

Federal Deposit Insurance Corporation

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(i) If it does not share with nonaffiliated third parties, state: “[name of financial institution] does not share with nonaffiliates so they can market to you”; or

(ii) If it shares with nonaffiliated third parties, state, as applicable: “Nonaffiliates we share with can include [list categories of companies such as mortgage companies, insurance companies, direct marketing companies, and nonprofit organizations].”

(3) *Joint Marketing.* As required by § 332.13 of this part, where [joint marketing] appears, the financial institution must:

(i) If it does not engage in joint marketing, state: “[name of financial institution] doesn’t jointly market”; or

(ii) If it shares personal information for joint marketing, state, as applicable: “Our joint marketing partners include [list categories of companies such as credit card companies].”

(c) *General instructions for the “Other important information” box.* This box is optional. The space provided for information in this box is not limited. Only the following types of information can appear in this box.

(1) State and/or international privacy law information; and/or

(2) Acknowledgment of receipt form.

[74 FR 69236, Dec. 1, 2009]

PART 333—EXTENSION OF CORPORATE POWERS

REGULATIONS

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INTERPRETATIONS

333.101 Prior consent not required.

AUTHORITY: 12 U.S.C. 1816, 1818, 1819 (“Seventh”, “Eighth” and “Tenth”), 1828, 1828(m), 1831p–1(e).

REGULATIONS

§ 333.1 Classification of general character of business.

State nonmember insured banks are divided into five categories for the purpose of classifying their general character or type of business,² viz: commercial banks, banks and trust companies, savings banks (including mutual and

²A bank’s business may include two or more of the general classifications.

stock), industrial banks, and cash depositories.

[15 FR 8644, Dec. 6, 1950]

§ 333.2 Change in general character of business.

No State nonmember insured bank (except a District bank) or branch thereof shall hereafter cause or permit any change to be made in the general character or type of business exercised by it after the effective date of this part without the prior written consent of the Corporation.

[15 FR 8644, Dec. 6, 1950]

§ 333.4 Conversions from mutual to stock form.

(a) *Scope.* This section applies to the conversion of insured mutual state savings banks to the stock form of ownership. It supplements the procedural and other requirements for such conversions in subpart I of part 303 of this chapter. This section also applies, to the extent appropriate, to the reorganization of insured mutual state savings banks to the mutual holding company form of ownership. As determined by the Board of Directors of the FDIC on a case-by-case basis, the requirements of paragraphs (d), (e), and (f) of this section do not apply to mutual-to-stock conversions of insured mutual state savings banks whose capital category under § 325.103 of this chapter or § 324.403, as applicable, is “undercapitalized”, “significantly undercapitalized” or “critically undercapitalized”. As provided in § 303.162 of this chapter, the Board of Directors of the FDIC may grant a waiver in writing from any requirement of this section for good cause shown.

(b) *Definition of Eligible Depositor.* For purposes of this section, *eligible depositors* are depositors holding qualifying deposits at the bank as of a date designated in the bank’s plan of conversion that is not less than one year prior to the date of adoption of the plan of conversion by the converting bank’s board of directors/trustees.

(c) *Requirements.* In addition to other requirements that may be imposed by the applicable state statutes and regulations and other federal statutes and regulations, including subpart I of part

303 of this chapter, an insured mutual state savings bank shall not convert to the stock form of ownership unless the following requirements are satisfied:

(1) Eligible depositors shall have higher subscription rights than employee stock ownership plans;

(2) The proposed conversion shall be approved by a vote of at least a majority of the bank's depositors and, as reasonably determined by the bank's directors or trustees, other stakeholders of the bank who are entitled to vote on the conversion, unless the applicable state law requires a higher percentage, in which case the higher percentage shall be used. Voting may be in person or by proxy; and

(3) Management shall not use proxies executed outside the context of the proposed conversion to satisfy the voting requirement imposed in the previous paragraph.

(d) *Restriction on repurchase of stock.* An insured mutual state savings bank 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; 68 FR 50461, Aug. 21, 2003; 78 FR 55595, Sept. 10, 2013]

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 (26 U.S.C. 408), Self-Employed Retirement Plans established pursuant to the Self-Employed Individuals Retirement Act of 1962 (26 U.S.C. 401), Roth Individual Retirement Accounts and Coverdell Education Savings Accounts established pursuant to the Taxpayer Relief Act of 1997 (26 U.S.C. 408A and 530 respectively), Health Savings Accounts

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established pursuant to the Medicare Prescription Drug Improvement, and Modernization Act of 2003 (26 U.S.C. 223), and other similar accounts 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 provide 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 applicable State law.

[41 FR 2375, Jan. 16, 1976, as amended at 50 FR 10754, Mar. 18, 1985; 70 FR 60422, Oct. 18, 2005]

PART 334—FAIR CREDIT REPORTING

Subpart A—General Provisions

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334.2 Examples.

334.3 Definitions.

Subparts B–H [Reserved]

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APPENDIXES A–B TO PART 334 [RESERVED]

APPENDIX C TO PART 334—MODEL FORMS FOR OPT-OUT NOTICES

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APPENDIXES F–I TO PART 334 [RESERVED]

APPENDIX J TO PART 334—INTERAGENCY GUIDELINES ON IDENTITY THEFT DETECTION, PREVENTION, AND MITIGATION

AUTHORITY: 12 U.S.C. 1818, 1819 (Tenth), and 1831p–1; 15 U.S.C. 1681a, 1681b, 1681c, 1681m,

1681s, 1681s–2, 1681s–3, 1681t, 1681w, 6801 *et seq.*, Pub. L. 108–159, 117 Stat. 1952.

SOURCE: 69 FR 77618, Dec. 28, 2004, unless otherwise noted.

Subpart A—General Provisions

SOURCE: 70 FR 70685, Nov. 22, 2005, unless otherwise noted.

§ 334.1 Purpose and scope.

(a) *Purpose* The purpose of this part is to implement the Fair Credit Reporting Act.

(b) *Scope* Except as otherwise provided in this part, the regulations in this part apply to insured state non-member banks, state savings associations whose deposits are insured by the Federal Deposit Insurance Corporation, insured state licensed branches of foreign banks, and subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers).

[80 FR 65918, Oct. 28, 2015]

§ 334.2 Examples.

The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part. Examples in a paragraph illustrate only the issue described in the paragraph and do not illustrate any other issue that may arise in this part.

§ 334.3 Definitions.

For purposes of this part, unless explicitly stated otherwise:

(a) *Act* means the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*).

(b) *Affiliate* means any company that is related by common ownership or common corporate control with another company.

(c) [Reserved]

(d) *Company* means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(e) *Consumer* means an individual.

(f)–(h) [Reserved]

(i) *Common ownership or common corporate control* means a relationship between two companies under which:

(1) One company has, with respect to the other company: