

a. Nonpayment when there is no history of late or missed payments;

b. A material increase in the use of available credit;

c. A material change in purchasing or spending patterns;

d. A material change in electronic fund transfer patterns in connection with a deposit account; or

e. A material change in telephone call patterns in connection with a cellular phone account.

22. A covered account that has been inactive for a reasonably lengthy period of time is used (taking into consideration the type of account, the expected pattern of usage and other relevant factors).

23. Mail sent to the customer is returned repeatedly as undeliverable although transactions continue to be conducted in connection with the customer's covered account.

24. The financial institution or creditor is notified that the customer is not receiving paper account statements.

25. The financial institution or creditor is notified of unauthorized charges or transactions in connection with a customer's covered account.

*Notice From Customers, Victims of Identity Theft, Law Enforcement Authorities, or Other Persons Regarding Possible Identity Theft in Connection With Covered Accounts Held by the Financial Institution or Creditor*

26. The financial institution or creditor is notified by a customer, a victim of identity theft, a law enforcement authority, or any other person that it has opened a fraudulent account for a person engaged in identity theft.

[72 FR 63762, Nov. 9, 2007, as amended at 74 FR 22643, May 14, 2009; 76 FR 14794, Mar. 18, 2011]

## PART 335—SECURITIES OF NONMEMBER INSURED BANKS

Sec.

335.101 Scope of part, authority and OMB control number.

335.111 Forms and schedules.

335.121 Listing standards related to audit committees.

335.201 Securities exempted from registration.

335.211 Registration and reporting.

335.221 Forms for registration of securities and cross reference to Regulation FD (Fair Disclosure).

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

335.241 Unlisted trading.

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

335.261 Exemptions; terminations; and definitions.

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

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

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

335.331 Acquisition statements, acquisition of securities by issuers, and other matters.

335.401 Solicitations of proxies.

335.501 Tender offers.

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

335.611 Initial statements of beneficial ownership of securities (Form 3).

335.612 Statement of changes in beneficial ownership of securities (Form 4).

335.613 Annual statement of beneficial ownership of securities (Form 5).

335.701 Filing requirements, public reference, and confidentiality.

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

335.901 Delegation of authority to act on matters with respect to disclosure laws and regulations.

AUTHORITY: 12 U.S.C. 1819; 15 U.S.C. 781(i), 78m, 78n, 78p, 78w, 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265.

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 the provisions of sections 10A(m), 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),

## Federal Deposit Insurance Corporation

## § 335.221

and 78(p)), and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265) regarding nonmember banks with one or more classes of securities subject to the registration provisions of sections 12(b) and 12(g) of the Exchange Act.

(b) Part 335 generally incorporates through cross reference the regulations of the SEC as these regulations are issued, revised, or updated from time to time under sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley Act), except as provided at § 335.801 of this part. References to the Commission in the regulations of the SEC are deemed to refer to the FDIC unless the context otherwise requires.

[62 FR 6856, Feb. 14, 1997, as amended at 69 FR 19088, Apr. 12, 2004; 69 FR 59783, Oct. 6, 2004; 70 FR 16400, Mar. 31, 2005; 70 FR 44272, Aug. 2, 2005]

### § 335.111 Forms and schedules.

The Exchange Act regulations of the SEC, which are cross referenced under this part, require the filing of forms and schedules as applicable. Reference is made to SEC Exchange Act regulation 17 CFR part 249 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. All forms and schedules shall be titled with the name of the FDIC in substitution for the name of the SEC. The filing of forms and schedules shall be made with the FDIC at the address in § 335.701 or may be filed electronically at *FDICconnect* at <https://www2.fdicconnect.gov/index.asp>. However, electronic filing of Beneficial Ownership Forms 3, 4 and 5 is required. Copies of Forms 3 (§ 335.611), 4 (§ 335.612) and 5 (§ 335.613) and the instructions thereto may be printed and downloaded from <https://www.fdic.gov/regulations/laws/forms>.

[75 FR 73949, Nov. 30, 2010]

### § 335.121 Listing standards related to audit committees.

The provisions of the applicable SEC regulation under section 10(A)(m) of

the Exchange Act shall be followed as codified at 17 CFR part 240.

[75 FR 73949, Nov. 30, 2010]

### § 335.201 Securities exempted from registration.

Persons subject to registration requirements under Exchange Act section 12 and subject to this part shall 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 part 240.

[75 FR 73949, Nov. 30, 2010]

### § 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 part 240.

[75 FR 73949, Nov. 30, 2010]

### § 335.221 Forms for registration of securities and cross reference to Regulation FD (Fair Disclosure).

(a) The applicable forms for registration of securities and similar matters are codified in 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 Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income when preparing unaudited interim statements. The requirements for Management's Discussion and Analysis of Financial Condition and Results of Operations can be found at 17 CFR part 229. Additional requirements are provided at Industry Guide 3, Statistical Disclosure by Bank Holding Companies, which is found at 17 CFR part 229.

