration statement.

- (a) Financial statements.
(b) Exhibits.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the bank has duly caused this registration statement to be signed on its behalf by the undersigned thereunto duly authorized.

(Name of bank) _____
Date _____
By _____
(Name and title of signing officer) _____

INSTRUCTIONS AS TO FINANCIAL STATEMENTS

These instructions specify the balance sheets and statements of income required to be filed as part of a registration to be filed as part of a registration statement on this form. Subpart F governs the certification, form, and content of the balance sheets and statements of income required, including the basis of consolidation, and prescribes the statement of changes in capital accounts, statement of changes in financial position, statement of cash flows, and the schedules to be filed in support thereof.

A. Financial Statements of the Bank

1. Balance Sheets. (a) The bank shall file an audited balance sheet as of the close of its latest fiscal year unless such fiscal year has ended within 90 days prior to the date of filing the registration statement, in which case the balance sheet may be as of the close of the preceding fiscal year.

(b) If the latest fiscal year of the bank has ended within 90 days prior to the date of filing the registration statement and the balance sheet required by paragraph (a) is filed as of the end of the preceding fiscal year, there shall be filed as an amendment to the registration statement, within 120 days after the date of filing, an audited balance sheet of the bank as of the end of the latest fiscal year.

2. Statements of Income. (a) The bank shall file audited statements of income for each of the three fiscal years preceding the date of the balance sheet required by instruction 1(a).

(b) There shall be filed with each balance sheet filed under instruction 1(b) an audited statement of income of the bank for the fiscal year immediately preceding the date of the balance sheet.

3. Omission of Banks' Financial Statements in Certain Cases. Notwithstanding instructions 1 and 2, the individual financial statements of the bank may be omitted if consolidated statements of the bank and one or more of its subsidiaries are filed.

B. Consolidated Statements

4. Consolidated Balance Sheets. (a) There shall be filed an audited consolidated balance sheet of the bank and its majority-owned: (i) Bank premises subsidiaries, (ii) subsidiaries doing a foreign banking business, and (iii) significant subsidiaries, as of the close of the latest fiscal year of the bank unless such fiscal year has ended within 90 days prior to the date of filing the registration statement, in which case this balance sheet may be as of the close of the preceding fiscal year.

(b) If the latest fiscal year of the bank has ended within 90 days prior to the date of filing the registration statement, and the balance sheet required by paragraph (a) is filed as of the end of the preceding fiscal year, there shall be filed as an amendment to the registration statement, within 120 days after the date of filing an audited consolidated balance sheet of the bank and such subsidiaries as of the end of the latest fiscal year.

5. Consolidated Statement of Income. (a) There shall be filed audited statements of income of the bank and its majority-owned (i) bank premises subsidiaries, (ii) subsidiaries doing a foreign banking business, and (iii) significant subsidiaries, for each of the three fiscal years preceding the date of the consolidated balance sheet required by instruction 4(a).

(b) There shall be filed with each balance sheet filed under instruction 4(b), an audited consolidated statement of income of the bank and such subsidiaries for the fiscal year immediately preceding the date of the balance sheet.

C. Unconsolidated Subsidiaries and Other Persons

6. Separate Statements of Unconsolidated Subsidiaries and Other Persons. There shall be filed such other audited financial statements with respect to unconsolidated subsidiaries and other persons as are material to a proper understanding of the financial position and results of operations of the total enterprise. For purposes of this item, "other persons" include 50 percent owned persons and unconsolidated persons in which the bank takes up equity in undistributed earnings.

D. Special Provisions

7. *Succession to Other Businesses.* (a) If during the period for which its statements of income are required, the bank has by merger, consolidation, or otherwise succeeded to one or more businesses, the additions, eliminations, and other changes effected in the succession shall be appropriately set forth in a note or supporting schedule to the balance sheets filed. In addition, statements of income for each constituent business, or combined statements, if appropriate, shall be filed for such period prior to the succession as may be necessary when added to the time, if any, for which statements of income after the succession are filed to cover the equivalent of the period as specified in instructions 2 and 5 above.

(b) If the bank by merger, consolidation, or otherwise is about to succeed to one or more businesses, there shall be filed for the constituent businesses financial statements, combined if appropriate, that would be required if they were registering securities under the Act. In addition, there shall be filed a balance sheet of the bank giving effect to the plan of succession. These balance sheets shall be set forth in such form, preferably columnar, as will show in related manner the balance sheets of the constituent businesses, the changes to be effected in the succession and the balance sheet of the bank after giving effect to the plan of succession. By a footnote or otherwise, a brief explanation of the changes shall be given.

(c) This instruction shall not apply with respect to the bank's succession to the business of any majority-owned subsidiary or to any acquisition of a business by purchase.

8. *Acquisition of Other Businesses.* (a) There shall be filed for any business directly or indirectly acquired by the bank after the date of the balance sheet filed under part A of B above and for any business to be directly or indirectly acquired by the bank, the financial statements that would be required if such business were a bank.

(b) The acquisition of securities shall be deemed to be the acquisition of a business if such securities give control of the business or combined with securities already held give such control. In addition, the acquisition of securities that will extend the bank's control of a business shall be deemed the acquisition of the business if any of the securities being registered hereunder are to be offered in exchange for the securities to be acquired.

(c) No financial statements need be filed, however, for any business acquired or to be acquired from a majority-owned subsidiary. In addition, the statements of any one or more businesses may be omitted if such businesses, considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary.

9. *Filing of Other Statements in Certain Cases.* The FDIC may, upon the request of the bank, and where consistent with the protection of investors, permit the omission of one or more of the statements herein required or the filing in substitution thereof of appropriate statements of comparable character. The FDIC may also require the filing of other statements in addition to, or in substitution for, the statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of investors.

E. Historical Financial Information

10. *Scope of Part E.* The information required by part E shall be furnished for the seven-year period preceding the period for which statements of income are filed, as to the accounts of each person whose balance sheet is filed. The information is to be given as to all of the accounts specified whether they are presently carried on the books or not. Part E does not call for certification but only for a survey or review of the accounts specified. It should not be detailed beyond a point material to an investor.

11. *Revaluation of assets.* (a) If there were any material increases or decreases resulting from revaluing of assets, state: (1) In what year or years such revaluations were made; (2) the amounts of such increases or decreases, and the accounts affected, including all related entries; and (3) if in connection with such revaluations any related adjustments were made in reserve accounts, the accounts and amounts with explanations.

(b) Information is not required as to adjustments made in the ordinary course of business, but only as to major revaluations made for the purpose of entering on the books current values, reproduction cost, or any values other than original cost.

(c) No information need be furnished with respect to any revaluation entry that was subsequently reversed or with respect to the reversal of a revaluation entry recorded prior to the period if a statement as to the reversal is made.

12. *Capital Shares.* (a) If there were any material restatements of capital shares that resulted in transfers from capital share liability to surplus, undivided profits, or reserves, state the amount of each such restatement and all related entries. No statement need be made as to restatements resulting from the declaration of share dividends.

(b) If there was an original issue of capital shares, any part of the proceeds of which was credited to accounts other than capital stock accounts, state the title of the class, the accounts, and the respective amounts credited thereto.

13. *Debt Discount and Expense Written Off.* If any material amount of debt discount and expense, on long-term debt still outstanding, was written off earlier than as required under any periodic amortization plan, give the following information: (1) Title of the securities, (2) date of the writeoff, (3) amount written off, and (4) to what account charged.

14. *Premiums and Discount and Expense on Securities Retired.* If any material amount of long-term debt or preferred shares was retired, and if either the retirement was made at a premium or there remained, at the time of retirement, a material amount of unamortized discount and expense applicable to the securities retired, state for each class: (1) Title of the securities retired, (2) date of retirement, (3) amount of premium paid and of unamortized discount and expense, (4) to what account charged, and (5) whether being amortized and, if so, the plan of amortization.

15. *Other Changes in Surplus or Undivided Profits.* If there were any material increases or decreases in surplus or undivided profits, other than those resulting from transactions specified above, the closing of the income account, or the declaration or payment of dividends, state: (1) The year or years in which such increases or decreases were made; (2) the nature and amounts thereof; and (3) the accounts affected, including all material related entries. Instruction 10(c) above also applies here.

16. *Predecessors.* The information shall be furnished, to the extent material, as to any predecessor of the bank from the beginning of the period to the date of succession, not only as to the entries made respectively in the books of the predecessor or the successor, but also as to the changes effected in the transfer of the assets from the predecessor. No information need be furnished, however, as to any one or more predecessors that, considered in the aggregate, would not constitute a significant predecessor.

17. *Omission of Certain Information.* (a) No information need be furnished as to any subsidiary, whether consolidated or unconsolidated, for the period prior to the date on which the subsidiary became a majority-owned subsidiary of the bank or of a predecessor for which information is required above.

(b) No information need be furnished hereunder as to any one or more unconsolidated subsidiaries for which separate financial statements are filed if all subsidiaries for which the information is so omitted, considered in the aggregate, would not constitute a significant subsidiary.

(c) Only the information specified in instruction 16 need be given as to any predecessor or any subsidiary thereof if immediately prior to the date of succession there-to by a person for which information is re-

quired, the predecessor or subsidiary was in insolvency proceedings.

INSTRUCTIONS AS TO EXHIBITS

Subject to the rules regarding incorporation by reference, the following exhibits shall be filed as a part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference. Exhibits incorporated by reference may bear the designation given in the previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits in item 19.

1. Copies of the charter (or a composite or restatement thereof) and the bylaws (or instruments corresponding thereto) as presently in effect.

2. Copies of any plan of acquisition, reorganization, readjustment, or succession described in answer to items 1 and 13.

3. (a) Specimens or copies of all securities being registered hereunder, and copies of all constituent instruments defining the rights of holders of long-term debt of the bank and of all subsidiaries for which consolidated or unconsolidated financial statements are required to be filed.

(b) There need not be filed, however, (1) Any instrument with respect to long-term debt not being registered hereunder if the total amount of securities authorized thereunder does not exceed 25 percent of the equity capital accounts of the bank and its subsidiaries on a consolidated basis and if there is filed an agreement to furnish a copy of such instrument to the FDIC upon request, (2) any instrument with respect to any class of securities if appropriate steps to assure the redemption or retirement of such class will be taken prior to or upon delivery by the bank of the securities being registered, or (3) copies of instruments evidencing scrip certificates for fractions of shares.

4. Copies of all pension, retirement, or other deferred compensation plans, contracts, or arrangements. If any such plan, contract, or arrangement is not set forth in a formal document, furnish a reasonably detailed description thereof. Copies of any booklet or other description of any such plan, contract, or arrangement shall also be filed.

5. Copies of any plan setting forth the terms and conditions upon which outstanding options, warrants, or rights to purchase securities of the bank or its subsidiaries from the bank or its affiliates have been issued, together with specimen copies of such options, warrants, or rights; or, if they were not issued pursuant to such a plan, copies of each such option, warrant, or right.

6. Copies of any voting trust agreement referred to in answer to item 5.

7. (a) Copies of every material contract not made in the ordinary course of business that is to be performed in whole or in part at or

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after the filing of the registration statement or that was made not more than two years before such filing and performance of which has not been completed. Only contracts need be filed as to which the bank or a subsidiary is a party or has succeeded to a party by assumption or assignment, or in which the bank or such subsidiary has a beneficial interest.

(b) If the contract is such as ordinarily accompanies the kind of business conducted by the bank and its subsidiaries, it is made in the ordinary course of business and need not be filed, unless it falls within one or more of the following categories, in which case it should be filed except where immaterial in amount or significance:

(1) Directors, officers, promoters, voting trustees, or security holders named in answer to item 5 are parties thereto except where the contract merely involves purchase or sale of current assets having a determinable market price, at such price.

(2) It calls for the acquisition or sale of fixed assets for a consideration exceeding 15 percent of the value of all fixed assets of the bank and its subsidiaries.

(3) It is a lease under which a significant part of the property described under item 3 is held by the bank, or

(4) The amount of the contract, or its importance to business of the bank and its subsidiaries, is material, and the terms and conditions are of a nature of which investors reasonably should be informed.

(c) Any management contract or any compensatory plan, contract or arrangement, including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing (or if not set forth in any formal document, a written description thereof) in which any director or any of the named executive officers of the bank, as defined by 17 CFR 229.402(a)(3), participates shall be deemed material and shall be filed; and any other management contract or any other compensatory plan, contract, or arrangement in which any other executive officer of the bank participates shall be filed unless immaterial in amount or significance except as follows: Notwithstanding the above, any compensatory plan, contract, or arrangement which pursuant to its terms is available to employees, officers or directors generally and which in operation provides for the same method of allocation of benefits between management and nonmanagement participants.

8. A statement setting forth in reasonable detail the computation of per share earnings, unless the computation can be clearly determined from the material contained in the registration statement.

9. A statement setting forth in reasonable detail the computation of ratios of earnings

to fixed charges which appears in the registration statement.

[46 FR 25208, May 5, 1981, as amended at 48 FR 55556, Dec. 14, 1983; 48 FR 56734, Dec. 23, 1983; 54 FR 53587, Dec. 29, 1989; 57 FR 58136, Dec. 9, 1992; 59 FR 67174, Dec. 29, 1994]

§ 335.309b Form for registration of additional class of securities of a bank under section 12(b) or section 12(g) of the Securities Exchange Act of 1934 (Form F-10).

FORM F-10—REGISTRATION STATEMENT FOR ADDITIONAL CLASSES OF SECURITIES OF A BANK UNDER SECTION 12(b) OR SECTION 12(g) OF THE SECURITIES EXCHANGE ACT OF 1934

(Exact name of bank as specified in charter)

(Address of principal office)
Securities being registered under section 12(b) of the Act: _____

Title of class _____
Name of each exchange on which class is being registered _____

Title of each class of equity securities being registered under section 12(g) of the Act: _____

GENERAL INSTRUCTIONS

1. *Applicability of This Form.* This form may be used for registration of the following securities under the Securities Exchange Act of 1934:

(a) For registration under section 12(g) of the Act of any class of equity securities of a bank which has one or more other classes of securities registered under either section 12(b) or (g) of the Act.

(b) For registration on a national securities exchange under section 12(b) of the Act of any class of securities of a bank which has one or more other classes of securities so registered on the same or another securities exchange.

2. *Preparation of Registration Statement.* This form is not to be used as a blank form to be filled in but only as a guide in the preparation of a registration statement. Particular attention should be given to the general requirements in Subpart C. The statement shall contain the numbers and captions of all items, but the text of the items may be omitted if the answers with respect thereto are prepared in the manner specified in § 335.361.

INFORMATION REQUIRED IN REGISTRATION STATEMENT

Item 1—Stock To Be Registered.

If stock is being registered, state the title of the class and furnish the following information (see instruction 1):

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(a) Outline briefly: (1) Dividend rights; (2) voting rights; (3) liquidation rights; (4) preemptive rights; (5) conversion rights; (6) redemption provisions; (7) sinking fund provisions; and (8) liability to further calls or to assessment.

(b) If the rights of holders of such stock may be modified otherwise than by a vote of a majority or more of the shares outstanding, voting as a class, so state and explain briefly.

(c) Outline briefly any restriction on the repurchase or redemption of shares by the bank while there is any arrearage in the payment of dividends or sinking fund installments. If there is no such restriction, so state.

Instructions. 1. If a description of the securities comparable to that required here is contained in any other document filed with the FDIC, such description may be incorporated by reference to such other filing in answer to this item. If the securities are to be registered on a national securities exchange and the description has not previously been filed with such exchange, copies of the description shall be filed with copies of the registration statement filed with the exchange.

2. This item requires only a brief summary of the provisions which are pertinent from an investment standpoint. A complete legal description of the provisions referred to is not required and should not be given. Do not set forth the provisions of the governing instrument verbatim; only a succinct resume is required.

3. If the rights evidenced by the securities to be registered are materially limited or qualified by the rights evidenced by any other class of securities or by the provisions of any contract or other document, include such information regarding such limitation or qualification as will enable investors to understand the rights evidenced by the securities to be registered.

Item 2—Debt Securities To Be Registered.

If the securities to be registered hereunder are bonds, debentures or other evidences of indebtedness, outline briefly such of the following as are relevant (see instruction 2 below):

(a) Provisions with respect to interest, conversion, maturity, redemption, amortization, sinking fund, or retirement.

(b) Provisions with respect to the kind and priority of any lien, securing the issue, together with a brief identification of the principal properties subject to such lien.

(c) Provisions restricting the declaration of dividends or requiring the maintenance of any ratio of assets, the creation or maintenance of reserves or the maintenance of properties.

(d) Provisions permitting or restricting the issuance of additional securities, the with-

drawal of cash deposited against such issuance, the incurring of additional debt, the release or substitution of assets securing the issue, the modification of the terms of the security, and similar provisions.

Instruction. Provisions permitting the release of assets upon the deposit of equivalent funds or the pledge of equivalent property, the release of property no longer required in the business, obsolete property or property taken by eminent domain, the application of insurance moneys, and similar provisions, need not be described.

(e) The name of the trustee and the nature of any material relationship with the bank or any of its affiliates; the percentage of securities of the class necessary to require the trustee to take action; and what indemnification the trustee may require before proceeding to enforce the lien.

(f) The general type of event which constitutes a default and whether or not any periodic evidence is required to be furnished as to the absence of default or as to compliance with the terms of the indenture.

Instruction. 1. In most cases, debt securities issued by banks need not be registered under section 12(g) of the Securities Exchange Act; the registration requirements of that section apply only to an *equity security*. The term *equity security* is defined by section 3(a)(11) of the Act to mean "any stock or similar security; or any security convertible, with or without consideration, into such a security; or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the FDIC shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as it may prescribe in the public interest or for the protection of investors, to treat as an equity security."

Instruction. 2. The instructions to item 1 also apply to this item.

Item 3—Other Securities To Be Registered.

If securities other than those referred to in items 1 and 2 are to be registered hereunder, outline briefly the rights evidenced thereby. If subscription warrants or rights are to be registered, state the title and amount of securities called for, and the period during which and the price at which the warrants or rights are exercisable.

Instruction. The instructions to item 1 also apply to this item.

Item 4—Exhibits.

List all exhibits filed as a part of the registration statement.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the bank has duly caused this registration statement to be

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signed on its behalf by the undersigned, thereunto duly authorized.

(Name of Bank)
Date _____ By _____

(Name and title of signing officer)

INSTRUCTIONS AS TO EXHIBITS

I. If the securities to be registered hereunder are to be registered on an exchange on which other securities of the bank are registered, or are to be registered under section 12(g) of the Act, the following exhibits shall, subject to §335.357 regarding incorporation of exhibits by reference, be filed with each copy of the registration statement filed with the FDIC with an exchange:

1. Specimens or copies of each security to be registered hereunder.

2. Copies of all constituent instruments defining the rights of the holders of each class of such securities, including any contracts or other documents which limit or qualify the rights of such holders.

II. If the securities to be registered are to be registered on an exchange on which no other securities of the bank are registered the following exhibits shall be filed with each copy of the registration statement filed with each such exchange, but need not be filed with, or incorporated by reference in, copies of the registration statement filed with the FDIC.

3. Copies of the last annual report filed under section 13 of the Act or, if no such report has yet been filed, copies of the latest registration statement filed under section 12(b) or (g) of the Act.

4. Copies of all current or quarterly reports filed under section 13 of the Act since the end of the fiscal year covered by the annual report filed under instruction 3 above, or if none, since the effective date of the latest registration statement so filed.

5. Copies of the latest definitive proxy statement or information statement, if any, filed with the FDIC under section 14 of the Act.

6. Copies of the charter and bylaws, or instruments corresponding thereto, and copies of any other documents defining the rights of holders of the securities to be registered.

7. Specimens or copies of each security to be registered hereunder.

8. Copies of the last annual report submitted to stockholders by the bank or its predecessors. Such annual report shall not be deemed to be "filed" with the exchange or otherwise subject to the liabilities of section 18 of the Act, except to the extent it may already be subject thereto.

§ 335.310 Requirement of annual reports and annual reports of predecessors.

(a) Every registrant bank (except for foreign banks) shall file an annual report for each fiscal year after the last full fiscal year for which financial statements were filed with the registration statement. Foreign banks shall file in accordance with the applicable requirements of 17 CFR 249.220f and SEC Form 20-F. The report, which shall conform to the requirements of Form F-2 (or SEC Form 20-F), shall be filed within 90 days after the close of the fiscal year or within 30 days of the mailing of the bank's annual report to stockholders, whichever occurs first.

(b) Every bank which changes its fiscal closing date after the last fiscal year for which financial statements were filed in a Form F-1 or Form F-2 shall file a report on Form F-2 covering the resulting interim period not more than 120 days after the close of the interim period or after the date of the determination to change the fiscal closing date, whichever is later. A separate report, however, need not be filed for any period of less than three months if the Form F-2 filed for the succeeding full fiscal year covers the interim period as well as the fiscal year. In such case, balance sheets need be furnished only as of the close of the entire period but all other financial statements and schedules shall be filed separately for both periods.

(c) *Annual reports of predecessors.* Every bank having securities registered under section 12 of the act on Form F-1 (or Form F-10, in the case of registration of an additional class of securities) shall file an annual report under this section for each of its predecessors which had securities registered under section 12 of the act covering the last full fiscal year of the predecessor prior to the bank's succession, unless such report has been filed by the predecessor. Such annual report shall contain the information that would be required if filed by the predecessor.

Note to Small Business Issuers: a "small business issuer", as defined under 17 CFR 240.12b-2 has the option of providing the disclosure required by SEC Form 10-KSB, optional form for annual and transitional reports of small business issuers (17 CFR

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249.310b), in lieu of the disclosure requirements set forth in Form F-2 (§335.312). The definition of "small business issuer", generally includes banks with annual revenues of less than \$25 million, whose voting stock does not have a public float of \$25 million or more.

[46 FR 25208, May 5, 1981, as amended at 54 FR 53590, Dec. 29, 1989; 59 FR 67174, Dec. 29, 1994]

§ 335.311 Exception from requirement for annual report.

Notwithstanding §335.310, any bank that has filed, within the period prescribed for filing an annual report pursuant to that paragraph, a registration statement that has become effective and is not subject to any proceeding under section 15(c) or section 12 of the act, or to an order thereunder, need not file an annual report if such statement covers the fiscal period that would be covered by such annual report and contains all of the information, including financial statements and exhibits, required for annual reports.

§ 335.312 Form for annual report of bank (Form F-2).

FORM F-2—ANNUAL REPORT UNDER SECTION 13 OF THE SECURITIES EXCHANGE ACT OF 1934
For the fiscal year ended
FDIC Certificate No.
(Exact name of bank as specified in its charter)
(State or other jurisdiction of incorporation or organization)
(I.R.S. Employer Identification No.)
(Address of principal office)
(ZIP Code)
Bank's telephone number, including area code
Securities registered under section 12(b) of the Act:
Title of each class
Name of each exchange on which registered
Securities registered under section 12(g) of the Act:
(Title of class)
(Title of class)
Indicate by check mark if the bank, as a "small business issuer" as defined under 17 CFR 240.12b-2, is providing alternative disclosures as permitted for small business issuers in this Form F-2.
Indicate by check mark if disclosure of delinquent filers pursuant to item 10 is not contained herein, and will not be contained,

to the best of bank's knowledge, in definitive proxy or information statements incorporated by reference in part III of this Form F-2 or any amendment of this Form F-2. []

Indicate by check mark whether the bank (1) has filed all reports required to be filed by section 13 of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the bank was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES— NO—.

State the aggregate market value of the voting stock held by nonaffiliates of the registrant. The aggregate market value shall be computed by reference to the price at which the stock was sold, or the average bid and asked prices of such stock, as of a specified date within 60 days prior to the date of filing.—

Indicate the number of shares outstanding of each of the registrant's classes of common stock, as of the latest practicable date.—

DOCUMENTS INCORPORATED BY REFERENCE

List hereunder the following documents if incorporated by reference and the part of the Form F-2 (e.g., part I, part II, etc.) into which the document is incorporated: (1) Any annual report to security holders; and (2) Any proxy or information statement. The listed documents should be clearly described for identification purposes (e.g., annual report to security holders for fiscal year ended December 24, 1980).

GENERAL INSTRUCTIONS

A. Rule as to Use of Form F-2

This form shall be used for annual reports pursuant to section 13 of the Securities Exchange Act of 1934 (the "Act") for which no other form is prescribed. Reports on this form shall be filed within 90 days after the end of the fiscal year covered by the report. However, all schedules required by §335.626 may, at the option of the bank be filed as an amendment to the report not later than 120 days after the end of the fiscal year covered by the report.

B. Application of Other Rules and Regulations

Subparts A and C of part 335 contain certain general requirements which are applicable to reports on a form. These general requirements should be carefully read and observed in the preparation and filing of reports on this form.

C. Preparation of Report

(1) This form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the report. Except as provided in general instruction F the answers to the items shall be prepared in the manner specified in §335.361. The report shall contain

the item numbers and captions of all items but the text of such items may be omitted.

(2) Except where information is required to be given for the fiscal year or as of a specified date, it shall be given as of the latest practicable date.

(3) Attention is directed to §335.350, which states: "In addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading."

D. Signature and Filing of Report

Three complete copies of the report, including financial statements, financial statement schedules, exhibits, and all other papers and documents filed as part thereof, shall be filed with the FDIC. At least one complete copy of the report, including financial statements, financial statement schedules, exhibits, and all other papers and documents filed as a part thereof, shall be filed with each exchange on which any class of securities of the bank is registered. At least one complete copy of the report filed with the FDIC and one such copy filed with each exchange shall be manually signed. Copies not manually signed shall bear typed or printed signatures. The report shall be signed by the bank, and on behalf of the bank by its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, and by at least the majority of the board of directors or persons performing similar functions. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the report.

E. Disclosure With Respect to Foreign Subsidiaries

Information required by any item or other requirement of this form with respect to any foreign subsidiary may be omitted to the extent that the required disclosure would be detrimental to the bank. However, financial statements and financial statement schedules, otherwise required, shall not be omitted pursuant to this instruction. Where information is omitted pursuant to this instruction, a statement shall be made that such information has been omitted and the names of the subsidiaries involved shall be separately furnished to the FDIC. The FDIC may, in its discretion, call for justification that the required disclosure would be detrimental.

F. Information to be Incorporated By Reference

(1) Attention is directed to §335.353 which provides for the incorporation by reference of information contained in certain docu-

ments in answer or partial answer to any item of a report.

(2) The information called for by parts I and II of this form [items 1 through 8 or any portion thereof] may, at the bank's option, be incorporated by reference from the bank's annual report to security holders furnished to the FDIC pursuant to §335.203 or from the bank's annual report to security holders, even if not furnished to the FDIC pursuant to §335.203 provided such annual report contains the information required by §335.203.

NOTE: In order to fulfill the requirements of part I of Form F-2 the incorporated portion of the annual report to security holders must contain the information required by items 1-4 of Form F-2 to the extent applicable.

(3) The information called for by part III (items 9 and 10) shall be incorporated by reference from the bank's definitive proxy statement (filed or to be filed under §335.204(C) or definitive information statement (filed or to be filed under §335.204(C) which involves the election of directors, if such definitive proxy statement or information statement is filed with the FDIC not later than 120 days after the end of the fiscal year covered by the Form F-2. However, if such definitive proxy or information statement is not filed with the FDIC in the 120-day period, the items comprising the part III information must be filed as part of the Form F-2, or as an amendment to the Form F-2 not later than the end of the 120-day period.

(4) No item numbers or captions of items need be contained in the material incorporated by reference into the report. However, the bank's attention is directed to §335.353(e) regarding the specific disclosure required in the report concerning information incorporated by reference. When the bank combines all of the information in parts I and II of this form (items 1 through 8) by incorporation by reference from the bank's annual report to security holders and all of the information in part III of this form (items 9 and 10) by incorporation by reference from a definitive proxy statement or information statement involving the election of directors, then, notwithstanding general instruction C(1), this form shall consist of the facing or cover page, those sections incorporated from the annual report to security holders, the proxy or information statement, and the information, if any, required by part IV of this form, signatures, and a cross reference sheet setting forth the item numbers and captions in parts I, II and III of this form and the page and/or pages in the referenced materials where the corresponding information appears.

PART I (SEE GENERAL INSTRUCTION F-2)

Item 1—Business

(a) Briefly describe the business done and intended to be done by the bank and its subsidiaries. If material is necessary for an understanding of the business, briefly describe the information specified in item 1(b)(1) to (8) below.

(b) Describe any material changes and developments since the beginning of the fiscal year in the business done and intended to be done by the bank and its subsidiaries. The description shall include information as to matters such as the following:

(1) Competitive conditions in the industry involved and the competitive position of the bank if known or reasonably available to the bank. If several services are involved, separate consideration shall be given to the principal services or classes of services;

(2) If a material portion of the bank's deposits has been obtained from a single person or a few persons (including Federal, State and local governments and agencies thereunder), the loss of any of one or more of which would have a materially adverse effect on the business of the bank, or if a material portion of the bank's loans is concentrated within a single industry or group of related industries, a description of such customers, their other relationships, if any, to the bank, and material facts regarding their importance to the business of the bank;

(3) The principal services rendered by the bank, the principal markets for, and methods of distribution of, such services, including any significant changes in the kinds of services rendered, or in the market or methods of distribution, during the past three fiscal years;

(4) The importance to the business and the duration and effect of, all material patents, trademarks, licenses, franchises, and concessions held;

(5)(i) The estimated dollar amount spent during each of the last two fiscal years on material research activities relating to the development of services or the improvement of existing services;

(ii) If there has been a public announcement of, or if information otherwise has become public about, a new product or line of business requiring the investment of a material amount of total assets, a description of the status of such line (*e.g.*, whether in the planning state).

(iii) Where material state the approximate number of employees engaged full time in each of the activities described in (i) above during each fiscal year and in (ii).

NOTE: Item 1(b)(5)(ii) is not intended to require disclosure of otherwise non-public corporate information the disclosure of which would adversely affect the bank's competitive position. Subparagraph (i) requires dis-

closure of financial information relating to research and development activities. Subparagraph (ii) is intended to elicit additional specific information only where there has been a public announcement or where information has otherwise become public about a new line of business requiring the investment of a material amount of total assets.

(6) The material effects that compliance with Federal, State, and local provisions which have been enacted or adopted regulating the discharge of materials into the environment, or otherwise relating to the discharge of materials into the environment, may have upon the capital expenditures, earnings, and competitive position of the bank and its subsidiaries.

(7) The number of persons employed by the bank.

(8) The extent to which the business of the bank or material portion thereof is or may be seasonal.

Instructions

1. If the bank proposes to enter, or has recently entered or introduced a new line of business requiring the investment of a material amount of its total assets, provide as supplemental information, but not as a part of the report, a copy of any market studies conducted or performed by or for the bank relating to such business and a statement as to the actual or proposed use of such study. Where material, disclosure in the report of the absence of such a study is required.

2. Positive and negative factors pertaining to the competitive position of the bank, to the extent that they exist, should be explained, if known or reasonably available to the bank. An estimate of the number of competitors should be included, and, where material, the particular markets in which the bank competes should be identified. Where one or a small number of competitors are dominant, they should be identified.

3. Where material to understanding the bank's business, the bank's and industry practices and conditions as they relate to liquidity items should be explained (*e.g.*, where the bank's business is highly seasonal).

4. The description shall not relate to the powers and objects specified in the charter, but to the actual business done and intended to be done. Include the business of subsidiaries and affiliates of the bank insofar as is necessary to understand the character and development of the business conducted by the bank.

5. In describing development, information shall be given as to matters such as the following: The nature and results of any material reorganization, readjustment, or succession of the bank or any of its significant subsidiaries; the acquisition or disposition of any material amount of assets otherwise

than in the ordinary course of business; and any material changes in the mode of conducting the business.

6. The business of a predecessor or predecessors shall be deemed to be the business of the bank for the purpose of this item.

7. Appropriate disclosure shall be made with respect to any material portion of the business which may be subject to termination at the election of any person (e.g., depositor).

(c) Information as to lines of business. If the bank and its subsidiaries are engaged in any business, in addition to normal commercial or mutual savings bank activities, state, for each of the bank's last five fiscal years, or for each fiscal year the bank has been engaged in business, whichever period is less, the approximate amount or percentage of: (i) Total revenues, and (ii) income (or loss) before income taxes and extraordinary items, attributable to each line of business which during either of the last two fiscal years accounted for:

(A) 10 percent or more of the total of revenues.

(B) 10 percent or more of income before income taxes and extraordinary items computed without deduction of loss resulting from operations of any line of business, or

(C) A loss which equalled or exceeded 10 percent of the amount of income specified in paragraph (B) of this paragraph (c); provided, however, that if total revenues did not exceed \$50,000,000 during either of the last two fiscal years, the percentages specified in items (A), (B), and (C) of this paragraph shall be 15 percent, instead of 10 percent.

If it is impracticable to state the contribution to income (or loss) before income taxes and extraordinary items for any line of business, state the contribution thereof to the results of operations most closely approaching such income, together with a brief explanation of the reasons why it is not practicable to state the contribution to such income or loss. The term *revenue* includes the total of the amounts reported in items (1), (6) and (7) of the income statement (Format F-9B).

