Board of Governors of the Federal Reserve System

Regulation H
Membership of State Banking Institutions in the Federal Reserve System

12 CFR 208; as amended effective December 2, 2020

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AUTHORITY: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321-338a, 371d, 461, 481-486, 601, 611, 1814, 1816, 1817(a)(3), 1817(a)(12), 1818, 1820(d)(9), 1833(j), 1828(o), 1831, 1831o, 1831p-1, 1831r-1, 1831w, 1831x, 1835a, 1882, 2901-2907, 3105, 3310, 3331-3351, 3905-3909, 5371, and 5371 note; 15 U.S.C. 78b, 78I(b), 78l(i), 780-4(c)(5), 78q, 78q-1, 78w, 1681s, 1681w, 6801, and 6805; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

* This subpart begins at 6–2800.
† Interpretations begin at 3–410.

SUBPART A—GENERAL MEMBERSHIP AND BRANCHING REQUIREMENTS

SECTION 208.1—Authority, Purpose, and Scope

(a) *Authority.* Subpart A of Regulation H (12 CFR 208, subpart A) is issued by the Board of Governors of the Federal Reserve System (Board) under 12 U.S.C. 24, 36; sections 9, 11, 21, 25, and 25A of the Federal Reserve Act (12 U.S.C. 321-338a, 248(a), 248(c), 481-486, 601, and 611); sections 1814, 1816, 1818, 1831o, 1831p-1, 1831r-1, and 1835a of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1814, 1816, 1818, 1831o, 1831p-1, 1831r-1, and 1835); and 12 U.S.C. 3906-3909.

(b) *Purpose and scope of part 208.* The requirements of this part 208 govern state member banks and state banks applying for admission to membership in the Federal Reserve System (System) under section 9 of the Federal Reserve Act (act), except for section 208.7, which also applies to certain foreign banks licensed by a state. This part 208 does not govern banks eligible for membership under section 2 or 19 of the act.[1] Any bank desiring to be admitted to the System under the provisions of section 2 or 19 should communicate with the Federal Reserve Bank with which it would like to become a member.

(c) *Purpose and scope of subpart A.* This subpart A describes the eligibility requirements for membership of state-chartered banking institutions in the System, the general conditions imposed upon members, including capital and dividend requirements, as well as the requirements for establishing and maintaining branches.

[1] Under section 2 of the Federal Reserve Act, every national bank in any state shall, upon commencing business, or within 90 days after admission into the union of the state in which it is located, become a member of the System. Under section 19 of the Federal Reserve Act, national banks and banks organized under local laws, located in a dependency or insular possession or any part of the United States outside of the states of the United States and the District of Columbia, are not required to become members of the System but may, with the consent of the board, become members of the System.

3–151

SECTION 208.2—Definitions

For the purposes of this part:

(a) *Board of directors* means the governing board of any institution performing the usual functions of a board of directors.

(b) *Board* means the Board of Governors of the Federal Reserve System.

(c) (1) *Branch* means any branch bank, branch office, branch agency, additional office, or any branch place of business that receives deposits, pays checks, or lends money. A branch may include a temporary, seasonal, or mobile facility that meets these criteria.

(2) *Branch* does not include—

(i) a loan-origination facility where the proceeds of loans are not disbursed;

(ii) an office of an affiliated or unaffiliated institution that provides services to customers of the member bank on behalf of the member bank so long as the institution is not established or operated by the bank;

(iii) an automated teller machine;

(iv) a remote service unit;

(v) a facility to which the bank does not permit members of the public to have physical access for purposes of making deposits, paying checks, or borrowing money (such as an office established by the bank that receives deposits only through the mail); or

(vi) a facility that is located at the site of, or is an extension of, an approved main office or branch. The Board determines whether a facility is an extension of an existing main or branch office on a case-by-case basis.

3–152

(d) *Capital stock and surplus* means, unless otherwise provided in this part, or by statute:

(1) tier 1 and tier 2 capital included in a member bank's risk-based capital (as defined in section 217.2 of Regulation Q); and

(2) the balance of a member bank's allowance for loan and lease losses or adjusted allowance for credit losses, as applicable, not included in its tier 2 capital for calculation of risk-based capital, based on the bank's most recent Report of Condition and Income filed under 12 U.S.C. 324.

(3) For a qualifying community banking organization (as defined in section 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in section 217.12 of this chapter), capital stock and surplus means the bank's tier 1 capital (as defined in section 217.2 of this chapter and calculated in accordance with section 217.12(b) of this chapter) plus allowance for loan and lease losses or adjusted allowance for credit losses, as applicable.

(e) *Eligible bank* means a member bank that—

(1) is well capitalized as defined in subpart D of this part;

(2) has a composite Uniform Financial Institutions Rating System (CAMELS) rating of 1 or 2;

(3) has a Community Reinvestment Act (CRA) (12 U.S.C. 2906) rating of ''outstanding'' or ''satisfactory'';

(4) has a compliance rating of 1 or 2; and

(5) has no major unresolved supervisory issues outstanding (as determined by the Board or appropriate Federal Reserve Bank in its discretion).

3–153

(f) *State bank* means any bank incorporated by special law of any state, or organized under the general laws of any state, or of the United States, including a Morris Plan bank, or other incorporated banking institution engaged in a similar business.

(g) *State member bank or member bank* means a state bank that is a member of the Federal Reserve System.

3–154

SECTION 208.3—Application and Conditions for Membership in the Federal Reserve System

(a) *Applications for membership and stock.*

(1) State banks applying for membership in

the Federal Reserve System shall file with the appropriate Federal Reserve Bank an application for membership in the Federal Reserve System and for stock in the Reserve Bank,[2] in accordance with this part and section 262.3 of the Rules of Procedure, located at 12 CFR 262.3.

(2) *Board approval.* If an applying bank conforms to all the requirements of the Federal Reserve Act and this section, and is otherwise qualified for membership, the Board may approve its application subject to such conditions as the Board may prescribe.

(3) *Effective date of membership.* A state bank becomes a member of the Federal Reserve System on the date its Federal Reserve Bank stock is credited to its account (or its deposit is accepted, if it is a mutual savings bank not authorized to purchase Reserve Bank stock) in accordance with the Board's Regulation I (12 CFR 209).

3–155

(b) *Factors considered in approving applications for membership.* Factors given special consideration by the Board in passing upon an application are:

(1) *Financial condition and management.* The financial history and condition of the applying bank and the general character of its management.

(2) *Capital.* The adequacy of the bank's capital in accordance with section 208.4, and its future earnings prospects.

(3) *Convenience and needs.* The convenience and needs of the community.

