

that has converted from the mutual to stock form of ownership may not repurchase its capital stock within one year following the date of its conversion to stock form, except that stock repurchases of no greater than 5% of the bank's outstanding capital stock may be repurchased during this one-year period where compelling and valid business reasons are established, to the satisfaction of the FDIC. Any stock repurchases shall be subject to the requirements of section 18(i)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1828(i)(1)).

(e) *Stock benefit plan limitations.* The FDIC will presume that a stock option plan or management or employee stock benefit plan that does not conform with the applicable percentage limitations of the regulations issued by the Office of Thrift Supervision constitutes excessive insider benefits and thereby evidences a breach of the board of directors' or trustees' fiduciary responsibility. In addition, no converted insured mutual state savings bank shall, for one year from the date of the conversion, implement a stock option plan or management or employee stock benefit plan, other than a tax-qualified employee stock ownership plan, unless each of the following requirements is met:

(1) Each of the plans was fully disclosed in the proxy solicitation and conversion stock offering materials;

(2) All such plans are approved by a majority of the bank's stockholders, or in the case of a recently formed holding company, its stockholders, prior to implementation at a duly called meeting of shareholders, either annual or special, to be held no sooner than six months after the completion of the conversion;

(3) In the case of a savings bank subsidiary of a mutual holding company, all such plans are approved by a majority of stockholders other than its parent mutual holding company prior to implementation at a duly called meeting of shareholders, either annual or special, to be held no sooner than six months following the stock issuance;

(4) For stock option plans, stock options are granted at no lower than the market price at which the stock is trading at the time of grant; and

(5) For management or employee stock benefit plans, no conversion stock is used to fund the plans.

[59 FR 61246, Nov. 30, 1994, as amended at 63 FR 44750, Aug. 20, 1998]

INTERPRETATIONS

§ 333.101 Prior consent not required.

(a) The extension by any State nonmember insured bank of its business to include personal, character or installment loans, or the extension by an industrial bank of its business to include the business of a commercial bank, is not a change in the general character or type of business requiring the prior written consent of the Corporation.

(b) An insured State nonmember bank, not exercising trust powers may act as trustee or custodian of Individual Retirement Accounts established pursuant to the Employee Retirement Income Security Act of 1974 and Self-Employed Retirement Plans established pursuant to the Self-Employed Individuals Retirement Act of 1962 without the prior written consent of the Corporation provided:

(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]

PART 335—SECURITIES OF NONMEMBER INSURED BANKS

Sec.

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- 335.613 Annual statement of beneficial ownership of securities (Form F-8A).
- 335.701 Filing requirements, public reference, and confidentiality.
- 335.801 Inapplicable SEC regulations; FDIC substituted regulations; additional information.
- 335.901 Delegation of authority to the Director (DOS) and to the associate directors, regional directors and deputy regional directors to act on matters with respect to disclosure laws and regulations.

AUTHORITY: 15 U.S.C. 781(i).

SOURCE: 62 FR 6856, Feb. 14, 1997, unless otherwise noted.

§ 335.101 Scope of part, authority and OMB control number.

(a) 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 Exchange Act) and applies to all securities of FDIC insured banks (including foreign banks having an insured branch) which are neither a member of the Federal Reserve System nor a District bank (collectively referred to as nonmember banks) that are subject to the registration requirements of section 12(b) or section 12(g) of the Exchange Act (registered nonmember banks). The FDIC is vested with the powers, functions, and duties vested in the Securities and Exchange Commission (the Commission or SEC) to administer and enforce

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the provisions of sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Securities Exchange Act of 1934, as amended (the Exchange Act) (15 U.S.C. 78l, 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78(p)), regarding nonmember banks with one or more classes of securities subject to the registration provisions of sections 12(b) and 12(g).

(b) This part 335 generally incorporates through cross reference the regulations of the SEC issued under sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act. References to the Commission are deemed to refer to the FDIC unless the context otherwise requires.

(c) The Office of Management and Budget has reviewed and approved the recordkeeping and reporting required by this part (OMB control number 3064-0030).

§ 335.111 Forms and schedules.