(d) If the bank and its subsidiaries engage in material operations in foreign countries, or if a material portion of revenues is derived from customers in foreign countries, appropriate disclosure shall be made with respect to the importance of that part of the business to the bank and the risks attendant thereto. Insofar as practicable, furnish information with respect to volume and relative profitability of such operations.

(e) The FDIC may, upon written request of the bank and where consistent with the protection of investors, permit the omission of any of the information herein required or the furnishing in substitution therefor of appropriate information of comparable character. The FDIC may also require the furnishing of

other information in addition to, or in substitution for, the information herein required in any case where such information is necessary or appropriate for an adequate description of the business done or intended to be done.

Item 2—Properties

State briefly the location and general character, individually or by categories, of (a) properties held in fee, or leased, by the bank and its subsidiaries, in which the banking offices are located, indicating any major encumbrances with respect thereto, and (b) other physical properties of material value that are owned or leased by the bank or its subsidiaries. State the expiration dates of material leases. In the event aggregate annual rentals paid during the bank's last fiscal year exceeded five percent of its operating expenses, state the amount of such rentals and the average term of the leases pursuant to which such rentals were paid.

Instruction. What is required is such information as will reasonably inform investors as to the suitability, adequacy and extent of utilization of the facilities used in the enterprise. Detailed descriptions of the physical characteristics of individual properties or legal descriptions by metes and bounds are not required and should not be given.

Item 3—Legal Proceedings

Briefly describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the bank or any of its subsidiaries is a party or of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeding and the relief sought. Include similar information as to any such proceedings known to be contemplated by governmental authorities.

Instructions. 1. Notwithstanding Instruction 2 to this item, administrative or judicial proceedings arising under section 8 of the Federal Deposit Insurance Act shall be deemed material and shall be described.

2. No information need be given with respect to any proceeding which involves primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10 percent of the equity capital accounts of the bank and its subsidiaries on a consolidated basis. However, if any proceeding presents in large degree the same issues as other proceedings pending or known to be contemplated, the amount involved in such other proceedings shall be included in computing such percentage.

3. Any material proceedings to which any director, officer or affiliate of the bank, any owner of record or beneficially of more than

5 percent of any class of voting securities of the bank, or any associate of any such director, officer or security holder is a party adverse to the bank or any of its subsidiaries or has a material interest adverse to the bank or any of its subsidiaries, also shall be described.

4. Notwithstanding the foregoing, if a receiver, fiscal agent or similar officer has been appointed for the bank or its parent, in a proceeding under the Bankruptcy Act or in any other proceeding under State or Federal law in which a court or governmental agency has assumed jurisdiction over substantially all of the assets or business of the bank or its parent, or if such jurisdiction has been assumed by leaving the existing directors and officers in possession but subject to the supervision and orders of a court or governmental body, identify the proceeding, the court or governmental body, the date jurisdiction was assumed, the identity of the receiver, fiscal agent or similar officer and the date of the person's appointment.

5. Discuss the extent of insurance coverage if appropriate to the type of proceeding.

Item 4—Security Ownership of Certain Beneficial Owners and Management

Set forth the same information as is required to be furnished by items 5 (d)(1), (d)(2), and (f) of Form F-5 at § 335.212.

NOTE: The information required by item 5(d)(2) of Form F-5 need not be included for any nominee for election as a director.

PART II—[SEE GENERAL INSTRUCTION F(2)]

Item 5—Market for the Bank's Common Stock and Related Security Holder Matters

(a) Identify the principal market or markets on which the bank's common stock is being traded and, if a principal market for such stock is an exchange, state the high and low sales prices for the stock as reported in the consolidated transaction reporting system or, if not so reported, on such principal exchange for each quarterly period during the past two years. If the principal market for such common stock is not an exchange, state the range of high and low bid quotations for each quarterly period during the past two years, the source of such quotations and, if there is no market for such stock (excluding limited or sporadic quotations), furnish a statement to that effect.

(b) Set forth the approximate number of holders of common stock securities of the bank as of the latest practicable date.

(c) State the frequency and amount of any dividends declared during the past two years with respect to such common stock and briefly describe any restriction on the bank's present or future ability to pay such dividends. Where banks have a record of paying

no dividends although earnings indicate an ability to do so, they are encouraged to consider the question of their intention to pay cash dividends in the foreseeable future and, if no such intention exists to make a statement of that fact in the filing. Banks which have a history of paying dividends are also encouraged to indicate whether there is a present expectation that dividends will continue to be paid in the future.

Instructions

1. The computation of the approximate number of holders of such common stock may be based upon the number of record holders or may also include individual participants in security position listings. See § 335.501(b)(8). The method of computation which is chosen should be indicated.

2. If the bank is a foreign bank: (a) Describe briefly any governmental laws, decrees or regulations in the country in which the foreign bank is organized relating to restrictions on the export or import of capital, including but not limited to foreign exchange controls, affecting the remittance of dividends, interest and other payments of nonresident holders of the foreign bank's securities.

(b) State whether there are any limitations, either by the law of the country under which the foreign bank is organized or in the charter or other constituent document of the foreign bank, on the right of foreigners to hold or vote securities. Outline briefly any such limitations.

(c) Outline briefly all taxes, including withholding provisions, to which United States security holders are subject under existing laws and regulations of the foreign country of origin. A brief description of pertinent provisions of any reciprocal tax treaties between such foreign country and the United States regarding withholding should be included. If there are no such treaties, so state.

Item 6—Selected Financial Data

Furnish in comparative columnar form a summary of selected financial data for the bank for:

(a) Each of the last five fiscal years of the bank (or for the life of the bank and its predecessors, if less), and

(b) Any additional fiscal years necessary to keep the summary from being misleading.

Instructions

1. The purpose of the summary of selected financial data shall be to supply in a convenient and readable format selected data which highlight significant trends in the bank's financial condition and results of operations.

2. The following items shall be included in the table of financial data: net interest income; other operating income; provision for

loan and lease losses; income (loss) from continuing operations; income (loss) from continuing operations per common share; total assets; long-term obligations and redeemable preferred stock and cash dividends declared per common share. Banks may include additional items which they believe would enhance an understanding of and would highlight other trends in their financial condition and results of operations. Briefly describe, or cross reference to a discussion thereof, factors such as accounting changes, business combinations or dispositions of business operations, that materially affect the comparability of the selected financial data. Discuss any material uncertainties which might cause the data not to be indicative of the bank's future financial condition or results of operations.

3. Those banks which provide five-year summary information in accordance with SFAS 89 may combine such information with the selected financial data appearing pursuant to this item.

4. All references to the bank in the summary and in these instructions shall mean the bank and its consolidated subsidiaries.

5. In addition, (a) if debt securities are registered under section 12 of the Act, the bank shall show in tabular form for each fiscal year the ratio of earnings to fixed charges. If appropriate, the ratio of earnings to fixed charges for such periods shall also be shown on a total enterprise basis in a position of equal prominence with the ratio for the bank or the bank and its consolidated subsidiaries.

(b) Earnings shall be computed after all operating and income deductions except fixed charges and taxes based on income or profits and after eliminating undistributed income of unconsolidated subsidiaries and 50 percent or less owned persons.

(c) The term *fixed charges* shall mean (i) interest and amortization of debt discount and expense and premium on all indebtedness; (ii) such portion of rentals as can be demonstrated to be representative of the interest factor in the particular case; and (iii) in case consolidated figures are used, preferred stock dividend requirements of consolidated subsidiaries, excluding in all cases items eliminated in consolidation.

Item 7—Management's Discussion and Analysis of Financial Condition and Results of Operations

Discuss the bank's financial condition, changes in financial condition and results of operations. The discussion shall provide information as specified in paragraphs (a), (b) and (c) of this item with respect to liquidity, capital resources, and results of operations, and should also provide such other information which the bank believes to be necessary to an understanding of its financial condition, changes in financial condition and results of operations. Discussions of liquidity

and capital resources may be combined whenever the two topics are interrelated. Where in the bank's judgment a discussion of segment information or of other subdivisions of the registrant's business would be appropriate to an understanding of such business, the discussion would focus on each relevant, reportable segment or other subdivision of the business and on the bank as a whole.

(a) *Liquidity*. Identify any known trends or any known demands, commitments, events or uncertainties which will result in or which are reasonably likely to result in the bank's liquidity increasing or decreasing in any material way. If a material deficiency is identified, indicate the course of action which the bank has taken or proposes to take to remedy the deficiency. Identify and separately describe internal and external sources of liquidity, and briefly discuss any material unused sources of liquid assets.

(b) *Capital resources*. Describe the bank's material commitments for capital expenditures as of the end of the latest fiscal period, and indicate the general purpose of such commitments and the anticipated source of funds needed to fulfill such commitments. Describe any known material trends, favorable or unfavorable, in the bank's capital resources. Indicate any expected material changes in the mix and the relative cost of such resources. This discussion should consider changes between equity, debt and any off-balance sheet financing arrangement.

(c) *Results of operations*. Describe any unusual or infrequent events or transactions or any significant economic changes which materially affected the amount of reported income from continuing operations and, in each case, indicate the extent to which income was so affected. In addition, describe any other significant components of revenues or expense which, in the bank's judgment, should be described in order to understand the bank's results of operations. Describe any known trends or uncertainties which have had or which the bank reasonably expects will have a material favorable or unfavorable impact on revenues or income from continuing operations. If the bank knows of events which will cause a material change in the relationship between costs and revenues (such as known future increases in costs of labor) the change in the relationship should be disclosed. To the extent that the financial statements disclose material increases in revenues, provide a narrative discussion of the extent to which such increases are attributable to increases in prices or to increases in the volume or amount of services being sold or to the introduction of new services.

Instructions

1. The bank's discussion and analysis shall be of the financial statement and of other statistical data which the bank believes will

enhance a reader's understanding of its financial condition, changes in financial condition and results of operations. Generally, the discussion should cover the three year period covered by the financial statements and should utilize year-to-year comparisons or any other formats which in the bank's judgment enhance a reader's understanding. However, where trend information is relevant, reference to the five-year selected financial data appearing in item 6 of a Form F-2 may be necessary.

2. The purpose of the discussion and analysis should be to provide to investors and other users information relevant to an assessment of the financial condition and results of operations of the bank as determined by evaluating the amounts and certainty of cash flows from operations and from outside sources. The information provided in this item 7 need only include that which is available to the bank without undue effort or expense but which does not clearly appear in the bank's financial statements.

3. The discussion and analysis should specifically focus on material events and uncertainties known to management which would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. This would include description and amounts of (a) matters which would have an impact on future operations and have not had an impact in the past, and (b) matters which have had an impact on reported operations and are not expected to have an impact upon future operations.

4. Where the consolidated financial statements reveal material changes from year to year in one or more line items, the causes for the changes should be described to the extent necessary to an understanding of the bank's businesses as a whole; *provided, however*, if the cause for a change in one line item also relate to other line items, no repetition is required and a line-by-line analysis of the financial statements as a whole is not required or generally appropriate. Banks need not recite the amounts of changes from year to year which are readily computable from the financial statements. The discussion should not merely repeat numerical data contained in the consolidated financial statements.

5. The term *liquidity* as used in paragraph (a) of this item refers to the ability of a bank generate adequate amounts of cash to meet the bank's needs for cash. Except where it is otherwise clear from the discussion, the bank should indicate those balance sheet conditions or income or cash flow items which the bank believes may be indicators of its liquidity condition. Liquidity generally should be discussed on both a long-term and short-term basis. The issue of liquidity should be discussed in the context of the bank's own business or businesses.

6. Banks are encouraged, but not required, to supply forward-looking information. This is to be distinguished from presently-known data which will impact upon future operating results, such as known future increases in costs of labor. This latter data may be required to be disclosed. Any forward-looking information supplied is expressly covered by the safe harbor rule for projections. See § 335.103.

7. Banks should furnish statistical information similar to that required by Securities Exchange Act Industry Guide 3 [Statistical disclosure by bank holding companies] SEC Rel. No. 34-23846, 51 FR 43599 (November 25, 1986), 17 CFR part 241 (1988) ("Guide 3") for each of the last three fiscal years of the bank, except, if the bank had assets of less than \$200,000,000 or net worth of \$10,000,000 or less as of the end of its latest fiscal year, information may be furnished for each of the last two fiscal years with respect to all items. If a material change in the information presented or the trend evidenced thereby has occurred, it may be appropriate to furnish statistical information for an additional interim period to keep the information from being misleading.

The information should be presented in tabular form and include descriptions of: I. Distribution of Assets, Liabilities, and Stockholder's Equity; Interest Rates and Interest Differentials; II. Investment Portfolio; III. Loan Portfolio; IV. Summary of Loan Loss Experience; V. Deposits; VI. Return on Equity and Assets; and VII. Short-Term Borrowings. Although no specific guidance as to the form and content is provided, relevant data, material to a description of lending and deposit activities, should include information about (a) yields and costs of various assets and liabilities, (b) maturities and repricing characteristics of various assets and liabilities and (c) risk elements, such as non-accrual and past-due items in the lending portfolio. Generally, statistical information called for by Guide 3 should be based on average daily amounts. However, weekly or month-end averages may be used if compiling daily information is too costly or difficult as long as it is representative of operations. Banks are not required to justify, but are required to disclose, which method of computing averages is selected.

NOTE: If any such information is not reasonably available to the bank, the bank may present comparable information. Where information required by Guide 3 is substantially similar to that required by Call Report schedules (i.e.—Guide 3 items II and III, Investment Portfolio and Loan Portfolio, etc.), the Call Report schedule information may be presented instead.

8. All references to the bank in the discussion and in these instructions shall mean the bank and its subsidiaries consolidated.

9. Foreign private banks should also discuss briefly any pertinent governmental economic, fiscal, monetary, or political policies or factors which have materially affected or could materially affect, directly or indirectly, company operations or investments by United States nationals.

Item 8—Financial Statements and Supplementary Data

These instructions specify the balance sheets and statements of income required to be filed as a part of annual reports on this form. Subpart F governs the certification, form, and content of the balance sheets and statements of income required, including the basis of consolidation, and prescribes the statement of changes in capital accounts, statement of changes in financial position, and/or statement of cash flows and the schedules to be filed in support thereof.

(a) *Financial Statements of the Bank.* (1) There shall be filed for the bank, in comparative columnar form, audited balance sheets as of the close of the last two fiscal years and audited statements of income for each of the three fiscal years preceding the date of the most recent balance sheet being filed.

(2) Notwithstanding paragraph (1), the individual financial statements of the bank may be omitted if consolidated statements of the bank and one or more of its subsidiaries are filed.

(b) *Consolidated Statements.* There shall be filed for the bank and its majority-owned: (1) Bank premises subsidiaries, (2) subsidiaries doing a foreign banking business, and (3) significant subsidiaries, in comparative columnar form, audited consolidated balance sheets as of the close of the last two fiscal years of the bank and audited consolidated statements of income for three fiscal years.

(c) *Separate Statements of Unconsolidated Subsidiaries and Other Persons.* There shall be filed such other audited financial statements with respect to unconsolidated subsidiaries and other persons as are material to a proper understanding of the financial position and results of operations of the total enterprise. For purposes of this item, *other persons* include 50 percent owned persons and unconsolidated persons in which the bank takes up equity in undistributed earnings.

(d) *Filing of Other Statements in Certain Cases*—The FDIC may, upon the informal written request of the bank and where consistent with the protection of investors, permit the omission of one or more of the statements herein required or the filing in substitution thereof of appropriate statements of comparable character. The FDIC may also by informal written notice require the filing of other statements in addition to, or in substitution for, the statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any per-

son whose financial statements are required, or whose statements are otherwise necessary for the protection of investors.

PART III—[SEE GENERAL INSTRUCTION F(3)]

Item 9—Directors and Principal Officers of the Bank

(a) *Directors of the Bank.* Set forth the same information as is required to be furnished by item 6 (a), (b), (c) and (d) of Form F-5 at § 335.212.

NOTE: The information required by item 6 (a), (b), (c) and (d) of Form F-5 need not be included for any nominee for election as a director.

(b) *Principal Officers of the Bank.* (1) *Principal officers.* List the names and ages of all principal officers of the bank and all persons chosen to become principal officers; indicate all positions and offices with the bank held by each such person; state the person's term of office as officer and the period during which the person has served as such and briefly describe any arrangement or understanding between the person and any other person pursuant to which the person was selected as an officer.

Instructions. 1. Do not include arrangements or understandings with directors of officers of the bank acting solely in their capacities as such.

2. No person chosen to become a principal officer who has not consented to act as such should be named in response to this item.

(2) *Significant employees.* Where the bank employs persons such as special consultants who are not principal officers, but who make or are expected to make significant contributions to the business of the bank, such persons should be identified and their background disclosed to the same extent as in the case of principal officers.

(3) *Business experience.* Give a brief account of the business experience during the past five years of each person chosen to become a principal officer, and each person named in answer to paragraph (2) of this item, including the person's principal occupations and employment during that period and the name and principal business of any corporation or other organization in which such occupations and employment were carried on. When a principal officer or person named in response to paragraph (2) of this item has been employed by the bank or a subsidiary of the bank for less than five years, a brief explanation should be included as to the nature of the responsibilities undertaken by the individual in prior positions to provide adequate disclosure of his prior business experience. The requirement is information relating to the level of this person's professional competence which may include, depending

upon the circumstances, such specific information as the size of the operation supervised.

(c) *Family relationships and involvement in certain legal proceedings.* Set forth the same information as is required to be furnished by items 6(b) and (d) of Form F-5 at § 335.212 for each principal officer, person chosen to become a principal officer, and each person named in answer to paragraph (2).

Item 10—Management compensation and transactions.

Furnish the information required by items 7 and 21 of Form F-5 at § 335.212.

Instruction

Checking the box provided on the cover page of this form to indicate that disclosure of delinquent Form F-7, F-8, or F-8A filers is not contained herein is intended to facilitate form processing and review. Failure to provide such indication will not create liability for violation of the federal securities laws. The space should be checked only if there is no disclosure in this form of reporting person delinquencies and the bank at the time of filing the Form F-2, has reviewed the information necessary to ascertain, and has determined that, disclosure of delinquencies is not expected to be contained in Part III of the Form F-2 or incorporated by reference.

PART IV

Item 11—Exhibits, Financial Statement Schedules, and Reports on Form F-3

(a) *Contents.* List the following documents filed as a part of the report:

- (1) All financial statements.
- (2) Those financial statement schedules required to be filed by item 8 of this form.
- (3) Those exhibits required by paragraph (c) of this Item 11. Identify in the list each management contract or compensatory plan or arrangement required to be filed as an exhibit to this form pursuant to paragraph (c)(3)(ii) of this Item 11.

Instruction. Where any financial statement, financial statement schedule, or exhibit is incorporated by reference, the incorporation by reference shall be set forth in the list required by this item. For purposes of all rules concerning incorporation by reference a financial statement schedule shall constitute an *exhibit*. See § 335.353.

(b) *Reports on Form F-3.* State whether any reports on Form F-3 have been filed during the last quarter of the period covered by this report, listing the items reported, any financial statements filed and the dates of any such reports.

(c) *Exhibits.* The following exhibits shall be filed:

(1) *Articles of incorporation and bylaws*—whenever amendments to the articles or bylaws of the registrant are filed, there shall

also be filed a complete copy of the articles or bylaws as amended.

(2) *Instruments defining the rights of security holders, including indentures.*

(3) *Material contracts.* (i) If the contract is such as ordinarily accompanies the kind of business conducted by the bank and its subsidiaries, it will be deemed to have been made in the ordinary course of business and need not be filed, unless it falls within one or more of the following categories, in which case it should be filed except where immaterial in amount or significance:

(A) Any contract to which directors, officers, promoters, voting trustees, security holders named in the report, or underwriters are parties other than contracts involving only the purchase or sale of current assets having a determinable market price, at such market price;

(B) Any contract calling for the acquisition or sale of any property, plant or equipment for a consideration exceeding 15% of the fixed assets of the bank on a consolidated basis; or

(C) Any lease under which a significant part of the property described in the registration statement or report is held by the bank.

(ii) Any management contract or any compensatory plan, contract or arrangement, including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing (or if not set forth in any formal document, a written description thereof) in which any director or any of the “named executive officers” of the bank, as defined by 17 CFR 229.402(a)(3), participates shall be deemed material and shall be filed; and any other management contract or any other compensatory plan, contract, or arrangement in which any other executive officer of the bank participates shall be filed unless immaterial in amount or significance except as follows: notwithstanding the above, any compensatory plan, contract, or arrangement which pursuant to its terms is available to employees, officers or directors generally and which in operation provides for the same method of allocation of benefits between management and nonmanagement participants.

(4) *Statement re computation of per share earnings.* A statement setting forth in reasonable detail the computation of per share earnings, unless the computation can be clearly determined from the material contained in the registration statement or report.

(5) *Statements re computation of ratios.* A statement setting forth in reasonable detail the computation of ratios of earnings to fixed charges which appears in the report.

(6) *Annual report to security holders.* The bank’s annual report to security holders for its last fiscal year if all or a portion thereof

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are incorporated by reference in the filing. Such report, except for those portions thereof which are expressly incorporated by reference in the filing, is to be furnished for the information of the FDIC and is not to be deemed filed as part of the filing. If the financial statements in the report have been incorporated by reference in the filing, the accountant's certificate shall be manually signed on one copy.

(7) Letter re change in accounting principles. Unless previously filed, a letter from the bank's independent accountant indicating whether any change in accounting principles or practices followed by the bank, or any change in the method of applying any such accounting principles or practices which affected the financial statements being filed with the FDIC in the report or which is reasonably certain to affect the financial statements of future fiscal years is to an alternative principle which in his judgment is preferable under the circumstances. No such letter need be filed when such change is made in response to a standard adopted by the Financial Accounting Standards Board requiring such a change.

(8) Previously unfiled documents. All contracts and other documents of a type required to be filed as an exhibit to an original registration statement on Form F-1 or a report on Form F-4 which were executed or in effect during the reporting period and not previously filed, as well as all amendments or modifications, not previously filed, to all exhibits previously filed with Forms F-1, F-2, and F-4.

(9) List all subsidiaries of the bank, the state or other jurisdiction of incorporation or organization of each, and the names under which such subsidiaries do business. The names of particular subsidiaries may be omitted if the unnamed subsidiaries, considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as of the end of the year covered by this report. (See the definition of significant subsidiary in §335.102(nn).) This list should be repeated in each annual filing or an express reference made to the most recent filing containing a complete and accurate list.

SIGNATURES—(SEE GENERAL INSTRUCTION D)

Pursuant to the requirements of section 13 of the Securities Exchange Act of 1934, the bank has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

(Bank) _____
By (Signature and Title)* _____
Date _____

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons

on behalf of the registrant and in the capacities and on the dates indicated.

(Signature and Title)* _____

(Date) _____

* * * * *

(Signature and Title)* _____

(Date) _____

*Print the name and title of each signing officer under his signature.

[46 FR 25208, May 5, 1981, as amended at 48 FR 55557, Dec. 14, 1983; 54 FR 53590, Dec. 29, 1989; 57 FR 4702, Feb. 7, 1992; 57 FR 58136, Dec. 9, 1992; 59 FR 67175, Dec. 29, 1994]

§335.320 Current reports.

Every registrant bank shall file a current report in conformity with the requirements of Form F-3 within 10 days after the close of any month during which any of the events specified in that form occurs, unless substantially the same information as required by that form has been previously reported by the bank.

§335.321 Form for current report of a bank (Form F-3).

FORM F-3.—CURRENT REPORT

Under Section 13 of the Securities Exchange Act of 1934

For the month of _____, 19—

(Exact name of bank as specified in charter)

(Address of principal office)

GENERAL INSTRUCTIONS

A. Preparation of Report

This form is not to be used as a blank form to be filled in but only as a guide in the preparation of the report. The report shall contain the numbers and captions of all applicable items, but the text of such items may be omitted if the answers with respect thereto are prepared in the manner specified in §335.361. All items which are not required to be answered in a particular report may be omitted and no reference thereto need be made in the report. Particular attention should be given to the definitions in §335.102 and the general requirements in Subpart C.

B. Events To Be Reported

A report on this form is required to be filed upon the occurrence of any one or more of

the events specified in the items of this form. Reports are to be filed within 10 days after the close of each month during which any of the specified events occur except for items 10 or 11. A report of an event specified in items 10 or 11 is to be filed within 5 business days after the occurrence of the event; if the event occurs on a Saturday, Sunday, or holiday on which the FDIC is not open for business, then the 5 business day period shall begin to run on and include the first business day thereafter. However, if substantially the same information as that required by this form has been previously reported by the bank, an additional report of the information in this form need not be made.

C. Incorporation by Reference to Proxy Statement, Statement Where Management Does Not Solicit Proxies, or Annual Report to Security Holders

Information contained in any statement previously filed with the FDIC under §335.201 or in an annual report to security holders furnished to the FDIC under §335.203 may be incorporated by reference in answer or partial answer to any item or items of this form. In addition, any financial statements contained in any such statement or annual report may be incorporated by reference provided such financial statements substantially meet the requirements of this form.

INFORMATION TO BE INCLUDED IN REPORT

Item 1—Changes in Control of Bank

(a) If, to the knowledge of management, a change in control of the bank has occurred, state the name of the person(s) who acquired such control; the amount and the source of the consideration used by such person(s); the basis of the control; the date and a description of the transaction(s) which resulted in the change in control; the percentage of voting securities of the bank now beneficially owned directly or indirectly by the person(s) who acquired control; and the identity of the person(s) from whom control was assumed. If the source of all or any part of the consideration used is a loan made in the ordinary course of business by a bank as defined in section 3(a)(6) of the Act, the identity of such bank shall be omitted provided a request for confidentiality has been made pursuant to section 13(d)(1)(B) of the Act by the person(s) who acquired control. In lieu thereof, the material shall indicate that disclosure of the identity of the bank has been so omitted and filed separately with the FDIC.

Instructions

1. State the terms of any loans or pledges obtained by the new control group for the purpose of acquiring control, and the names of the lenders or pledgees, unless confidential treatment has been requested under sec-

tion 13(d)(1)(B) of the Act in which case the identity of the lending bank shall be omitted.

2. Any arrangements or understandings among members of both the former and new control groups and their associates with respect to the election of directors or other matters shall be described.

(b) Describe any contractual arrangements, including any pledge of securities of the bank, or any of its parents, known to management, the operation of the terms of which may be at a subsequent date result in a change in control of the bank.

Instruction

Paragraph (b) does not require a description of ordinary default provisions contained in the charter, trust indentures or other governing instruments relating to securities of the bank.

(c) If the source of all or any part of the funds used to acquire control of the bank is a loan made by a bank as defined in section 3(a)(6) of the Act, indicate whether there exists any agreement, arrangement, or understanding under which the registrant bank maintains or would maintain a correspondent deposit account at such lending bank.

Item 2—Acquisition or Disposition of Assets

If the bank or any of its significant subsidiaries has acquired or disposed of a significant amount of assets, otherwise than in the ordinary course of business, state the date and manner of acquisition or disposition and briefly describe the assets involved, the nature and amount of consideration given or received therefor, the principle followed in determining the amount of such consideration, the identity of the persons from whom the assets were acquired or to whom they were sold and the nature of any material relationship between such persons and the bank or any of its affiliates, any director or officer of the bank, or any associate of any such director or officer. If any assets so acquired by the bank or its subsidiaries constituted plant, equipment or other physical property, state the nature of the business in which the assets were used by the persons from whom acquired and whether the bank intends to continue such use or intends to devote the assets to other purposes, indicating such other purposes.

Instructions

1. No information need be given as to: (i) Any transaction between any person and any wholly owned subsidiary of such person: *i.e.*, a subsidiary substantially all of whose outstanding voting securities are owned by such person and/or its other wholly owned subsidiaries; (ii) any transaction between two or

more wholly owned subsidiaries of any person; or (iii) the redemption or other acquisition of securities from the public, or the sale or other disposition of securities to the public, by the issuer of such securities.

2. The term *acquisition* includes every purchase, acquisition by lease, exchange, merger, consolidation, succession or other acquisition; provided that such term does not include the construction or development of property by or for the bank or its subsidiaries or the acquisition of materials for such purpose, and does not include the acquisition of assets acquired: (i) In collecting a debt previously contracted in good faith or (ii) in a fiduciary capacity. The term *disposition* includes every sale, disposition by lease exchange, merger, consolidation, mortgage, or hypothecation of assets, assignment, abandonment, destruction, or other disposition, but does not include disposition of assets acquired: (i) In collecting a debt previously contracted in good faith or (ii) in a fiduciary capacity.

3. The information called for by this item is to be given as to each transaction or series of related transactions of the size indicated. The acquisition or disposition of securities shall be deemed the indirect acquisition or disposition of the assets represented by such securities if it results in the acquisition or disposition of control of such assets.

4. An acquisition or disposition shall be deemed to involve a significant amount of assets: (i) If the net book value of such assets or the amount paid or received there for upon such acquisition or disposition exceeded five percent of the equity capital accounts of the bank, or (ii) if it involved the acquisition or disposition of a business whose gross operating revenues for its last fiscal year exceeded five percent of the gross operating revenues of the bank and its consolidated subsidiaries for the bank's latest fiscal year.

5. Where assets are acquired or disposed of through the acquisition or disposition of control of a person, the person from whom such control was acquired or to whom it was disposed of shall be deemed the person from whom the assets were acquired or to whom they were disposed of, for the purposes of this item. Where such control was acquired from or disposed of to not more than five persons, their names shall be given, otherwise it will suffice to identify in any appropriate manner the class of such persons.

6. Attention is directed to the requirements at the end of this form with respect to the filing of financial statements for businesses acquired and to the filing of copies of the plans of acquisition or disposition as exhibits to the report.

Item 3—Legal Proceedings

The description of legal proceedings shall include the information required by item 3 of

Form F-2 at §335.312. As to such proceedings which have been terminated during the period covered by the report, provide similar information, including the date of termination and a description of the disposition thereof with respect to the bank and its subsidiaries.

Instruction

A legal proceeding need only be reported in the Form F-3 filed for the month in which it first became a reportable event and in subsequent months in which there have been material developments. Subsequent Form F-3 filings in the same fiscal year in which a legal proceeding or a material development is reported should reference any previous reports in that year.

Item 4—Changes in Securities

(a) If the instruments defining the rights of the holders of any class of registered securities have been materially modified, give the title of the class of securities involved and state briefly the general effect of such modification upon the rights of holders of such securities.

(b) If the rights evidenced by any class of registered securities have been materially limited or qualified by the issuance or modification of any other class of securities, state briefly the general effect of the issuance or modification of such other class of securities upon the rights of the holders of the registered securities.

Instruction

Working capital restrictions and other limitations upon the payment of dividends are to be reported hereunder.

Item 5—Changes in Security for Registered Securities

If there has been a material withdrawal or substitution of assets securing any class of registered securities of the bank, furnish the following information:

(a) Give the title of the securities.

(b) Identify and describe briefly the assets involved in the withdrawal or substitutions.

(c) Indicate the provision in the underlying indenture, if any, authorizing the withdrawal or substitution.

Item 6—Defaults Upon Senior Securities

(a) If there has been any material default in the payment of the principal, interest, a sinking or purchase fund installment, or any other material default not cured within 30 days, with respect to any indebtedness of the bank or any of its significant subsidiaries exceeding five percent of the equity capital accounts of the bank, identify the indebtedness and state the nature of the default. In the case of such a default in the payment of principal, interest, or a sinking or purchase fund

installment, state the amount of the default and the total arrearage on the date of filing this report.

Instruction

This paragraph refers only to events which have become defaults under the governing instruments, *i.e.*, after the expiration of any period of grace and compliance with any notice requirements.

(b) If any material arrearage in the payment of dividends has occurred or if there has been any other material delinquency not cured within 30 days, with respect to any class of preferred stock of the bank which is registered or which ranks prior to any class or registered securities, or with respect to any class of preferred stock of any significant subsidiary of the bank, give the title of the class and state the nature of the arrearage or delinquency. In the case of an arrearage in the payment of dividends, state the amount and the total arrearage on the date of filing this report.

Item 7—Increase in Amount of Securities Outstanding

If the amount of securities of the bank outstanding has been increased through the issuance of any new class of securities or through the issuance or reissuance of any additional securities of a class outstanding and the aggregate amount of all such increases not previously reported exceeds five percent of the previously outstanding securities of the class, furnish the following information:

(a) Title of class, the amount outstanding as last previously reported, and the amount presently outstanding (as of a specified date).

(b) A brief description of the transaction or transactions resulting in the increase and a statement of the aggregate net cash proceeds or the nature and aggregate amount of any other consideration received or to be received by the bank.

(c) The names of the principal underwriters, if any, indicating any such underwriters which are affiliates of the bank.

(d) A reasonably itemized statement of the purposes, so far as determinable, for which the net proceeds have been or are to be used and the approximate amount used or to be used for each such purpose.

(e) If the securities were capital shares, a statement of the amount of the proceeds credited or to be credited to any account other than the appropriate capital share account.

Instructions

1. This item does not apply to notes, drafts, bills of exchange, or bank acceptances which mature not later than 12 months from the date of issuance. No report need be made where the amount not previously reported,

although in excess of five percent of the amount previously outstanding, does not exceed \$50,000 face amount of indebtedness of 1,000 shares or other units.