(4) *Corporate powers.* Whether the bank's corporate powers are consistent with the purposes of the Federal Reserve Act.

3–156

(c) *Expedited approval for eligible banks and bank holding companies.*

(1) *Availability of expedited treatment.* The expedited membership procedures described in paragraph (c)(2) of this section are available to—

(i) an eligible bank; and

(ii) a bank that cannot be determined to be an eligible bank because it has not received CAMELS compliance or CRA ratings from a bank regulatory authority, if it is controlled by a bank holding company that meets the criteria for expedited processing under section 225.14(c) of Regulation Y (12 CFR 225.14(c)).

(2) *Expedited procedures.* A completed membership application filed with the appropriate Reserve Bank will be deemed approved on the fifteenth day after receipt of the complete application by the Board or appropriate Reserve Bank, unless the Board or the appropriate Reserve Bank notifies the bank that the application is approved prior to that date or the Board or the appropriate Federal Reserve Bank notifies the bank that the application is not eligible for expedited review for any reason, including, without limitation, that—

(i) the bank will offer banking services that are materially different from those currently offered by the bank, or by the affiliates of the proposed bank;

(ii) the bank or bank holding company does not meet the criteria under section 208.3(c)(1);

(iii) the application contains a material error or is otherwise deficient; or

(iv) the application raises significant supervisory, compliance, policy, or legal issues that have not been resolved, or a timely substantive adverse comment is submitted. A comment will be considered substantive unless it involves individual complaints, or raises frivolous, previously considered, or wholly unsubstantiated claims or irrelevant issues.

3–157

(d) *Conditions of membership.*

(1) *Safety and soundness.* Each member bank shall at all times conduct its business and exercise its powers with due regard to safety and soundness. Each member bank shall comply with the Interagency Guidelines Establishing Standards for Safety and

[2] A mutual savings bank not authorized to purchase Federal Reserve Bank stock may apply for membership evidenced initially by a deposit, but if the laws under which the bank is organized are not amended at the first session of the legislature after its admission to authorize the purchase, or if the bank fails to purchase the stock within six months of the amendment, its membership shall be terminated.

Soundness prescribed pursuant to section 39 of the FDI Act (12 U.S.C. 1831p-1), set forth in appendix D-1 to this part [at 3–1579.3], and the Interagency Guidelines Establishing Information Security Standards prescribed pursuant to sections 501 and 505 of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 and 6805) and section 216 of the Fair and Accurate Credit Transactions Act of 2003 (15 U.S.C. 1681w), set forth in appendix D-2 to this part [at 3–1571].

(2) *General character of bank's business.* A member bank may not, without the permission of the Board, cause or permit any change in the general character of its business or in the scope of the corporate powers it exercises at the time of admission to membership.

(3) *Compliance with conditions of membership.* Each member bank shall comply at all times with this Regulation H (12 CFR 208) and any other conditions of membership prescribed by the Board.

3–158

(e) *Waivers.*

(1) *Conditions of membership.* A member bank may petition the Board to waive a condition of membership. The Board may grant a waiver of a condition of membership upon a showing of good cause and, in its discretion, may limit, among other items, the scope, duration, and timing of the waiver.

(2) *Reports of affiliates.* Pursuant to section 21 of the Federal Reserve Act (12 U.S.C. 486), the Board waives the requirement for the submission of reports of affiliates of member banks, unless such reports are specifically requested by the Board.

(f) *Voluntary withdrawal from membership.* Voluntary withdrawal from membership becomes effective upon cancellation of the Federal Reserve Bank stock held by the member bank, and after the bank has made due provision to pay any indebtedness due or to become due to the Federal Reserve Bank in accordance with the Board's Regulation I (12 CFR 209).

3–159

SECTION 208.4—Capital Adequacy

(a) *Adequacy.* A member bank's capital, calculated in accordance with part 217, shall be at all times adequate in relation to the character and condition liabilities and other corporate responsibilities. If at any time, in light of all the circumstances, the bank's capital appears inadequate in relation to its assets, liabilities, and responsibilities, the bank shall increase the amount of its capital, within such period as the Board deems reasonable, to an amount which, in the judgment of the Board, shall be adequate.

(b) *Standards for evaluating capital adequacy.* Standards and measures, by which the Board evaluates the capital adequacy of member banks for risk-based capital purposes and for leverage measurement purposes, are located in part 217 of this chapter.

3–160

SECTION 208.5—Dividends and Other Distributions

(a) *Definitions.* For the purposes of this section:

(1) *Capital surplus* means the total of surplus as reportable in the bank's Reports of Condition and Income and surplus on perpetual preferred stock.

(2) *Permanent capital* means the total of the bank's perpetual preferred stock and related surplus, common stock and surplus, and minority interest in consolidated subsidiaries, as reportable in the Reports of Condition and Income.

(b) *Limitations.* The limitations in this section on the payment of dividends and withdrawal of capital apply to all cash and property dividends or distributions on common or preferred stock. The limitations do not apply to dividends paid in the form of common stock.

3–161

(c) *Earnings limitations on payment of dividends.*

(1) A member bank may not declare or pay a dividend if the total of all dividends declared during the calendar year, including

the proposed dividend, exceeds the sum of the bank's net income (as reportable in its Reports of Condition and Income) during the current calendar year and the retained net income of the prior two calendar years, unless the dividend has been approved by the Board.

(2) ''Retained net income'' in a calendar year is equal to the bank's net income (as reported in its Report of Condition and Income for such year), less any dividends declared during such year.[3] The bank's net income during the current year and its retained net income from the prior two calendar years is reduced by any net losses incurred in the current or prior two years and any required transfers to surplus or to a fund for the retirement of preferred stock.[4]

3–162

(d) *Limitation on withdrawal of capital by dividend or otherwise.*

(1) A member bank may not declare or pay a dividend if the dividend would exceed the bank's undivided profits as reportable on its Reports of Condition and Income, unless the bank has received the prior approval of the Board and of at least two-thirds of the shareholders of each class of stock outstanding.

(2) A member bank may not permit any portion of its permanent capital to be withdrawn unless the withdrawal has been approved by the Board and by at least two-thirds of the shareholders of each class of stock outstanding.

(3) If a member bank has capital surplus in excess of that required by law, the excess amount may be transferred to the bank's undivided-profits account and be available for the payment of dividends if—

(i) the amount transferred came from the earnings of prior periods, excluding earnings transferred as a result of stock dividends;

(ii) the bank's board of directors approves the transfer of funds; and

(iii) the transfer has been approved by the Board.

3–163

(e) *Payment of capital distributions.* All member banks also are subject to the restrictions on payment of capital distributions contained in section 208.45 of subpart D of this part implementing section 38 of the FDI Act (12 U.S.C. 1831o).

(f) *Compliance.* A member bank shall use the date a dividend is declared to determine compliance with this section.

3–164

SECTION 208.6—Establishment and Maintenance of Branches

(a) *Branching.*

(1) To the extent authorized by state law, a member bank may establish and maintain branches (including interstate branches) subject to the same limitations and restrictions that apply to the establishment and maintenance of national bank branches (12 U.S.C. 36 and 1831u), except that approval of such branches shall be obtained from the Board rather than from the Comptroller of the Currency.

(2) *Branch applications.* A state member bank wishing to establish a branch in the United States or its territories must file an application in accordance with the Board's Rules of Procedure, located at 12 CFR 262.3, and must comply with the public-notice and comment rules contained in paragraphs (a)(3) and (a)(4) of this section. Branches of member banks located in for-

[3] In the case of dividends in excess of net income for the year, a bank generally is not required to carry forward negative amounts resulting from such excess. Instead, the bank may attribute the excess to the prior two years, attributing the excess first to the earlier year and then to theimmediately preceding year. If the excess is greater than the bank's previously undistributed net income for the preceding two years, prior Board approval of the dividend is required and a negative amount would be carried forward in future dividend calculations. However, in determining any such request for approval, the Board could consider any request for different treatment of such negative amount, including advance waivers for future periods. This applies only to earnings deficits that result from dividends declared in excess of net income for the year and does not apply to other types of current earnings deficits.

[4] State member banks are required to comply with state-law provisions concerning the maintenance of surplus funds in addition to common capital. Where the surplus of a state member bank is less than what applicable state law requires the bank to maintain relative to its capital stock account, the bank may be required to transfer amounts from its undivided profits account to surplus.

eign nations, in the overseas territories, dependencies, and insular possessions of those nations and of the United States, and in the Commonwealth of Puerto Rico, are subject to the Board's Regulation K (12 CFR 211).

3–165

(3) *Public notice of branch applications.*

(i) *Location of publication.* A state member bank wishing to establish a branch in the United States or its territories must publish notice in a newspaper of general circulation in the form and at the locations specified in section 262.3 of the Rules of Procedure (12 CFR 262.3).

(ii) *Contents of notice.* The newspaper notice referred to in paragraph (a)(3) of this section shall provide an opportunity for interested persons to comment on the application for a period of at least 15 days.

(iii) *Timing of publication.* Each newspaper notice shall be published no more than seven calendar days before and no later than the calendar day on which an application is filed with the appropriate Reserve Bank.

(4) *Public comment.*

(i) *Timely comments.* Interested persons may submit information and comments regarding a branch application under section 208.6. A comment shall be considered timely for purposes of this subpart if the comment, together with all supplemental information, is submitted in writing in accordance with the Board's Rules of Procedure (12 CFR 262.3) and received by the Board or the appropriate Reserve Bank prior to the expiration of the public comment period provided in paragraph (a)(3)(ii) of this section.

(ii) *Extension of comment period.* The Board may, in its discretion, extend the public comment period regarding any application under section 208.6. In the event that an interested person requests a copy of an application submitted under section 208.6, the Board may, in its discretion and based on the facts and circumstances, grant such person an extension of the comment period for up to 15 calendar days.

3–166

(b) *Factors considered in approving domestic-branch applications.* Factors given special consideration by the Board in passing upon a branch application are:

(1) *Financial condition and management.* The financial history and condition of the applying bank and the general character of its management;

(2) *Capital.* The adequacy of the bank's capital in accordance with section 208.4, and its future earnings prospects;

(3) *Convenience and needs.* The convenience and needs of the community to be served by the branch;

(4) *CRA performance.* In the case of branches with deposit-taking capability, the bank's performance under the Community Reinvestment Act (12 USC 2901 et seq.) and Regulation BB (12 CFR 228); and

(5) *Investment in bank premises.* Whether the bank's investment in bank premises in establishing the branch is consistent with section 208.21.

3–167

(c) *Expedited approval for eligible banks and bank holding companies.*

(1) *Availability of expedited treatment.* The expedited branch-application procedures described in paragraph (c)(2) of this section are available to—

(i) an eligible bank; and

(ii) a bank that cannot be determined to be an eligible bank because it has not received CAMELS compliance or CRA ratings from a bank regulatory authority, if it is controlled by a bank holding company that meets the criteria for expedited processing under section 225.14(c) of Regulation Y (12 CFR 225.14(c)).

(2) *Expedited procedures.* A completed domestic-branch application filed with the appropriate Reserve Bank will be deemed approved on the fifth day after the close of the comment period, unless the Board or the appropriate Reserve Bank notifies the bank that the application is approved prior to that date (but in no case will an application be approved before the third day after the close of the public comment period) or the Board or the appropriate Federal Re-

serve Bank notifies the bank that the application is not eligible for expedited review for any reason, including, without limitation, that—

(i) the bank or bank holding company does not meet the criteria under section 208.6(c)(1);

(ii) the application contains a material error or is otherwise deficient; or

(iii) the application or the notice required under paragraph (a)(3) of this section raises significant supervisory, Community Reinvestment Act, compliance, policy, or legal issues that have not been resolved, or a timely substantive adverse comment is submitted. A comment will be considered substantive unless it involves individual complaints, or raises frivolous, previously considered, or wholly unsubstantiated claims or irrelevant issues.

3–168

(d) *Consolidated applications.*

(1) *Proposed branches; notice of branch opening.* A member bank may seek approval in a single application or notice for any branches that it proposes to establish within one year after the approval date. The bank shall, unless notification is waived, notify the appropriate Reserve Bank not later than 30 days after opening any branch approved under a consolidated application. A bank is not required to open a branch approved under either a consolidated or single branch application.

(2) *Duration of branch approval.* Branch approvals remain valid for one year unless the Board or the appropriate Reserve Bank notifies the bank that in its judgment, based on reports of condition, examinations, or other information, there has been a change in the bank's condition, financial or otherwise, that warrants reconsideration of the approval.

3–169

(e) *Branch closings.* A member bank shall comply with section 42 of the FDI Act (FDI Act), 12 USC 1831r-1, with regard to branch closings.

(f) *Branch relocations.* A relocation of an existing branch does not require filing a branch application. A relocation of an existing branch, for purposes of determining whether to file a branch application, is a movement that does not substantially affect the nature of the branch's business or customers served.