The Exchange Act regulations of the SEC, which are incorporated by cross reference under this part, require the filing of forms and schedules as applicable. Reference is made to SEC Exchange Act regulation 17 CFR 249.0-1 regarding the availability of all applicable SEC Exchange Act forms. Required schedules are codified and are found within the context of the SEC's regulations. The filings of all applicable SEC forms and schedules shall be made with the FDIC at the address in this section. They shall be titled with the name of the FDIC in substitution for the name of the SEC. Forms F-7 (§ 335.611), F-8 (§ 335.612), F-8A (§ 335.613), are FDIC forms which are issued under section 16 of the Exchange Act and can be obtained from the Registration and Disclosure Section, Division of Supervision, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Reference is also made to § 335.701 for general filing requirements, public reference, and confidentiality provisions.

§ 335.201 Securities exempted from registration.

Persons generally subject to registration requirements under Exchange Act section 12 and subject to this part shall

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follow the applicable and currently effective SEC regulations relative to exemptions from registration issued under sections 3 and 12 of the Exchange Act as codified at 17 CFR 240.3a12-1 through 240.3a12-11, 240.12a-4 through 240.12a-7, 240.12g-1 through 240.12h-4.

§ 335.211 Registration and reporting.

Persons with securities subject to registration under Exchange Act sections 12(b) and 12(g), required to report under Exchange Act section 13, and subject to this part shall follow the applicable and currently effective SEC regulations issued under section 12(b) of the Exchange Act as codified at 17 CFR 240.12b-1 through 240.12b-36.

§ 335.221 Forms for registration of securities and similar matters.

(a) The applicable forms for registration of securities and similar matters are codified in subpart C of 17 CFR part 249. All forms shall be filed with the FDIC as appropriate and shall be titled with the name of the FDIC instead of the SEC.

(b) The requirements for Financial Statements can generally be found in Regulation S-X (17 CFR part 210). Banks may also refer to the instructions for FFIEC Reports of Income and Reports of Condition when preparing unaudited interim statements. The requirements for Management's Discussion and Analysis of Financial Condition and Results of Operations can be found in at 17 CFR 229.300. Industry Guide 3, Statistical Disclosure by Bank Holding Companies, is codified at 17 CFR 229.802.

(c) A "small business issuer," as defined under 17 CFR 240.12b-2, has the option of filing Small Business (SB) Forms (as codified in 17 CFR part 249) in lieu of the Exchange Act forms otherwise required to be filed, which provide for financial and other item disclosures in conformance with Regulation S-B of the Securities and Exchange Commission (17 CFR part 228). 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.

§ 335.231 Certification, suspension of trading, and removal from listing by exchanges.

The provisions of the applicable and currently effective SEC regulations under section 12(d) of the Exchange Act shall be followed as codified at 17 CFR 240.12d1-1 through 240.12d2-2.

§ 335.241 Unlisted trading.

The provisions of the applicable and currently effective SEC regulations under section 12(f) of the Exchange Act shall be followed as codified at 17 CFR 240.12f-1 through 240.12f-6.

§ 335.251 Forms for notification of action taken by national securities exchanges.

The applicable forms for notification of action taken by national securities exchanges are codified in subpart A of 17 CFR part 249. All forms shall be filed with the FDIC as appropriate and shall be titled with the name of the FDIC instead of the SEC.

§ 335.261 Exemptions; terminations; and definitions.

The provisions of the applicable and currently effective SEC regulations under sections 12(g) and 12(h) of the Exchange Act shall be followed as codified at 17 CFR 240.12g-1 through 240.12h-4.

§ 335.301 Reports of issuers of securities registered pursuant to section 12.

The provisions of the applicable and currently effective SEC regulations under section 13(a) of the Exchange Act shall be followed as codified at 17 CFR 240.13a-1 through 240.13a-17.

§ 335.311 Forms for annual, quarterly, current, and other reports of issuers.

(a) The applicable forms for annual, quarterly, current, and other reports are codified in subpart D of 17 CFR part 249. All forms shall be filed with the FDIC as appropriate and shall be titled with the name of the FDIC instead of the SEC.

(b) The requirements for Financial Statements can generally be found in Regulation S-X (17 CFR part 210).

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Banks may also refer to the instructions for FFIEC Reports of Income and Reports of Condition when preparing unaudited interim reports. The requirements for Management's Discussion and Analysis of Financial Condition and Results of Operations can be found at 17 CFR 229.300. Industry Guide 3, Statistical Disclosure by Bank Holding Companies, is codified at 17 CFR 229.802.