2. This item includes the reissuance of Treasury securities and securities held for the account of the issuer thereof. The extension of the maturity date of indebtedness shall be deemed to be the issuance of new indebtedness for the purpose of this item. In the case of such an extension, the percentage shall be computed upon the basis of the principal amount of the indebtedness extended.

Item 8—Decrease in Amount of Securities Outstanding

If the amount of any class of securities of the bank outstanding has been decreased through one or more transactions and the aggregate amount of all such decreases not previously reported exceeds five percent of the amount of securities of the class previously outstanding, furnish the following information:

(a) Title of the class, the amount outstanding as last previously reported, and the amount presently outstanding (as of a specified date).

(b) A brief description of the transaction or transactions involving the decrease and a statement of the aggregate amount of cash or the nature and aggregate amount of any other consideration paid or to be paid by the bank in connection with such transaction or transactions.

Instruction

Instruction 1 to item 7 shall also apply to this item. This item need not be answered as to decreases resulting from ordinary sinking fund operations, similar periodic decreases made pursuant to the terms of the constituent instruments, decreases resulting from the conversion of securities or decreases resulting from the payment of indebtedness at maturity.

Item 9—Submission of Matters to a Vote of Security Holders

If any matter has been submitted to a vote of security holders, through the solicitation of proxies or otherwise, furnish the following information:

(a) The date of the meeting and whether it was an annual or special meeting.

(b) If the meeting involved the election of directors, state the name of each director elected at the meeting and the name of each other director whose term of office as a director continued after the meeting.

(c) A brief description of each matter voted upon at the meeting and state the number of votes cast for, against or withheld, as well as the number of abstentions and broker non-votes, as to each such matter, including a

separate tabulation with respect to each nominee for office.

(d) Describe the terms of any settlement between the bank and any other participant (as defined in § 335.220) terminating any solicitation subject to § 335.220, including the cost or anticipated cost to the bank.

Instructions

1. If any matter has been submitted to a vote of security holders otherwise than at a meeting of such security holders, corresponding information with respect to such submission shall be furnished. The solicitation of any authorization or consent (other than a proxy to vote at a security holders' meeting) with respect to any matter shall be deemed a submission of such matter to a vote of security holders within the meaning of this item.

2. Paragraph (a) need be answered only if paragraph (b) or (c) is required to be answered.

3. Paragraph (b) need not be answered if: Proxies for the meeting were solicited pursuant to subpart B of this part; there was no solicitation in opposition to the management's nominees as listed in the proxy statement; and all of such nominees were elected. If the bank did not solicit proxies and the board of directors as previously reported to the FDIC was reelected in its entirety, a statement to that effect in answer to paragraph (b) will suffice as an answer thereto.

4. Paragraph (c) must be answered for all matters voted upon at the meeting, including both contested and uncontested elections of directors.

5. If the bank has furnished to its security holders proxy soliciting material containing the information called for by paragraph (d), the paragraph may be answered by reference to the information contained in such material.

6. If the bank has published a report containing all of the information called for by this item, the item may be answered by a reference to the information contained in such report, provided copies of such report are filed as an exhibit to the report on this form.

Item 10—Changes in Bank's Certifying Accountant

If an independent accountant who was previously engaged as the principal accountant to audit the bank's financial statements resigns (or indicates he declines to stand for re-election after the completion of the current audit) or is dismissed as the bank's principal accountant, or another independent accountant is engaged as principal accountant or if an independent accountant on whom the principal accountant expressed reliance in his report regarding a significant subsidiary resigns (or formally indicates he

declines to stand for re-election after the completion of the current audit) or is dismissed or another independent accountant is engaged to audit that subsidiary:

(a) State the date of such resignation (or declination to stand for re-election) dismissal or engagement.

(b) State whether in connection with the audits of the two most recent fiscal years and any subsequent interim period preceding such resignation, dismissal or engagement there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements if not resolved to the satisfaction of the former accountant would have caused him to make reference in connection with his report to the subject matter of the disagreement(s); also, describe each such disagreement. The disagreements required to be reported in response to the preceding sentence include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this rule are those which occur at the decision-making level; *i.e.*, between personnel of the bank responsible for the presentation of its financial statements and personnel of the accounting firm responsible for rendering its report.

(c) State whether the principal accountant's report on the financial statements for any of the past two years contained an adverse opinion or a disclaimer of opinion or was qualified as to uncertainty, audit scope, or accounting principles; also describe the nature of each such adverse opinion, disclaimer of opinion, or qualification.

(d) The bank shall request the former accountant to furnish the bank with a letter addressed to the FDIC stating whether he agrees with the statements made by the bank in response to this item and, if not, stating the respects in which he does not agree. The bank shall file a copy of the former accountant's letter as an exhibit with all copies of the Form F-3 required to be filed under § 335.359.

(e) State whether the decision to change accountants was recommended or approved by

(1) Any audit or similar committee of the board of directors, if the bank has such a committee; or

(2) The board of directors, if the bank has no such committee.

Item 11—Resignations of Bank's Directors

(a) If a director has resigned or declined to stand for re-election to the board of directors since the date of the last annual meeting of shareholders because of a disagreement with the bank on any matter relating to the bank's operations, policies or practices, and if the director has furnished the bank with a

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letter describing such disagreement and requesting that the matter be disclosed, the bank shall state the date of such resignation or declination to stand for re-election and summarize the director's description of the disagreement.

(b) If the bank believes that the description provided by the director is incorrect or incomplete, it may include a brief statement presenting its views of the disagreement.

(c) The bank shall file a copy of the director's letter as an exhibit with all copies of this Form F-3.

Item 12—Other Materially Important Events

The bank shall, at its option, report under this item any events that it deems of material importance to security holders, even though information as to such events is not otherwise called for by this form.

Item 13—Financial Statements and Exhibits

List below the financial statements and exhibits, if any, filed as a part of this report:

- (a) Financial statements.
(b) Exhibits.

SIGNATURES

Under the requirements of the Securities Exchange Act of 1934, the bank has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

(Name of bank)

Date _____

By _____

(Name and title of signing officer)

FINANCIAL STATEMENTS OF BUSINESSES ACQUIRED

1. Business for which statements are required.

The financial statement specified below shall be filed for any business the acquisition of which by the bank or any of its majority-owned subsidiaries is required to be described in answer to item 2 above.

2. Statements required.

(a) There shall be filed a balance sheet of the business as of a date reasonably close to the date of acquisition. The balance sheet need not be audited, but if it is not audited there shall also be filed an audited balance sheet as of the close of the preceding fiscal year.

(b) Statements of income of the business shall be filed for each of the last three full fiscal years and for the period, if any, between the close of the latest of such fiscal years and the date of the latest balance sheet filed. These statements of income shall be verified up to the date of the audited balance sheet.

(c) If the business was in insolvency proceedings immediately prior to its acquisition, the balance sheets required above need not be audited. In such case, the statements of income required shall be audited to the close of the latest full fiscal year.

(d) No supporting schedules need be filed.

(e) Except as otherwise provided in this instruction, the principles applicable to a bank and its subsidiaries with respect to the filing of individual, consolidated and group statements in an original application or annual report shall be applicable to the statements required by this instruction.

3. Filing of other statements in certain cases.

The FDIC may, upon the informal written request of the bank, and where consistent with the protection of investors, permit the omission of one or more of the statements herein required or the filing in substitution therefor of appropriate statements of comparable character. The FDIC may also by informal written notice require the filing of other statements in addition to or in substitution for the statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person for which financial statements are required, or whose statements are otherwise necessary for the protection of investors.

EXHIBITS

Subject to the rules as to incorporation by reference, the following documents shall be filed as exhibits to this report:

- 1. Copies of any contract, plan, or arrangement for any acquisition or disposition described in answer to item 2, including a plan of reorganization, readjustment, exchange, merger, consolidation, or succession in connection therewith.
2. Copies of any judgment or any document setting forth the terms of any settlement described in answer to item 3.
3. Copies of the amendments to all constituent instruments and other documents described in answer to item 4.
4. Copies of all constituent instruments defining the rights of the holders of any class of securities referred to in answer to item 7.
5. Copies of the plan pursuant to which the options referred to in answer to item 9 were granted, or if there is no such plan, specimen copies of the options.
6. Copies of any material amendments to the bank's charter or bylaws, not otherwise required to be filed.
7. Copies of the text of any proposal described in answer to item 9.
8. Copies of any published report furnished in response to item 9. (See item 9, instruction 6.)
9. Letters from the bank and the independent accountants furnished pursuant to item 10.

10. Letters from directors furnished pursuant to item 11.

[46 FR 25208, May 5, 1981, as amended at 48 FR 55562, Dec. 14, 1983; 54 FR 53592, Dec. 29, 1989; 59 FR 67175, Dec. 29, 1994]

§335.330 Quarterly reports.

Every registrant bank shall file a quarterly report in conformity with the requirements of Form F-4 for each fiscal quarter ending after the close of the latest fiscal year for which financial statements were filed in a registration statement except that no report need be filed for the fiscal quarter which coincides with the end of the fiscal year of the bank. Such reports shall be filed not later than 45 days after the end of such quarterly period, except that the report for any period ending prior to the date on which a class of securities of the bank first becomes effectively registered may be filed not later than 45 days after the effective date of such registration.

Note to Small Business Issuers: a "small business issuer", as defined under 17 CFR 240.12b-2 has the option of providing the disclosure required by SEC Form 10-QSB, optional form for quarterly and transitional reports of small business issuers (17 CFR 249.310b), in lieu of the disclosure requirements set forth in Form F-4 (§335.330). The definition of "small business issuer", generally includes banks with annual revenues of less than \$25 million, whose voting stock does not have a public float of \$25 million or more.

[46 FR 25208, May 5, 1981, as amended at 59 FR 67175, Dec. 29, 1994]

§335.331 Form for quarterly report of a bank (Form F-4).

FORM F-4

Quarterly Report Under Section 13 of the Securities Exchange Act of 1934 for Quarter Ended _____

FDIC Insurance Certificate Number _____
(Exact name of bank as specified in its charter) _____

(State or other jurisdiction of incorporation or organization) _____

(IRS Employer Identification No.) _____
(Address of principal executive offices) _____

(Zip Code) _____
Bank's telephone number, including area code _____

(Former name, former address and former fiscal year, if changed since last report) _____

Indicate by check mark if the bank, as a "small business issuer" as defined under 17 CFR 240.12b-2, is providing alternative disclosures as permitted for small business issuers in this Form F-4. []

Indicate by check mark whether the bank (1) has filed all reports required to be filed by section 13 of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the bank was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes — No —

Indicate the number of shares outstanding of each of the bank's classes of common stock, as of the latest practicable date.

A. Rule as to Use of Form F-4

(a) Form F-4 shall be used for quarterly reports under section 13 of the Securities Exchange Act of 1934, filed under §335.330.

(b) A report on this form shall be filed within 45 days after the end of each of the first three fiscal quarters of each fiscal year. No report need be filed for the fourth quarter of any fiscal year.

B. Application of General Rules and Regulations

Particular attention is directed to §335.360 which contains general requirements regarding matters such as the kind and size of paper to be used, the printing and the language; §335.364 regarding the information to be given whenever the title of securities is required to be stated; and §335.701 regarding the filing of the report. The definitions contained in §335.102 should be especially noted.

C. Preparation of Report

(a) This is not a blank form to be filled in. It is a guide to be used in preparing the report in accordance with §335.330. The FDIC does not furnish blank copies of this form to be filled in for filing.

(b) These general instructions are not to be filed with the report. The instructions to the various captions of the form are also to be omitted from the report as filed.

D. Incorporation by Reference to Published Statements

If the bank makes available to its stockholders or otherwise publishes, within the period prescribed for filing the report, a financial statement containing the information required by this form, such information may be incorporated by reference to such published statement if copies thereof are filed as an exhibit to this report.

E. Signature and Filing of Report

Three copies of the report shall be filed with the FDIC. At least one copy of the report shall be filed with each exchange on which any class of securities of the bank is listed and registered. At least one copy of the report filed with the FDIC and one copy filed with each such exchange shall be manually signed on the bank's behalf by a duly authorized officer of the bank and by the principal financial officer or chief accounting officer of the bank. Copies not manually signed shall bear typed or printed signatures.

*Item 1—Financial Statements**(a) Condensed statements.*

Interim financial statements shall follow the general form and content of presentation prescribed by Subpart F of this Part 335 with the following exceptions:

(1) Interim financial statements required by this rule need only be provided as to the bank and its subsidiaries consolidated and may be unaudited. Separate statements of other entities which may otherwise be required by this regulation may be omitted.

(2) Interim balance sheets shall include only major captions prescribed by § 335.627A. Where any major balance sheet caption is less than 10 percent of total assets, and the amount in the caption has not increased or decreased by more than 25 percent since the end of the preceding fiscal year, the caption may be combined with others.

(3) Interim statements of income shall also include major captions prescribed by § 335.627B. When any major income statement caption is less than 15 percent of average net income for the most recent three fiscal years and the amount in the caption has not increased or decreased by more than 20 percent as compared to the corresponding interim period of the preceding fiscal year, the caption may be combined with others. In calculating average net income, loss years should be excluded. If losses were incurred in each of the most recent three years, the average loss shall be used for purposes of this text.

(4) The statement of changes in financial position and/or statement of cash flows may be abbreviated, as appropriate.

(5) The interim financial information shall include disclosure either on the face of the financial statements or in accompanying footnotes sufficient so as to make the interim information presented not misleading. Banks may presume that users of the interim financial information have read or have access to the audited financial statements for the preceding fiscal year and that the adequacy of additional disclosure needed for a fair presentation, except in regard to material contingencies, may be determined in that context. Accordingly, footnote disclosure which would substantially duplicate

the disclosure contained in the most recent annual report to security holders or latest audited financial statements, such as a statement of significant accounting policies and practices, details of accounts which have not changed significantly in amount or composition since the end of the most recently completed fiscal year, and detailed disclosures prescribed by § 335.621 or § 335.622, may be omitted. However, disclosure shall be provided where events subsequent to the end of the most recent fiscal year have occurred which have a material impact on the bank. Disclosures should encompass for example, significant changes since the end of the most recently completed fiscal year in such items as: accounting principles and practices; estimates inherent in the preparation of financial statements; status of long-term contracts; capitalization including significant new borrowings or modification of existing financing arrangements; and the reporting entity resulting from business combinations or dispositions. Notwithstanding the above, where material contingencies exist, disclosure of such matters shall be provided even though a significant change since year end may not have occurred.

(6) Detailed schedules otherwise required by § 335.626 may be omitted for purposes of preparing interim financial statements.

(b) Other instructions as to content. The following additional instructions shall be applicable for purposes of preparing interim financial statements:

(1) Summarized income statement information shall be given separately as to each subsidiary not consolidated or 50 percent or less owned persons or as to each group of such subsidiaries or fifty percent or less owned persons for which separate individual or group statements would otherwise be required for annual periods.

(2) If appropriate, the income statement shall show earnings per share and dividends per share applicable to common stock and the basis of the earnings per share computation shall be stated together with the number of shares used in computation. The bank shall file as an exhibit, a statement setting forth in reasonable detail the computation of per share earnings, unless the computation is otherwise clearly set forth in the report.

(3) If, during the most recent interim period presented, the bank or any of its consolidated subsidiaries entered into a business combination treated for accounting purposes as a pooling of interests, the interim financial statements for both the current year and the preceding year shall reflect the combined results of the pooled businesses. Supplemental disclosure of the separate results of the combined entities for periods prior to the combination shall be given, with appropriate explanations.

(4) Where a material business combination accounted for as a purchase has occurred

during the current fiscal year, pro forma disclosure shall be made of the results of operations for the current year up to the date of the most recent interim balance sheet provided (and for the corresponding period in the preceding year) as though the companies had combined at the beginning of the period being reported on. This pro forma information shall as a minimum show revenue, income before extraordinary items and the cumulative effect of accounting changes, including such income on a per share basis, and net income and net income per share.

(5) In addition to meeting the reporting requirements specified by existing standards for accounting changes, the bank shall state the date of any material accounting change and the reasons for making it. In addition, a letter from the bank's independent accountant shall be filed as an exhibit in the first Form F-4 subsequent to the date of an accounting change indicating whether or not the change is to an alternative principle which in his judgment is preferable under the circumstances; except that no letter from the accountant need be filed when the change is made in response to a standard adopted by the Financial Accounting Standards Board which requires such change.

(6) Any material retroactive prior period adjustment made during any period covered by the interim financial statements shall be disclosed, together with the effect thereof upon net income—total and per share—of any prior period included and upon the balance of undivided profits. If results of operations for any period presented have been adjusted retroactively by such an item subsequent to the initial reporting of such period, similar disclosure of the effect of the change shall be made.

(7) The interim financial statements furnished shall reflect all adjustments which are, in the opinion of management, necessary to a fair statement of the results for the interim periods presented. A statement to that effect shall be included. Such adjustments shall include, for example, appropriate estimated provisions for bonus and profit sharing arrangements normally determined or settled at year-end.

(c) *Periods to be covered.* For filings on Form F-4, financial statements shall be provided as set forth below:

(1) An interim balance sheet as of the end of the most recent fiscal quarter and a balance sheet as of the end of the preceding fiscal year shall be provided. The balance sheet as of the end of the preceding fiscal year may be condensed to the same degree as the interim balance sheet provided. An interim balance sheet as of the end of the corresponding fiscal quarter of the preceding fiscal year need not be provided unless necessary for an understanding of the impact of seasonal fluctuations on the bank's financial condition.

(2) Interim statements of income shall be provided for the most recent fiscal quarter, for the period between the end of the preceding fiscal year and the end of the most recent fiscal quarter, and for the corresponding periods of the preceding fiscal year. Such statements may also be presented for the cumulative twelve-month period ended during the most recent fiscal quarter and for the corresponding preceding period.

(3) Interim statements of cash flows/changes in financial position (See Statement of Financial Accounting Standards No. 95, Statement of Cash Flows) and statements of changes in capital accounts shall be provided for the period between the end of the preceding fiscal year and the end of the most recent fiscal quarter, and for the corresponding period of the preceding fiscal year. Such statements may also be presented for the cumulative twelve-month period ending during the most recent fiscal quarter and for the corresponding preceding period.

NOTE: Restatement of prior years' statements of financial position is encouraged but is not required.

(d) *Review by independent public accountant.* The interim financial information included in filings with the FDIC need not be reviewed by an independent public accountant prior to filing. If, however, a review of the data is made in accordance with established professional standards and procedures for such a review, the bank may state that the independent accountant has performed such a review. If such a statement is made, the report of the independent accountant on such review shall accompany the interim financial information.

(e) *Filing of other interim financial information in certain cases.* The FDIC may, upon the informal written request of the bank, and where consistent with the protection of investors, permit the omission of any of the interim financial information herein required or the filing in substitution therefor of appropriate information of comparable character. The FDIC may also by informal written notice require the filing of other information in addition to, or in substitution for, the interim information herein required in any case where such information is necessary or appropriate for an adequate presentation of the financial condition of any person for which interim financial information is required, or whose financial information is otherwise necessary for the protection of investors.

Item 2—Management's Discussion and Analysis of Financial Condition and Results of Operations

Management's discussion and analysis of the financial condition and results of operations shall be provided so as to enable the

reader to assess material changes in financial condition and results of operations between the periods specified in (c)(1) and (c)(2) of item 1 of this Form F-4. The discussion and analysis shall include a discussion of material changes in the bank's liquidity, capital resources and results of operations.

(a) *Material changes in financial condition.* Discuss any material changes in financial condition from the end of the preceding fiscal year to the date of the most recent interim balance sheet provided. If the interim financial statements include an interim balance sheet as of the corresponding interim date of the preceding fiscal year, any material changes in financial condition from that date to the date of the most recent interim balance sheet provided shall also be discussed. If discussions of changes from both the year-end and the corresponding interim date of the preceding fiscal year are required, the discussions may be combined at the discretion of the bank.

(b) *Material changes in results of operations.* Discuss any material changes in the bank's results of operations with respect to the most recent fiscal year-to-date period for which an income statement is provided and the corresponding year-to-date period of the preceding fiscal year. The discussion also shall cover material changes with respect to the most recent fiscal quarter and the corresponding fiscal quarter in the preceding fiscal year. In addition, if the bank has elected to provide an income statement for the twelve-month period ended as of the date of the most recent interim balance sheet provided, the discussion shall also cover material changes with respect to that twelve-month period and the twelve-month period ended as of the corresponding interim balance sheet date of the preceding fiscal year.

Instructions. 1. In preparing the discussion and analysis required by this paragraph, the bank may presume that users of the interim financial information have read or have access to the discussion and analysis required in the bank's most recent Form F-2 or Form F-1.

2. The discussion and analysis required by this paragraph is required to focus only on material changes. Where the interim financial statements reveal material changes from period to period in one or more significant line items, the causes for the changes should be described if they have not already been disclosed; *provided, however*, if the causes for a change in one line item also relate to other line items, no repetition is required. Banks need not recite the amounts of changes from period to period which are readily computable from the financial statements. The discussion should not merely repeat numerical data contained in the financial statements. The information provided should include that which is available to the bank without undue effort or expense and

which does not clearly appear in the bank's interim financial statements.

3. The bank's discussion of material changes in results of operations should identify any significant elements of the bank's income or loss from continuing operations which do not arise from or are not necessarily representative of the bank's ongoing business.

4. The bank should discuss any seasonal aspects of its business which have had a material effect upon its financial condition or results of operation.

5. Banks are encouraged but are not required to discuss forward-looking information.

SIGNATURES

Under the requirements of the Securities Exchange Act of 1934, the bank has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

(Name of bank) _____

Date _____ (Signature)¹ _____

Date _____ (Signature)¹ _____

¹Print name and title of signing officer under his signature.

[48 FR 55562, Dec. 14, 1983, as amended at 54 FR 53592, Dec. 29, 1989; 57 FR 58136, Dec. 9, 1992; 59 FR 67175, Dec. 29, 1994]

§ 335.332 Report of foreign issuer to be filed under section 13(a) of the Securities Exchange Act of 1934 (Form F-4A).

Federal Deposit Insurance Corporation
Washington, DC 20429

FORM F-4A—REPORT UNDER SECTION 13(a) OF
THE SECURITIES EXCHANGE ACT OF 1934

For the month of _____ 19—

(Translation of bank's name into English)

(Address of principal executive offices)

General Instructions

A. Rule as to Use of Form F-4A.

This form shall be used by foreign banks which are required to furnish reports under § 335.308.

B. Information and Document Required to be Furnished.

Subject to General Instruction D herein, a bank furnishing report on this form shall furnish whatever information, not previously furnished, such bank (i) is required to make public in the country of its domicile or in which it is incorporated or organized pursuant to the law of that country, or (ii) filed with a foreign stock exchange on which its securities are traded and which was made

§ 335.340

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public by that exchange, or (iii) distributed to its security holders.

The information required to be furnished pursuant to paragraphs (i), (ii), or (iii) of the previous paragraph is that which is significant with respect to the bank and its subsidiaries concerning: Changes in management or control; acquisitions or dispositions of assets; bankruptcy or receivership; changes in bank's certifying accountants; the financial condition and results of operations; material legal proceedings; changes in securities or in the security for registered securities; defaults upon senior securities; material increases or decreases in the amount outstanding of securities or indebtedness; the results of the submission of matters to a vote of security holders; and any other information which the bank deems of material importance to security holders.

This report is required to be furnished promptly after the material contained in the report is made public as described above. The information and documents furnished in this report shall not be deemed to be "filed" for the purpose of section 18 of the Act or otherwise subject to the liabilities of that section.

C. Preparation and Filing of Report.

This report shall consist of a cover page, the document or report furnished by the bank, and a signature page. Three complete copies of each report on this form shall be sent to the FDIC. At least one complete copy shall be filed with each United States stock exchange on which any security of the bank is listed and registered under section 12(b) of the Act. At least one of the copies sent to the FDIC and one filed with each such exchange shall be manually signed. Unsigned copies shall be conformed.

D. Translations of Papers and Documents into English.

Information required to be furnished pursuant to general instruction B in the form of press releases and all communications or materials distributed directly to securityholders of each class of securities to which any reporting obligation under section 13(a) of the Act relates shall be in the English language. English versions or adequate summaries in the English language of such materials may be furnished in lieu of original English translations.

Notwithstanding general instruction B, no other documents or reports, including prospectuses or offering circulars relating to entirely foreign offerings, need be furnished unless the bank otherwise has prepared or caused to be prepared English translation, English versions or summaries in English thereof. If no such English translations, versions or summaries have been prepared, it will be sufficient to provide a brief description in English of any such documents or reports. In no event are copies of original language documents or reports required to be furnished.

SIGNATURES

Under the requirements of the Securities Exchange Act of 1934, the bank has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

(Bank)
Date _____
By _____
(Signature)*

[46 FR 25208, May 5, 1981, as amended at 54 FR 53592, Dec. 29, 1989]

§335.340 Notification to national securities associations.

Each bank having securities registered under section 12(g) of the Act, upon being notified by a national securities association registered under section 15A of the Act that a class of the bank's securities is to be quoted on an interdealer quotation system, which is sponsored and governed by the rules of such association, shall thereafter notify such association promptly of:

(a) Any increase or decrease in the amount of securities of such class outstanding which exceeds five percent of the amount of such class last reported to the association and

(b) Any change in the name of the bank. The obligation to report pursuant to this section shall continue until notification is received from the association that all classes of securities are no longer quoted on such interdealer quotation system.

§335.350 Additional information.

In addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.

§335.351 Information not available.

Information required need be given only insofar as it is known or reasonably available to the bank. If any required information is unknown and not reasonably available to the bank, either because the obtaining thereof would involve unreasonable effort or

*Print the name and title of the signing officer under his signature.

expense or because it rests peculiarly within the knowledge of another person not affiliated with the bank, the information may be omitted, subject to the following conditions:

(a) The bank shall give such information on the subject as it possesses or can acquire without unreasonable effort or expense together with the sources thereof, and

(b) The bank shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information. No such request need be made, however, to any foreign government, or an agency or instrumentality thereof, if, in the opinion of the bank, such request would be harmful to existing relationships.

§ 335.352 Disclaimer of control.

If the existence of control is open to reasonable doubt in any instance, the bank may disclaim the existence of control and any admission thereof; in such case, however, the bank shall state the material facts pertinent to the possible existence of control.

§ 335.353 Incorporation by reference.

(a) Information contained in any part of a registration statement or report, other than exhibits, may be incorporated by reference in answer or partial answer to any item of the same statement or report. Information contained in an exhibit may be so incorporated to the extent permitted in § 335.357.

(b) Any information, other than financial statements, contained in any of the following documents may be incorporated by reference in answer or partial answer to any item of a registration statement or report: (1) A definitive proxy statement filed under section 14(a) of the Act or a definitive information statement filed under section 14(c) of the Act; or (2) a report to security holders.

(c) Any financial statement contained in any document referred to in paragraph (b) of this section or filed with the FDIC may be incorporated by

reference in a registration statement or report if such financial statement substantially meets the requirements of the form on which the statement or report is filed. Financial statements or other financial data required to be given in comparative form for two or more fiscal years or periods shall not be incorporated by reference unless the material incorporated by reference includes the entire period for which the comparative data is required to be given.

(d) Copies of any information or financial statement incorporated by reference under paragraph (b) or (c) of this section, or copies of the pertinent pages of the document containing such information or statement, shall be submitted with the statement or report and shall be deemed to be filed with the FDIC for all purposes of the Act.

(e) Matter incorporated by reference shall be clearly identified in the reference by page, paragraph, caption, or otherwise. Where only certain pages of a document are incorporated by reference and filed with the statement or report, the document from which the material is taken shall be clearly identified in the reference. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement or report where the information is required. Matter shall not be incorporated by reference in any case where such incorporation would render the statement or report incomplete, unclear, or confusing.

§ 335.354 Summaries or outlines of documents.

Where an item requires a summary or outline of the provisions of any document, only a brief statement shall be made, in succinct and condensed form, as to the most important provisions. In addition to such statement, the summary or outline may incorporate by reference particular items, sections, or paragraphs of any exhibit and may be qualified in its entirety by such reference. Matter contained in an exhibit may be incorporated by reference in answer to an item only to the extent permitted by this paragraph.

§ 335.355 Omission of substantially identical documents.

In any case where two or more indentures, contracts, franchises, or other documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, the bank need file a copy of only one of such documents, with a schedule identifying the documents omitted and setting forth the material details in which such documents differ from the document of which a copy is filed. The FDIC may at any time in its discretion require the filing of copies of documents so omitted.

§ 335.356 Additional exhibits.

The bank may file such exhibits as it may desire, in addition to those required by the appropriate form. Such exhibits shall be so marked as to indicate clearly the subject matters to which they refer.

§ 335.357 Incorporation of exhibits by reference.

(a) Any document or part thereof previously filed with the FDIC under this part may, subject to the following limitations, be incorporated by reference as an exhibit to any registration statement or report filed with the FDIC by the same or any other person. Any document or part thereof filed with an exchange under the Act may be incorporated by reference as an exhibit to any registration statement or report filed with the exchange by the same or any other person.

(b) Any document incorporated by reference under § 335.357 shall be so incorporated only by reference to the specific document and to the prior filing in which it was physically filed, not to another file which incorporates it by reference.

(c) If any modification has occurred in the text of any document incorporated by reference since the filing thereof, the registrant shall file with the reference a statement containing the text of any such modification and the date thereof.

(d) No document which has been on file with the FDIC under this part for a period of more than 10 years may be incorporated by reference. This limita-

tion shall not, however, apply to a corporate charter or bylaws if such document has not been amended more than twice since such filing.

§ 335.358 Notification of inability to timely file all or any required portion of a Form F-2, F-4 or SEC Form 20-F.

(a) If all or any required portion of an annual report on Form F-2 or SEC Form 20-F or a quarterly report on Form F-4 required to be filed pursuant to section 13 of the Act and rules thereunder is not filed within the time period prescribed for such report, the bank, no later than one business day after the due date for such report, shall file a notification with the FDIC which shall contain disclosure of the inability to file the report timely and the reasons therefor in reasonable detail.

(b) With respect to any report or portion of any report described in paragraph (a) of this section which is not timely filed because the bank is unable to do so without unreasonable effort or expense, such report shall be deemed to be filed on the prescribed due date for such report if:

(1) The bank files a notification in compliance with paragraph (a) of this section and, when applicable, furnishes the exhibit required by paragraph (c) of this section;

(2) The bank represents in the notification that:

(i) The reason(s) causing the inability to file timely could not be eliminated by the bank without unreasonable effort or expense; and

(ii) Either the subject annual report/portion thereof will be filed no later than the fifteenth calendar day following the prescribed due date or the subject quarterly report/portion thereof will be filed no later than the fifth calendar day following the prescribed due date; and

(3) The report/portion thereof is actually filed within the period specified by paragraph (b)(2)(ii) of this section.

(c) If paragraph (b) of this section is applicable and the reason the subject report/portion thereof cannot be filed timely without unreasonable effort or expense relates to the inability of any person, other than the bank to furnish

any required opinion, report or certificate, the notification shall have attached as an exhibit a statement signed by such person stating the specific reasons why such person is unable to furnish the required opinion, report or certification on or before the date such report must be filed.

(d) If a notification filed pursuant to paragraph (a) of this section relates only to a portion of a subject report, the bank shall:

(1) File the balance of such report and indicate on the cover page thereof which disclosure items are omitted; and

(2) Include, on the upper right corner of the amendment to the report which includes the previously omitted information, the following statement:

The following items were the subject of a notification under § 335.358 and are included herein: (*List Item Numbers*)

[48 FR 55564, Dec. 14, 1983]

§ 335.359 Number of copies; signatures; binding.

(a) Except where otherwise provided in a particular form, three copies of each registration statement and report (including financial statements) and two copies of each exhibit and each other document filed as part thereof, shall be filed with the FDIC. At least one complete copy of each statement shall be filed with each exchange, if any on which the securities covered thereby are being registered. At least one copy of each report shall be filed with each exchange, if any, on which the bank has securities registered.

(b) At least one copy of each statement or report filed with the FDIC and one copy thereof filed with an exchange shall be manually signed. If the statement or report is typewritten, one of the signed copies filed with the FDIC shall be an original "ribbon" copy. Unsigned copies shall be conformed. If the signature of any person is affixed under a power of attorney or other similar authority, a copy of such power or other authority shall also be filed with the statement or report.

(c) Each copy of a statement or report filed with the FDIC or with an exchange shall be bound in one or more parts. Copies filed with the FDIC shall be bound without stiff covers. The

statement or report shall be bound on the left side in such a manner as to leave the reading matter legible.

[46 FR 25208, May 5, 1981, as amended at 54 FR 53592, Dec. 29, 1989]

§ 335.360 Specifications for paper, printing, and language.

(a) Statements and reports shall be filed on good quality unglazed white paper 8½ x 13 inches in size, insofar as practicable. Tables, charts, maps, and financial statements may, however, be on larger paper if folded to that size.

(b) The statement or report and, insofar as practicable, all papers and documents filed as a part thereof, shall be printed, lithographed, mimeographed, xeroxed, or typewritten. The statement or report or any portion thereof may, however, be prepared by any similar process that, in the opinion of the FDIC produces copies suitable for a permanent record. Irrespective of the process used, all copies of any such material shall be clear, easily readable, and suitable for repeated photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies.

(c) The body of all printed statements and reports shall be in roman type at least as large as a 10-point modern type. To the extent necessary for convenient presentation, however, financial statements and other statistical or tabular data and the notes thereto may be in type at least as large as 8-point modern type. All type shall be leaded at least 2 points.

(d) Statements and reports shall be in English. If any exhibit or other paper or document filed with a statement or report is in a foreign language, it shall be accompanied by a translation into English.

§ 335.361 Preparation of statement or report.

Each statement and report shall contain the numbers and captions of all items of the appropriate form, but the text of the items may be omitted provided the answers thereto are so prepared as to indicate to the reader the coverage of the items without the necessity of his referring to the text of the items or instructions thereto.

Where any item requires information to be given in tabular form, however, it shall be given in substantially the tabular form specified in the item. All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made.

§ 335.362 Riders; inserts.

Riders shall not be used. If the statement or report is typed on a printed form, and the space provided for the answer to any given item is insufficient, reference shall be made in such space to a full insert page or pages on which the item number and caption and the complete answer are given.

§ 335.363 Amendments.

All amendments shall comply with all pertinent requirements applicable to statements and reports. Amendments shall be filed separately for each separate statement or report amended. Amendments to a statement may be filed either before or after registration becomes effective.

§ 335.364 Title of securities.

Whenever the title of securities is required to be stated, information shall be given that will indicate the type and general character of the securities, including:

(a) In the case of shares, the par or stated value, if any; the rate of dividends, if fixed, and whether cumulative or noncumulative; a brief indication of the preference, if any; and if convertible, a statement to that effect.

(b) In the case of funded debt, the rate of interest; the date of maturity, or if the issue matures serially, a brief indication of the serial maturities, such as "maturing serially from 1970 to 1980"; if payment of principal or interest is contingent, an appropriate indication of such contingency; a brief indication of the priority of the issue; and if convertible, a statement to that effect.

(c) In the case of any other kind of security, appropriate information of comparable character.

§ 335.365 Interpretation of requirements.

Unless the context clearly shows otherwise:

(a) The forms require information only as to the bank.

(b) Whenever any fixed period of time in the past is indicated, such period shall be computed from the date of filing.

(c) Whenever words relate to the future, they have reference solely to present intention.

(d) Any words indicating the holder of a position or office include persons, by whatever titles designated, whose duties are those ordinarily performed by holders of such positions or offices.

Subpart D—Shareholder Reports

§ 335.401 Requirement of acquisition statements.

(a) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a bank of a class which is registered under section 12 of the Act (except non-voting securities), is directly or indirectly the beneficial owner of more than five (5) percent of such class shall, within 10 days after such acquisition, send to the bank at its principal office, by registered or certified mail, and to each exchange where the security is traded, and file with the FDIC, a statement containing the information required by Form F-11. Three copies of the statement, including all exhibits, shall be filed with the FDIC.

(b)(1) A person who would otherwise be obligated under paragraph (a) of this section to file a statement on Form F-11 may, in lieu thereof, file with the FDIC, within 45 days after the end of the calendar year in which such person became so obligated, three copies, including all exhibits, of a short form ownership statement on Form F-11A and send one copy each of such form to the bank at its principal office, by registered or certified mail, and to the principal national securities exchange where the security is traded: *Provided*, That it shall not be necessary to file a Form F-11A unless the percentage of the class of equity security beneficially owned as of the end of the calendar

year is more than five (5) percent: *And provided further*, That

(i) Such person has acquired such securities in the ordinary course of his business and not with the purpose nor with the effect of changing or influencing the control of the bank, nor in connection with or as a participant in any transaction having such purpose or effect, including any transaction subject to § 335.403(b);

(ii) Such person is:

(A) A broker or dealer registered under section 15 of the Act;

(B) A bank as defined in section 3(a)(6) of the Act;

(C) An insurance company as defined in section 3(a)(19) of the Act;

(D) An investment company registered under section 8 of the Investment Company Act of 1940;

(E) An investment adviser registered under section 203 of the Investment Advisers Act of 1940;

(F) An employee benefit plan, or pension fund which is subject to the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA") or an endowment fund;

(G) A parent holding company: *Provided*, The aggregate amount held directly by the parent, and directly and indirectly by its subsidiaries which are not persons specified in paragraphs (b)(1)(ii) (A) through (G) of this section, does not exceed one percent of the securities of the subject class;

(H) A group, provided that all the members are persons specified in paragraphs (b)(1)(ii) (A) through (G) of this section; and

(iii) Such person has promptly notified any other person (or group within the meaning of section 13(d)(3) of the Act) on whose behalf it holds, on a discretionary basis, securities exceeding five percent of the class, of any acquisition or transaction on behalf of such other person which might be reportable by the person under section 13(d) of the Act. This paragraph only requires notice to the account owner of information which the filing person reasonably should be expected to know and which would advise the account owner of an obligation he may have to file a statement under section 13(d) of the Act or an amendment thereto.

(2) Any person relying on paragraph (b)(1) of this section and § 335.402(b) shall, in addition to filing any statement required thereunder, file a statement on Form F-11A within ten days after the end of the first month in which such person's direct or indirect beneficial ownership exceeds ten percent of a class of equity securities specified in paragraph (a) of this section computed as of the last day of the month, and thereafter within ten days after the end of any month in which such person's beneficial ownership of securities of such class, computed as of the last day of the month, increased or decreased by more than five percent of such class of equity securities. Three copies of such statement, including all exhibits, shall be filed with the FDIC and one each sent, by registered or certified mail, to the bank at its principal office and to the principal national securities exchange where the security is traded. Once an amendment has been filed reflecting beneficial ownership of five percent or less of the class of securities, no additional filings are required by paragraph (b)(2) of this section unless the person thereafter becomes the beneficial owner of more than ten percent of the class and is required to file pursuant to this provision.

(3)(i) Notwithstanding paragraphs (b)(1) and (2) of this section and § 335.402(b), a person shall immediately become subject to paragraph (a) of this section and § 335.402(a) and shall promptly, but not more than 10 days later, file a statement on Form F-11 if such person:

(A) Has reported that the person is the beneficial owner of more than five percent of a class of equity securities in a statement on Form F-11A pursuant to paragraph (b)(1) or (b)(2) of this section, or is required to report such acquisition but has not yet filed the form;

(B) Determines that the person no longer has acquired or hold such securities in the ordinary course of business or not with the purpose nor with the effect of changing or influencing the control of the bank, nor in connection with or as a participant in any

transaction having such purpose or effect, including any transaction subject to § 335.403(b); and

(C) Is at that time the beneficial owner of more than five percent of a class of equity securities described in paragraph (a) of this section.

(ii) For the ten-day period immediately following the date of the filing of a Form F-11 under paragraph (b)(3) of this section, such person shall not:

(A) Vote or direct the voting of the securities described in paragraph (b)(3)(i)(A) of this section; nor,

(B) Acquire an additional beneficial ownership interest in any equity securities of the bank, nor of any person controlling the bank.

(4) Any person who has reported an acquisition of securities in a statement of Form F-11A under paragraph (b)(1) or (b)(2) of this section and thereafter ceases to be a person specified in paragraph (b)(1)(ii) of this section shall immediately become subject to paragraph (a) of this section and § 335.402(a) and shall file, within ten days thereafter, a statement on Form F-11 in the event such person is a beneficial owner at that time of more than five percent of the class of equity securities.

(c) Any person who, as of December 31, 1979, or as of the end of any calendar year thereafter, is directly or indirectly the beneficial owner of more than five percent of any equity security of a class specified in paragraph (d) of this section and who is not required to file a statement under paragraph (a) of this section by virtue of the exemption provided by section 13(d)(6)(A) or (B) of the Act, or because such beneficial ownership was acquired prior to December 22, 1970, or because such person otherwise (except for the exemption provided by section 13(d)(6)(C) of the Act) is not required to file such statement, shall, within 45 days after the end of the calendar year in which such person became obligated to report under this paragraph, send to the bank at its principal office, by registered or certified mail, and file with the FDIC, a statement containing the information required by Form F-11A. Three copies of the statement, including all exhibits, shall be filed with the FDIC.

(d) For the purposes of section 13(d) and 13(g), any person, in determining

the amount of outstanding securities of a class of equity securities, may rely upon information set forth in the bank's most recent quarterly or annual report, and any current report subsequent thereto, filed with the FDIC pursuant to the Act, unless the person knows or has reason to believe that the information contained therein is inaccurate.

(e)(1) Whenever two or more persons are required to file a statement containing the information required by Form F-11 or Form F-11A with respect to the same securities, only one statement need be filed; *Provided*, That:

(i) Each person on whose behalf the statement is filed is individually eligible to use the form on which the information is filed;

(ii) Each person on whose behalf the statement is filed is responsible for the timely filing of such statement and any amendments thereto, and for the completeness and accuracy of the information concerning such person contained therein; such person is not responsible for the completeness or accuracy of the information concerning the other persons making the filing, unless such person knows or has reason to believe that such information is inaccurate; and

(iii) Such statement identifies all such persons, contains the required information with regard to each such person, indicates that such statement is filed on behalf of all such persons, and includes, as an exhibit, their agreement in writing that such statement is filed on behalf of each of them.

(2) A group's filing obligation may be satisfied either by a single joint filing or by each of the group's members making an individual filing. If the group's members elect to make their own filings, each filing should identify all members of the group but the information provided concerning the other persons making the filing need only reflect information which the filing person knows or has reason to know.

[46 FR 25208, May 5, 1981, as amended at 54 FR 53592, Dec. 29, 1989; 57 FR 58136, Dec. 9, 1992]

§ 335.402 Amendments to acquisition statements.

(a) Form F-11—If any material change occurs in the facts set forth in the statement required by § 335.401(a) including, but not limited to, any material increase or decrease in the percentage of the class beneficially owned, the person or persons who were required to file such statement shall promptly file or cause to be filed with the FDIC and send or cause to be sent to the bank at its principal office, by registered or certified mail, and to each exchange on which the security is traded, an amendment disclosing such change. An acquisition or disposition of beneficial ownership of securities in an amount equal to one percent or more of the class of securities shall be deemed “material” for purposes of this section; acquisitions or dispositions of less than such amounts may be material, depending upon the facts and circumstances. Three copies of each amendment shall be filed with the FDIC.

(b) Form F-11A—Notwithstanding paragraph (a) of this section and provided that the person or persons filing a statement under § 335.401(b) continue to meet the requirements set forth therein, any person who has filed a short form statement on Form F-11A shall amend such statement within 45 days after the end of each calendar year to reflect, as of the end of the calendar year, any changes in the information reported in the previous filing on that form. Three copies of the amendment, including all exhibits, shall be filed with the FDIC and one each sent, by registered or certified mail, to the bank at its principal office and to the principal national securities exchange where the security is traded. Once an amendment has been filed reflecting beneficial ownership of five percent or less of the class of securities, no additional filings are required unless the person thereafter becomes the beneficial owner of more than five percent of the class and is required to file under § 335.401.

NOTE: For persons filing a short form statement pursuant to § 335.401(b), see also § 335.401(b) (2), (3), and (4).

[46 FR 25208, May 5, 1981, as amended at 54 FR 53592, Dec. 29, 1989]

§ 335.403 Determination of beneficial owner.

(a) For the purposes of sections 13(d) and 13(g) of the Act a beneficial owner of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares:

(1) *Voting power* which includes the power to vote, or to direct the voting of, such security; and/or

(2) *Investment power* which includes the power to dispose, or to direct the disposition, of such security.

(b) Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement or any other contract, arrangement, or device with the purpose or effect of divesting such person of beneficial ownership of a security or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the requirements of section 13(d) or 13(g) of the Act shall be deemed for purposes of such sections to be the beneficial owner of such security.

(c) All securities of the same class beneficially owned by a person, regardless of the form which such beneficial ownership takes, shall be aggregated in calculating the number of shares beneficially owned by such person.

(d) Notwithstanding the provisions of other paragraphs of this section:

(1)(i) A person shall be deemed to be the beneficial owner of a security, subject to the provisions of paragraph (b) of this section, if that person has the right to acquire beneficial ownership of such security, as defined in paragraph (a) of this section at any time within sixty days including but not limited to any right to acquire:

(A) Through the exercise of any option, warrant or right;

(B) Through the conversion of a security;

(C) Pursuant to the power to revoke a trust, discretionary account, or similar arrangement; or

(D) Pursuant to the automatic termination of a trust, discretionary account or similar arrangement;

Provided, however, any person who acquires a security or power specified in paragraph (d)(1)(i) (A), (B), or (C) of this section, with the purpose or effect of changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition shall be deemed to be the beneficial owner of the securities which may be acquired through the exercise or conversion of such security or power. Any securities not outstanding which are subject to such options, warrants, rights or conversion privileges shall be deemed to be outstanding for the purpose of computing the percentage of outstanding securities of the class owned by such person, but shall not be deemed to be outstanding for the purposes of computing the percentage of the class by any other person.

(ii) Paragraph (d)(1)(i) of this section remains applicable for the purpose of determining the obligation to file with respect to the underlying security even though the option, warrant, right or convertible security is of a class of equity security and may therefore give rise to a separate obligation to file.

(2) A member of a national securities exchange shall not be deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because such member is the record holder of such securities and, under the rules of such exchange, may direct the vote of such securities, without instruction, on other than contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted, but is otherwise precluded by the rules of such exchange from voting without instruction.

(3) A person who in the ordinary course of business is a pledgee of securities under a written pledge agreement shall not be deemed to be the beneficial owner of such pledged securities until the pledgee has taken all formal steps necessary which are required to declare a default and determines that the power to vote or to direct the vote or to dispose or to direct the dis-

position of such pledged securities will be exercised, *Provided, That:*

(i) The pledgee agreement is bona fide and was not entered into with the purpose nor with the effect of changing or influencing the control of the issuer, nor in connection with any transaction having such purpose or effect, including any transaction subject to paragraph (b) of this section;

(ii) The pledgee is a person specified in §335.401(b)(1)(ii), including persons meeting the conditions set forth in §335.401(b)(1)(ii)(G); and

(iii) The pledgee agreement, prior to default, does not grant to the pledgee:

(A) The power to vote or to direct the vote of the pledged securities; or

(B) The power to dispose or direct the disposition of the pledged securities, other than the grant of such power(s) pursuant to a pledge agreement under which credit is extended subject to Regulation T (12 CFR 220.1 to 220.8) and in which the pledgee is a broker or dealer registered under section 15 of the Act.

§335.404 Disclaimer of beneficial ownership.

Any person may expressly declare in any statement filed that the filing of such statement shall not be construed as an admission that such person is, for the purposes of sections 13(d) or 13(g) of the Act, the beneficial owner of any securities covered by the statement.

§335.405 Acquisition of securities.

(a) A person who becomes a beneficial owner of securities shall be deemed to have acquired such securities for purposes of section 13(d)(1) of the Act, whether such acquisition was through purchase or otherwise. However, executors or administrators of a decedent's estate generally will be presumed not to have acquired beneficial ownership of the securities in the decedent's estate until such time as the executors or administrators are qualified under local law to perform their duties.

(b)(1) When two or more persons agree to act together for the purpose of acquiring, holding, voting or disposing of equity securities of a bank, the group formed thereby shall be deemed to have acquired beneficial ownership, for purposes of sections 13(d) and 13(g)

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of the Act, as of the date of such agreement, of all equity securities of that bank beneficially owned by any such person.

(2) Notwithstanding the previous paragraph, a group shall be deemed not to have acquired any equity securities beneficially owned by the other members of the group solely by virtue of their concerted actions relating to the purchase of equity securities directly from a bank in a transaction not involving a public offering: *Provided*, That: (i) All the members of the group are persons specified in §335.401(b)(1)(ii);

(ii) The purchase is in the ordinary course of each member's business and not with the purpose nor with the effect of changing or influencing control of the bank, nor in connection with or as a participant in any transaction having such purpose or effect, including any transaction subject to §335.403(b);

(iii) There is no agreement among, or between any members of the group to act together with respect to the bank or its securities except for the purpose of facilitating the specific purpose involved; and

(iv) The only actions among or between any members of the group with respect to the bank or its securities subsequent to the closing date of the non-public offering are those which are necessary to conclude ministerial matters directly related to the completion of the offer or sale of the securities.

§335.406 Exemption of certain acquisitions.

The acquisition of securities of a bank by a person who, prior to such acquisition, was a beneficial owner of more than five percent of the outstanding securities of the same class as those acquired shall be exempt from section 13(d) of the Act: *Provided*, That:

(a) The acquisition is made pursuant to preemptive subscription rights in an offering made to all holders of securities of the class to which the preemptive subscription rights pertain;

(b) Such person does not acquire additional securities except through the exercise of the person's pro rata share of the preemptive subscription rights; and

(c) The acquisition is duly reported, if required, under section 16(a) of the Act and the rules and regulations thereunder.

§335.407 Acquisition statement to be filed under section 13(d) of the Securities Exchange Act of 1934 (Form F-11).

Federal Deposit Insurance Corporation
Washington, DC 20429

FORM F-11—ACQUISITION STATEMENT UNDER SECTION 13(d) OF THE SECURITIES EXCHANGE ACT OF 1934

(Amendment No. _____)

(Name and address of issuing bank)

(Title of class of securities)
(CUSIP Number) _____

(Name, address and telephone number of person authorized to receive notices and communications)

(Date of event which requires filing of this statement)

If the filing person has previously filed a statement on Form F-11A to report the acquisition which is the subject of this Form F-11, and is filing this form because of §335.401(b) (3) or (4), check the following box []

(Continuing on following pages)
Page 1 of _____ pages

NOTE: Three copies of this form including all exhibits, should be filed with the FDIC.

See §335.401(a) for other parties to whom copies are to be sent.

Special Instructions for Complying With Form F-11

Under sections 13(d) and 23 of the Securities Exchange Act of 1934 and the rules and regulations thereunder, the FDIC is authorized to solicit the information required to be supplied by this form by certain security holders of certain banks.

Disclosure of the information specified in this form is mandatory, except for Social Security or IRS identification numbers, disclosure of which is voluntary. The information will be used for the primary purpose of determining and disclosing the holdings of certain beneficial owners of certain equity securities. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the FDIC can utilize it for a variety

of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statements or provisions. Social Security or IRS identification numbers, if furnished, will assist the FDIC in identifying security holders and, therefore, in promptly processing statements of beneficial ownership of securities.

Failure to disclose the information requested by this form, except for Social Security or I.R.S. identification numbers, may result in civil or criminal action against the persons involved for violation of the Federal securities laws and rules promulgated thereunder.

General Instructions

A. The item numbers and captions of the items shall be included but the text of the items is to be omitted. The answers to the items shall be so prepared as to indicate clearly the coverage of the items without referring to the text of the items. Answer every item. If an item is inapplicable or the answer is in the negative, so state.

B. Information contained in exhibits to the statement may be incorporated by reference in answer or partial answer to any item or sub-item of the statement unless it would render an answer misleading, incomplete, unclear or confusing. Material incorporated by reference shall be clearly identified in the reference by page, paragraph, caption or otherwise. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement where the information is required. A copy of any information or a copy of pertinent pages of a document containing information which is incorporated by reference shall be submitted with this statement as an exhibit and shall be considered filed with the FDIC for purposes of the Act.

C. If the statement is filed by a general or limited partnership, syndicate, or other group, the information called for by items 2-6, inclusive, shall be given with respect to:

(i) Each partner of such general partnership; (ii) each partner who is denominated as a general partner or who functions as a general partner of such limited partnership; (iii) each member of such syndicate or group; and (iv) each person controlling such partner or member. If the statement is filed by a corporation or if a person referred to in paragraphs (i), (ii), (iii) or (iv) of this instruction is a corporation, the information called for by the above mentioned items shall be given with respect to (a) each executive officer and director of such corporation; (b) each person controlling such corporation; and (c) each executive officer and director of any corporation or other person ultimately in control of such corporation. Executive officer shall

mean the president, secretary, treasurer, and any vice president in charge of a principal business function (such as sales, administration or finance) and any other person who performs or has the power to perform similar policy making functions for the corporation.

Item 1—Security and Bank

State the title of the class of equity securities to which this statement relates and the name and address of the principal office of the bank.

Item 2—Identity and Background

If the person filing this statement or any person enumerated in Instruction C of this statement is a corporation, general partnership, limited partnership, syndicate or other group of persons, state its name, the state or other place of its organization, its principal business, the address of its principal office and the information required by (d) and (e) of this item. If the person filing this statement or any person enumerated in instruction C is a natural person, provide the information specified in (a) through (f) of this Item with respect to such person(s).

(a) Name;

(b) Residence or business address;

(c) Present principal occupation or employment and the name, principal business and address of any corporation or other organization in which such employment is conducted;

(d) Whether or not, during the last five years, such person has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) and, if so, give the dates, nature of conviction, name and location of court, any penalty imposed, or other disposition of the case;

(e) Whether or not, during the last five years, such person was a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, Federal or State securities laws or finding any violation with respect to such laws; and, if so, identify and describe such proceedings and summarize the terms of such judgment, decree or final order; and

(f) Citizenship.

Item 3—Source and Amount of Funds or Other Consideration

State the source and the amount of funds or other consideration used or to be used in making the purchases, and if any part of the purchase price is or will be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, trading or voting the securities, a description of the transaction and the

names of the parties thereto. Where material, such information should also be provided with respect to prior acquisitions not previously reported pursuant to this regulation. If the source of all or any part of the funds is a loan made in the ordinary course of business by a bank, as defined in section 3(a)(6) of the Act, the name of the bank shall not be made available to the public if the person at the time of filing the statement so requests in writing and files such request, naming such bank, with the FDIC. If the securities were acquired other than by purchase, describe the method of acquisition.

Item 4—Purpose of Transaction

State the purpose or purposes of the acquisition of securities of the bank. Describe any plans or proposals which the reporting persons may have which related or would result in:

(a) The acquisition by any person of additional securities of the bank, or the disposition of securities of the bank;

(b) An extraordinary corporate transaction, such as a merger, reorganization or liquidation, involving the bank or any of its subsidiaries;

(c) A sale or transfer of a material amount of assets of the bank or of any of its subsidiaries;

(d) Any change in the present board of directors or management of the bank, including any plans or proposals to change the number or term of directors or to fill any existing vacancies on the board;

(e) Any material change in the present capitalization or dividend policy of the bank;

(f) Any other material change in the bank's business or corporate structure;

(g) Changes in the bank's charter, bylaws or instruments corresponding thereto or other actions which may impede the acquisition of control of the bank by any person;

(h) Causing a class of securities of the bank to be delisted from a national securities exchange or to cease to be authorized to be quoted in an inter-dealer quotation system of a registered national securities association;

(i) A class of equity securities of the bank becoming eligible for termination of registration under section 12(g)(4) of the Act; or

(j) Any action similar to any of those enumerated above.

Item 5—Interest in Securities of the Bank

(a) State the aggregate number and percentage of the class of securities identified pursuant to item 1 (which may be based on the number of securities outstanding as contained in the most recently available filing with the FDIC by the bank unless the filing person has reason to believe such information is not current) beneficially owned (identifying those shares which there is a right to

acquire) by each person named in item 2. The above mentioned information should also be furnished with respect to persons who, together with any of the persons named in item 2, comprise a group within the meaning of section 13(d)(3) of the Act.

(b) For each person named in response to paragraph (a), indicate the number of shares as to which there is sole power to vote or to direct the vote, shared power to vote or to direct the vote, sole power to dispose or to direct the disposition, or shared power to dispose or to direct the disposition. Provide the applicable information required by item 2 with respect to each person with whom the power to vote or to direct the vote or to dispose or direct the disposition is shared.

(c) Describe any transactions in the class of securities reported on that were effected during the past sixty days or since the most recent filing on Form F-11, whichever is less, by the persons named in response to paragraph (a).

Instruction

The description of a transaction required by item 5(c) shall include, but not necessarily be limited to, (1) the identity of the person covered by item 5(c) who effected the transaction, (2) the date of the transaction, (3) the amount of securities involved, (4) the price per share or unit, and (5) where and how the transaction was effected.

(d) If any other person is known to have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, such securities, a statement to that effect should be included in response to this item and, if such interest relates to more than five percent of the class, such person should be identified. A listing of the shareholders of an investment company registered under the Investment Company Act of 1940 or the beneficiaries of an employee benefit plan, pension fund or endowment fund is not required.

(e) If applicable, state the date on which the reporting person ceased to be the beneficial owner of more than five percent of the class of securities.

Instruction

For computations regarding securities which represent a right to acquire an underlying security, see § 335.403(d)(1).

Item 6—Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Bank

Describe any contracts, arrangements, understandings or relationships (legal or otherwise) among the persons named in item 2 and between such persons and any person with respect to any securities of the bank, including but not limited to transfer or voting of

any of the securities, finder's fees, joint ventures, loan or option arrangements, puts or calls, guarantees of profits, division of profits or losses, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, understandings or relationships have been entered into. Include such information for any of the securities that are pledged or otherwise subject to a contingency the occurrence of which would give another person voting power or investment power over such securities except that disclosure of standard default and similar provisions contained in loan agreements need not be included.

Item 7—Material to be Filed as Exhibits

The following shall be filed as exhibits: Copies of written agreements relating to the filing of joint acquisition statements as required by §335.401(e) and copies of all written agreements, contracts, arrangements, understandings, plans, or proposals relating to: (1) The borrowing of funds to finance the acquisition as disclosed in item 3; (2) the acquisition of bank control, liquidation, sale of assets, merger, or change in business or corporate structure, or any other matter as disclosed in item 4; and (3) the transfer or voting of the securities, finder's fees, joint ventures, options, puts, calls, guarantees of loans, guarantees against loss or of profit, or the giving or withholding of any proxy as disclosed in item 6.

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete, and correct.

Date-----
Signature-----
Name/Title-----

The original statement shall be signed by each person on whose behalf the statement is filed or his authorized representative. If the statement is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the filing person), evidence of the representative's authority to sign on behalf of such person shall be filed with the statement, provided, however, that a power of attorney for this purpose which is already on file with the FDIC may be incorporated by reference. The name and any title of each person who signs the statement shall be typed or printed beneath the person's signature.

Attention: Intentional misstatements or omissions of fact constitute Federal criminal violations (See 18 U.S.C. 1001).

[46 FR 25208, May 5, 1981, as amended at 54 FR 53592, Dec. 29, 1989]

§335.408 Short form acquisition/ownership statement to be filed under section 13(d) or section 13(g) of the Securities Exchange Act of 1934 (Form F-11A).

Federal Deposit Insurance Corporation
Washington, DC 20429

FORM F-11A—SHORT FORM ACQUISITION/OWNERSHIP STATEMENT UNDER SECTION 13 (d) OR (g) OF THE SECURITIES EXCHANGE ACT OF 1934

(Amendment No. -----)

(Name and address of issuing bank)

(Title of class of securities)

(CUSIP Number) -----

(Continued on following pages)

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Under sections 13(d), 13(g) and 23 of the Securities Exchange Act of 1934 and the rules and regulations thereunder, the FDIC is authorized to solicit the information required to be supplied by this schedule by certain security holders of certain banks.

Disclosure of the information specified in this schedule is mandatory, except for Social Security or IRS identification numbers, disclosure of which is voluntary. The information will be used for the primary purpose of determining and disclosing the holdings of certain beneficial owners of certain equity securities. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the FDIC can utilize it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statutes or provisions. Social Security or IRS identification numbers, if furnished, will assist the FDIC in identifying security holders and, therefore, in promptly processing statements of beneficial ownership of securities.

Failure to disclose the information requested by this schedule, except for Social Security or IRS identification numbers, may result in civil or criminal action against the persons involved for violation of the Federal securities laws and rules promulgated thereunder.

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General Instructions

A. Statements containing the information required by this form shall be filed not later than February 14 following the calendar year covered by the statement or within the time specified in §335.401(b)(2), if applicable.

B. Information contained in a form which is required to be filed by the Securities and Exchange Commission's rules under section 13(f) of the Act (15 U.S.C. 78m(f)) for the same calendar year as that covered by a statement on this form may be incorporated by reference in response to any of the items of this form. If such information is incorporated by reference in this form, copies of the relevant pages of such form shall be filed as an exhibit to this form.

C. The item numbers and captions of the items shall be included but the text of the items is to be omitted. The answers to the items shall be so prepared as to indicate clearly the coverage of the items without referring to the text of the items. Answer every item. If an item is inapplicable or the answer is in the negative, so state.

Item 1(a)—Name of the Bank Issuer:

Item 1(b)—Address of Bank's Principal Executive Offices:

Item 2(a)—Name of Person Filing:

Item 2(b)—Address of Principal Business Office, or if None, Residence:

Item 2(c)—Citizenship:

Item 2(d)—Title of Class of Securities:

Item 2(e)—CUSIP Number:

Item 3—If this statement is filed under §335.401(b), or §335.402(b), check whether the person filing is a:

- (a) [] Broker or Dealer registered under section 15 of the Act
(b) [] Bank as defined in section 3(a)(6) of the Act
(c) [] Insurance Company as defined in section 3(a)(19) of the Act
(d) [] Investment Company registered under section 8 of the Investment Company Act
(e) [] Investment Adviser registered under section 203 of the Investment Advisers Act of 1940
(f) [] Employee Benefit Plan, Pension Fund which is subject to the provisions of the Employee Retirement Income Security Act of 1974 or Endowment Fund; see §335.401(b)(1)(ii)(F).

(g) [] Parent Holding Company, in accordance with §335.401(b)(1)(ii)(G). (Note: See item 7)

(h) [] Group, in accordance with §335.401(b)(1)(ii)(H).

Item 4—Ownership.

If the percent of the class owned, as of December 31 of the year covered by the statement, or as of the last day of any month described in §335.401(b)(2), if applicable, exceeds five percent, provide the following information as of that date and identify those shares which there is a right to acquire.

(a) Amount Beneficially Owned:

(b) Percent of Class:

(c) Number of shares as to which such person has:

- (i) sole power to vote or to direct the vote....
(ii) shared power to vote or to direct the vote....
(iii) sole power to dispose or to direct the disposition of...
(iv) shared power to dispose or to direct the disposition of...

Instruction: For computations regarding securities which represent a right to acquire an underlying security see §335.403(d)(1).

Item 5—Ownership of Five Percent or Less of a Class.

If this statement is being filed to report the fact that as of the date hereof the reporting person has ceased to be the beneficial owner of more than five percent of the class of securities, check the following [].

Instruction: Dissolution of a group requires a response to this item.

Item 6—Ownership of More Than Five Percent on Behalf of Another Person.

If any other person is known to have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, such securities, a statement of that effect should be included in response to this item and, if such interest relates to more than five percent of the class, such person should be identified. A listing of the shareholders of an investment company registered under the Investment Company Act of 1940 or the beneficiaries of an employee benefit plan, pension fund or endowment fund is not required.

Item 7—Identification and Classification of the Subsidiary Which Acquired the Security Being Reported on by the Parent Holding Company.

If a parent holding company has filed this schedule, under §335.401(b)(1)(ii)(G) so indicate under item 3(g) and attach an exhibit

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stating the identity and the item 3 classification of the relevant subsidiary. If a parent holding company has filed this schedule under § 335.401(c) attach an exhibit stating the identification of the relevant subsidiary.

Item 8—Identification and Classification of Members of the Group.

If a group has filed this schedule, under § 335.401(b)(1)(ii)(H), so indicate under item 3(h) and attach an exhibit stating the identity and item 3 classification of each member of the group. If a group has filed this schedule under § 335.401(c) attach an exhibit stating the identity of each member of the group.

Item 9—Notice of Dissolution of Group.

Notice of dissolution of a group may be furnished as an exhibit stating the date of the dissolution and that all further filings with respect to transactions in the security reported on will be filed, if required, by members of the group, in their individual capacity. See item 5.

Item 10—Certification.

The following certification shall be included if the statement is filed under § 335.401(b).

By signing below I certify that, to the best of my knowledge and belief, the securities referred to above were acquired in the ordinary course of business and were not acquired for the purpose of and do not have the effect of changing or influencing the control of the issuer of such securities and were not acquired in connection with or as a participant in any transactions having such purpose or effect.

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete, and correct.

Date

Signature

Name/Title

The original statement shall be signed by each person on whose behalf the statement is filed or the person's authorized representative. If the statement is signed on behalf of a person by the person's authorized representative (other than an executive officer or general partner of the filing person), evidence of the representative's authority to sign on behalf of such person shall be filed with the statement, *Provided, however*, That a power of attorney for this purpose which is already on file with the FDIC may be incorporated by reference. The name and any title

of each person who signs the statement shall be typed or printed beneath the person's signature.

NOTE: Three copies of this statement, including all exhibits, should be filed with the FDIC.

Attention: Intentional misstatements or omissions of fact constitute Federal criminal violations (See 18 U.S.C. 1001).

[46 FR 25208, May 5, 1981, as amended at 54 FR 53592, Dec. 29, 1989]

§ 335.409 Going private transactions by a bank or its affiliates.

A bank or its affiliates (as defined in 17 CFR 240.13e-3) shall not engage in a Rule 13e-3 transaction (as defined in 17 CFR 240.13e-3) unless it meets the requirements of 17 CFR 240.13e-3, except that all filings shall be made with the FDIC and be titled with the name of the FDIC instead of the Securities and Exchange Commission.