(c) The provisions of the applicable and currently effective SEC regulation

**§ 335.231**

FD shall be followed as codified at 17 CFR part 243.

[75 FR 73949, Nov. 30, 2010]

**§ 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 part 240.

[75 FR 73949, Nov. 30, 2010]

**§ 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 part 240.

[75 FR 73949, Nov. 30, 2010]

**§ 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 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.

[75 FR 73949, Nov. 30, 2010]

**§ 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 in 17 CFR part 240.

[75 FR 73949, Nov. 30, 2010]

**§ 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 part 240.

[75 FR 73949, Nov. 30, 2010]

**12 CFR Ch. III (1–1–12 Edition)**

**§ 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 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 Consolidated Reports of Condition and Income 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 part 229. Additional requirements are included in Industry Guide 3, Statistical Disclosure by Bank Holding Companies, which is found at 17 CFR part 229.

[75 FR 73949, Nov. 30, 2010]

**§ 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 13(b) of the Exchange Act shall be followed as codified at 17 CFR part 240.

[75 FR 73949, Nov. 30, 2010]

**§ 335.331 Acquisition statements, acquisition of securities by issuers, and other matters.**

The provisions of the applicable and currently effective SEC regulations under sections 13(d) and 13(e) of the Exchange Act shall be followed as codified at 17 CFR part 240.

[75 FR 73949, Nov. 30, 2010]

**§ 335.401 Solicitations of proxies.**

The provisions of the applicable and currently effective SEC regulations under sections 14(a) and 14(c) of the Exchange Act shall be followed as codified at 17 CFR part 240.

[75 FR 73950, Nov. 30, 2010]

**§ 335.501 Tender offers.**

The provisions of the applicable and currently effective SEC regulations

## Federal Deposit Insurance Corporation

## § 335.701

under sections 14(d), 14(e), and 14(f) of the Exchange Act shall be followed as codified at 17 CFR part 240.

[75 FR 73950, Nov. 30, 2010]

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

Persons subject to section 16 of the Exchange Act with respect to securities registered under this part shall follow the applicable and currently effective SEC regulations issued under section 16 of the Exchange Act (17 CFR part 240), except that the forms described in §335.611 (FDIC Form 3), §335.612 (FDIC Form 4), and §335.613 (FDIC Form 5) shall be used in lieu of SEC Form 3, Form 4, and Form 5, respectively. FDIC Forms 3, 4, and 5 shall be filed electronically on FDICconnect at <https://www2.fdicconnect.gov/index.asp>. Copies of FDIC Forms 3, 4, and 5 and the instructions thereto can be printed and downloaded at <https://www.fdic.gov/regulations/laws/forms>.

[75 FR 73950, Nov. 30, 2010]

### § 335.611 Initial statement of beneficial ownership of securities (Form 3).

This form shall be filed in lieu of SEC Form 3 pursuant to SEC rules 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 Exchange Act (15 U.S.C. 78p and 78w) and the rules and regulations thereunder. SEC regulations referenced in this form are codified at 17 CFR part 240.

[75 FR 73950, Nov. 30, 2010]

### § 336.612 Statement of changes in beneficial ownership of securities (Form 4).

This form shall be filed in lieu of SEC Form 4 pursuant to SEC Rules 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 Exchange Act (15 U.S.C. 78p and 78w) and the rules and regulations thereunder. SEC regulations referenced in this form are codified at 17 CFR part 240.

[75 FR 73950, Nov. 30, 2010]

### § 336.613 Annual statement of beneficial ownership of securities (Form 5).

This form shall be filed in lieu of SEC Form 5 pursuant to SEC Rules 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 Exchange Act (15 U.S.C. 78p and 78w) and the rules and regulations thereunder. SEC regulations referenced in this form are codified at 17 CFR part 240.

[75 FR 73950, Nov. 30, 2010]

### § 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 may be filed electronically at <https://www2.fdicconnect.gov/index.asp>, except for FDIC Beneficial Ownership Forms 3, 4, and 5 for which electronic filing is mandatory as described in §335.801(b). Paper filings should be submitted to the FDIC's office in Washington, DC, and should be addressed as follows: Accounting and Securities Disclosure Section, Division of Supervision and Consumer Protection, 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 paper filings are actually received by the designated FDIC office shall be the date of filing.