(c) A "small business issuer," as defined under 17 CFR 240.12b-2, has the option of filing Small Business (SB) Forms (as codified in 17 CFR part 249) in lieu of the Exchange Act forms otherwise required to be filed, which provide for financial and other item disclosures in conformance with Regulation S-B of the Securities and Exchange Commission (17 CFR part 228). 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.

§ 335.321 Maintenance of records and issuer's representations in connection with required reports.

The provisions of the applicable and currently effective SEC regulations under section 13(b) of the Exchange Act shall be followed as codified at 17 CFR 240.13b2-1 through 240.13b2-2.

§ 335.331 Acquisition statements and acquisitions of securities by issuers.

The provisions of the applicable and currently effective SEC regulations under section 13(d) and 13(e) of the Exchange Act shall be followed as codified at 17 CFR 240.13d-1 through 240.13e-102.

§ 335.401 Solicitations of proxies.

The provisions of the applicable and currently effective SEC regulations under section 14(a) and 14(c) of the Exchange Act shall be followed as codified at 17 CFR 240.14a-1 through 240.14a-103 and 240.14c-1 through 240.14c-101.

§ 335.501 Tender offers.

The provisions of the applicable and currently effective SEC regulations under section 14(d), 14(e), and 14(f) of

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the Exchange Act shall be followed as codified at 17 CFR 240.14d-1 through 240.14f-1.

§ 335.601 Requirements of section 16 of the Securities Exchange Act of 1934.

Persons subject to section 16 of the Act with respect to securities registered under this part 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(1), except that the forms described in § 335.611 (Form F-7), § 335.612 (Form F-8), and § 335.613 (Form F-8A) shall be used in lieu of SEC Form 3 (17 CFR 249.103), Form 4 (17 CFR 249.104), or Form 5 (17 CFR 249.105), respectively. Copies of Forms F-7, F-8, F-8A and the instructions thereto can be obtained from the Registration, Disclosure, and Securities Operations Unit, Division of Supervision, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

§ 335.611 Initial statement of beneficial ownership of securities (Form F-7).

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 regulations referenced in this form are codified at 17 CFR 240.16a-1 through 240.16e-1.

§ 335.612 Statement of changes in beneficial ownership of securities (Form F-8).

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 regulations referenced in this form are codified at 17 CFR 240.16a-1 through 240.16e-1.

§ 335.613 Annual statement of beneficial ownership of securities (Form F-8A).

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 regulations referenced in this form are codified at 17 CFR 240.16a-1 through 240.16e-1.

§ 335.701 Filing requirements, public reference, and confidentiality.

(a) *Filing requirements.* Unless otherwise indicated in this part, one original and four conformed copies of all papers required to be filed with the FDIC under the Exchange Act or regulations thereunder shall be filed at its office in Washington, DC. Official filings made at the FDIC's office in Washington, DC should be addressed as follows: Attention: Registration, Disclosure, and Securities Operations Unit, Division of Supervision, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Material may be filed by delivery to the FDIC through the mails or otherwise. The date on which papers are actually received by the designated FDIC office shall be the date of filing thereof if all of the requirements with respect to the filing have been complied with.

(b) *Inspection.* Except as provided in paragraph (c) of this section, 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.

(c) *Nondisclosure of certain information filed.* Any person filing any statement, report, or document under the Act may make a written objection to the public disclosure of any information contained therein in accordance with the procedure set forth in this paragraph (c).

(1) 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.

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

(i) As many copies of the confidential portion, each clearly marked "Confidential Treatment," as there are copies of the statement, report, or document filed with the 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 the case where 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;

(ii) 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:

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

(B) A statement of the grounds of objection;

(C) Consent that the FDIC may determine the question of public disclosure upon the basis of the application, subject to proper judicial reviews;

(D) The name of each exchange, if any, with which the statement, report, or document is filed;

(iii) 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.

(3) Pending the determination by the FDIC as to the objection filed in accordance with paragraph (c)(2)(ii) of this section, the confidential portion will not be disclosed by FDIC.