[54 FR 53592, Dec. 29, 1989]

§ 335.410 Requirements of section 16 of the Act.

Persons subject to section 16 of the Act with respect to securities registered under part 335 shall follow the applicable and currently effective SEC regulations issued under section 16 of the Act (17 CFR 240.16a-1 through 240.16e-1), except that:

(a) The forms required by §§ 335.420 (Form F-7), 335.421 (Form F-8), and 335.422 (Form F-8A) of this part 335 shall be used in lieu of SEC Form 3, Form 4, or Form 5; and

(b) Any SEC regulations specified in § 335.411, as superseded by the FDIC, shall not be followed and any other rules adopted and published in § 335.411 in lieu of those superseded regulations shall be followed.

[57 FR 4702, Feb. 7, 1992]

§ 335.411 Superseded SEC regulations and FDIC substituted regulations.

The following is a list of SEC regulations superseded by the FDIC: None.

[57 FR 4702, Feb. 7, 1992]

§ 335.420 Initial statement of beneficial ownership of securities (Form F-7).

(a) This form shall be filed in lieu of SEC Form 3 pursuant to SEC rule 16a-

3 (17 CFR 240.16a-3) for initial statements of beneficial ownership of securities. The FDIC is authorized to solicit the information required by this form pursuant to sections 16(a) and 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78p and 78w) and the rules and regulations thereunder. (SEC rules referenced in this form appear at 17 CFR 240.16a-1 through 240.16e-1.)

(b) Disclosure of information specified on this form is mandatory, except for disclosure of IRS (Tax Identification) or Social Security Numbers of the reporting person, which is voluntary. If such numbers are furnished, they will assist the FDIC in distinguishing reporting persons with similar names and will facilitate the prompt processing of the form. The information will be used for the primary purpose of disclosing the holdings of directors, officers and beneficial owners of registered companies. Information disclosed will be a matter of public record and available for inspection by members of the public. The FDIC can use the information in investigations or litigation involving the Federal securities laws or other civil, criminal, or regulatory statutes or provisions, as well as for referral to other governmental authorities and self-regulatory organizations. Failure to disclose required information may result in civil or criminal action against persons involved for violations of the Federal securities laws and rules.

(c) Copies of this form and the instructions thereto can be obtained from the Registration and Disclosure Section, Division of Supervision, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

[57 FR 4703, Feb. 7, 1992]

§ 335.421 Statement of changes in beneficial ownership of securities (Form F-8).

(a) This form shall be filed pursuant to SEC rule 16a-3 (17 CFR 240.16a-3) for statements of changes in beneficial ownership of securities. The FDIC is authorized to solicit the information required by this form pursuant to sections 16(a) and 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78p and 78w) and the rules and regulations thereunder. (SEC rules referenced in

this form appear at 17 CFR 240.16a-1 through 16e-1).

(b) Disclosure of information specified on this form is mandatory, except for disclosure of IRS (Tax Identification) or Social Security numbers of the reporting person, which is voluntary. If such numbers are furnished, they will assist the FDIC in distinguishing reporting persons with similar names and will facilitate the prompt processing of the form. The information will be used for the primary purpose of disclosing the transactions and holdings of directors, officers and beneficial owners of registered companies. Information disclosed will be a matter of public record and available for inspection by members of the public. The FDIC can use the information in investigations or litigation involving the federal securities laws or other civil, criminal, or regulatory statutes or provisions, as well as for referral to other governmental authorities and self-regulatory organizations. Failure to disclose required information may result in civil or criminal action against persons involved for violations of the federal securities laws and rules.

(c) Copies of this form and the instructions thereto can be obtained from the Registration and Disclosure Section, Division of Supervision, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington DC 20429.

[57 FR 4703, Feb. 7, 1992]

§ 335.422 Annual statement of beneficial ownership of securities (Form F-8A).

(a) This form shall be filed pursuant to SEC rule 16a-3 (17 CFR 240.16a-3) for annual statements of beneficial ownership of securities. The FDIC is authorized to solicit the information required by this form pursuant to sections 16(a) and 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78p and 78w), and the rules and regulations thereunder. (SEC rules referenced in this form appear at 17 CFR 16a-1 through 16e-1.)

(b) Disclosure of information specified on this form is mandatory, except for disclosure of IRS (Tax Identification) or Social Security numbers of the reporting person, which is voluntary. If such numbers are furnished, they will

assist the FDIC in distinguishing reporting persons with similar names and will facilitate the prompt processing of the form. The information will be used for the primary purpose of disclosing the transactions and holdings of officers, directors and beneficial owners of registered companies. Information disclosed will be a matter of public record and available for inspection by members of the public. The FDIC can use the information in investigations or litigation involving the federal securities laws or other civil, criminal, or regulatory statutes or provisions, as well as for referral to other governmental authorities and self-regulatory organizations. Failure to disclose required information may result in civil or criminal action against persons involved for violations of the federal securities laws and rules.

(c) Copies of this form and the instructions thereto can be obtained from the Registration and Disclosure Section, Division of Supervision, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

[57 FR 4703, Feb. 7, 1992]

Subpart E—Tender Offers

§ 335.501 Scope and definitions applicable to subpart E (the “tender offer regulations”).

(a) *Scope.* Subpart E (the *tender offer regulations*) shall apply to any tender offer which is subject to section 14(d)(1) of the Act, including, but not limited to, any tender offer for securities of a class described in that section which is made by an affiliate of the bank issuer of such class.

(b) *Definitions.* Unless the context otherwise requires, all terms used in the tender offer regulations have the same meaning as in the Act and in § 335.102. In addition, for purposes of section 14(d) of the Act and the tender offer regulations, the following definitions apply:

(1) The term *bidder* means any person who makes a tender offer or on whose behalf a tender offer is made: *Provided, however,* That the term does not include a bank which makes a tender offer for securities of any class of which it is the issuer.

(2) The term *subject bank* means any issuer of securities which are sought by a bidder pursuant to a tender offer.

(3) The term *security holders* means holders of record and beneficial owners of securities which are the subject of a tender offer.

(4) The term *beneficial owner* shall have the same meaning as that set forth in § 335.403: *Provided, however,* That, except with respect to §§ 335.503 and 335.509(d) and item 6 of Form F-13, the term shall not include a person who does not have or share investment power or who is deemed to be a beneficial owner by virtue of § 335.403(d)(1).

(5) The term *tender offer material* means:

(i) The bidder’s formal offer, including all the material terms and conditions of the tender offer and all amendments thereto;

(ii) The related transmittal letter (whereby securities of the subject bank which are sought in the tender offer may be transmitted to the bidder or its depository) and all amendments thereto; and

(iii) Press releases, advertisements, letters and other documents published by the bidder or sent or given by the bidder to security holders which, directly or indirectly, solicit, invite or request tenders of the securities being sought in the tender offer.

(6) The term *executive officer* means the president, secretary, treasurer, any vice president in charge of a principal business function (such as sales, administration or finance) or any other person who performs similar policy making functions for a corporation.

(7) The term *business day* means any day, other than Saturday, Sunday or a Federal holiday, and shall consist of the time period from 12:01 a.m. through 12:00 midnight Eastern time. In computing any time period under section 14(d)(5) or section 14(d)(6) of the Act or under these tender offer regulations the date of the event which begins the running of such time period shall be included *except that* if such event occurs on other than a business day such period shall begin to run on and shall include the first business day thereafter.

(8) The term *security position listing* means, with respect to securities of any issuer held by a registered clearing

agency in the name of the clearing agency or its nominee, a list of those participants in the clearing agency on whose behalf the clearing agency holds the issuer's securities and of the participants' respective positions in such securities as of a specified date.

§335.502 Date of commencement of a tender offer.

(a) *Commencement.* A tender offer shall commence for the purposes of section 14(d) of the Act and the rules promulgated thereunder at 12:01 a.m. on the date when the first of the following events occurs:

(1) The long form publication of the tender offer is first published by the bidder under §335.504(a)(1);

(2) The summary advertisement of the tender offer is first published by the bidder under §335.504(a)(2);

(3) The summary advertisement or the long form publication of the tender offer is first published by the bidder under §335.504(a)(3);

(4) Definitive copies of a tender offer, in which the consideration offered by the bidder consists of securities registered under the Securities Act of 1933 (15 U.S.C. 77), are first published or sent or given by the bidder to security holders; or

(5) The tender offer is first published or sent or given to security holders by the bidder by any means not otherwise referred to in paragraphs (a) (1) through (4) of this section.

(b) *Public announcement.* A public announcement by a bidder through a press release, newspaper advertisement or public statement which includes the information in paragraph (c) of this section with respect to a tender offer in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933 (15 U.S.C. 77) shall be deemed to constitute the commencement of a tender offer under paragraph (a)(5) of this section *except that* such tender offer shall not be deemed to be first published or sent or given to security holders by the bidder under paragraph (a)(5) of this section on the date of such public announcement if within five business days of such public announcement, the bidder either:

(1) Makes a subsequent public announcement stating that the bidder has determined not to continue with such tender offer, in which event paragraph (a)(5) of this section shall not apply to the initial public announcement; or

(2) Complies with §335.503(a) and contemporaneously disseminates the disclosure required by §335.506 to security holders under §335.504 or otherwise in which event:

(i) The date of commencement of such tender offer under paragraph (a) of this section will be determined by the date on which information required by §335.506 is first published or sent or given to security holders under §335.504 or otherwise; and

(ii) Notwithstanding the preceding paragraph, section 14(d)(7) of the Act shall be deemed to apply to such tender offer from the date of such public announcement.

(c) *Information.* The information referred to in paragraph (b) of this section is as follows:

(1) The identity of the bidder;

(2) The identity of the subject bank; and

(3) The amount and class of securities being sought and the price or range of prices being offered therefor.

(d) *Announcements not resulting in commencement.* A public announcement by a bidder through a press release, newspaper advertisement or public statement which only discloses the information in paragraphs (d) (1) through (3) of this section concerning a tender offer in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933 (15 U.S.C. 77) shall not be deemed to constitute the commencement of a tender offer under paragraph (a)(5) of this section.

(1) The identity of the bidder;

(2) The identity of the subject bank; and

(3) A statement that the bidder intends to make a tender offer in the future for a class of equity securities of the subject bank which statement does not specify the amount of securities of such class to be sought or the consideration to be offered therefor.

(e) *Announcement made under SEC Rule 135.* A public announcement by a

bidder through a press release, newspaper advertisement or public statement which discloses only the information in SEC Rule 135(a)(4) (17 CFR 230.135(a)(4)) concerning a tender offer in which the consideration consists solely or in part of securities to be registered under the Securities Act of 1933 (15 U.S.C. 77) shall not be deemed to constitute the commencement of a tender offer under paragraph (a)(5) of this section: *Provided* That such bidder files a registration statement with the SEC concerning the securities promptly after the public announcement.

§ 335.503 Filing and transmission of tender offer statement.

(a) *Filing and transmittal.* No bidder shall make a tender offer if, after consummation thereof, such bidder would be the beneficial owner of more than 5 percent of the class of the subject bank's securities for which the tender offer is made, unless as soon as practicable on the date of the commencement of the tender offer the bidder:

(1) Files with the FDIC three copies of a Tender Offer Statement on Form F-13 (§335.512), including all exhibits thereto;

(2) Hand delivers a copy of such Form F-13, including all exhibits thereto:

(i) To the subject bank at its principal executive office; and

(ii) To any other bidder, which has filed a Form F-13 with the FDIC relating to a tender offer which has not yet terminated for the same class of securities of the subject bank, at such bidder's principal executive office or at the address of the person authorized to receive notices and communications (which is disclosed on the cover sheet of such other bidder's Form F-13);

(3) Gives telephonic notice of the information required by §335.506(e)(2) (i) and (ii) and mails by means of first class mail a copy of such Form F-13, including all exhibits thereto:

(i) To each national securities exchange where such class of the subject bank's securities is registered and listed for trading (which may be based upon information contained in the subject bank's most recent Annual Report on Form F-2 (§335.312) filed with the FDIC unless the bidder has reason to believe that such information is not

current) which telephonic notice shall be made when practicable prior to the opening of such exchange; and

(ii) To the National Association of Securities Dealers, Inc. (NASD) if such class of the subject bank's securities is authorized for quotation in the NASDAQ interdealer quotation system.

(b) *Additional materials.* The bidder shall file with the FDIC three copies of any additional tender offer materials as an exhibit to the Form F-13 required by this section, and if a material change occurs in the information set forth in such Form F-13, six copies of an amendment to Form F-13 (each of which shall include all exhibits other than those required by item 11(a) of Form F-13) disclosing such change and shall send a copy of such additional tender offer material or such amendment to the subject bank and to any exchange and/or the NASD, as required by paragraph (a) of this section, promptly but not later than the date such additional tender offer material or such change is first published, sent or given to security holders.

(c) *Certain announcements.* Notwithstanding paragraph (b) of this section, if the additional tender offer material or an amendment to Form F-13 discloses only the number of shares deposited to date, and/or announces an extension of the time during which shares may be tendered, then the bidder may file such tender offer material or amendment and send a copy of such tender offer material or amendment to the subject bank, any exchange and/or the NASD, as required by paragraph (a) of this section, promptly after the date such tender offer material is first published or sent or given to security holders.

[46 FR 25208, May 5, 1981, as amended at 54 FR 53592, Dec. 29, 1989]

§ 335.504 Dissemination of certain tender offers.

(a) *Materials deemed published or sent or given.* A tender offer in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933 (15 U.S.C. 77) shall be deemed "published or sent or given to security holders" within the meaning

of section 14(d)(1) of the act if the bidder complies with all of the requirements of any one of the following subparagraphs: *Provided, however,* That any such tender offers may be published or sent or given to security holders by other methods, but with respect to summary publication, and the use of stockholder lists and security position listings under §335.505, only paragraphs (a) (2) and (3) of this section can be followed.

(1) *Long-form publication.* The bidder makes adequate publication in a newspaper or newspapers of long-form publication of the tender offer.

(2) *Summary publication.* (i) The bidder makes adequate publication in a newspaper or newspapers of a summary advertisement of the tender offer; and

(ii) Mails by first-class mail or otherwise furnishes with reasonable promptness the bidder's tender offer materials to any security holder who requests such tender offer materials in response to the summary advertisement or otherwise.

(3) *Use of stockholder lists and security position listings.* Any bidder using stockholder lists and security position listings under §335.505 shall comply with paragraph (a)(1) or (2) of this section on or prior to the date of the bidder's request for such lists or listing under §335.505(a).

(b) *Adequate publication.* Depending on the facts and circumstances involved, adequate publication of a tender offer under this section may require publication in a newspaper with a national circulation or may only require publication in a newspaper with metropolitan or regional circulation or may require publication in a combination thereof: *Provided, however,* That publication in all editions of a daily newspaper with a national circulation shall be deemed to constitute adequate publication.

(c) *Publication of changes.* If a tender offer has been published or sent or given to security holders by one or more of the methods enumerated in paragraph (a) of this section, a material change in the information published, sent or given to security holders shall be promptly disseminated to security holders in a manner reasonably designed to inform security holders of

such change: *Provided, however,* That if the bidder has elected under §335.505(f)(1) to require the subject bank to disseminate amendments disclosing material changes to the tender offer materials under §335.505 the bidder shall disseminate material changes in the information published or sent or given to security holders at least pursuant to §335.505.

§ 335.505 Dissemination of certain tender offers by the use of stockholder lists and security position listings.

(a) *Obligations of the subject bank.* Upon receipt by a subject bank at its principal executive offices of a bidder's written request, meeting the requirements of paragraph (e) of this section, the subject bank shall comply with the following paragraphs.

(1) The subject bank shall notify promptly transfer agents and any other persons who will assist the subject bank in complying with the requirements of this section of the receipt by the subject bank of a request by a bidder under this section.

(2) The subject bank shall promptly ascertain whether the most recently prepared stockholder list, written or otherwise, within the access of the subject bank was prepared as of a date earlier than ten business days before the date of the bidder's request and, if so, the subject bank shall promptly prepare or cause to be prepared a stockholder list as of the most recent practicable date which shall not be more than ten business days before the date of the bidder's request.

(3) The subject bank shall make an election to comply and shall comply with all of the provisions of either paragraph (b) or (c) of this section. The subject bank's election once made shall not be modified or revoked during the bidder's tender offer and extensions thereof.

(4) No later than the second business day after the date of the bidder's request, the subject bank shall orally notify the bidder, which notification shall be confirmed in writing, of the subject bank's election made under paragraph (a)(3) of this section. Such notification shall indicate (i) the approximate number of security holders of the class of securities being sought by the bidder,

and (ii) if the subject bank elects to comply with paragraph (b) of this section, appropriate information concerning the location for delivery of the bidder's tender offer materials and the approximate direct costs incidental to the mailing to security holders of the bidder's tender offer materials computed in accordance with paragraph (g)(2) of this section.

(b) *Mailing of tender offer materials by the subject bank.* A subject bank which elects under paragraph (a)(3) of this section to comply with the provisions of this paragraph shall perform the acts prescribed by the following subparagraphs.

(1) The subject bank shall promptly contact each participant named on the most recent security position listing of any clearing agency within the access of the subject bank and make inquiry of each participant as to the approximate number of beneficial owners of the subject bank securities being sought in the tender offer held by each such participant.

(2) No later than the third business day after delivery of the bidder's tender offer materials under paragraph (g)(1) of this section, the subject bank shall begin to mail or cause to be mailed by means of first class mail a copy of the bidder's tender offer materials to each person whose name appears as a record holder of the class of securities for which the offer is made on the most recent stockholder list referred to in paragraph (a)(2) of this section. The subject bank shall use its best efforts to complete the mailing in a timely manner but in no event shall such mailing be completed in a substantially greater period of time than the subject bank would complete a mailing to security holders of its own materials relating to the tender offer.

(3) No later than the third business day after the delivery of the bidder's tender offer materials under paragraph (g)(1) of this section, the subject bank shall begin to transmit or cause to be transmitted a sufficient number of sets of the bidder's tender offer materials to the participants named on the security position listings described in paragraph (b)(1) of this section. The subject bank shall use its best efforts to complete the transmittal in a timely manner but

in no event shall such transmittal be completed in a substantially greater period of time than the subject bank would complete a transmittal to such participants using security position listings of clearing agencies of its own material relating to the tender offer.

(4) The subject bank shall promptly give oral notification to the bidder, which notification shall be confirmed in writing, of the commencement of the mailing under paragraph (b)(2) of this section and of the transmittal under paragraph (b)(3) of this section.

(5) During the tender offer and any extension thereof the subject bank shall use reasonable efforts to update the stockholder list and shall mail or cause to be mailed promptly following each update a copy of the bidder's tender offer materials (to the extent sufficient sets of such materials have been furnished by the bidder) to each person who has become a record holder since the later of (i) the date of preparation of the most recent stockholder list referred to in paragraph (a)(2) or (a)(2)(ii) of this section the last preceding update.

(6) If the bidder has elected under paragraph (f)(1) of this section to require the subject bank to disseminate amendment disclosing material changes to the tender offer materials under this section, the subject bank promptly following delivery of each such amendment, shall mail or cause to be mailed a copy of each such amendment to each record holder whose name appears on the shareholder list described in paragraphs (a)(2) and (b)(5) of this section and shall transmit or cause to be transmitted sufficient copies of such amendment to each participant named on security position listings who received sets of the bidder's tender offer materials under paragraph (b)(3) of this section.

(7) The subject bank shall not include any communication other than the bidder's tender offer materials or amendments thereto in the envelopes or other containers furnished by the bidder.

(8) Promptly following the termination of the tender offer, the subject bank shall reimburse the bidder the excess, if any, of the amounts advanced under paragraph (f)(3)(iii) of this section over the direct costs incidental to

compliance by the subject bank and its agents in performing the acts required by this section computed in accordance with paragraph (g)(2) of this section.

(c) *Delivery of stockholder lists and security position listings.* A subject bank which elects under paragraph (a)(3) of this section to comply with the provisions of this paragraph shall perform the acts prescribed by the following subparagraphs.

(1) No later than the third business day after the date of the bidder's request, the subject bank shall furnish to the bidder at the subject bank's principal executive office a copy of the names and addresses of the record holders on the most recent stockholder list referred to in paragraph (a)(2) of this section and a copy of the names and addresses of participants identified on the most recent security position listing of any clearing agency which is within the access of the subject bank.

(2) If the bidder has elected under paragraph (f)(1) of this section to require the subject bank to disseminate amendments disclosing material changes to the tender offer materials, the subject bank shall update the stockholder list by furnishing the bidder with the name and address of each record holder named on the stockholder list, and not previously furnished to the bidder, promptly after such information becomes available to the subject bank during the tender offer and any extensions thereof.

(d) *Liability of subject bank and others.* Neither the subject bank nor any affiliate or agent of the subject bank nor any clearing agency shall be:

(1) Deemed to have made a solicitation or recommendation respecting the tender offer within the meaning of section 14(d)(4) of the Act based solely upon the compliance or noncompliance by the subject bank or any affiliate or agent of the subject bank with one or more requirements of this section;

(2) Liable under any provision of the Federal securities laws to the bidder or to any security holder based solely upon the inaccuracy of the current names or addresses on the stockholder list or security position listing, unless such inaccuracy results from a lack of reasonable care on the part of the sub-

ject bank or any affiliate or agent of the subject bank;

(3) Deemed to be an "underwriter" within the meaning of section (2)(11) of the Securities Act of 1933 (15 U.S.C. 77) for any purpose of that Act or any rule or regulation issued thereunder based solely upon the compliance or noncompliance by the subject bank or any affiliate or agent of the subject bank with one or more of the requirements of this section; or

(4) Liable under any provision of the Federal securities laws for the disclosure in the bidder's tender offer materials, including any amendment thereto, based solely upon the compliance or noncompliance by the subject bank or any affiliate or agent of the subject bank with one or more of the requirements of this section.

(e) *Content of the bidder's request.* The bidder's written request referred to in paragraph (a) of this section shall include the following:

(1) The identity of the bidder;

(2) The title of the class of securities which is the subject of the bidder's tender offer;

(3) A statement that the bidder is making a request to the subject bank under paragraph (a) of this section for the use of the stockholder list and security position listings for the purpose of disseminating a tender offer to security holders;

(4) A statement that the bidder is aware of and will comply with the provisions of paragraph (f) of this section;

(5) A statement as to whether or not it has elected under paragraph (f)(1) of this section to disseminate amendments disclosing material changes to the tender offer material under this section; and

(6) The name, address and telephone number of the person whom the subject bank shall contact under paragraph (a)(4) of this section.

(f) *Obligations of the bidder.* Any bidder who requests that a subject bank comply with the provisions of paragraph (a) of this section shall comply with the following subparagraphs.

(1) The bidder shall make an election whether or not to require the subject bank to disseminate amendments disclosing material changes to the tender offer materials under this section,

which election shall be included in the request referred to in paragraph (a) of this section and shall not be revocable by the bidder during the tender offer and extensions thereof.

(2) With respect to a tender offer subject to section 14(d)(1) of the Act in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933 (15 U.S.C. 77), the bidder shall comply with § 335.504(a)(3).

(3) If the subject bank elects to comply with paragraph (b) of this section,

(i) The bidder shall promptly deliver the tender offer materials after receipt of the notification from the subject bank as provided in paragraph (a)(4) of this section;

(ii) The bidder shall promptly notify the subject bank of any amendment to the bidder's tender offer materials requiring compliance by the subject bank with paragraph (b)(6) of this section and shall promptly deliver such amendment to the subject bank under paragraph (g)(1) of this section;

(iii) The bidder shall advance to the subject bank an amount equal to the approximate cost of conducting mailings to security holders computed in accordance with paragraph (g)(2) of this section;

(iv) The bidder shall promptly reimburse the subject bank for the direct costs incidental to compliance by the subject bank and its agents in performing the acts required by this section computed in accordance with paragraph (g)(2) of this section which are in excess of the amount advanced under paragraph (f)(2)(iii) of this section; and

(v) The bidder shall mail by means of first class mail or otherwise furnish with reasonable promptness the tender offer materials to any security holder who requests such materials.

(4) If the subject bank elects to comply with paragraph (c) of this section,

(i) The subject bank shall use the stockholder list and security position listings furnished to the bidder under paragraph (c) of this section exclusively in the dissemination of tender offer materials to security holders in connection with the bidder's tender offer and extensions thereof;

(ii) The bidder shall return the stockholder lists and security position list-

ings furnished to the bidder under paragraph (c) of this section promptly after the termination of the bidder's tender offer;

(iii) The bidder shall accept, handle and return the stockholder lists and security position listings furnished to the bidder under paragraph (c) of this section to the subject bank on a confidential basis;

(iv) The bidder shall not retain any stockholder list or security position listing furnished by the subject bank under paragraph (c) of this section, or any copy thereof, nor retain any information derived from any such list or listing or copy thereof after the termination of the bidder's tender offer;

(v) The bidder shall mail by means of first class mail, at its own expense, a copy of its tender offer materials to each person whose identity appears on the stockholder list as furnished and updated by the subject bank under paragraphs (c) (1) and (2) of this section;

(vi) The bidder shall contact the participants named on the security position listing of any clearing agency, make inquiry of each participant as to the approximate number of sets of tender offer materials required by each participant, and furnish, at its own expense, sufficient sets of tender offer materials and any amendment thereto to each participant for subsequent transmission to the beneficial owners of the securities being sought by the bidder;

(vii) The bidder shall mail by means of first class mail or otherwise furnish with reasonable promptness the tender offer materials to any security holder who requests such materials; and

(viii) The bidder shall promptly reimburse the subject bank for direct costs incidental to compliance by the subject bank and its agents in performing the acts required by this section computed in accordance with paragraph (g)(2) of this section.

(g) *Delivery of materials, computation of direct costs.* (1) Whenever the bidder is required to deliver tender offer materials or amendments to tender offer materials, the bidder shall deliver to the subject bank at the location specified by the subject bank in its notice

given under paragraph (a)(4) of this section a number of sets of the materials or of the amendment, as the case may be, at least equal to the approximate number of security holders specified by the subject bank in such notice, together with appropriate envelopes or other containers therefor: *Provided, however,* That delivery shall be deemed not to have been made unless the bidder has complied with paragraph (f)(3)(iii) of this section at the time the materials or amendments, as the case may be, are delivered.

(2) The approximate direct cost of mailing the bidder's tender offer materials shall be computed by adding—

(i) The direct cost incidental to the mailing of the subject bank's last annual report to shareholders (excluding employees' time), less the costs of preparation and printing of the report, and postage, plus

(ii) The amount of first class postage required to mail the bidder's tender offer materials. The approximate direct costs incidental to the mailing of the amendments to the bidder's tender offer materials shall be computed by adding

(iii) The estimated direct costs of preparing mailing labels, of updating shareholders lists and of third parity handling charges plus

(iv) The amount of first class postage required to mail the bidder's amendment.

Direct costs incidental to the mailing of the bidder's tender offer materials and amendments thereto when finally computed may include all reasonable charges paid by the subject bank to third parties for supplies or services, including costs attendant to preparing shareholder lists, mailing labels, handling the bidder's materials, contacting participants named on security position listings, and for postage, but shall exclude indirect costs, such as employee time which is devoted to either contesting or supporting the tender offer on behalf of the subject bank. The final billing for direct costs shall be accompanied by an appropriate accounting in reasonable detail.

§ 335.506 Disclosure requirements with respect to tender offers.

(a) *Information required on date of commencement—(1) Long-form publication.* If a tender offer is published, sent or given to security holders on the date of commencement by means of long-term publication under § 335.504(a)(1), such long-form publication shall include the information required by § 335.505(e)(1).

(2) *Summary publication.* If a tender offer is published, sent or given to security holders on the date of commencement by means of summary publication under.

(i) The summary advertisement shall contain and shall be limited to, the information required by paragraph (e)(2) of this section; and

(ii) The tender offer materials furnished by the bidder upon the request of any security holder shall include the information required by paragraph (e)(1) of this section.

(3) *Use of stockholder lists and security position listing.* If a tender offer is published or sent or given to security holders on the date of commencement by the use of stockholder lists and security position listings under § 335.504(a)(3).

(i) Either (A) the summary advertisement shall contain, and shall be limited to the information required by paragraph (e)(2) of this section, or (B) if long-form publication of the tender offer is made, such long-form publication shall include the information required by paragraph (e)(1) of this section; and

(ii) The tender offer materials transmitted to security holders by use of such lists and security position listings and furnished by the bidder upon the request of any security holder shall include the information required by paragraph (e)(1) of this section.

(4) *Other tender offers.* If a tender offer is published or sent or given to security holders other than under § 335.504(a), the tender offer materials which are published or sent or given to security holders on the date of commencement of such offer shall include the information required by paragraph (e)(1) of this section.

(b) *Information required in summary advertisement made after commencement.* A summary advertisement published

subsequent to the date of commencement of the tender offer shall include at least the information specified in paragraphs (e)(1) (i) through (iv) and (e)(2)(iv) of this section.

(c) *Information required in other tender offer materials published after commencement.* Except for summary advertisement described in paragraph (b) of this section and tender offer materials described in paragraphs (a)(2)(ii) and (a)(3)(ii) of this section, additional tender offer materials published, sent or given to security holders subsequent to the date of commencement shall include the information required by paragraph (e)(1) of this section and may omit any of the information required by paragraphs (e)(1) (v) through (viii) of this section which has been previously furnished by the bidder in connection with the tender offer.

(d) *Material changes.* A material change in the information published or sent or given to security holders shall be promptly disclosed to security holders in additional tender offer materials.

(e) *Information to be included—(1) Long-form publication and tender offer materials.* The information required to be disclosed by paragraphs (a)(1), (a)(2)(ii), (a)(3)(i)(B) and (a)(4) of this section shall include the following:

- (i) The identity of the bidder;
- (ii) The identity of the subject bank;
- (iii) The amount of the class of securities being sought and the type and amount of consideration being offered therefor;
- (iv) The scheduled expiration date of the tender offer, whether the tender offer may be extended and, if so, the procedures for extension of the tender offer;
- (v) The exact dates prior to which, and after which, security holders who deposit their securities will have the right to withdraw their securities under section 14(d)(5) of the Act and § 335.507 and the manner in which shares will be accepted for payment and in which withdrawal may be effected;
- (vi) If the tender offer is for less than all the outstanding securities of a class of equity securities and the bidder is not obligated to purchase all of the securities tendered, the period of periods,

and in the case of the period from the commencement of the offer, the date of the expiration of such period during which the securities will be taken up pro rata under section 14(d)(6) of the Act or § 335.508, and the present intention or plan of the bidder with respect to the tender offer in the event of an oversubscription by security holders;

(vii) The disclosure required by items 1(c); 2 (with respect to persons other than the bidder; excluding sub-items (b) and (d); 3; 4; 5; 6; 7; 8; and 10 of Form F-13 (§335.512) or a fair and adequate summary thereof; *Provided, however,* That negative responses to any item or sub-item of Form F-13 (§335.512) need not be included; and

(viii) The disclosure required by item 9 of Form F-13 or a fair and adequate summary thereof. (Under normal circumstances, summary financial information equivalent to that required by paragraph (e) of SEC Guide 59 of the Guides for Preparation and Filing of Registration Statements under the Securities Act of 1933 (15 U.S.C. 77) for the periods covered by the financial information furnished in response to item 9 will be a sufficient summary. (If the information required by item 9 is summarized, appropriate instructions shall be included stating how complete financial information can be obtained.)

(2) *Summary publication.* The information required to be disclosed by paragraphs (a)(2)(i) and (a)(3)(i)(A) of this section in a summary advertisement is as follows:

- (i) The information required by paragraphs (e)(1) (i) through (vi) of this section;
- (ii) If the tender offer is for less than all the outstanding securities of a class of equity securities, a statement as to whether the purpose or one of the purposes of the tender offer is to acquire or influence control of the business of the subject bank;
- (iii) A statement that the information required by paragraph (e)(1)(vii) of this section is incorporated by reference into the summary advertisement;
- (iv) Appropriate instructions as to how security holders may obtain promptly, at the bidder's expense, the bidder's tender offer materials; and

(v) In a tender offer published or sent or given to security holders by the use of stockholders lists and security position listings under §335.504(a)(3), a statement that a request is being made for such lists and listings and that tender offer materials will be mailed to record holders and will be furnished to brokers, banks and similar persons whose name appears or whose nominee appears on the list of stockholders or, if applicable, who are listed as participants in a clearing agency's security position listing for subsequent transmittal to beneficial owners of such securities.

(3) *No transmittal letter.* Neither the initial summary advertisement nor any subsequent summary advertisement shall include a transmittal letter (whereby securities of the subject bank which are sought in the tender offer may be transmitted to the bidder or its depository) or any amendment thereto.

[46 FR 25208, May 5, 1981, as amended at 48 FR 55564, Dec. 14, 1983]

§ 335.507 Additional withdrawal rights.

(a) *Rights.* In addition to the provisions of section 14(d)(5) of the Act, any person who has deposited securities pursuant to a tender offer has the right to withdraw any such securities during the following period such offer, request or invitation remains open.