(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, Accounting and Securities Disclosure Section, Division of Supervision and Consumer Protection, 550 17th Street, NW., Washington, DC. Beneficial ownership report forms and other official filings that are electronically submitted to the FDIC are available for inspection on the FDIC's Web site at <http://www2.fdic.gov/efr/>.

(c) *Nondisclosure of certain information filed.* Any person filing any statement,

report, or document with the FDIC under the Exchange 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) or the instructions provided for electronic filing available on the FDIC's Web site <https://www2.fdicconnect.gov/index.asp>.

(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 the 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 ac-

cordance 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 the FDIC.

(4) 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.

(5) If the FDIC determines 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, or the date of the electronic filing, 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, or the date of the electronic filing, 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.

[75 FR 73950, Nov. 30, 2010]

**§ 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 10A(m), 12, 13, 14, and 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78), sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265), and this part.

(b) *Electronic filings.* (1) The FDIC does not participate in the SEC's EDGAR (Electronic Data Gathering Analysis and Retrieval) electronic filing program (17 CFR part 232). The FDIC permits voluntary electronically transmitted filings and submissions of correspondence and other materials in electronic format to the FDIC, with the exception of Beneficial Ownership Reports (Forms 3, 4, and 5) for which electronic filing is mandatory. Beneficial Ownership Report filing requirements are provided in paragraph (b)(2) of this section.

(2) All reporting persons must electronically file Beneficial Ownership Reports (FDIC Forms 3, 4, and 5), including amendments and exhibits thereto, using the Internet-based interagency Beneficial Ownership Filings System, except that a reporting person that has obtained a continuing hardship exemption under these rules may file the forms with the FDIC in paper format. For electronic filing purposes, FDIC Forms 3, 4, and 5 are accessible at the Internet-based interagency Web site for Beneficial Ownership Filings at *FDICconnect* at <https://www2.fdicconnect.gov/index.asp>. These forms and the instructions thereto are available for printing and downloading at <http://www.fdic.gov/regulations/laws/forms>. A reporting person that has obtained a continuing hardship exemption under these rules may file the appropriate forms with the FDIC in paper format. Instructions for continuing hardship exemptions are provided in paragraph (b)(6) of this section.

(3) Electronic filings of FDIC beneficial ownership report Forms 3, 4, and 5 must be submitted to the FDIC

through the interagency Beneficial Ownership Filings system. Beneficial ownership reports and any amendments are deemed filed with the FDIC upon electronic receipt on business days from 8 a.m. through 10 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect (Eastern Time). Business days include each day, except Saturdays, Sundays and Federal holidays. All filings submitted electronically to the FDIC commencing after 10 p.m. Eastern Time on business days shall be deemed filed as of 8 a.m. on the following business day. All filings submitted electronically to the FDIC on non-business days shall be deemed filed as of 8 a.m. on the following business day.

(4) *Adjustment of the filing date.* If an electronic filer in good faith attempts to file a beneficial ownership report with the FDIC in a timely manner but the filing is delayed due to technical difficulties beyond the electronic filer's control, the electronic filer may request an adjustment of the filing date of such submission. The FDIC may grant the request if it appears that such adjustment is appropriate and consistent with the public interest and the protection of investors.

(5) *Exhibits.* (i) Exhibits to an electronic filing that have not previously been filed with the FDIC shall be filed in electronic format, absent a hardship exemption.

(ii) Previously filed exhibits, whether in paper or electronic format, may be incorporated by reference into an electronic filing to the extent permitted by applicable SEC rules under the Exchange Act. An electronic filer may, at its option, restate in electronic format an exhibit incorporated by reference that originally was filed in paper format.

(iii) Any document filed in paper format in violation of mandated electronic filing requirements shall not be incorporated by reference into an electronic filing.

(6) *Continuing Hardship Exemption.* The FDIC will not accept in paper format any beneficial ownership report filing required to be submitted electronically under this part unless the

**§ 335.801**

**12 CFR Ch. III (1–1–12 Edition)**

filer satisfies the requirements for a continuing hardship exemption:

(i) A filer may apply in writing for a continuing hardship exemption if all or part of a filing or group of filings otherwise to be filed in electronic format cannot be so filed without undue burden or expense. Such written application shall be made at least ten business days prior to the required due date of the filing(s) or the proposed filing date, as appropriate, or within such shorter period as may be permitted. The written application shall be sent to the Accounting and Securities Disclosure Section, Division of Supervision and Consumer Protection, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429, and shall contain the information set forth in paragraph (b)(6)(i) of this section.

(A) The application shall not be deemed granted until the applicant is notified by the FDIC.

(B) If the FDIC denies the application for a continuing hardship exemption, the filer shall file the required document in electronic format on the required due date or the proposed filing date or such other date as may be permitted.