3–170

SECTION 208.7—Prohibition Against Use of Interstate Branches Primarily for Deposit Production

(a) *Purpose and scope.*

(1) *Purpose.* The purpose of this section is to implement section 109 (12 USC 1835a) of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act).

(2) *Scope.*

(i) This section applies to any state member bank that has operated a covered interstate branch for a period of at least one year, and any foreign bank that has operated a covered interstate branch licensed by a state for a period of at least one year.

(ii) This section describes the requirements imposed under 12 USC 1835a, which requires the appropriate federal banking agencies (the Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation) to prescribe uniform rules that prohibit a bank from using any authority to engage in interstate branching pursuant to the Interstate Act, or any amendment made by the Interstate Act to any other provision of law, primarily for the purpose of deposit production.

3–171

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Bank* means, unless the context indicates otherwise—

(i) a state member bank as that term is defined in 12 USC 1813(d)(2); and

(ii) a foreign bank as that term is defined in 12 USC 3101(7) and 12 CFR 211.21.

(2) *Covered interstate branch* means—

(i) any branch of a state member bank,

and any uninsured branch of a foreign bank licensed by a state, that—

(A) is established or acquired outside the bank's home state pursuant to the interstate branching authority granted by the Interstate Act or by any amendment made by the Interstate Act to any other provision of law; or

(B) could not have been established or acquired outside of the bank's home state but for the establishment or acquisition of a branch described in paragraph (b)(2)(i) of this section; and

(ii) any bank or branch of a bank controlled by an out-of-state bank holding company.

(3) *Home state* means—

(i) with respect to a state bank, the state that chartered the bank;

(ii) with respect to a national bank, the state in which the main office of the bank is located;

(iii) with respect to a bank holding company, the state in which the total deposits of all banking subsidiaries of such company are the largest on the later of—

(A) July 1, 1966; or

(B) the date on which the company becomes a bank holding company under the Bank Holding Company Act.

(iv) with respect to a foreign bank—

(A) for purposes of determining whether a U.S. branch of a foreign bank is a covered interstate branch, the home state of the foreign bank as determined in accordance with 12 USC 3103(c) and 12 CFR 211.22; and

(B) for purposes of determining whether a branch of a U.S. bank controlled by a foreign bank is a covered interstate branch, the state in which the total deposits of all banking subsidiaries of such foreign bank are the largest on the later of—

(*1*) July 1, 1966; or

(*2*) the date on which the foreign bank becomes a bank holding company under the Bank Holding Company Act.

(4) *Host state* means a state in which a covered interstate branch is established or acquired.

(5) *Host state loan-to-deposit ratio* generally means, with respect to a particular host state, the ratio of total loans in the host state relative to total deposits from the host state for all banks (including institutions covered under the definition of ''bank'' in 12 USC 1813(a)(1)) that have that state as their home state, as determined and updated periodically by the appropriate federal banking agencies and made available to the public.

(6) *Out-of-state bank holding company* means, with respect to any state, a bank holding company whose home state is another state.

(7) *State* means state as that term is defined in 12 USC 1813(a)(3).

(8) *Statewide loan-to-deposit ratio* means, with respect to a bank, the ratio of the bank's loans to its deposits in a state in which the bank has one or more covered interstate branches, as determined by the Board.

3–172

(c) *Loan-to-deposit ratio screen.*

(1) *Application of screen.* Beginning no earlier than one year after a covered interstate branch is acquired or established, the Board will consider whether the bank's statewide loan-to-deposit ratio is less than 50 percent of the relevant host state loan-to-deposit ratio.

(2) *Results of screen.*

(i) If the Board determines that the bank's statewide loan-to-deposit ratio is 50 percent or more of the host-state loan-to-deposit ratio, no further consideration under this section is required.

(ii) If the Board determines that the bank's statewide loan-to-deposit ratio is less than 50 percent of the host-state loan-to-deposit ratio, or if reasonably available data are insufficient to calculate the bank's statewide loan-to-deposit ratio, the Board will make a credit-needs determination for the bank as provided in paragraph (d) of this section.

3–173

(d) *Credit-needs determination.*

(1) *In general.* The Board will review the loan portfolio of the bank and determine whether the bank is reasonably helping to meet the credit needs of the communities in the host state that are served by the bank.

(2) *Guidelines.* The Board will use the following considerations as guidelines when making the determination pursuant to paragraph (d)(1) of this section:

(i) whether covered interstate branches were formerly part of a failed or failing depository institution;

(ii) whether covered interstate branches were acquired under circumstances where there was a low loan-to-deposit ratio because of the nature of the acquired institution's business or loan portfolio;

(iii) whether covered interstate branches have a high concentration of commercial or credit card lending, trust services, or other specialized activities, including the extent to which the covered interstate branches accept deposits in the host state;

(iv) the Community Reinvestment Act ratings received by the bank, if any, under 12 USC 2901 et seq.;

(v) economic conditions, including the level of loan demand, within the communities served by the covered interstate branches;

(vi) the safe and sound operation and condition of the bank; and

(vii) the Board's Regulation BB, Community Reinvestment, (12 CFR 228) and interpretations of that regulation.

3–174

(e) *Sanctions.*

(1) *In general.* If the Board determines that a bank is not reasonably helping to meet the credit needs of the communities served by the bank in the host state, and that the bank's statewide loan-to-deposit ratio is less than 50 percent of the host-state loan-to-deposit ratio, the Board—

(i) may order that a bank's covered interstate branch or branches be closed unless the bank provides reasonable assurances to the satisfaction of the Board, after an opportunity for public comment, that the bank has an acceptable plan under which the bank will reasonably help to meet the credit needs of the communities served by the bank in the host state; and

(ii) will not permit the bank to open a new branch in the host state that would be considered to be a covered interstate branch unless the bank provides reasonable assurances to the satisfaction of the Board, after an opportunity for public comment, that the bank will reasonably help to meet the credit needs of the community that the new branch will serve.

(2) *Notice prior to closure of a covered interstate branch.* Before exercising the Board's authority to order the bank to close a covered interstate branch, the Board will issue to the bank a notice of the Board's intent to order the closure and will schedule a hearing within 60 days of issuing the notice.

(3) *Hearing.* The Board will conduct a hearing scheduled under paragraph (e)(2) of this section in accordance with the provisions of 12 USC 1818(h) and 12 CFR 263.