(1) At any time until the expiration of fifteen business days from the date of commencement of such tender offer; and

(2) On the date and until the expiration of ten business days following the date of commencement of another bidder's tender offer other than under §335.502(b) for securities of the same class: *Provided*, That the bidder has received notice or otherwise has knowledge of the commencement of such other tender offer and: *Provided, further*, That withdrawal may only be effected with respect to securities which have not been accepted for payment in the manner set forth in the bidder's tender offer prior to the date such other tender offer is first published, sent or given to security holders.

(b) *Computation of time periods.* The time periods for withdrawal rights under this section shall be computed

on a concurrent, as opposed to a consecutive basis.

(c) *Knowledge of competing offer.* For the purposes of this section, a bidder shall be presumed to have knowledge of another tender offer, as described in paragraph (a)(2) of this section, on the date such bidder receives a copy of the Form F-13 (§335.512) under §335.502 from such other bidder.

(d) *Notice of Withdrawal.* Notice of withdrawal under this section shall be deemed to be timely upon the receipt by the bidder's depository of a written notice of withdrawal specifying the name(s) of the tendering stockholder(s), the number or amount of the securities to be withdrawn and the name(s) in which the certificate(s) is (are) registered, if different from that of the tendering security holder(s). A bidder may impose other reasonable requirements, including certificate numbers and a signed request for withdrawal accompanied by a signature guarantee, as conditions precedent to the physical release of withdrawn securities.

[46 FR 25208, May 5, 1981, as amended at 54 FR 53592, Dec. 29, 1989]

§ 335.508 Exemption from statutory pro rata requirement.

Notwithstanding the pro rata provisions of section 14(d)(6) of the Act, if any person makes a tender offer or request or invitation for tenders, for less than all of the outstanding equity securities of a class, and if a greater number of securities are deposited pursuant thereto than such person is bound or willing to take up and pay for, the securities taken up and paid for shall be taken up and paid for as nearly as may be pro rata, disregarding fractions, according to the number of securities deposited by each depositor during the period such offer, request or invitation remains open.

[48 FR 55564, Dec. 14, 1983]

§ 335.509 Solicitation/recommendation statements with respect to certain tender offers (Form F-12).

(a) *Filing and transmittal of recommendation statement.* No solicitation or recommendation to security holders shall be made by any person described

in paragraph (d) of this section with respect to a tender offer for the securities unless as soon as practicable on the date the solicitation or recommendation is first published or sent or given to security holders the person complies with the following paragraphs.

(1) The person shall file with the FDIC three copies of a Solicitation/Recommendation Statement on Form F-12 (§335.513), including all exhibits thereto; and

(2) If the person is either the subject bank or an affiliate of the subject bank,

(i) The person shall hand deliver a copy of the Form F-12 to the bidder at its principal office or at the address of the person authorized to receive notices and communications (which is set forth on the cover sheet of the bidder's Form F-13 (§335.512) filed with the FDIC); and

(ii) The persons shall give telephonic notice (which notice to the extent possible shall be given prior to the opening of the market) of the information required by items 2 and 4(a) of Form F-12 and shall mail a copy of the form to each national securities exchange where the class of securities is registered and listed for trading and, if the class is authorized for quotation in the NASDAQ interdealer quotation system, to the National Association of Securities Dealers, Inc. (*NASD*).

(3) If the person is neither the subject bank nor an affiliate of the subject bank,

(i) The person shall mail a copy of the Form F-12 to the bidder at its principal office or at the address of the person authorized to receive notices and communications (which is set forth on the cover sheet of the bidder's Form F-13 (§335.512) filed with the FDIC); and

(ii) The person shall mail a copy of the Form F-12 to the subject bank at its principal office.

(b) *Amendments.* If any material change occurs in the information set forth in Form F-12 (§335.513) required by this section, the person who filed Form F-12 shall:

(1) File with the FDIC three copies of an amendment of Form F-12 (§335.513) disclosing the change promptly, but not later than the date the material is

first published, sent or given to security holders; and

(2) Promptly deliver copies and give notice of the amendment in the same manner as that specified in paragraph (a)(2) or (a)(3) of this section, whichever is applicable; and

(3) Promptly disclose and disseminate the change in a manner reasonably designed to inform security holders of the change.

(c) *Information required in solicitation or recommendation.* Any solicitation or recommendation to holders of a class of securities referred to in section 14(d)(1) of the Act with respect to a tender offer for the securities shall include the name of the person making the solicitation or recommendation and the information required by items 1, 2, 3(b), 4, 6, 7 and 8 of Form F-12 (§335.513) or a fair and adequate summary thereof: *Provided, however,* That the solicitation or recommendation may omit any of the information previously furnished to security holders of the class of securities by the person with respect to the tender offer.

(d) *Applicability.* (1) Except as provided in paragraphs (d)(2) and (e) of this section, shall only apply to the following persons:

(i) The subject bank, any director, officer, employee, affiliate or subsidiary of the subject bank;

(ii) Any record holder or beneficial owner of any security issued by the subject bank, by the bidder, or by any affiliate of either the subject bank or the bidder; and

(iii) Any person who makes a solicitation or recommendation to security holders on behalf of any of the foregoing or on behalf of the bidder other than by means of a solicitation or recommendation to security holders which has been filed with the FDIC under this section or §335.503.

(2) Notwithstanding paragraph (d)(1) of this section, shall not apply to the following persons:

(i) A bidder who has filed Form F-13 (§335.512) under §335.503;

(ii) Attorneys, banks, brokers, fiduciaries or investment advisers who are not participating in a tender offer in more than a ministerial capacity and who furnish information and/or advice

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regarding the tender offer to their customers or clients on the unsolicited request of such customers or clients or solely pursuant to a contract or a relationship providing for advice to the customer or client to whom the information and/or advice is given.

(e) *Stop-look-and-listen communications.* This section shall not apply to the subject bank with respect to its communication to its security holders which only:

(1) Identifies the tender offer by the bidder;

(2) States that the tender offer is under consideration by the subject bank's board of directors and/or management;

(3) States that on or before a specified date (which shall be no later than 10 business days from the date of commencement of the tender offer) the subject bank will advise its security holders of (i) whether the subject bank recommends acceptance or rejection of the tender offer; expresses no opinion and remains neutral toward the tender offer; or is unable to take a position with respect to the tender offer and (ii) the reason(s) for the position taken by the subject bank with respect to the tender offer (including the inability to take a position); and

(4) Requests its security holders to defer making determination whether to accept or reject the tender offer until they have been advised of the subject bank's position with respect thereto under paragraph (e)(3) of this section.

(f) *Statement of management's position.* A statement by the subject bank of its position with respect to a tender offer which is required to be published or sent or given to security holders under § 335.511 of this part shall constitute a solicitation or recommendation within the meaning of this section and section 14(d)(4) of the Act.

[46 FR 25208, May 5, 1981, as amended at 48 FR 55564, Dec. 14, 1983; 54 FR 53592, Dec. 29, 1989]

§ 335.509a Equal treatment of security holders.

(a) No bidder shall make a tender offer unless:

(1) The tender offer is open to all security holders of the class of securities subject to the tender offer; and

(2) The consideration paid to any security holder pursuant to the tender offer is the highest consideration paid to any other security holder during the tender offer.

(b) Paragraph (a)(1) of this section shall not:

(1) Affect dissemination under § 335.505; or

(2) Prohibit a bidder from making a tender offer excluding all security holders in a state where the bidder is prohibited from making the tender offer by administrative or judicial action pursuant to a state statute after a good faith effort by the bidder to comply with such statute.

(c) Paragraph (a)(2) of this section shall not prohibit the offer of more than one type of consideration in a tender offer, provided that:

(1) Security holders are afforded equal rights to elect among each of the types of consideration offered; and

(2) The highest consideration of each type paid to any security holder is paid to any other security holder receiving that type of consideration.

(d) If the offer and sale of securities constituting consideration offered in a tender offer is prohibited by the appropriate authority of a state after a good faith effort by the bidder to register or qualify the offer and sale of such securities in such state:

(1) The bidder may offer security holders in such state an alternative form of consideration; and

(2) Paragraph (c) of this section shall not operate to require the bidder to offer or pay the alternative form of consideration to security holders in any other state.

(e) This section shall not apply to any tender offer with respect to which the FDIC, upon written request or upon its own motion, either unconditionally or on specified terms and conditions, determines that compliance with this section is not necessary or appropriate in the public interest or for the protection of investors.

[54 FR 53592, Dec. 29, 1989]

§ 335.510 Unlawful tender offer practices.

No person who makes a tender offer subject to this Part 335 shall:

(a) Hold such tender offer open for less than twenty business days from the date such tender offer is first published or sent or given to security holders: *Provided, however,* That this paragraph shall not apply to a tender offer by a bank relating to its class of securities which are being sought which is not made in anticipation of or in response to another person's tender offer for securities of the same class;

(b) Increase or decrease the percentage of the class of securities being sought or the consideration offered or the dealers' soliciting fee to be given in a tender offer unless such tender offer remains open for at least ten business days from the date that notice of such increase or decrease is first published or sent or given to security holders: *Provided, however,* That, for purposes of this paragraph, the acceptance for payment of an additional amount of securities not to exceed two percent of the class of securities that is the subject of the tender offer shall not be deemed to be an increase. For purposes of this paragraph, the percentage of a class of securities shall be calculated in accordance with section 14(d)(3) of the Act.

(c) Fail to pay the consideration offered or return the securities deposited by or on behalf of security holders promptly after the termination or withdrawal of a tender offer;

(d) Extend the length of a tender offer without issuing a notice of such extension by press release or other public announcement, which notice shall include disclosure of the approximate number of securities deposited to date and shall be issued no later than the earlier of (1) 9:00 a.m. Eastern time, on the next business day after the scheduled expiration date of the offer or (2) if the class of securities which is the subject of the tender offer is registered on one or more national securities exchanges, the first opening of any one of such exchanges on the next business day after the scheduled expiration date of the offer.

[46 FR 25208, May 5, 1981, as amended at 54 FR 53593, Dec. 29, 1989]

§ 335.511 Position of subject bank with respect to a tender offer.

(a) *Position of bank.* The bank, no later than 10 business days from the

date the tender offer is first published or sent or given, shall publish, send or give to security holders a statement disclosing that the bank:

(1) Recommends acceptance or rejection of the bidder's tender offer;

(2) Expresses no opinion and is remaining neutral toward the bidder's tender offer; or

(3) Is unable to take a position with respect to the bidder's tender offer. Such statement shall also include the reason(s) for the position (including the inability to take a position) disclosed therein.

(b) *Material change.* If any material change occurs in the disclosure required by paragraph (a) of this section, the Bank shall promptly publish, send or give a statement disclosing such material change to security holders.

§ 335.512 Tender offer statement to be filed under section 14(d)(1) of the Securities Exchange Act of 1934 (Form F-13).

Federal Deposit Insurance Corporation
Washington, DC 20429.

FORM F-13—TENDER OFFER STATEMENT
UNDER SECTION 14(d)(1) OF THE SECURITIES
EXCHANGE ACT OF 1934

(Amendment No. _____)

(Name of Subject Bank)

(Bidder)

(Title of Class of Securities)

(CUSIP Number of Class of Securities)

(Name, address and telephone number of person authorized to receive notices and communications on behalf of bidder)

Instruction

Two copies of this statement, including all exhibits, and one additional copy of this statement, including only the exhibits described in item 11(a) of this statement, should be filed with the FDIC.

General Instructions

A. The item numbers and captions of the items shall be included but the text of the items is to be omitted. The answers to the

items shall be prepared so as to indicate clearly the coverage of the items without referring to the text of the items. Answer every item. If an item is inapplicable or the answer is in the negative, so state.

B. Information in exhibits to the statement may be incorporated by reference in answer or partial answer to any item of subitem of the statement unless it would render an answer misleading, incomplete, unclear or confusing. Material incorporated by reference shall be clearly identified in the reference by page, paragraph, caption or otherwise. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement where the information is required. A copy of any information or a copy of the pertinent pages of a document containing information which is incorporated by reference shall be submitted with this statement as an exhibit and shall be considered filed with the FDIC for purposes of the Act.

C. If the statement is filed by a partnership, limited partnership, syndicate or other group, the information called for by items 2-7, inclusive, shall be given with respect to: (i) Each partner of a partnership; (ii) each partner who is named a general partner or who functions as a general partner of a limited partnership; (iii) each member of a syndicate or group; and (iv) each person controlling a partner or member. If the statement is filed by a corporation, or if a person referred to in (i), (ii), (iii), or (iv) of this instruction is a corporation, the information called for by the above mentioned items shall be given with respect to: (a) each executive officer and director of a corporation; (b) each person controlling a corporation; and (c) each executive officer and director of any corporation ultimately in control of a corporation. A response to an item in the statement is required with respect to the bidder and to all other persons referred to in this instruction unless the item specifies to the contrary.

D. Upon termination of the tender offer, the bidder shall promptly file a final amendment to this Form F-13 disclosing all material changes in the items of this Form F-13 and stating that the tender offer has terminated, the date of such termination and the results of such tender offer.

E. If the bidder, before filing this statement, has filed a Form F-11 (§335.407) with respect to the acquisition of securities of the same class referred to in item 1(a) of this statement, the bidder shall amend such Form F-11 (§335.407) and may do so by means of this statement and amendments thereto, including the final amendment required to be filed by instruction D: *Provided*, That the bidder indicated on the cover sheet of this statement that it is amending its Form F-11 (§335.407) by means of this statement.

F. The final amendment required to be filed by instruction D shall be deemed to sat-

isfy the reporting requirements of section 13(d) of the Act with respect to all securities acquired by the bidder pursuant to the tender offer as reported in such final amendment.

G. For purposes of this statement, the following definitions shall apply:

- (i) The term *bidder* means any person on whose behalf a tender offer is made; and
- (ii) The term *subject bank* means any bank whose securities are sought by a bidder pursuant to a tender offer.

Item 1—Security and Subject Bank

(a) State the name of the subject bank and the address of its principal office;

(b) State the exact title and the number of shares outstanding of the class of equity securities being sought (which may be based upon information contained in the most recently available filing with the FDIC by the subject bank unless the bidder has reason to believe such information is not current), the exact amount of such securities being sought and the consideration being offered therefor; and

(c) Identify the principal market in which such securities are traded and state the high and low sales prices for such securities in such principal market (or, in the absence thereof, the range of high and low bid quotations) for each quarterly period during the past two years.

Item 2—Identity and Background

If the person filing this statement or any person enumerated in instruction C of this statement is a corporation, partnership, limited partnership, syndicate or other group of persons, state its name, the state or other place of its organization, its principal business, the address of its principal office and the information required by (e) and (f) of this item. If the person filing this statement or any person enumerated in instruction C is a natural person, provide the information specified in (a) through (g) of this item with respect to such person(s).

- (a) Name;
- (b) Residence or business address;
- (c) Present principal occupation or employment and the name, principal business and address of any corporation or other organization in which such employment or occupation is conducted;
- (d) Material occupations, positions, offices or employments during the last 5 years, giving the starting and ending dates of each and the name, principal business and address of any business corporation or other organization in which such occupation, position, office or employment was carried on.

INSTRUCTION

If a person has held various positions with the same organization, or if a person holds

comparable positions with multiple related organizations, each and every position need not be specifically disclosed.

(e) Whether or not, during the last 5 years, such person has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) and, if so, give the dates, nature of conviction, name and location of court, and penalty imposed or other disposition of the case.

INSTRUCTION

While a negative answer to this sub-item is required in this schedule, it need not be furnished to security holders.

(f) Whether or not, during the last 5 years, such person was a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding, was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting activities subject to, Federal or State securities laws or finding any violation of such laws; and, if so, identify and describe such proceeding and summarize the terms of such judgment, decree or final order.

INSTRUCTION

While a negative answer to this subitem is required in this schedule, it need not be furnished to security holders.

(g) Citizenship(s).

Item 3—Past Contacts, Transactions or Negotiations With the Subject Bank

(a) Briefly state the nature and approximate amount (in dollars) of any transaction, other than those described in item 3(b) of this schedule, which has occurred since the commencement of the subject bank's third full fiscal year preceding the date of this schedule, between the person filing this schedule (including those persons enumerated in instruction C of this schedule) and:

(1) The subject bank or any of its affiliates which are corporations: *Provided, however*, That no disclosure need be made with respect to any transaction if the aggregate amount involved in such transaction was less than one percent of the subject bank's consolidated revenues (which may be based upon information contained in the most recently available filing with the FDIC by the subject bank, unless the bidder has reason to believe otherwise): (i) For the fiscal year in which such transaction occurred, or (ii) for the portion of the current fiscal year which has occurred, if the transaction occurred in such year; and

(2) The executive officers, directors, or affiliates of the subject bank which are not corporations, if the aggregate amount involved in such transaction or in a series of similar transactions, including all periodic installments in the case of any lease or other

agreement providing for periodic payments or installments, exceeds \$40,000.

(b) Describe any contacts, negotiations or transactions which have occurred since the commencement of the subject bank's third full fiscal year preceding the date of this schedule between the bidder or its subsidiaries (including those persons enumerated in instruction C of this schedule) and the subject bank or its affiliates concerning: A merger, consolidation or acquisition; a tender offer or other acquisition of securities; an election of directors; or a sale or other transfer of a material amount of assets.

Item 4—Source and Amount of Funds or Other Consideration

(a) State the source and the total amount of funds or other consideration for the purchase of the maximum number of securities for which the tender offer is being made.

(b) If all or any part of such funds or other consideration are or are expected to be, directly or indirectly, borrowed for the purpose of the tender offer:

(1) Provide a summary of each loan agreement or arrangement containing the identify of the parties, the term, the collateral, the stated and effective interest rates, and other material terms or conditions relative to such loan agreement; and

(2) Briefly describe any plans or arrangements to finance or repay such borrowings, or if no such plans or arrangements have been made, make a statement to that effect.

(c) If the source of all or any part of the funds to be used in the tender offer is a loan made in the ordinary course of business by a bank as defined in section 3(a)(6) of the Act, the name of such bank shall not be made available to the public if the person filing the statement so requests in writing and files such request, naming such bank, with the FDIC.

(d) If the source of all or any part of the funds to be used in the tender offer is a loan made by a bank as defined in section 3(a)(6) of the Act, indicate whether there exists any agreement, arrangement, or understanding pursuant to which the subject bank maintains or would maintain a correspondent deposit account at such lending bank.

Item 5—Purpose of the Tender Offer and Plans or Proposals of the Bidder

State the purpose or purposes of the tender offer for the subject bank's securities. Describe any plans or proposals which relate to or would result in:

(a) An extraordinary corporate transaction, such as a merger, reorganization or liquidation, involving the subject bank or any of its subsidiaries;

(b) A sale or transfer of a material amount of assets of the subject bank or any of its subsidiaries;

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(c) Any change in the present board of directors or management of the subject bank including, but not limited to, any plans or proposals to change the number or the term of directors or to fill any existing vacancies on the board;

(d) Any material change in the present capitalization or dividend policy of the subject bank;

(e) Any other material change in the subject bank's corporate structure or business;

(f) Causing a class of securities of the subject bank to be delisted from a national securities exchange or to cease to be authorized to be quoted in an inter-dealer quotation system of a registered national securities association; or

(g) A class of equity securities of the subject bank becoming eligible for termination of registration under section 12(g)(4) of the Act.

Item 6—Interest in Securities of the Subject Bank

(a) State the aggregate number and percentage of the class represented by such shares (which may be based on the number of shares outstanding as contained in the most recently available filing with the FDIC by the subject bank unless the bidder has reason to believe such information is not current), beneficially owned (identifying those shares for which there is a right to acquire) by each person named in item 2 of this schedule and by each associate and majority-owned subsidiary of such person giving the name and address of any such associate or subsidiary.

(b) Describe any transaction in the class of securities reported on that was effected during the past 60 days by the persons named in response to paragraph (a) of this item or by any executive officer, director or subsidiary of such person.

INSTRUCTIONS

1. The description of a transaction required by item 6(b) shall include, but not necessarily be limited to: (1) The identity of the person covered by item 6(b) who effected the transaction; (2) the date of the transaction; (3) the amount of securities involved; (4) the price per share; and (5) where and how the transaction was effected.

2. If the information required by item 6(b) of this Form F-13 is available to the bidder at the time this statement is initially filed with the FDIC under § 335.503(a)(1), the information should be included in the initial filing. However, if the information is not available to the bidder at the time of the initial filing, it shall be filed with the FDIC promptly but in no event later than two business days after the date of filing and, if material, shall be disclosed in a manner reasonably designed to inform security holders. The proce-

dures specified by this instruction is provided for the purpose of maintaining the confidentiality of the tender offer in order to avoid possible misuse of inside information.

Item 7—Contracts, Arrangements, Understandings, or Relationships With Respect to the Subject Bank's Securities

Describe any contract, arrangement, understanding, or relationship (whether or not legally enforceable) between the bidder (including those persons enumerated in instruction C to this Form F-13) and any person with respect to any securities of the subject bank, (including, but not limited to, any contract, arrangement, understanding or relationship concerning the transfer or the voting of any of such securities, joint ventures, loan or option arrangements, puts or calls, guaranty of loans, guaranty against loss, or the giving or withholding of proxies) naming the persons with whom such contracts, arrangements, understandings or relationships have been entered into and giving the material provisions thereof. Include such information for any of such securities that are pledged or otherwise subject to a contingency, the occurrence of which would give another person the power to direct the voting or disposition of such securities, except that, disclosure of standard default and similar provisions contained in loan agreements need not be included.

Item 8—Persons Retained, Employed or To Be Compensated

Identify all persons and classes of persons employed, retained or to be compensated by the bidder, or by any person on the bidder's behalf, to make solicitations or recommendations in connection with the tender offer and describe briefly the terms of such employment, retainer or arrangement for compensation.

Item 9—Financial Statements of Certain Bidders

Where the bidder is other than a natural person and the bidder's financial condition is material to a decision by a security holder of the subject company whether to sell, tender or hold securities being sought in the tender offer, furnish current, adequate financial information concerning the bidder; *Provided*, That if the bidder is controlled by another entity which is not a natural person and has been formed for the purpose of making the tender offer, furnish current, adequate financial information concerning such parent.

INSTRUCTIONS

1. The facts and circumstances concerning the tender offer, particularly the terms of the tender offer, may influence a determination as to whether disclosure of financial information is material. However, once the materiality requirement is applicable, the

adequacy of the financial information will depend primarily on the nature of the bidder.

In order to provide guidance in making this determination, the following types of financial information will be deemed adequate for purposes of this item for the type of bidder specified: (a) Financial statements prepared in compliance with SEC Form 10 as amended (17 CFR 249.210) for a domestic bidder which is otherwise eligible to use such form; and (b) financial statements prepared in compliance with SEC Form 20 (17 CFR 249.220) for a foreign bidder which is otherwise eligible to use such form.

2. If the bidder is subject to the periodic reporting requirements of sections 13(a) or 15(d) of the Act, financial statements contained in any document filed with the FDIC under the Act may be incorporated by reference in this Form F-13 solely for the purposes of this Form F-13: *Provided*, That such financial statements substantially meet the requirements of this item; an express statement is made that such financial statements are incorporated by reference; the matter incorporated by reference is clearly identified by page, paragraph, caption or otherwise; and an indication is made where such information may be inspected and copies obtained. Financial statements which are required to be presented in comparative form for two or more fiscal years or periods shall not be incorporated by reference unless the material incorporated by reference includes the entire period for which the comparative data is required to be given.

3. If the bidder is not subject to the periodic reporting requirements of the Act, the financial statements required by this item need not be audited if such financial statements are not available or obtainable without unreasonable cost or expense and a statement is made to that effect disclosing the reasons therefor.

Item 10—Additional Information

If material to a decision by a security holder whether to sell, tender or hold securities being sought in the tender offer, furnish information as to the following:

(a) Any present or proposed material contracts, arrangements, understandings or relationships between the bidder or any of the persons listed in general instruction C or any of its subsidiaries and the subject bank or any of its executive officers, directors, controlling persons or subsidiaries (other than any contract, arrangement or understanding required to be disclosed under item 3 or 7 of this schedule);

(b) To the extent known by the bidder after reasonable investigation, the applicable regulatory requirements which must be complied with or approvals which must be obtained in connection with the tender offer;

(c) The applicability of antitrust laws;

(d) The applicability of the margin requirements of section 7 of the Act and the regulations promulgated thereunder;

(e) Any material pending legal proceedings relating to the tender offer including the name and location of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto and a brief summary of the proceedings.

INSTRUCTION

In connection with this sub-item, a copy of any document relating to a major development (such as pleadings, an answer, complaint, temporary restraining order, injunction, opinion, judgment or order) in a material pending legal proceeding should be promptly furnished to the FDIC on a supplemental basis.

(f) Such additional material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not materially misleading.

Item 11—Material To Be Filed as Exhibits

Furnish a copy of: (a) Tender offer material which is published, sent or given to security holders by or on behalf of the bidder in connection with the tender offer;

(b) Any loan agreement referred to in item 4 of this schedule.

Instruction. The identity of any bank which is a party to a loan agreement need not be disclosed if the person filing the statement has requested that the identity of such bank not be made available to the public under item 4 of this Form F-13.

(c) Any document setting forth the terms of any contracts, arrangements, understandings or relationships referred to in item 7 or 10(a) of this Form F-13;

(d) Any written opinion prepared by legal counsel at the bidder's request and communicated to the bidder pertaining to the tax consequences of the tender offer;

(e) In an exchange offer where securities of the bidder have been or are to be registered under the Securities Act of 1933, the prospectus containing the information required to be included therein by SEC Rule 434b (17 CFR 230.434b) of that Act; and

(f) If any oral solicitation of security holders is to be made by or on behalf of the bidder, any written instruction, form or other material which is furnished to the persons making the actual oral solicitation for their use, directly or indirectly, in connection with the tender offer.

Signature

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Date _____.

 (Signature)

(Name and Title)

The original statement shall be signed by each person on whose behalf the statement is filed or his authorized representative. If the statement is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the bidder), evidence of the representative's authority to sign on behalf of such person shall be filed with the statement. The name and any title of each person who signs the statement shall be typed or printed beneath his signature.

[46 FR 25208, May 5, 1981, as amended at 48 FR 55564, Dec. 14, 1983; 54 FR 53593, Dec. 29, 1989]

§ 335.513 Solicitation/recommendation statement to be filed under section 14(d)(4) of the Securities Exchange Act of 1934 (Form F-12).

Federal Deposit Insurance Corporation
 Washington, DC 20429

FORM F-12—SOLICITATION/RECOMMENDATION STATEMENT UNDER SECTION 14(d)(4) OF THE SECURITIES EXCHANGE ACT OF 1934

(Amendment No. -----)

 (Name of Subject Bank)

 (Name of Person(s) Filing Statement)

 (Title of Class of Securities)

 ((CUSIP) Number of Class of Securities)

(Name, address and telephone number of person authorized to receive notice and communications on behalf of the person(s) filing statement)

Instruction: Three copies of this statement, including all exhibits, should be filed with the FDIC.

GENERAL INSTRUCTION

A. The item numbers and captions of the items shall be included but the text of the items is to be omitted. The answers to the items shall be so prepared as to indicate clearly the coverage of the items without referring to the text of the items. Answer every item. If an item is inapplicable or the answer is in the negative so state.

B. Information contained in exhibits to the statement may be incorporated by reference in answer or partial answer to any item or sub-item of the statement unless it would render such answer misleading, incomplete, unclear or confusing. Material incorporated by reference shall be clearly identified in the reference by page, paragraph, caption or otherwise. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement where the information is required. A copy of any information or a copy of the pertinent pages of a document containing such information which is incorporated by reference shall be submitted with this statement as an exhibit and shall be considered filed with the FDIC for purposes of the Act.

Item 1—Security and Subject Bank

State the title of the class of equity securities to which this statement relates and the name and the address of the principal office of the subject bank.

Item 2—Tender Offer of the Bidder

Identify the tender offer to which this statement relates, the name of the bidder and the address of its principal executive offices or, if the bidder is a natural person, the bidder's residence or business address (which may be based on the bidder's Form F-13) (§335.512) filed with the FDIC.

Item 3—Identity and Background

- (a) State the name and business address of the person filing this statement.
- (b) If material, describe any contract, agreement, arrangement or understanding and any actual or potential conflict of interest between the person filing this statement or its affiliates and: (1) The subject bank, its principal officers, directors or affiliates; or (2) the bidder, its executive officers, directors or affiliates.

Instruction

If the person filing this statement is the subject bank and if the materiality requirement of item 3(b) is applicable to any contract, agreement, arrangement or understanding between the subject bank or any affiliate of the subject bank and any principal officer or director of the subject bank, it shall not be necessary to include a description thereof in this statement, or in any solicitation or recommendation published, sent or given to security holders if substantially similar information has been disclosed in any proxy statement, report or other communication sent within one year of the filing date of this statement by the subject bank to the then holders of the securities and has been filed with the FDIC: *Provided* That this

statement and the solicitation or recommendation published, sent or given to security holders shall contain specific reference to the proxy statement, report or other communication and that a copy of the pertinent portion(s) thereof is filed as an exhibit to this statement.

Item 4—The Solicitation or Recommendation

(a) State the nature of the solicitation or the recommendation. If this statement relates to a recommendation, state whether the person filing this statement is advising security holders of the securities being sought by the bidder to accept or reject the tender offer or to take other action with respect to the tender offer and, if so, furnish a description of such other action being recommended. If the person filing this statement is the subject bank and a recommendation is not being made, state whether the subject bank is either expressing no opinion and is remaining neutral toward the tender offer or is unable to take a position with respect to the tender offer.

(b) State the reason(s) for the position (including the inability to take a position) stated in (a) of this item.

Instruction

Conclusory statements such as "The tender offer is in the best interest of shareholders," will not be considered sufficient disclosure in response to item 4(b).

Item 5—Persons Retained, Employed or to be Compensated

Identify any person or class of persons employed, retained or to be compensated by the person filing this statement or by any person on its behalf, to make solicitation or recommendations to security holders and describe briefly the terms of such employment, retainer or arrangement for compensation.

Item 6—Recent Transactions and Intent with Respect to Securities

(a) Describe any transaction in the securities referred to in item 1 which was effected during the past 60 days by the person(s) named in response to item 3(a) and by any executive officer, director, affiliate or subsidiary of such person(s).

(b) To the extent known by the person filing this statement, state whether the persons referred to in item 6(a) presently intend to tender to the bidder, sell or hold securities of the class of securities being sought by the bidder which are held of record or beneficially owned by such persons.

Item 7—Certain Negotiations and Transactions by the Subject Bank

(a) If the person filing this statement is the subject bank, state whether or not any negotiation is being undertaken or is under-

way by the subject bank in response to the tender offer which relates or would result in:

(1) An extraordinary transaction such as a merger or reorganization, involving the subject bank or any subsidiary of the subject bank;

(2) A purchase, sale or transfer of a material amount of assets by the subject bank or any subsidiary of the subject bank;

(3) A tender offer for or other acquisition of securities by or of the subject bank; or

(4) Any material change in the present capitalization or dividend policy of the subject bank.

Instruction

If no agreement in principle had yet been reached, the possible terms of any transaction or the parties thereto need not be disclosed if in the opinion of the Board of Directors of the subject bank disclosure would jeopardize continuation of the negotiations. In that event, disclosure that negotiations are being undertaken or are underway and are in a preliminary stage will be sufficient.

(b) Describe any transaction, board resolution, agreement in principle, or a signed contract in response to the tender offer, other than one described in item 3(b) of this statement, which relates to or would result in one or more of the matters listed in item 7(a) (1), (2), (3) or (4).

Item 8—Additional Information to be Furnished

Furnish any additional information necessary to make the required statements, in light of the circumstances under which they are made, not materially misleading.

Item 9—Material to be Filed as Exhibits

Furnish a copy of:

(a) Any written solicitation or recommendation which is published or sent or given to security holders in connection with the solicitation or recommendation referred to in item 4.

(b) Any written instruction, or other material which is furnished to persons making any actual oral solicitation or recommendation for their use, directly or indirectly, in connection with the solicitation or recommendation.

(c) Any contract, agreement, arrangement or understanding described in item 3(b) or the pertinent portion(s) of any proxy statement, report or other communication referred to in item 3(b).

Signature

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Federal Deposit Insurance Corporation

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(Date)

(Signature)

(Name and Title)

Instruction

The original statement shall be signed by each person on whose behalf the statement is filed or his authorized representative. If the statement is signed on behalf of a person by his authorized representative (other than an executive officer of a corporation or a general partner of a partnership), evidence of the representative's authority to sign on behalf of that person shall be filed with the statement. The name and any title of each person who signs the statement shall be typed or printed beneath his signature.

[46 FR 25208, May 5, 1981, as amended at 54 FR 53593, Dec. 29, 1989]

§ 335.520 Purchase of securities by the bank and others.

When a person other than the issuing bank or any person described in section 13(e)(2) of the Act makes a tender offer for, or request or invitation for tenders of, any class of equity securities of a bank subject to section 13(e) of the Act, and such person has filed a statement with the FDIC under subpart E and the issuing bank has received notice thereof, such issuing bank or any person described in section 13(e)(2) of the Act shall not thereafter, during the period such tender offer, request or invitation continues, purchase any equity securities of the issuing bank unless:

(a) The issuing bank or any person described in section 13(e)(2) of the Act has filed with the FDIC a statement containing the information specified below with respect to proposed purchases:

(1) The title and amount of securities to be purchased, the names of the persons or classes of persons from whom, and the market in which, the securities are to be purchased, including the name of any exchange on which the purchase is to be made;

(2) The purpose for which the purchase is to be made and any plan or proposal for the disposition of such securities; and

(3) The source and amount of funds or other consideration used or to be used in making the purchases, and, if any

part of the purchase price or proposed purchase price is represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading the securities, a description of the transaction and the names of the parties thereto.