(4) If the FDIC determines that the objection shall be sustained, a notation

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to that effect will be made at the appropriate place in the statement, report, or document.

(5) 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.

(6) The confidential portion shall be made available to the public:

(i) 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 (c)(5) 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;

(ii) 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 (c)(6)(i) of this section shall have been filed and if a petition for judicial review shall not have been filed within such 60 days; or

(iii) 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.

(7) 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.

§ 335.801 Inapplicable SEC regulations; FDIC substituted regulations; additional information.

(a) *Filing fees.* Filing fees will not be charged relative to any filings or submissions of materials made with the FDIC pursuant to the cross reference to regulations of the SEC issued under sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act, and this part.

(b) *Electronic filings.* The FDIC does not participate in the SEC's EDGAR (Electronic Data Gathering Analysis and Retrieval) electronic filing program (17 CFR part 232), and does not permit electronically transmitted fil-

ings or submissions of materials in electronic format to the FDIC.

(c) *Legal proceedings.* Whenever this part or cross referenced provisions of the SEC regulations require disclosure of legal proceedings, administrative or judicial proceedings arising under section 8 of the Federal Deposit Insurance Act shall be deemed material and shall be described.

(d) *Indebtedness of management.* Whenever this part or cross referenced provisions of the SEC regulations require disclosure of indebtedness of management, extensions of credit to specified persons in excess of ten (10) percent of the equity capital accounts of the bank or \$5 million, whichever is less, shall be deemed material and shall be disclosed in addition to any other required disclosure. The disclosure of this material indebtedness shall include 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 since the beginning of the bank's last fiscal year, and as of the latest practicable date.

(1) If aggregate extensions of credit to all 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, the aggregate amount of such extensions of credit shall also be disclosed.

(2) Other loans are deemed material and shall be disclosed where:

(i) The extension(s) of credit was 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;

(ii) The extension(s) of credit was not made in the ordinary course of business; or

(iii) The extension(s) of credit has involved or presently involves 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.

(e) *Proxy material required to be filed.* (1) Three preliminary copies of each information statement, proxy 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 12 CFR 335.401 at least ten calendar days (or 15 calendar days in the case of other than routine meetings, as defined in paragraph (e)(2) of this section) prior to the date such item is first sent or given to any security holders, or such shorter date as may be authorized.

(2) For the purposes of this paragraph (e), a routine meeting means:

(i) A meeting with respect to which no one is soliciting proxies subject to §335.401 other than on behalf of the bank, and at which the bank intends to present no matters other than:

(A) The election of directors;

(B) The election, approval or ratification of accountants;

(C) A Security holder proposal included pursuant to SEC Rule 14(a)-8 (17 CFR 240.14a-8); and

(D) The approval or ratification of a plan as defined in paragraph (a)(7)(ii) of Item 402 of SEC Regulation S-K (17 CFR 229.402(a)(7)(ii)) or amendments to such a plan; and

(ii) The bank does not comment upon or refer to a solicitation in opposition (as defined in 17 CFR 240.14a-6) in connection with the meeting in its proxy material.

(3) 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.

(f) *Additional information; filing of other statements in certain cases.* (1) In addition to the information expressly required to be included in a statement, form, schedule 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.

(2) The FDIC may, upon the written request of the bank, and where consistent with the protection of investors, permit the omission of one or more of the statements or disclosures herein required, or the filing in substi-

tution therefor of appropriate statements or disclosures of comparable character.

(3) The FDIC may also require the filing of other statements or disclosures in addition to, or in substitution for those 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 disclosure about which is otherwise necessary for the protection of investors.

§335.901 Delegation of authority to the Director (DOS) and to the associate directors, regional directors and deputy regional directors to act on matters with respect to disclosure laws and regulations.

(a) Except as provided in paragraph (b) of this section, authority is delegated to the Director, Division of Supervision (DOS), and where confirmed in writing by the director, to an associate director, or to the appropriate regional director or deputy regional director, to act on disclosure matters under and pursuant to sections 12, 13, 14 and 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78) or this part.

(b) Authority to act on disclosure matters is retained by the FDIC Board of Directors when such matters involve:

(1) Exemption from disclosure requirements pursuant to section 12(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(h)); or

(2) Exemption from tender offer requirements pursuant to section 14(d)(8) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(d)(8)).

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.