3–200

SUBPART B—INVESTMENTS AND LOANS

SECTION 208.20—Authority, Purpose, and Scope

(a) *Authority.* Subpart B of Regulation H (12 CFR 208, subpart B) is issued by the Board of Governors of the Federal Reserve System under 12 USC 24; sections 9, 11, and 21 of the Federal Reserve Act (12 USC 321-338a, 248(a), 248(c), and 481-486); sections 1814, 1816, 1818, 1823(j), 1831o, 1831p-1, and 1831r-1 of the FDI Act (12 USC 1814, 1816, 1818, 1823(j), 1831o, 1831p-1, and 1831r-1); and the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 USC 4001-4129).

(b) *Purpose and scope.* This subpart B describes certain investment limitations on member banks, statutory requirements for amortizing losses on agricultural loans and extending credit in areas having special flood hazards, as

well as the requirements for issuing letters of credit and acceptances.

3–201

SECTION 208.21—Investments in Premises and Securities

(a) *Investment in bank premises.* No state member bank shall invest in bank premises, or in the stock, bonds, debentures, or other such obligations of any corporation holding the premises of such bank, or make loans to or upon the security of any such corporation unless—

(1) the bank notifies the appropriate Reserve Bank at least 15 days prior to such investment and has not received notice that the investment is subject to further review by the end of the 15-day notice period;

(2) the aggregate of all such investments and loans, together with the amount of any indebtedness incurred by any such corporation that is an affiliate of the bank (as defined in section 2 of the Banking Act of 1933, as amended, 12 USC 221a), is less than or equal to the bank's perpetual preferred stock and related surplus plus common stock plus surplus, as those terms are defined in the FFIEC Consolidated Reports of Condition and Income; or

(3) (i) the aggregate of all such investments and loans, together with the amount of any indebtedness incurred by any such corporation that is an affiliate of the bank, is less than or equal to 150 percent of the bank's perpetual preferred stock and related surplus plus common stock plus surplus, as those terms are defined in the FFIEC Consolidated Reports of Condition and Income; and

(ii) the bank—

(A) has a CAMELS composite rating of 1 or 2 under the Uniform Interagency Bank Rating System[5] (or an equivalent rating under a comparable rating system) as of the most recent examination of the bank; and

(B) is well capitalized and will continue to be well capitalized, in accordance with subpart D of this part, after the investment or loan.

3–202

(b) *Investments in securities.* Member banks are subject to the same limitations and conditions with respect to purchasing, selling, underwriting, and holding investment securities and stocks as are national banks under 12 U.S.C. 24, paragraph seventh. To determine whether an obligation qualifies as an investment security for the purposes of 12 U.S.C. 24, paragraph seventh, and to calculate the limits with respect to the purchase of such obligations, a state member bank may look to part 1 of the rules of the Comptroller of the Currency (12 CFR 1) and interpretations thereunder. A state member bank may consult the Board for a determination with respect to the application of 12 U.S.C. 24, paragraph seventh, with respect to issues not addressed in 12 CFR 1. The provisions of 12 CFR 1 do not provide authority for a state member bank to purchase securities of a type or amount that the bank is not authorized to purchase under applicable state law.

3–203

SECTION 208.22—Community Development and Public-Welfare Investments

(a) *Definitions.* For purposes of this section:

(1) *Low- or moderate-income area* means—

(i) one or more census tracts in a metropolitan statistical area where the median family income adjusted for family size in each census tract is less than 80 percent of the median family income adjusted for family size of the metropolitan statistical area; or

(ii) if not in a metropolitan statistical area, one or more census tracts or block-numbered areas where the median family income adjusted for family size in each census tract or block-numbered area is less than 80 percent of the median family income adjusted for family size of the state.

[5] See 3–1575 for an explanation of the Uniform Interagency Bank Rating System. (For availability, see 12 CFR 261.10(f).)

(2) *Low- and moderate-income persons* has the same meaning as low- and moderate-income persons as defined in 42 U.S.C. 5302(a)(20)(A).

(3) *Small business* means a business that meets the size eligibility standards of 13 CFR 121.802(a)(2).

3–204

(b) *Investments not requiring prior Board approval.* Notwithstanding the provisions of section 5136 of the Revised Statutes (12 U.S.C. 24 (seventh)) made applicable to member banks by paragraph 20 of section 9 of the Federal Reserve Act (12 U.S.C. 335), a member bank may make an investment, without prior Board approval, if the following conditions are met:

(1) the investment is in a corporation, limited partnership, or other entity, and

(i) the Board has determined that an investment in that entity or class of entities is a public-welfare investment under paragraph 23 of section 9 of the Federal Reserve Act (12 U.S.C. 338a), or a community development investment under Regulation Y (12 CFR 225.25(b)(6)); or

(ii) the Comptroller of the Currency has determined, by order or regulation, that an investment in that entity by a national bank is a public-welfare investment under section 5136 of the Revised Statutes (12 U.S.C. 24, eleventh); or

(iii) the entity is a community development financial institution as defined in section 103(5) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702(5)); or

(iv) the entity, directly or indirectly, engages solely in or makes loans solely for the purposes of one or more of the following community development activities:

(A) investing in, developing, rehabilitating, managing, selling, or renting residential property if a majority of the units will be occupied by low- and moderate-income persons or if the property is a ''qualified low-income building'' as defined in section 42(c)(2) of the Internal Revenue Code (26 U.S.C. 42(c)(2));

(B) investing in, developing, rehabilitating, managing, selling, or renting nonresidential real property or other assets located in a low- or moderate-income area and targeted towards low- and moderate-income persons;

(C) investing in one or more small businesses located in a low- or moderate-income area to stimulate economic development;

(D) investing in, developing, or otherwise assisting job training or placement facilities or programs that will be targeted towards low- and moderate-income persons;

(E) investing in an entity located in a low- or moderate-income area if the entity creates long-term employment opportunities, a majority of which (based on full-time equivalent positions) will be held by low- and moderate-income persons; and

(F) providing technical assistance, credit counseling, research, and program-development assistance to low- and moderate-income persons, small businesses, or nonprofit corporations to help achieve community development;

(2) the investment is permitted by state law;

(3) the investment will not expose the member bank to liability beyond the amount of the investment;

(4) the aggregate of all such investments of the member bank does not exceed the sum of 5 percent of its capital stock and surplus;

(5) the member bank is well capitalized or adequately capitalized under section 208.43(b)(1) and (2);

(6) the member bank received a composite CAMELS rating of 1 or 2 under the Uniform Financial Institutions Rating System as of its most recent examination and an overall rating of 1 or 2 as of its most recent consumer compliance examination; and

(7) the member bank is not subject to any written agreement, cease-and-desist order, capital directive, prompt-corrective-action directive, or memorandum of un-

derstanding issued by the Board or a Federal Reserve Bank.