(b) The issuing bank or any person described in section 13(e)(2) of the Act has at any time within the past six months sent or given to the equity security holders of the issuing bank the substance of the information contained in the statement required by § 335.520(a).

§ 335.521 Tender offers by issuers.

A bank or its affiliates shall not make an "issuer tender offer" unless the offer meets the requirements of 17 CFR 240.13e-4, except that all filings shall be made with the FDIC and be titled with the name of the FDIC instead of the Securities and Exchange Commission.

[54 FR 53593, Dec. 29, 1989]

§ 335.530 Change in majority of directors.

If, under any arrangement or understanding with the person or persons acquiring securities in a transaction subject to section 13(d) or section 14(d) of the Act, any persons are to be elected or designated as directors of the bank, otherwise than at a meeting of security holders, and the persons so elected or designated will constitute a majority of the directors of the bank, then, not less than 10 days prior to the date any such person takes office as a director, or such shorter period prior to that date as the FDIC may authorize upon a showing of good cause therefor, the bank shall file with the FDIC and transmit to all holders of record of securities of the bank who would be entitled to vote at a meeting for election of directors, information substantially equivalent to the information which would be required by items 5 (a), (d), (e), and (f), 6 and 7 of Form F-5 to be transmitted if such person or persons were nominees for election as directors at a meeting of such security holders.

Subpart F—Financial Statement Requirements

BASIC PRINCIPLES

§ 335.601 Principles of financial reporting.

Financial statements filed with the FDIC under this part shall be prepared in accordance with generally accepted accounting principles and practices applicable to banks. The FDIC may from time to time issue releases on accounting principles and practices to be used with respect to specific areas.

QUALIFICATIONS AND REPORTS OF ACCOUNTANTS

§ 335.602 General rules.

Every accountant's report with respect to financial statements filed under this part shall be dated, shall be signed manually, shall indicate the city and State where issued, and shall identify without detailed enumeration the financial statements covered by the report.

[54 FR 53593, Dec. 29, 1989]

§ 335.603 [Reserved]

§ 335.604 Examination by independent public accountants.

(a) *Qualifications of independent public accountants.* (1) The FDIC will not recognize any person as a certified public accountant who is not duly registered and in good standing as such under the laws of the place of his/her residence or principal office. The FDIC will not recognize any person as a public accountant who is not in good standing and entitled to practice as such under the laws of the place of his/her residence or principal office.

(2)(i) The FDIC will not recognize any certified public accountant or public accountant as independent who is not in fact independent. For example, an accountant will be considered not independent with respect to any person or any of its parents, its subsidiaries, or other affiliates—

(A) In which, during the period of his/her professional engagement to examine the financial statements being reported on or at the date of his report, the firm or a member of the firm had,

or was committed to acquire a direct financial interest or any material indirect financial interest or

(B) With which during the period of his/her professional engagement to examine the financial statements being reported on, at the date of the report or during the period covered by the financial statements, the firm or a member of the firm was connected as a promoter, underwriter, voting trustee, director, officer, or employee.

A firm will be deemed independent in regard to a particular person if a former officer or employee of the person is employed by the firm and the individual has been completely disassociated from the person and its affiliates and does not participate in auditing financial statements of the person or its affiliates covering any period of his/her employment by the person.

(ii) For the purposes of this section, the term *member* means (A) all partners, shareholders, and other principals in the firm, (B) any professional employee involved in providing any professional service to the person, its parents, subsidiaries, or other affiliates, and (C) any professional employee having managerial responsibilities and located in the engagement office or other office of the firm which participates in a significant portion of the audit.

(3) In determining whether a public accountant is, in fact, independent with respect to a particular person, the FDIC will give appropriate consideration to all relevant circumstances, including evidence bearing on all relationships between the accountant and that person or any affiliate thereof, and will not confine itself to the relationships existing in connection with the filing of reports with the FDIC.

(b) *Representations as to the audit.* The independent public accountant's report:

(1) Shall state whether the audit was made in accordance with generally accepted auditing standards; and

(2) Shall designate any auditing procedures generally recognized as normal (or deemed necessary by the accountant under the circumstances of the particular case) that have been omitted, and the reasons for their omission.

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Nothing in this provision shall be construed to imply authority for the omission of any procedure which independent accountants would ordinarily employ in the course of an audit made for the purpose of expressing the opinions required by paragraph (c) of this section.

(c) *Opinions to be expressed.* The independent public accountant's report shall state clearly:

(1) The opinion of the accountant with respect to the financial statements covered by the report and the accounting principles and practices reflected therein; and

(2) The opinion of the accountant as to the consistency of the application of the accounting principles, or as to any changes in the principles which have a material effect on the financial statements required to be set forth by § 335.614.

(d) *Exceptions.* If the accountant making the report considers that he/she must take exceptions or express qualifications with respect thereto, each exception or qualification shall be stated specifically and clearly and, to the extent practicable, shall indicate the effect of the matter on the financial statements to which it relates.

(e) *Association with unaudited note covering interim financial data.* If the financial statements covered by the accountant's report designate as "unaudited" the note required by § 335.622(g), it shall be presumed that appropriate professional standards and procedures with respect to the data in the note have been followed by the independent accountant who is associated with the unaudited footnote by virtue of reporting on the financial statements in which the note is included.

(f) *Examination of financial statements by more than one independent public accountant.* If, with respect to the examination of the financial statements, part of the examination is made by an independent accountant other than the principal accountant and the principal accountant elects to place reliance on the work of the other accountant and makes reference to that effect in his report, the separate report of the other accountant shall be filed. However, notwithstanding the provisions of this

section, reports of other accountants which may otherwise be required in filings need not be presented in annual reports to security holders furnished pursuant to the proxy and information statement rules.

[46 FR 25208, May 5, 1981, as amended at 48 FR 55564, Dec. 14, 1983; 54 FR 53593, Dec. 29, 1989]

MAINTENANCE OF RECORDS AND PREPARATION OF REQUIRED REPORTS

§ 335.605 Falsification of accounting records.

No person shall, directly or indirectly, falsify or cause to be falsified, any book, record or account subject to section 13(b)(2)(A) of the Securities Exchange Act.

§ 335.606 Bank's representation in connection with the preparation of required reports and documents.

No director or officer of a bank shall directly or indirectly make or cause to be made a materially false or misleading statement, or omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading to an accountant in connection with (a) any audit or examination of the financial statements of the bank required to be made under this part or (b) the preparation or filing of any document or report required to be filed with the FDIC under this part or otherwise.

PROVISIONS OF GENERAL APPLICATION

§ 335.610 Requirements as to form.

Financial statements shall be prepared in accordance with the applicable requirements of Formats 9 A, B, C, and D. All money amounts required to be shown in financial statements may be expressed in even dollars or thousands of dollars. If shown in even thousands, an indication to that effect shall be inserted immediately beneath the caption of the statement or schedule, or at the top of each money column. The individual amounts shown need not be adjusted to the nearest dollar or thousand if the failure of the items to add to the totals shown is stated in a

§ 335.611

note as due to the dropping of amounts of less than \$1.00 or \$1,000, as appropriate.

[46 FR 25208, May 5, 1981, as amended at 54 FR 53593, Dec. 29, 1989]

§ 335.611 Items not material.

If the amount that would otherwise be required to be shown with respect to any item is not material, it need not be separately set forth.

§ 335.612 Inapplicable captions and omission of unrequired or inapplicable financial statements.

No caption need be shown in any financial statement required by the forms set forth in this part as to which the items and conditions are not present. Financial statements not required or inapplicable because the required matter is not present need not be filed, but the statements omitted and the reasons for their omission shall be indicated in the list of financial statements required by the applicable form.

§ 335.613 Additional information.

In addition to the information required with respect to any financial statement, further information shall be furnished as is necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

§ 335.614 Changes in accounting principles and practices and retroactive adjustments of accounts.

Any change in accounting principle or practice, or in the method of applying any accounting principle or practice, made during any period for which financial statements are filed that affects comparability of the financial statements with those of prior or future periods and the effect thereof upon the net income for each period for which financial statements are filed, shall be disclosed in a note to the appropriate financial statement. Any material retroactive adjustment made during any period for which financial statements are filed, and the effect thereof upon net income of prior periods, shall be disclosed in a note to the appropriate financial statement.

12 CFR Ch. III (1-1-97 Edition)

§ 335.615 Summary of accounting principles and practices.

Information required in notes as to accounting principles and practices reflected in the financial statements may be presented in the form of a single statement. In such a case specific references shall be made in the appropriate financial statements to the applicable portion of the single statement.

§ 335.616 Reacquired evidences of indebtedness.

Reacquired evidences of indebtedness shall be deducted from the appropriate liability caption.

§ 335.617 Reacquired shares.

When authorized by statute, reacquired shares not retired shall be shown separately as a deduction from capital shares, or from the total of capital shares and other stockholders' equity, at either par of stated value, or cost, as circumstances require.

§ 335.618 Foreign activities.

If assets, revenue, or income (loss) before taxes and securities gains (losses), or net income (loss) associated with foreign activities, exceeded 10 percent of the corresponding amount in the related financial statements, the following disclosures concerning foreign activities shall be furnished in a note to the financial statements. The term *revenue* includes the total of the amounts reported in items (1), (6) and (7) of the income statement, Format F-9B.

(a) *Loans.* State separately loan categories as prescribed by schedule A column C of Consolidated Report of Condition, Schedule RC-C, FFIEC 031, as applicable. Categories of less than 10 percent of total loans related to foreign activities may be grouped with all other loans.

(b) *Balances with banks in foreign countries.* State separately balances with foreign branches of other U.S. banks and with other banks in foreign countries. (See lines 3 (a) and (b) of Scheduled RC-A of the Consolidated Report of Condition, FFIEC 031. Also furnish the amount of interest-bearing balances included above.

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(c) *Deposit liabilities.* Furnish deposit information as prescribed in Schedule RC-E, Part II of Consolidated Report of Condition, FFIEC 031. State also the amount of interest-bearing deposits in denominations of \$100,000 or more.

(d) *Other borrowings.* State separately short-term borrowings, other liabilities for borrowed money, and other indebtedness related to foreign activities corresponding to the amounts reported on Schedule RC, FFIEC 031, items 14, 16, 17, 18, and 19.

(e) *Income and expense summary.* For each period for which an income statement is filed, furnish information as prescribed in part 1, column B and part 2 of the Statement of Income, Schedule RI-D, Part I, FFIEC 031. State in a note the basis of pricing money transfers and the policy governing allocation of income and expenses to foreign activities.

(f) *Allowance for possible loan and lease losses.* For each period for which a statement of income is filed, furnish in a note a reconciliation of changes in the allowance for possible loan and lease losses applicable to loans related to foreign activities.

(g) If disclosure above is required, state separately in a note for each significant geographic area, and in the aggregate for all other geographic areas not deemed significant, the following:

- (1) Total assets (net of valuation allowances);
- (2) Total net interest income;
- (3) Provisions for loan and lease losses and for allocated transfer risk;
- (4) Other net noninterest income (expense) including gains (losses) on securities not held in trading accounts; and
- (5) Net income (loss).

NOTE: A *significant geographic area* is one whose assets, operating income, or net income exceed 10 percent of the comparable amount as reported in the related financial statements.

[54 FR 53593, Dec. 29, 1989]

§ 335.619 Foreign currencies.

The basis of conversion of all items in foreign currencies shall be stated, and the amount and disposition of the resulting unrealized profit or loss shown. Disclosure should be made as to the effect, insofar as this can be reasonably determined, of foreign ex-

change restrictions upon the consolidated financial position and operating results of the bank and its subsidiaries.

§ 335.620 Commitments.

If material in amount, the pertinent facts relative to firm commitments for the acquisition, directly or indirectly, of fixed assets and for the purchase, repurchase, construction, or rental of assets under long-term leases shall be stated briefly in the balance sheet or in footnotes referred to therein. Where the rentals or obligations under long-term leases are material the following shall be set forth in a note to the appropriate financial statement:

(a) Total rental expense (reduced by rentals from subleases, with disclosure of such amounts) entering into the determination of results of operations for each period for which an income statement is presented shall be disclosed. Rental payments under short-term leases for a month or less which are not expected to be renewed need not be included. Contingent rentals, such as those based upon usage or sales, shall be reported separately from the basic or minimum rentals.

(b) The minimum rental commitments under all noncancelable leases shall be disclosed, as of the date of the latest balance sheet required, in the aggregate for (1) each of the five succeeding fiscal years and (2) the remainder as a single amount. The amounts so determined should be reduced by rentals to be received from existing noncancelable subleases (with disclosure of the amounts of such rentals). For purposes of this rule, a noncancelable lease is defined as one that has an initial or remaining term of more than one year and is noncancelable, or is cancelable only upon the occurrence of some remote contingency or upon the payment of a substantial penalty.

(c) Additional disclosures shall be made to report in general terms: (1) The basis for calculating rental payments if dependent upon factors other than the lapse of time;

(2) Existence and terms of renewal or purchase options, escalation clauses, etc;

(3) The nature and amount of related guarantees made or obligations assumed;

(4) Restrictions on paying dividends, incurring additional debt, further leasing, etc; and

(5) Any other information necessary to assess the effect of lease commitments upon the financial position, results of operations, and changes in financial position of the lessee.

§335.621 General notes to balance sheets.

If present with respect to the bank for which the statement is filed, the following shall be set forth in the balance sheet or in referenced notes. Information required by paragraphs (a), (e), (f), (g), (h), (i), and (j) of this section shall be provided with the most recent fiscal year balance sheet and any interim date balance sheet being filed.

(a) *Assets subject to lien.* The amounts of assets mortgaged, pledged, or otherwise subject to a lien or security interest shall be designated and the obligation secured thereby, if any, shall be identified briefly.

(b) *Intercompany profits and losses.* The effect upon any balance sheet item of profits or losses, resulting from transactions with affiliated companies and not eliminated shall be stated. If impracticable of accurate determination without unreasonable effort or expense, an estimate or explanation shall be given.

(c) *Pension and retirement plans.* (1) A brief description of the essential provisions of any employee pension or retirement plan and of the accounting and funding policies relating thereto shall be given;

(2) The estimated annual cost of the plan shall be stated;

(3) If a plan has not been funded or otherwise provided for, the estimated amount that would be necessary to fund or otherwise provide for the past-service cost of the plan shall be disclosed;

(4) The excess, if any, of the actuarially computed value of vested benefits over the total of the pension fund and any balance sheet accruals, less any pension prepayments or deferred charges, shall be stated as of the most recent practicable date;

(5) A statement shall be given of the nature and effect of significant matters affecting comparability of pension costs for which income statements are presented.

(d) *Capital stock optioned to officers and employees.* (1) A brief description of the terms of each option arrangement shall be given, including the title and amount of securities subject to the option, the year or years during which the options were granted, and the year or years during which the optionees became, or will become, entitled to exercise the options;

(2) There shall be stated the number of shares under option at the balance sheet date, and the option price and the fair value thereof (per share and in total) at the dates the options were granted; the number of shares with respect to which options became exercisable during the period, and the option price and the fair value thereof (per share and in total) at the dates the options became exercisable; the number of shares with respect to which options were exercised during the period, and the option price and the fair value thereof (per share and in total) at the dates the options were exercised; and the number of unoptioned shares available at the beginning and at the close of the latest period presented, for the granting of options under an option plan. A brief description of the terms of each other arrangement covering shares sold or offered for sale to only directors, officers, and key employees shall be given, including the number of shares, and the offered price and the fair value thereof (per share and in total) at the dates of sale or offer to sell, as appropriate. The required information may be summarized as appropriate with respect to each of the categories referred to in paragraphs (d)(2) of this section;

(3) The basis of accounting for the option arrangements and the amount of charges if any, reflected in income with respect thereto shall be stated.

(e) *Restrictions that limit the availability of surplus and/or undivided profit for dividend purposes.* Describe the most restrictive of any such restriction, other than as reported under item 22(b) of Format F-9A, indicating briefly its source, its pertinent provisions, and

where appropriate and determinable, the amount of the surplus and/or undivided profits (1) so restricted or (2) free of such restrictions.

(f) *Contingent liabilities.* A brief statement as to contingent liabilities not reflected in the balance sheet shall be made.

(g) *Standby letters of credit.* State the amount of outstanding *standby letters of credit*. For the purpose of this paragraph, *standby letters of credit* include every letter of credit (or similar arrangement however named or designated) which represents an obligation to the beneficiary on the part of the issuing bank—

(1) To repay money borrowed by or advanced to or for the account of the account party or

(2) To make payment on account of any evidence of indebtedness undertaken by the account party, or

(3) To make payment on account of any default by the account party in the performance of an obligation,¹ except that, if prior to or at the time of issuance of a standby letter of credit, the issuing bank is paid an amount equal to the bank's maximum liability under the standby letter of credit, or 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, then the amount of that standby letter of credit need not be stated.

(h) *Defaults.* The facts and amounts concerning any default in principal, interest, sinking fund, or redemption provisions with respect to any issue of securities or credit agreements, or any breach of covenant of a related indenture or agreement, which default or breach existed at the date of the most recent balance sheet being filed and which as not been subsequently cured, shall be stated. Notation of such default or breach of covenant shall be

¹As defined, *standby letter of credit* would not include (1) commercial letters of credit and similar instruments where the issuing bank expects the beneficiary to draw upon the issuer and which do not "guaranty" payment of a money obligation or (2) a guaranty or similar obligation issued by a foreign branch in accordance with and subject to the limitations of regulation M of the Board of Governors of the Federal Reserve System.

made in the financial statements. If a default or breach exists, but acceleration of the obligation has been waived for a stated period of time beyond the date of the most recent balance sheet being filed, state the amount of the obligation and the period of the waiver.

(i) *Significant changes in bonds, mortgages, and similar debt.* Any significant changes in the authorized or issued amounts of bonds, mortgages, and similar debt since the date of the latest balance sheet being filed for a particular person or group shall be stated.

(j) *Warrants or rights outstanding.* Information with respect to warrants or rights outstanding at the date of the related balance sheet shall be set forth as follows:

(1) Title of issue of securities called for by warrants or rights outstanding;

(2) Aggregate amount of securities called for by warrants or rights outstanding;

(3) Date from which warrants or rights are exercisable and expiration date;

(4) Price at which warrant or right is exercisable.

[46 FR 25208, May 5, 1981, as amended at 48 FR 55564, Dec. 14, 1983; 54 FR 53594, Dec. 29, 1989]

§ 335.622 General notes to statement of income.

If present with respect to the bank for which the statement is filed, the following shall be set forth in the statement of income or in referenced notes thereto:

(a) *Intercompany profits and losses.* The amount of any profits or losses resulting from transactions between unconsolidated affiliated companies shall be stated. If impracticable of determination without unreasonable effort and expense, an estimate or explanation shall be given.

(b) *Depreciation and amortization.* For the period for which statements of income are filed, there shall be stated the policy followed with respect to:

(1) The provision for depreciation of physical properties or valuation allowances created in lieu thereof, including the methods and, if practicable, the rates used in computing the annual amounts;

(2) The provision for depreciation and amortization of intangible assets, or valuation allowances created in lieu thereof, including the methods and, if practicable, the rates used in computing the annual amounts;

(3) The accounting treatment for maintenance, repairs, renewals, and improvements; and

(4) The adjustment of the accumulated valuation allowances for depreciation and amortization at the time the properties were retired or otherwise disposed of, including the disposition made of any profit or loss on sale of the properties.

(c) *Bonus, profit sharing, and other similar plans.* Describe the essential provisions of any plans in which only directors, officers or key employees may participate, and state, for each of the fiscal periods for which income statements are required to be filed, the aggregate amount provided for all plans by charges to expense.

(d) *Income tax expense.* (1) Disclosure shall be made, in the income statement or a note thereto, of the components of income tax expense, including:

(i) Taxes currently payable;

(ii) The net tax effects, as applicable, of (A) timing differences (indicate separately the amount of the estimated tax effect of each of the various types of timing differences where the amount of each such tax effects exceeds 5 percent of the amount computed by multiplying the income before tax by the applicable statutory Federal income tax rates; other differences may be combined) and (B) operating losses; and

(iii) The net deferred investment tax credits.

Amounts applicable to United States Federal income taxes, to foreign income taxes and to other income taxes shall be stated separately for each major component, unless the amounts applicable to foreign and other income taxes do not exceed 5 percent of the total for the component.

(2) If it is expected that the cash outlay for income taxes with respect to any of the succeeding three years will substantially exceed income tax expense for such year, that fact should be disclosed together with the approximate amount of the excess the year (or

years) of occurrence and the reasons therefor.

(3) Provide a reconciliation between the amount of reported total income tax expense and the amount computed by multiplying the income before tax by the applicable statutory Federal income tax rate, showing the estimated dollar amount of each of the underlying causes for the difference. If no individual reconciling item amounts to more than 5 percent of the amount computed by multiplying the income before tax by the applicable statutory Federal income tax rate, and the total difference to be reconciled is less than 5 percent of the computed amount, no reconciliation need be provided unless it would be significant in appraising the trend of earnings. Reconciling items that are individually less than 5 percent of the computed amount may be aggregated in the reconciliation. The reconciliation may be presented in percentages rather than in dollar amounts.

(4) Those banks adopting SFAS No. 96, Accounting for Income Taxes, should disclose such adoption and provide appropriate income tax expense disclosure as therein required, in lieu of paragraph (d)(1) of this section.

(e) *Interest capitalized.* The amount of interest cost capitalized in each period for which an income statement is presented shall be shown within the income statement. Banks which follow a policy of capitalizing interest cost shall make the following additional disclosures:

(1) The reason for the policy of interest capitalization and the way in which the amount to be capitalized is determined.

(2) The effect on net income for each period for which an income statement is presented of following a policy of capitalizing interest as compared to a policy of charging interest to expense as incurred.

(f) *Disagreements on accounting and financial disclosure matters.* If, (1) within the twenty-four months prior to the date of the most recent financial statements, a Form F-3 has been filed reporting a change of accountants,

(2) Included in the Form F-3 there was a reported disagreement on any matter of accounting principles or

practices or financial statement disclosure,

(3) During the fiscal year in which the change in accountants took place or during the subsequent fiscal year there have been any transactions or events similar to those which involved the reported disagreement, and

(4) Such transactions or events were material and were accounted for or disclosed in a manner different from that which the former accountants apparently would have concluded was required, state the existence and nature of the disagreement and also state the effect on the financial statements if the method had been followed which the former accountant apparently concluded was required. The effects on the financial statements need not be disclosed if the method asserted by the former accountant ceases to be generally accepted because of authoritative standards or interpretations subsequently issued.

(g) *Disclosure of selected quarterly financial data in notes to financial statements*—(1) *Exemption*. This paragraph (g) shall not apply unless the bank meets the tests prescribed by 17 CFR 229.302(a)(5).

(2) *Disclosure requirement*. (i) Disclosure shall be made in a note to financial statements of total interest income, total interest expense, net interest income, provision for loan and lease losses, other income (expense) net, income before extraordinary items and cumulative effect of a change in accounting, net income, and per share data based upon such income for each full quarter within the two most recent fiscal years and any subsequent interim period for which income statements are presented.

(ii) When the data required by the preceding paragraph above vary from the amounts previously reported on the Form F-4 filed for any quarter, such as would be the case when a pooling of interests occurs or where an error is corrected, reconcile the amounts given with those previously reported describing the reason for the difference.

(iii) Describe the effect of any unusual or infrequently occurring items recognized in each full quarter within the two most recent fiscal years and any subsequent interim period for

which income statements are presented, as well as the aggregate effect and the nature of year-end or other adjustments that are material to the results of that quarter.

(iv) Where this note is part of audited financial statements, it may be designated “unaudited.”

[46 FR 25208, May 5, 1981, as amended at 54 FR 53594, Dec. 29, 1989; 59 FR 67175, Dec. 29, 1994]

§ 335.623 Consolidated financial statements.

(a) Consolidated statements generally present more meaningful information to the investor than unconsolidated statements. Except where good reason exists, consolidated statement of the bank and its majority-owned significant subsidiaries should be filed.

(b) Every majority-owned bank-premises subsidiary and every majority-owned subsidiary operating under the provisions of section 25 or section 25(a) of the Federal Reserve Act (“Agreement Corporations” and “Edge Act Corporations”) shall be consolidated with that of the reporting bank irrespective of whether such subsidiary is a significant subsidiary.

(c) If the financial statements of a subsidiary are as of a date or for periods different from those of the bank, such statements may be used as the basis for consolidation of the subsidiary only if the date of such statements is not more than 93 days from the date of the close of the bank’s fiscal year; the closing date of the subsidiary is specified; the necessity for the use of different closing dates is explained briefly; and any changes in the respective fiscal periods of the bank and subsidiary made during the period of report are indicated clearly.

(d) There shall be set forth in a note to each consolidated balance sheet filed a statement of any difference between the investment in subsidiaries consolidated, as shown by the bank’s books, and the bank’s equity in the net assets of such subsidiaries as shown by the subsidiaries’ books. If any such difference exists, there shall be set forth the amount of the difference and the disposition made thereof in preparing the consolidated statements, naming

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the balance sheet captions, and stating the amount included in each.

(e) There may be filed financial statements in which majority-owned subsidiaries not consolidated with the parent are consolidated or combined in one or more groups, and 50 percent or less owned persons, the investments in which are accounted for by the equity method are consolidated or combined in one or more groups, principles of inclusion or exclusion which will clearly exhibit the financial position and results of operations of the group or groups.

(f) A brief description of the principles followed in consolidating or combining the separate financial statements, including the principles followed in determining the inclusion or exclusion of (1) subsidiaries and (2) companies in consolidated or combined financial statements, shall be stated in the notes to the respective financial statements.

(g) As to each consolidated financial statement and as to each combined financial statement, if there has been a change in the persons included or excluded in the corresponding statement for the preceding fiscal period filed with the FDIC which has a material effect on the financial statements, the persons included and the persons excluded shall be disclosed. If there have been any changes in the respective fiscal periods of the persons included made during the periods of the report which have a material effect on the financial statements, indicate clearly such changes and the manner of treatment.

(h) A statement shall be made in a note to the latest balance sheet of the amount and the accounting treatment of any difference between the investment of a bank and its consolidated subsidiaries, as shown in the consolidated balance sheet, in the unconsolidated subsidiaries and 50 percent or less owned persons accounted for by the equity method, and their equity in the net assets of such unconsolidated subsidiaries and 50 percent or less owned persons.

[46 FR 25208, May 5, 1981, as amended at 54 FR 53594, Dec. 29, 1989]

12 CFR Ch. III (1-1-97 Edition)

§ 335.624 Statement of changes in equity capital.

A statement of changes in equity capital shall be filed with each statement of income filed under this part.

§ 335.625 Statement of changes in financial position, and/or statement of cash flows.

A statement of changes in financial position and/or statement of cash flows, as appropriate, shall be filed with each statement of income filed pursuant to this part.

[54 FR 53594, Dec. 29, 1989]

§ 335.626 Schedules to be filed.

(a) The following schedules shall be filed with each balance sheet filed under this part: Schedule I—Securities; Schedule III—Loans and Lease Financing Receivables; and Schedule IV—Bank Premises and Equipment.

(b) The following schedule shall be filed with each statement of income filed under this part; schedule II—Loans to Officers, Directors, Principal Security Holders, and any Associates of the Foregoing Persons; schedule V—Investments in, Income from Dividends, and Equity in Earnings or losses of Subsidiaries and Associated Companies; and schedule VI—Allowance for Possible Loan Losses.

(c) Reference to the schedules referred to in paragraphs (a) and (b) of this section shall be made against the appropriate captions of the balance sheet or statement of income.

(d) The schedules shall be examined by the independent accountant if the related financial statements are so examined.

[46 FR 25208, May 5, 1981, as amended at 54 FR 53594, Dec. 29, 1989]

§ 335.627 Format F-9 financial statements.

- A. Balance Sheet (Format F-9A)
- B. Statement of Income (Format F-9B)
- C. Statement of Changes in Equity Capital (Format F-9C)
- D. Schedules (Format F-9D)

GENERAL INSTRUCTIONS

1. *Preparation of Financial Statements*

The formats are intended to serve as guides for preparation of financial statements required to be filed under this part. The formats are recommended presentations, but financial statements may be filed in such form and order as will best indicate their significance and character. Requirements for inclusion of financial statements in certain other guideline forms required by part 335 are found in the instructions to such forms.

The formats for the statements of changes in financial position and cash flows are not set forth herein. Refer to SFAS No. 95 "Statement of Cash flows", appendix C for an illustrative example of an acceptable format for banks.

Banks have the option of conforming their financial statement formats to the provisions of Article 9 of Regulation S-X of the SEC (17 CFR 210.9) in lieu of the formats set forth herein. Savings banks are encouraged to utilize Call Report formats for the Balance Sheet, Statement of Income, Statement of Changes in Equity Capital, and appropriate schedules.

2. *Accrual Accounting*

Financial statements shall generally be prepared on the basis of accrual accounting whereby all revenues and all expenses shall be recognized during the period earned or incurred regardless of the time received or paid, with certain exceptions: (a) Where the results would be only insignificantly different on a cash basis, or (b) where accrual is not feasible. Statements with respect to the first fiscal year that a bank reports on the accrual basis shall indicate clearly, by footnote or otherwise, the beginning-of-year adjustments that were necessary and their effect on prior financial statements filed under this part.

3. *Negative Amounts*

Negative amounts shall be shown in brackets or parentheses and so described in the related caption, columnar heading or a note to the statement or schedule, as appropriate.

4. *Items not Material*

If the amount that would otherwise be required to be shown with respect to any items is not material, it need not be separately set forth.

5. *Inapplicable Captions and Omission of Unrequired or Inapplicable Financial Statements and Schedules*

No caption need be shown in any financial statement or schedule if the items and conditions are not present. Financial statements and schedules not required or inapplicable because the required matter is not present

need not be filed, but the statements and schedules omitted and the reasons for their omission shall be indicated in the list of financial statements and schedules required by the applicable form.

A. BALANCE SHEET

The Balance Sheet shall be prepared in accordance with the instructions for the preparation of the Consolidated Report of Condition (FFIEC 031, 032, 033, 034 as applicable) except to the extent revised or expanded financial data presentation is necessary to meet the disclosure standards of the Securities Exchange Act of 1934, as amended.

NOTE: Banks subject to this part are required to report on the accrual basis of accounting.

The following captions and added *supplemental* instructions shall be observed in the preparation of the Balance Sheet required under this part.

Assets

1. *Cash and balances due from depository institutions.* (a) State separately (1) interest-bearing balances in other banks and (2) non-interest-bearing balances and cash.

(b) Any withdrawal and usage restrictions (including requirements of the Federal Reserve to maintain certain average reserve balances) or compensating balance requirements should be disclosed.

2. *Securities.* (a) Include securities held for investment only. Disclose the aggregate book value of investment securities; show on the balance sheet parenthetically the aggregate market value at balance sheet date. The aggregate amounts should include securities pledged, loaned or sold under repurchase agreements and similar arrangements; borrowed securities and securities purchased under resale agreements or similar arrangements should be excluded.

(b) Disclose in a note the carrying value and market value of securities of (1) the U.S. Treasury and other U.S. Government agencies and corporations; (2) states of the U.S. and political subdivisions; and (3) other securities.

3. *Federal funds sold and securities purchased under agreements to resell.* These amounts should be presented gross and not netted against Federal funds purchased and securities sold under agreements to repurchase.

4. *Loans and lease financing receivables.* Disclose separately (1) total loans and lease financing receivables, (2) the related allowance for losses and (3) unearned income.

(a) Disclose on the balance sheet or in a note the amount of total loans in each of the following categories:

(1) Commercial, financial and agricultural, (2) real estate-construction, (3) real estate-

mortgage, (4) installment loans to individuals, (5) lease financing receivables, (6) foreign, (7) other. (State separately any other loan category regardless of relative size if necessary to reflect any unusual risks or uncertainties such as a substantial portion of total loans which are concentrated in one or a few industries or foreign countries).

(b) A series of categories other than those specified in (a) above may be used to present details of loans if considered a more appropriate presentation.

(c) The amount of foreign loans must be presented if the disclosures specified by § 335.618 are required.

(d) For each period for which an income statement is required, furnish in a note a statement of changes in the allowance for loan and lease losses showing the balances at beginning and end of the period, provision charged to income, recoveries of amounts charged off and losses charged to the allowance.

(e)(1)(i) For each balance sheet date, disclose in a note the aggregate dollar amount of loans (exclusive of loans to any such persons which in the aggregate do not exceed \$60,000 during the latest year) made by the bank or any of its subsidiaries to directors, principal-officers, or principal holders of equity securities of the bank or any of its significant subsidiaries, or to any associate of such persons. For the latest fiscal year, an analysis of activity with respect to such aggregate loans to related parties should be provided. The analysis should include the aggregate amount at the beginning of the period, new loans, repayments, and other changes. (Other changes, if significant, should be explained).

(ii) This disclosure need not be furnished when the aggregate amount of such loans at the balance sheet date (or with respect to the latest fiscal year, the maximum amount outstanding during the period) does not exceed 5 percent of equity capital at the balance sheet date.

(2) If a significant portion of the aggregate amount of loans outstanding at the end of the fiscal year disclosed pursuant to paragraph (e)(1)(i) of this section A, relates to loans which are nonaccrual, past due (over 90 days) or restructured, as those terms are used in the Call Report, so state and disclose the aggregate amount of such loans along with such other information necessary to an understanding of the effects of the transactions of the financial statements.

(3) Notwithstanding the aggregate disclosure called for by paragraph (e)(1) of this section A, if any loans were not made in the ordinary course of business during any period for which an income statement is required to be filed, provide an appropriate description of each such loan.

5. *Assets held in trading accounts.* Include securities or any other investments held for trading purposes only.

6. *Premises and fixed assets.*

7. *Other real estate owned.* State in a note (1) the basis at which carried, (2) the aggregate fair market value of all real estate owned other than bank premises with an explanation of the method of determining such fair market value, and (3) for each period for which an income statement is required, a reconciliation of any valuation allowance account, including the balance at the beginning and end of the period, provisions charged to income, and losses charged to the allowance.

8. *Investments in an indebtedness of unconsolidated subsidiaries and associated companies.*

9. *Customers' liability to the bank on acceptances outstanding.*

10. *Intangible assets.*

11. *Other assets.* Disclose separately on the balance sheet or in a note thereto any of the following assets or any other assets the amount of which exceeds 30 percent of equity capital. The remaining assets may be shown as one amount.

(1) Accrued interest.

(2) Net deferred tax charges.

12. *Total assets.*

Liabilities

13. *Deposits.* (a) Disclose separately the amounts of noninterest bearing deposits and interest bearing deposits. The amount of noninterest bearing deposits and interest bearing deposits in foreign banking offices must be presented if the disclosures provided by § 335.618 are required.

(b) State in a note the aggregate amount of (1) time certificates of deposit in denominations of \$100,000 or more and (2) other time deposits in denominations of \$100,000 or more, in domestic offices and, if § 335.618 applies, foreign offices.

14. *Federal funds purchased and securities sold under agreements to repurchase and other short term borrowings.* (a) Disclose separately on the balance sheet or in a note, amounts payable for (1) Federal funds purchased and securities sold under agreements to repurchase; (2) commercial paper, and (3) other short term borrowings. Disclose any unused lines of credit for short-term financing.

(b) If the average balance outstanding during the period for any category was 30 percent or more of equity capital, provide the following information, with respect to each category, in a note:

(1) Weighted average interest rate at balance sheet date.

(2) Maximum amount of borrowings at any month-end during each period for which an end of period balance sheet is required.

(3) Approximate average borrowings outstanding during the period.

(4) Approximate weighted average interest rate for such average borrowings outstanding during the period.

15. *Demand notes issued to the U.S. Treasury.*

16. *Other borrowed money.* See supplemental instruction to Item 14.

17. *Mortgage indebtedness and obligations under capitalized leases.* (a) Report the amount of mortgages, liens, or other encumbrances on premises and fixed assets and on other real estate owned for which the bank or its consolidated subsidiaries are liable. If the bank is the lessee on capitalized lease property, include the bank's liability for capitalized lease payments. (See the Call Report Glossary entry for "lease accounting" for a discussion of accounting with bank as lessee.)

(b) State in a note material terms and conditions of each obligation, including (but not limited to): (1) The general character of the debt; (2) the rate of interest; (3) the date of maturity or if maturing serially, a brief indication of the serial maturities; (4) if the payment of principal or interest is contingent, an appropriate indication of such contingency; (5) a brief indication of priority; and (6) the amount outstanding at the balance sheet date.

18. *Bank's liability or acceptances executed and outstanding.* Report the amount of liability that is represented by drafts and bills of exchange that have been accepted by the reporting bank, or by others for its account, and that are outstanding. See the Call Report Glossary entry for "Bankers Acceptances" for further information.

19. *Notes and debentures subordinated to deposits.* (a) Report the amount of outstanding notes and debentures (including mandatory convertible debt) that are subordinated to the deposits of the consolidated bank (see the Call Report Glossary entry for "Subordinated Notes and Debentures").

(b) State in a note the material terms and conditions of each obligation including, but not limited to: (1) The general character of the debt; (2) the rate of interest; (3) the date of maturity, or if maturing serially, an indication of serial maturities; (4) if the payment of principal or interest is contingent, an appropriate indication of such contingency; (5) a brief indication of priority; (6) the amount outstanding at the balance sheet date; and (7) if convertible, the basis.

20. *Other liabilities.* Disclose separately on the balance sheet or in a note any of the following liabilities or any other items which are individually in excess of 25 percent of the equity capital (except that amounts in excess of 5 percent of equity capital should be disclosed with respect to item (4)). The remaining items may be shown as one amount. (1) Income taxes payable, (2) Deferred income taxes, (3) Indebtedness to affiliates and other persons the investments in which are accounted for by the equity method, (4) Indebt-

ness to directors, executive officers, and principal holders of equity securities of the bank or any of its significant subsidiaries, (5) Accounts payable and accrued expenses, (6) Commitments and contingent liabilities, minority interest in consolidated subsidiaries.

21. *Total Liabilities.*

22. *Limited-life preferred stock.* (a) Report the amount of any preferred stock that has a stated maturity date that can be redeemed at the option of the holder (excluding those issues of preferred stock that automatically convert into perpetual preferred stock or common stock at a stated date). State on the face of the balance sheet the title of each issue, the carrying amount and redemption amount. (If there is more than one issue, these amounts may be aggregated on the face of the balance sheet and details concerning each issue may be presented in the note required by paragraph (b) below.) Show also the dollar amount of any shares subscribed but unissued, and show the deduction of subscriptions receivable therefrom. If the carrying amount is different from the redemption amount, describe the accounting treatment for such difference in the note required by paragraph (b) below. Also state in this note or on the face of the balance sheet, for each issue, the number of shares authorized and the number of shares issued or outstanding, as appropriate.

(b) State in a separate note captioned "Redeemable Preferred Stock": (1) A general description of each issue, including its redemption features (e.g., sinking fund, at option of holders, out of future earnings) and the rights, if any, of holders in the event of default, including the effect, if any, on junior securities in the event that a required dividend, sinking fund, or other redemption payment(s) is not made; (2) the combined aggregate amount of redemption requirements for all issues each year for the five years following the date of the latest balance sheet; and (3) the changes in each issue for each period for which an income statement is required to be filed.

Equity Capital

23. *Perpetual preferred stock.* Report the amount of preferred stock that does not have a stated maturity date or that cannot be redeemed at the option of the holder (including those issues of preferred stock that automatically convert into common stock at a stated date). State on the face of the balance sheet, or if more than one issue is outstanding, state in a note, the title of each issue and the dollar amount thereof. Show also the dollar amount of any shares subscribed but unissued, and show the deduction of subscriptions receivable therefrom. State on the face of the balance sheet or in a note, for each issue, the number of shares authorized

and the number of shares issued or outstanding, as appropriate. Show in a note or separate statement the changes in each class of preferred shares reported herein for each period for which an income statement is required to be filed.

24. *Common stock.* Report the aggregate par or stated value of outstanding common stock. State for each class of shares the title of issue, the number of shares authorized, issued and outstanding, the par value per share and the dollar amount thereof. Show also the dollar amount, if any, of each class of shares subscribed to but unissued, and show the deduction of subscriptions receivable therefrom. Disclose in the statement or in a note the changes in the aggregate par or stated value of outstanding common stock for each period for which an income statement is required.

25. *Surplus.*

26. *Undivided profits and capital reserves.* Report the amounts appropriated and unappropriated; restrictions which limit the payment of dividends; and the amount of undivided profits which represents undistributed earnings of 50 percent or less owned companies.

27. *Cumulative foreign currency translation adjustments.* (Not applicable to banks with domestic offices only).

28. *Total equity capital.*

29. *Total liabilities, limited-life preferred stock, and equity capital.*

B. STATEMENT OF INCOME

The statement of income shall conform generally to the Consolidated Report of Income (FFIEC 031, 032, 033, 034 as applicable) and related instructions thereto, except to the extent revised or expanded financial data presentation is necessary to meet the disclosure standards of the Securities Exchange Act of 1934, as amended.

NOTE: See § 335.601 for general requirements of financial reporting.

The following captions and added supplemental instructions shall be observed in the preparation of the statement of income required under this subpart.

1. *Interest income.* Include commitment and origination fees, late charges and current amortization of premium and accretion of discount on loans which are related to or are an adjustment of the loan interest rate. Disclose separately.

- (a) Interest and fee income on loans.
- (b) Income from lease financing receivables.
- (c) Interest income on balance due from depository institutions.
- (d) Interest and dividend income on securities—Disclose separately (1) taxable interest income, (2) nontaxable interest income, and

(3) dividends. State in a note interest and dividend income on

- (i) U.S. Treasury securities and U.S. Government agency and corporation obligations.
- (ii) Securities issued by states and political subdivisions in the U.S.
- (iii) Other domestic securities (debt and equity).
- (iv) Foreign securities (debt and equity).
- (e) Interest income from assets held in trading accounts.
- (f) Interest income on federal funds sold and securities purchased under agreements to resell.

2. *Interest expense.* Disclose separately:

- (a) Interest on deposits.
 - (i) Interest on time certificates of deposit of \$100,000 or more.
 - (ii) Interest on other deposits.
- (b) Expense of federal funds purchased and securities sold under agreements to repurchase.
- (c) Interest on demand notes issued to the U.S. Treasury and on other borrowed money.
- (d) Interest on mortgage indebtedness and obligations under capitalized leases.
- (e) Interest on notes and debentures subordinated to deposits.

3. *Net interest income.*

4. *Provision for loan and lease losses.*

5. *Net interest income after provision for loan and lease losses.*

6. *Noninterest income.* Disclose separately:

- (a) Income from fiduciary activities.
- (b) Service charges on deposit accounts.
- (c) Trading gains (losses) and fees from foreign exchange transactions.
- (d) Other foreign transaction gains (losses).
- (e) Gains (losses) and fees from assets held in trading account. Report the net gain or loss from the sale of assets reportable in item 5, "Assets held in trading accounts," other than those trading gains (losses) and fees relating to foreign exchange transactions reported in item 6(c) above.
- (f) Other noninterest income. Report all operating income of the bank not required to be reported in item 1(a) through 1(f) and 6(a) through 6(e). State separately the dollar amount of any individual component of this item which exceeds 25 percent of the total.

7. *Gain (losses) on securities not held in trading accounts.* Report the net gain or loss. Disclose in a note the method used to determine the cost of investments sold and the related income taxes.

8. *Noninterest expense.* (a) Salaries and employee benefits.

- (b) Expenses of premises and fixed assets.
- (c) Other noninterest expense. See item 6(f) for threshold for disclosure of individual components.
- (d) Total noninterest expense.
- (e) Amortization of goodwill.
- (f) Minority interest in income of consolidated subsidiaries.

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- 9. *Income (loss) before income taxes and extraordinary items and other adjustments.*
- 10. *Applicable income taxes (on item 9). See § 335.622(d).*
- 11. *Income (loss) before extraordinary items and other adjustments.*
- 12. *Extraordinary items and other adjustments.*
 - (a) Extraordinary items and other adjustments, gross of income taxes.
 - (b) Applicable income taxes (on item 12(a)).
 - (c) Extraordinary items and other adjustments, net of income taxes.
- 13. *Net income (loss).* Report the sum of items 11 and 12(c).
- 14. *Earnings per share data.*

- 4. *Net income (loss).*
- 5. *Sale, conversion, acquisition, or retirement of capital net: (a) Transactions with own holding company or affiliates. (b) Other.*
- 6. *Changes incident to mergers and absorptions, net.*
- 7. *Less: Cash dividends declared on common stock.*
- 8. *Less: Cash dividends declared on preferred stock.*
- 9. *Stock dividend issued.*
- 10. *Other increases (decreases).²*
- 11. *Balance end of period.*

D. SCHEDULES (FORMAT F-9D)

Schedule I—Securities

Exclude assets held in trading accounts.

C. STATEMENT OF CHANGES IN EQUITY CAPITAL

The format and content of the Statement of Changes in Equity Capital shall conform generally to section B of the Consolidated Report of Income (FDIC 8040/02) and related instruction thereto except to the extent revised or expanded financial data presentation is necessary to meet the disclosure standards of the Securities Exchange Act of 1934, as amended.

The following supplemental instructions shall be observed in the preparation of the Statement of Changes in Equity Capital required under this part.

Reconcile the various equity capital accounts individually as follows:

- 1. *Balance end of previous year.*
- 2. *Prior period adjustment.²*
 - (a) Cumulative effect type changes in accounting principles shall be reported under item 9 of the Statement of Income.
- 3. *Adjusted balance end of previous year.*

²State separately any material amounts, indicating clearly the nature of the transaction out of which the item arose.

	Book value (Col. A)	Market value (Col. B)
1. U.S. Treasury securities
2. U.S. Government agency and corporation obligations:		
a. All holdings of U.S. Government-issued or guaranteed certificates of participation in pools of residential mortgages
b. All other
3. Securities issued by states and political subdivisions in the U.S.
4. Other domestic securities (debt and equity):		
a. All holdings of private (i.e., nongovernment-issued or guaranteed) certificates of participation in pools of residential mortgages
b. All other
5. Foreign securities (debt and equity)
6. Total (sum of items 1 through 5) (total of column A must equal call report schedule RC, item 2)
7. Pledged securities

SCHEDULE II—LOANS TO OFFICERS, DIRECTORS, PRINCIPAL SECURITY HOLDERS, AND ANY ASSOCIATES OF THE FOREGOING PERSONS ¹

[NOTE: See footnotes at end of schedule.]

Col. A Name of borrower ²	Col. B Balance at beginning of period	Col. C Additions	Col. D Deductions		Col. E Balance at end of period
			(1) Amounts collected ³	(2) Amounts charged off	

¹Provide information if at any time during the period for which related income statements are required to be filed, loans to a specified person and associates exceeded 2½% of equity capital of the bank or \$500,000, whichever is less. It shall not be necessary to include amount of loans related to individuals for household, family and other personal expenditures made in the ordinary course of business.

Loans to directors (and any associates) who are neither officers nor principal security holders may be stated in the aggregate. The number of directors for whom loans are stated in the aggregate shall be indicated in column A.

²State in a note hereto pertinent information such as the maturity date, interest rate, terms of repayment and collateral, if any, of loans made to the specified persons named in column A as of the date of the most recent balance sheet being filed.

³If collection was other than cash, explain.

SCHEDULE III—LOANS AND LEASE FINANCING RECEIVABLES

Book value

Net of unearned income and before adjustment for allowance for loan and lease losses. Excluding assets held in trading accounts.

	<i>Book value</i>	
1. Loans secured by real estate:		4. Commercial and industrial loans:
a. Construction and land development		a. To U.S. addressees (domicile)
b. Secured by farmland (including farm residential and other improvements)		b. To non-U.S. addressees (domicile)
c. Secured by 1-4 family residential properties		5. Acceptance of other banks
d. Secured by multifamily (5 or more) residential properties		6. Loans to individuals for household, family, and other personal expenditures (includes purchased paper):
e. Secured by nonfarm nonresidential properties		a. Credit cards and related plans
2. Loans to depository institutions:		b. Other
a. To commercial banks in the U.S.:		7. Loans to foreign governments and official institutions (including foreign central banks)
(1) To U.S. branches and agencies of foreign banks		8. Obligations (other than securities) of states and political subdivision in the U.S.:
(2) To other commercial banks in the U.S.		a. Nonrated industrial development obligations
b. To other depository institutions in the U.S.		b. Other obligations (excluding securities)
c. To banks in foreign countries:		9. Other loans:
(1) To foreign branches of other U.S. banks		a. Loans for purchasing or carrying securities (secured and unsecured)
(2) To other banks in foreign countries ...		b. All other loans
3. Loans to finance agricultural production and other loans to farmers		10. Lease financing receivables (net of unearned income)
		11. Less: Any unearned income on loans reflected in items 1-9 above
		12. Total loans and leases, net of unearned income (sum of items 1 through 10 minus item 11) (must equal call report schedule RC, item 4a)
		Note: Commercial paper included in call report schedule RC-C

SCHEDULE IV—BANK PREMISES AND EQUIPMENT

[NOTE: See footnotes at end of schedule.]

Classification	Column A	Column B	Column C
	Gross book value ¹	Accumulated depreciation and amortization ²	Amount at which carried on balance sheet
Bank premises (including land)			
Equipment			
Leasehold improvements			

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SCHEDULE IV—BANK PREMISES AND EQUIPMENT—Continued

[NOTE: See footnotes at end of schedule.]

Classification	Column A	Column B	Column C
	Gross book value ¹	Accumulated depreciation and amortization ²	Amount at which carried on balance sheet
Totals

¹ State the basis of determining the amounts in column A.
² The nature and amount of significant additions (other than provisions for depreciation and amortization) and deductions from depreciation accounts shall be stated in an explanatory footnote.

SCHEDULE V—INVESTMENTS IN, INCOME FROM DIVIDENDS, AND EQUITY IN EARNINGS OR LOSSES OF SUBSIDIARIES AND ASSOCIATED COMPANIES

[NOTE: See footnotes at end of schedule.]

Name of issuer ¹	Col. A	Col. B	Col. C	Col. D	Col. E
	Percent of voting stock owned	Total investment	Equity in underlying net assets at balance sheet date ²	Amount of dividends ³	Bank's proportionate part of earnings or loss for the period
Totals

¹ Group separately securities of (a) subsidiaries consolidated, (b) subsidiaries not consolidated, and (c) associated companies. Show shares, bonds, notes and advances separately in each case.
² Equity shall include advances and other obligations reported in column B to the extent recoverable.
³ State as to any dividends other than cash the basis on which they have been reported as income. If any such dividend received has been credited to income in an amount differing from that charged to surplus and/or undivided profits by the disbursing subsidiary, state the amount of such difference and explain.

SCHEDULE VI—ALLOWANCE FOR POSSIBLE LOAN LOSSES

[NOTE: See footnotes at end of schedule.]

	Amount
Balance end of previous period
Recoveries credited to allowance
Changes incident to mergers and absorptions ¹
Provisions for possible loan losses
Less: Losses charged to allowance
Foreign currency translation adjustment
Balance end of period ²

¹ Describe briefly in a footnote any such addition.
² State in a footnote (1) the amount deducted for Federal income tax purposes, (2) the maximum amount that could have been deducted for Federal income tax purposes, and (3) the balance of the allowance at the end of the period as reported for Federal income tax purposes.

Note: See schedule C of FDIC 8040/02.

[46 FR 25208, May 5, 1981, as amended at 54 FR 53594, Dec. 29, 1989; 57 FR 58136, Dec. 9, 1992]

§ 335.628 Pro forma financial information.

I. PRESENTATION REQUIREMENTS

(a) Pro forma financial information shall be furnished when any of the following conditions exist:

- (1) During the most recent fiscal year or subsequent interim period for which a balance sheet is required, a significant business combination accounted for as a purchase has occurred;
 - (2) After the date of the most recent balance sheet required to be filed, consummation of a significant business combination to be accounted for by either the purchase method or pooling-of-interests method of accounting has occurred or is probable;
 - (3) The bank is offering its securities to the security holders of a significant business to be acquired or the proceeds from the offered securities will be applied, directly or indirectly, to the purchase of a specific significant business;
 - (4) The disposition of a significant portion of a business either by sale, abandonment or distribution to shareholders by means of a spin-off, split-up or split-off has occurred or is probable and such disposition is not fully reflected in the bank's financial statements included in the filing; or
 - (5) Other transactions or events have occurred or are probable for which disclosure of pro forma financial information would be material to investors.
- (b) A business combination or disposition of a business shall be considered significant if:

(1) A comparison of the most recent annual financial statements of the business acquired or to be acquired and the bank's most recent annual consolidated financial statements filed at or prior to the date of acquisition indicates that the business would be a significant subsidiary under conditions specified in § 335.103(nn): or

(2) The business to be disposed of meets the conditions of a significant subsidiary in § 335.102(nn).

(c) When consummation of more than one transaction has occurred or is probable during a fiscal year, the tests of significance in paragraph (b) of this section shall be applied to the cumulative effect of those transactions. If the cumulative effect of the transactions is significant, pro forma financial information shall be presented.

(d) For purposes of this section the term *business* should be evaluated in light of the facts and circumstances involved and whether there is sufficient continuity of the acquired entity's operations prior to and after the transactions so that disclosure of prior financial information is material to an understanding of future operations. A presumption exists that a separate entity, a subsidiary, or a division is a business. However, a lesser component of an entity may also constitute a business. Among the facts and circumstances which should be considered in evaluating whether an acquisition of a lesser component of an entity constitutes a business are the following:

(1) Whether the nature of the revenue-producing activity of the component will remain generally the same as before the transaction; or

(2) Whether any of the following attributes remain with the component after the transaction:

- (i) Physical facilities,
- (ii) Employee base,
- (iii) Market distribution system,
- (iv) Sales force,
- (v) Customer base,
- (vi) Operating rights,
- (vii) Production techniques, or
- (viii) Trade names.

(e) This section does not apply to transactions between a bank and its totally owned subsidiaries.

II. PREPARATION REQUIREMENTS

(a) *Objective.* Pro forma financial information should provide investors with information about the continuing impact of a particular transaction by showing how it might have affected historical financial statements if the transaction had been consummated at an earlier time. Such statement should assist investors in analyzing the future prospects of the bank because they illustrate the possible scope of the change in the bank's historical financial position and results of operations caused by the transactions.

(b) *Form and content.* Pro forma financial information shall consist of a pro forma condensed balance sheet, pro forma condensed statements of income, and accompanying explanatory notes. Where a limited number of pro forma adjustments are required and those adjustments are easily understood, a narrative description of the pro forma effects of the transaction may be furnished in lieu of the statements described herein.

(2) The pro forma financial information shall be accompanied by an introductory paragraph which briefly sets forth a description of (i) the transaction; (ii) the entities involved, and (iii) the periods for which the pro forma information is presented. In addition, an explanation of what the pro forma presentation shows shall be set forth.

(3) The pro forma condensed financial information need only include major captions (*i.e.*, the numbered captions) prescribed by § 335.627 A and B. Where any major balance sheet caption is less than 10 percent of total assets, the caption may be combined with others. When any major income statement caption is less than 15 percent of average net income of the bank for the most recent three fiscal years, the caption may be combined with others. In calculating average net income, loss years should be excluded, unless losses were incurred in each of the most recent three years, in which case the average loss shall be used for purposes of this test. Notwithstanding these tests, *de minimis* amounts need not be shown separately.

(4) Pro forma statements shall ordinarily be in columnar form showing condensed historical statement, pro forma adjustments, and the pro forma results.

(5) The pro forma condensed income statement shall disclose income (loss) from continuing operations before nonrecurring charges or credits directly attributable to the transaction. Material nonrecurring charges or credits and related tax effects which result directly from the transaction and which will be included in the income of the Bank within the 12 months succeeding the transaction shall be disclosed separately. It should be clearly indicated that such charges or credits were not considered in the pro forma condensed income statement. If the transaction for which pro forma financial information is presented related to the disposition of a business, the pro forma results should give effect to the disposition and be presented under an appropriate caption.

(6) Pro forma adjustments related to the pro forma condensed income statement shall be computed assuming the transaction was consummated at the beginning of the fiscal year presented and shall include adjustment which give effect to events that are (i) directly attributable to the transaction, (ii) expected to have a continuing impact on the bank, and (iii) factually supportable. Pro

forma adjustments related to the pro forma condensed balance sheet shall be computed assuming the transaction was consummated at the end of the most recent period for which a balance sheet is required and shall include adjustments which give effect to events that are directly attributable to the transaction and factually supportable, regardless of whether they have a continuing impact or are nonrecurring. All adjustments should be referenced to notes which clearly explain the assumption involved.

(7) Historical, primary and fully diluted per share data based on continuing operations (or net income if the bank does not report discontinued operations, extraordinary items, securities gains (losses), or the cumulative effects of accounting changes) for the bank, and primary and fully diluted pro forma per share data based on continuing operations before nonrecurring charges or credits directly attributable to the transaction shall be presented on the face of the pro forma condensed income statement together with the number of shares used to compute such per share data. For transactions involving the issuance of securities, the number of shares used in the calculation of the pro forma per share data based on continuing operations before nonrecurring charges or credits directly attributable to the transaction or event taken place at the beginning of the period presented. If a convertible security is being issued in the transaction, consideration should be given to the possible dilution of the pro forma per share data.

(8) If the transaction is structured in such a manner that significantly different results may occur, additional pro forma presentations shall be made which give effect to the range of possible results.

INSTRUCTIONS

1. The historical statement of income used in the pro forma financial information shall not report operations of a segment that has been discontinued, extraordinary items, securities gains (losses), or the cumulative effects of accounting changes. If the historical statement of income includes such items, only the appropriate portion of the statement (and appropriate captions) should be used in preparing pro forma results.

2. For a purchase transaction, pro forma adjustments for the income statement shall include amortization of any intangible asset, depreciation and other adjustments based on the allocated purchase price of net assets acquired. Disclose in a note the effect which the purchase adjustment will have on the reported results of operations for each of the next five years if such adjustments:

(a) Involve a significant write-down of the historical cost of the acquired assets to their fair value at the acquisition date; and

(b) Will have a significant effect on earnings in periods immediately following the acquisition which will be progressively eliminated over a relatively short period.

3. For a disposition transaction, the pro forma financial information shall begin with the historical financial statements of the bank and show the deletion of the business to be divested along with the necessary pro forma adjustments, including adjustments relating to expenses that will be or have been incurred on behalf of the business to be divested, *e.g.*, advertising costs and personnel expenses.

4. When consummation of more than one transaction has occurred or is probable during a fiscal year, the pro forma financial information may be presented on a combined basis; however, in some circumstances, *e.g.*, where some transactions have been consummated and the others are probable, it may be more useful to present the pro forma financial information on a nonaggregated basis, even though some or all of the transactions would not meet the tests of significance individually. For combined presentations, a note should explain the various transactions and disclose the maximum variances in the pro forma financial information which would occur for any of the possible combinations. If the pro forma financial information is presented in a proxy or information statement for purposes of obtaining shareholder approval of one of the transactions, the effects of that transaction must be clearly set forth.

5. Income tax effects, if any, of pro forma adjustments normally should be calculated at the statutory rate in effect during the periods for which pro forma condensed income statements are presented and should be reflected as a separate pro forma adjustment.

(c) *Periods to be presented.* (1) A pro forma condensed balance sheet as of the end of the most recent period for which a consolidated balance sheet of the bank is required shall be filed, unless the transaction is already reflected in such balance sheet.

(2)(i) Pro forma condensed statements of income shall be filed for only the most recent fiscal year and for the period from the end of the most recent fiscal year to the most recent interim date for which a balance sheet is required. A pro forma condensed statement of income may be filed for the corresponding interim period of the preceding fiscal year. A pro forma condensed statement of income shall not be filed when the historical income statement reflects the transaction for the entire period.

(ii) For a business combination accounted for as a pooling of interests, the pro forma income statements (which are in effect a restatement of the historical income statements as if the combination had been consummated) shall be filed for all periods for

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which historical income statements of the bank are required.

(3) Pro forma condensed statements of income shall be presented using the bank's fiscal year-end. If the most recent fiscal year-end of any other entity involved in the transaction differs from the bank's most recent fiscal year-end by more than 93 days, the other entity's income statement shall be brought up to within 93 days of the bank's most recent fiscal year-end, if practicable. This updating could be accomplished by adding subsequent interim period results to the most recent fiscal year-end information and deducting the comparable preceding year interim period results. Disclosure shall be made of the periods combined and of the sales or revenues and income for any periods which were excluded from or included more than once in the condensed pro forma income statements (*e.g.*, an interim period that is included both as part of the fiscal year and the subsequent interim period).

(4) Whenever unusual events enter into the determination of the results shown for the most recently completed fiscal year, the effect of such unusual events should be disclosed and consideration should be given to presenting a pro forma condensed income statement for the most recent twelve-month period, in addition to those required in paragraph (c)(2)(i) of this section, if the most recent twelve-month period is more representative of normal operations.

III. PRESENTATION OF FINANCIAL FORECAST

(a) A financial forecast may be filed in lieu of the pro forma condensed statements of income required by § 335.628 II(b)(1).

(1) The financial forecast shall cover a period of at least 12 months from the later of (i) the date of the most recent balance sheet included in the filing or (ii) the consummation date or estimated consummation date of the transaction.

(2) The forecasted statement of income shall be presented in the same degree of detail required by § 335.628 II(b)(3) for the pro forma condensed statements of income.

(3) Assumptions particularly relevant to the transaction and effects thereof should be clearly set forth.

(4) Historical condensed financial information of the bank and the business acquired or to be acquired, if any, shall be presented for at least a recent 12 month period in parallel columns with the financial forecast.

(b) Such financial forecast shall be presented in accordance with the guidelines established by the American Institute of Certified Public Accountants.

(c) Forecasted earnings-per-share data shall be substituted for pro forma per-share data.

(d) This section does not permit the filing of a financial forecast in lieu of pro forma in-

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formation required by generally accepted accounting principles.

[54 FR 53597, Dec. 29, 1989, as amended at 57 FR 58137, Dec. 9, 1992]

Subpart G—Public Reference and Confidentiality

§ 335.701 Filing of material with the FDIC.

All papers required to be filed with the FDIC under the Act or regulations thereunder shall be filed at its office in Washington, DC. Material may be filed by delivery to the FDIC, through the mails, or otherwise. The date on which papers are actually received by the FDIC shall be the date of filing thereof if all of the requirements with respect to the filing have been complied with.

NOTE: Official filings made at the FDIC's office in Washington, DC should be addressed as follows:

Attention: Registration and Disclosure Section, Division of Supervision, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

[46 FR 25208, May 5, 1981, as amended at 54 FR 53600, Dec. 29, 1989]

§ 335.702 Inspection.

Except as provided in § 335.703 of this part, all information filed regarding a security registered with the FDIC will be available for inspection at the Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC. In addition, copies of the registration statement and reports required by subpart C (exclusive of exhibits), the statements required by § 335.201, and the annual reports to security holders required by § 335.203 will be available for inspection at the Reserve bank of the district in which the bank filing the statements or reports is located.

[46 FR 25208, May 5, 1981, as amended at 54 FR 53600, Dec. 29, 1989]

§ 335.703 Nondisclosure of certain information filed.

Any person filing any statement, report, or document under the Act may make written objection to the public disclosure of any information contained therein in accordance with the procedure set forth below:

(a) The person shall omit from the statement, report, or document, when it is filed, the portion thereof that it desires to keep undisclosed (hereinafter called the confidential portion). In lieu thereof, it shall indicate at the appropriate place in the statement, report, or document that the confidential portion has been so omitted and filed separately with the FDIC.

(b) The person shall file with the copies of the statement, report, or document filed with the FDIC.

(1) 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 FDIC and with each exchange, if any. Each copy 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;

(2) An application making objection to the disclosure of the confidential portion. Such application shall be on a sheet or sheets separate from the confidential portion, and shall contain: (i) An identification of the portion of the statement, report, or document that has been omitted, (ii) a statement of the grounds of objection, (iii) consent that the FDIC may determine the question of public disclosure upon the basis of the application, subject to proper judicial reviews, (iv) the name of each exchange, if any, with which the statement, report, or document is filed. The copies of the confidential portion and the application filed in accordance with this paragraph shall be enclosed in a separate envelope marked "Confidential Treatment" and addressed to Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429.

(c) Pending the determination by the FDIC as to the objection filed in accordance with paragraph (b) of this section the confidential portion will not be disclosed by FDIC.

(d) If the FDIC determines that the objection shall be sustained, a notation to that effect will be made at the appropriate place in the statement, report, or document.

(e) If the FDIC shall have determined that disclosure of the confidential portion is in the public interest, a finding and determination to that effect will be entered and notice of the finding and determination will be sent by registered or certified mail to the person.

(f) The confidential portion shall be made available to the public:

(1) Upon the lapse of 15 days after the dispatch of notice by registered or certified mail of the finding and determination of the FDIC described in paragraph (e) of this section, if prior to the lapse of such 15 days the person shall not have filed a written statement that he intends in good faith to seek judicial review of the finding and determination;

(2) Upon the lapse of 60 days after the dispatch of notice by registered or certified mail of the finding and determination of the FDIC, if the statement described in paragraph (f)(1) of this section shall have been filed and if a petition for judicial review shall not have been filed within such 60 days; or

(3) If such petition for judicial review shall have been filed within such 60 days upon final disposition, adverse to the person, of the judicial proceedings.

(g) 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 FDIC and with each exchange concerned.

PART 336—FDIC EMPLOYEES

Subpart A—Employee Responsibilities and Conduct

Sec.

336.1 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

Subpart B—Minimum Standards of Fitness for Employment With the Federal Deposit Insurance Corporation

336.2 Authority, purpose and scope.

336.3 Definitions.

336.4 Minimum standards for appointment to a position with the FDIC.