(C) If the FDIC determines that the grant of the exemption is appropriate and consistent with the public interest and the protection of investors and so notifies the applicant, the filer shall follow the procedures set forth in paragraph (b)(6)(iii) of this section.

(ii) The request for the continuing hardship exemption shall include, but not be limited to, the following:

(A) The reason(s) that the necessary hardware and software are not available without unreasonable burden and expense;

(B) The burden and expense involved to employ alternative means to make the electronic submission; and/or

(C) The reasons for not submitting electronically the document or group of documents, as well as justification for the requested time period for the exemption.

(iii) If the request for a continuing hardship exemption is granted, the electronic filer shall submit the document or group of documents for which the exemption is granted in paper format on the required due date specified

in the applicable form, rule or regulation, or the proposed filing date, as appropriate. The paper format document(s) shall have placed at the top of page 1, or at the top of an attached cover page, a legend in capital letters: IN ACCORDANCE WITH 12 CFR 335.801(b), THIS (SPECIFY DOCUMENT) IS BEING FILED IN PAPER PURSUANT TO A CONTINUING HARDSHIP EXEMPTION.

(iv) Where a continuing hardship exemption is granted with respect to an exhibit only, the paper format exhibit shall be filed with the FDIC under Form SE (17 CFR part 249). The name of the FDIC shall be substituted for the name of the SEC on the form. Form SE shall be filed as a paper cover sheet to all exhibits to Beneficial Ownership Reports submitted to the FDIC in paper form pursuant to a hardship exemption.

(v) Form SE may be filed with the FDIC up to six business days prior to, or on the date of filing of, the electronic form to which it relates but shall not be filed after such filing date. If a paper exhibit is submitted in this manner, requirements that the exhibit be filed with, provided with, or accompany the electronic filing shall be satisfied. Any requirements as to delivery or furnishing the information to persons other than the FDIC shall not be affected by this section.

(7) *Signatures.* (i) Required signatures to, or within, any electronic submission must be in typed form. When used in connection with an electronic filing, the term “signature” means an electronic entry or other form of computer data compilation of any letters or series of letters or characters comprising a name, executed, adopted or authorized as a signature.

(ii) Each signatory to an electronic filing shall manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form within the electronic filing. Such document shall be executed before or at the time the electronic filing is made and shall be retained by the filer for a period of five years. Upon request, an electronic filer shall furnish to the FDIC a copy of any or all documents retained pursuant to this section.

(iii) Where the FDIC's rules require a filer to furnish to a national securities exchange, a national securities association, or a bank, paper copies of a document filed with the FDIC in electronic format, signatures to such paper copies may be in typed form.

(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.

## § 335.901

(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 substitution 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.

[62 FR 6856, Feb. 14, 1997, as amended at 69 FR 19088, Apr. 12, 2004; 69 FR 59783, Oct. 6, 2004; 70 FR 16400, Mar. 31, 2005; 70 FR 44273, Aug. 2, 2005; 75 FR 73951, Nov. 30, 2010]

### § 335.901 Delegation of authority 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 and Consumer Protection (DSC), and where confirmed in writing by the director, to a deputy director or an associate director, or to the appropriate regional director or deputy regional director or area director, to act on disclosure matters under and pursuant to sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78), sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265), and 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)

## 12 CFR Ch. III (1–1–12 Edition)

of the Securities Exchange Act of 1934 (15 U.S.C. 78n(d)(8)).

[62 FR 6856, Feb. 14, 1997, as amended at 70 FR 16400, Mar. 31, 2005; 70 FR 44273, Aug. 2, 2005]

## 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.

336.5 Minimum standards for employment with the FDIC.

336.6 Verification of compliance.

336.7 Employee responsibility, counseling and distribution of regulation.

336.8 Sanctions and remedial actions.

336.9 Finality of determination.

### Subpart C—One-Year Restriction on Post-Employment Activities of Senior Examiners

336.10 Purpose and scope.

336.11 Definitions.

336.12 One-year post-employment restriction.

336.13 Penalties.

SOURCE: 61 FR 28728, June 6, 1996, unless otherwise noted.

### Subpart A—Employee Responsibilities and Conduct

AUTHORITY: 5 U.S.C. 7301; 12 U.S.C. 1819(a).

#### § 336.1 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

Employees of the Federal Deposit Insurance Corporation (Corporation) are subject to the Executive Branch-wide Standards of Ethical Conduct at 5 CFR part 2635, the Corporation regulation at 5 CFR part 3201 which supplements the Executive Branch-wide Standards, the Executive Branch-wide financial disclosure regulations at 5 CFR part 2634, and the Corporation regulation at 5 CFR part 3202, which supplements the