3–205

(c) *Notice to Federal Reserve Bank.* Not more than 30 days after making an investment under paragraph (b) of this section, the member bank shall advise its Federal Reserve Bank of the investment, including the amount of the investment and the identity of the entity in which the investment is made.

(d) *Investments requiring Board approval.*

(1) With prior Board approval, a member bank may make public-welfare investments under paragraph 23 of section 9 of the Federal Reserve Act (12 U.S.C. 338a), other than those specified in paragraph (b) of this section.

(2) Requests for approval under this paragraph (d) should include, at a minimum—

(i) the amount of the proposed investment;

(ii) a description of the entity in which the investment is to be made;

(iii) an explanation of why the investment is a public-welfare investment under paragraph 23 of section 9 of the Federal Reserve Act (12 U.S.C. 338a);

(iv) a description of the member bank's potential liability under the proposed investment;

(v) the amount of the member bank's aggregate outstanding public-welfare investments under paragraph 23 of section 9 of the Federal Reserve Act;

(vi) the amount of the member bank's capital stock and surplus; and

(vii) if the bank investment is not eligible under paragraph (b) of this section, explain the reason or reasons why it is ineligible.

(3) The Board shall act on a request under this paragraph (d) within 60 calendar days of receipt of a request that meets the requirements of paragraph (d)(2) of this section, unless the Board notifies the requesting member bank that a longer time period will be required.

3–206

(e) *Divestiture of investments.* A member bank shall divest itself of an investment made under paragraph (b) or (d) of this section to the extent that the investment exceeds the scope of, or ceases to meet, the requirements of paragraphs (b)(1) through (b)(4) or paragraph (d) of this section. The divestiture shall be made in the manner specified in 12 CFR 225.140, Regulation Y, for interests acquired by a lending subsidiary of a bank holding company or the bank holding company itself in satisfaction of a debt previously contracted.

3–207

SECTION 208.23—Agricultural Loan Loss Amortization

(a) *Definitions.* For purposes of this section:

(1) *Accepting official* means—

(i) the Reserve Bank in whose District the bank is located; or

(ii) The director of the Division of Banking Supervision and Regulation in cases in which the Reserve Bank cannot determine that the bank qualifies.

(2) *Agriculturally related other property* means any property, real or personal, that the bank owned on January 1, 1983, and any additional property that it acquired prior to January 1, 1992, in connection with a qualified agricultural loan. For the purposes of paragraph (d) of this section, the value of such property shall include the amount previously charged off as a loss.

(3) *Participating bank* means an agricultural bank (as defined in 12 U.S.C. 1823(j)(4)(A)) that, as of January 1, 1992, had a proposal for a capital-restoration plan accepted by an accepting official and received permission from the accepting official, subject to paragraphs (d) and (e) of this section, to amortize losses in accordance with paragraphs (b) and (c) of this section.

(4) *Qualified agricultural loan* means—

(i) loans that finance agricultural production or are secured by farm land for purposes of Schedule RC-C of the FFIEC Consolidated Report of Condition or such other comparable schedule;

(ii) loans secured by farm machinery;
(iii) other loans that a bank proves to be sufficiently related to agriculture for classification as an agricultural loan by the Board; and
(iv) the remaining unpaid balance of any loans described in paragraphs (a)(4)(i), (ii), and (iii) of this section that have been charged off since January 1, 1984, and that qualify for deferral under this section.

3–208

(b) (1) Provided there is no evidence that the loss resulted from fraud or criminal abuse on the part of the bank, the officers, directors, or principal shareholders, a participating bank may amortize in its Reports of Condition and Income—
(i) any loss on a qualified agricultural loan that the bank would be required to reflect in its financial statements for any period between and including 1984 and 1991; or
(ii) any loss that the bank would be required to reflect in its financial statements for any period between and including 1983 and 1991 resulting from a reappraisal or sale of agriculturally related other property.
(2) Amortization under this section shall be computed over a period not to exceed seven years on a quarterly straight-line basis commencing in the first quarter after the loan was or is charged off so as to be fully amortized not later than December 31, 1998.

3–209

(c) *Accounting for amortization.* Any bank that is permitted to amortize losses in accordance with paragraph (b) of this section may restate its capital and other relevant accounts and account for future authorized deferrals and authorization in accordance with the instructions to the FFIEC Consolidated Reports of Condition and Income. Any resulting increase in the capital account shall be included in capital pursuant to part 217 of this chapter.

(d) *Conditions of participation.* In order for a bank to maintain its status as a participating bank, it shall—
(1) adhere to the approved capital plan and obtain the prior approval of the accepting official before making any modifications to the plan;
(2) maintain accounting records for each asset subject to loss deferral under the program that document the amount and timing of the deferrals, repayments, and authorizations;
(3) maintain the financial condition of the bank so that it does not deteriorate to the point where it is no longer a viable, fundamentally sound institution;
(4) make a reasonable effort, consistent with safe and sound banking practices, to maintain in its loan portfolio a percentage of agricultural loans, including agriculturally related other property, not less than the percentage of such loans in its loan portfolio on January 1, 1986; and
(5) provide the accepting official, upon request, with any information the accepting official deems necessary to monitor the bank's amortization, its compliance with the conditions of participation, and its continued eligibility.

3–210

(e) *Revocation of eligibility for loss amortization.* The failure to comply with any condition in an acceptance, with the capital-restoration plan, or with the conditions stated in paragraph (d) of this section, is grounds for revocation of acceptance for loss amortization and for an administrative action against the bank under 12 U.S.C. 1818(b). In addition, acceptance of a bank for loss amortization shall not foreclose any administrative action against the bank that the Board may deem appropriate.

(f) *Expiration date.* The terms of this section will no longer be in effect as of January 1, 1999.

3–211

SECTION 208.24—Letters of Credit and Acceptances

(a) *Standby letters of credit.* For the purpose of this section, standby letters of credit in-

clude every letter of credit (or similar arrangement however named or designated) that represents an obligation to the beneficiary on the part of the issuer—

(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 party procuring the issuance of the letter of credit in the performance of an obligation.[6]

(b) *Ineligible acceptance.* An ineligible acceptance is a time draft accepted by a bank, which does not meet the requirements for discount with a Federal Reserve Bank.

3–212

(c) *Bank's lending limits.* Standby letters of credit and ineligible acceptances count toward member bank's lending limits imposed by state law.

(d) *Exceptions.* A standby letter of credit or ineligible acceptance is not subject to the restrictions set forth in paragraph (c) of this section if prior to or at the time of issuance of the credit—

(1) the issuing bank is paid an amount equal to the bank's maximum liability under the standby letter of credit; or

(2) the party procuring the issuance of a letter of credit or ineligible acceptance 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 or ineligible acceptance.

3–213

SECTION 208.25—Loans in Areas Having Special Flood Hazards

[6] A standby letter of credit does 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 12 CFR 211 (Regulation K).

(a) *Purpose and scope.*

(1) *Purpose.* The purpose of this section is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4129).

(2) *Scope.* This section, except for paragraphs (f) and (h) of this section, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Administrator of the Federal Emergency Management Agency to have special flood hazards. Paragraphs (f) and (h) of this section apply to loans secured by buildings or mobile homes, regardless of location.

3–214

(b) *Definitions.* For purposes of this section:

(1) *Act* means the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001-4129).

(2) *Administrator of FEMA* means the Administrator of the Federal Emergency Management Agency.

(3) *Building* means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.

(4) *Community* means a State or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.

(5) *Designated loan* means a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the Act.

(6) *Mobile home* means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term *mobile home* does not include a recreational vehicle. For purposes of this section, the term *mobile home* means a mobile home on a permanent foundation. The term *mobile home* includes a manufactured home as that term is used in the NFIP.

3–215

(7) *Mutual aid society* means an organization—

(i) Whose members share a common religious, charitable, educational, or fraternal bond;

(ii) That covers losses caused by damage to members' property pursuant to an agreement, including damage caused by flooding, in accordance with this common bond; and

(iii) That has a demonstrated history of fulfilling the terms of agreements to cover losses to members' property caused by flooding.

(8) *NFIP* means the National Flood Insurance Program authorized under the Act.

(9) *Private flood insurance* means an insurance policy that:

(i) Is issued by an insurance company that is:

(A) Licensed, admitted, or otherwise approved to engage in the business of insurance by the insurance regulator of the State or jurisdiction in which the property to be insured is located; or

(B) Recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction in which the property to be insured is located in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property;

(ii) Provides flood insurance coverage that is at least as broad as the coverage provided under an SFIP for the same type of property, including when considering deductibles, exclusions, and conditions offered by the insurer. To be at least as broad as the coverage provided under an SFIP, the policy must, at a minimum:

(A) Define the term ''flood'' to include the events defined as a ''flood'' in an SFIP;

(B) Contain the coverage specified in an SFIP, including that relating to building property coverage; personal property coverage, if purchased by the insured mortgagor(s); other coverages; and increased cost of compliance coverage;

(C) Contain deductibles no higher than the specified maximum, and include similar non-applicability provisions, as under an SFIP, for any total policy coverage amount up to the maximum available under the NFIP at the time the policy is provided to the lender;

(D) Provide coverage for direct physical loss caused by a flood and may only exclude other causes of loss that are excluded in an SFIP. Any exclusions other than those in an SFIP may pertain only to coverage that is in addition to the amount and type of coverage that could be provided by an SFIP or have the effect of providing broader coverage to the policyholder; and

(E) Not contain conditions that narrow the coverage provided in an SFIP;

(iii) Includes all of the following:

(A) A requirement for the insurer to give written notice 45 days before cancellation or non-renewal of flood insurance coverage to:

(*1*) The insured; and

(*2*) The member bank that made the designated loan secured by the property covered by the flood insurance, or the servicer acting on its behalf;

(B) Information about the availability of flood insurance coverage under the NFIP;

(C) A mortgage interest clause similar to the clause contained in an SFIP; and

(D) A provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy; and

(iv) Contains cancellation provisions that are as restrictive as the provisions contained in an SFIP.

(10) *Residential improved real estate* means real estate upon which a home or other residential building is located or to be located.

(11) *Servicer* means the person responsible for:

(i) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other

charges with respect to the property securing the loan; and

(ii) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

(12) *SFIP* means, for purposes of paragraph (b)(9) of this section, a standard flood insurance policy issued under the NFIP in effect as of the date private flood insurance is provided to a member bank.

(13) *Special flood hazard area* means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Administrator of FEMA.

(14) *Table funding* means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

3–216

(c) *Requirement to purchase flood insurance where available.*

(1) *In general.* A member bank shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act. Flood insurance coverage under the Act is limited to the building or mobile home and any personal property that secures a loan and not the land itself.

(2) *Table funded loans.* A member bank that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for the purposes of this section.

(3) *Private flood insurance.*

(i) *Mandatory acceptance.* A member bank must accept private flood insurance, as defined in paragraph (b)(9) of this section, in satisfaction of the flood insurance purchase requirement in paragraph (c)(1) of this section if the policy meets the requirements for coverage in paragraph (c)(1) of this section.

(ii) *Compliance aid for mandatory acceptance.* A member bank may determine that a policy meets the definition of private flood insurance in paragraph (b)(9) of this section, without further review of the policy, if the following statement is included within the policy or as an endorsement to the policy: ''This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation.''

(iii) *Discretionary acceptance.* A member bank may accept a flood insurance policy issued by a private insurer that is not issued under the NFIP and that does not meet the definition of private flood insurance in paragraph (b)(9) of this section in satisfaction of the flood insurance purchase requirement in paragraph (c)(1) of this section if the policy:

(A) Provides coverage in the amount required by paragraph (c)(1) of this section;

(B) Is issued by an insurer that is licensed, admitted, or otherwise approved to engage in the business of insurance by the insurance regulator of the State or jurisdiction in which the property to be insured is located; or in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is issued by a surplus lines insurer recognized, or not disapproved, by the insurance regulator of the State or jurisdiction where the property to be insured is located;

(C) Covers both the mortgagor(s) and the mortgagee(s) as loss payees, except in the case of a policy that is provided by a condominium association, cooperative, homeowners association, or other applicable group and for which the premium is paid by the condominium association, cooperative, homeowners association, or other applicable group as a common expense; and

(D) Provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the member bank documents its conclusion regarding sufficiency of the protection of the loan in writing.

(iv) *Mutual aid societies.* Notwithstanding the requirements of paragraph (c)(3)(iii) of this section, a member bank may accept a plan issued by a mutual aid society, as defined in paragraph (b)(7) of this section, in satisfaction of the flood insurance purchase requirement in paragraph (c)(1) of this section if:

(A) The Board has determined that such plans qualify as flood insurance for purposes of the Act.

(B) The plan provides coverage in the amount required by paragraph (c)(1) of this section;

(C) The plan covers both the mortgagor(s) and the mortgagee(s) as loss payees; and

(D) The plan provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the member bank documents its conclusion regarding sufficiency of the protection of the loan in writing.

3–217

(d) *Exemptions.* The flood insurance requirement prescribed by paragraph (c) of this section does not apply with respect to:

(1) Any State-owned property covered under a policy of self-insurance satisfactory to the Administrator of FEMA, who publishes and periodically revises the list of States falling within this exemption;

(2) Property securing any loan with an original principal balance of $5,000 or less and a repayment term of one year or less; or

(3) Any structure that is a part of any residential property but is detached from the primary residential structure of such property and does not serve as a residence. For purposes of this paragraph (d)(3):

(i) ''A structure that is a part of a residential property'' is a structure used primarily for personal, family, or household purposes, and not used primarily for agri cultural, commercial, industrial, or other business purposes;

(ii) A structure is ''detached'' from the primary residential structure if it is not joined by any structural connection to that structure; and

(iii) ''Serve as a residence'' shall be based upon the good faith determination of the member bank that the structure is intended for use or actually used as a residence, which generally includes sleeping, bathroom, or kitchen facilities.

(e) *Escrow requirement.*

(1) *In general.*

(i) *Applicability.* Except as provided in paragraphs (e)(1)(ii) or (e)(3) of this section, a member bank, or a servicer acting on its behalf, shall require the escrow of all premiums and fees for any flood insurance required under paragraph (c) of this section for any designated loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016, payable with the same frequency as payments on the designated loan are required to be made for the duration of the loan.

(ii) *Exceptions.* Paragraph (e)(1)(i) of this section does not apply if:

(A) The loan is an extension of credit primarily for business, commercial, or agricultural purposes;

(B) The loan is in a subordinate position to a senior lien secured by the same residential improved real estate or mobile home for which the borrower has obtained flood insurance coverage that meets the requirements of paragraph (c) of this section;

(C) Flood insurance coverage for the residential improved real estate or mobile home is provided by a policy that:

(*1*) Meets the requirements of paragraph (c) of this section;

(*2*) Is provided by a condominium association, cooperative, homeowners association, or other applicable group; and

(*3*) The premium for which is paid by the condominium association, cooperative, homeowners association, or other applicable group as a common expense;

(D) The loan is a home equity line of credit;

(E) The loan is a nonperforming loan, which is a loan that is 90 or more days past due and remains nonperforming until it is permanently modified or until the entire amount past due, including principal, accrued interest, and penalty interest incurred as the result of past due status, is collected or otherwise discharged in full; or

(F) The loan has a term of not longer than 12 months.

(iii) *Duration of exception.* If a member bank, or a servicer acting on behalf of the bank, determines at any time during the term of a designated loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016, that an exception under paragraph (e)(1)(ii) of this section does not apply, then the bank or its servicer shall require the escrow of all premiums and fees for any flood insurance required under paragraph (c) of this section as soon as reasonably practicable and, if applicable, shall provide any disclosure required under section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA).

(iv) *Escrow account.* The member bank, or a servicer acting on its behalf, shall deposit the flood insurance premiums and fees on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of RESPA, which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Administrator of FEMA or other provider of flood insurance that premiums are due, the member bank, or a servicer acting on its behalf, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

(2) *Notice.* For any loan for which a member bank is required to escrow under paragraphs (e)(1) or (e)(3)(ii) of this section or may be required to escrow under paragraph (e)(1)(iii) of this section during the term of the loan, the member bank, or a servicer acting on its behalf, shall mail or deliver a written notice with the notice provided under paragraph (i) of this section informing the borrower that the member bank is required to escrow all premiums and fees for required flood insurance, using language that is substantially similar to model clauses on the escrow requirement in appendix A to this section.

(3) *Small lender exception.*

(i) *Qualification.* Except as may be required under applicable State law, paragraphs (e)(1), (2), and (4) of this section do not apply to a member bank:

(A) That has total assets of less than $1 billion as of December 31 of either of the two prior calendar years; and

(B) On or before July 6, 2012:

(*1*) Was not required under Federal or State law to deposit taxes, insurance premiums, fees, or any other charges in an escrow account for the entire term of any loan secured by residential improved real estate or a mobile home; and

(*2*) Did not have a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account for any loans secured by residential improved real estate or a mobile home.

(ii) *Change in status.* If a member bank previously qualified for the exception in paragraph (e)(3)(i) of this section, but no longer qualifies for the exception because it had assets of $1 billion or more for two consecutive calendar year ends, the member bank must escrow premiums and fees for flood insurance pursuant to paragraph (e)(1) of this section for any designated loan made, increased, extended, or

renewed on or after July 1 of the first calendar year of changed status.

(4) *Option to escrow.*

(i) *In general.* A member bank, or a servicer acting on its behalf, shall offer and make available to the borrower the option to escrow all premiums and fees for any flood insurance required under paragraph (c) of this section for any loan secured by residential improved real estate or a mobile home that is outstanding on January 1, 2016, or July 1 of the first calendar year in which the member bank has had a change in status pursuant to paragraph (e)(3)(ii) of this section, unless:

(A) The loan or the member bank qualifies for an exception from the escrow requirement under paragraphs (e)(1)(ii) or (e)(3) of this section, respectively;

(B) The borrower is already escrowing all premiums and fees for flood insurance for the loan; or

(C) The member bank is required to escrow flood insurance premiums and fees pursuant to paragraph (e)(1) of this section.

(ii) *Notice.* For any loan subject to paragraph (e)(4)(i) of this section, the member bank, or a servicer acting on its behalf, shall mail or deliver to the borrower no later than June 30, 2016, or September 30 of the first calendar year in which the member bank has had a change in status pursuant to paragraph (e)(3)(ii) of this section, a notice in writing, or if the borrower agrees, electronically, informing the borrower of the option to escrow all premiums and fees for any required flood insurance and the method(s) by which the borrower may request the escrow, using language similar to the model clause in appendix B to this section.

(iii) *Timing.* The member bank or servicer must begin escrowing premiums and fees for flood insurance as soon as reasonably practicable after the member bank or servicer receives the borrower's request to escrow.

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(f) *Required use of standard flood hazard determination form.*

(1) *Use of form.* A state member bank shall use the standard flood hazard determination form developed by the Administrator of FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner. A state member bank may obtain the standard flood hazard determination form from FEMA's Web site at www.fema.gov.

(2) *Retention of form.* A state member bank shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the state member bank owns the loan.

(g) *Force placement of flood insurance.*

(1) *Notice and purchase of coverage.* If a member bank, or a servicer acting on behalf of the bank, determines at any time during the term of a designated loan, that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under paragraph (c) of this section, then the member bank or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under paragraph (c) of this section, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the member bank or its servicer shall purchase insurance on the borrower's behalf. The member bank or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance, including premiums or fees incurred for coverage beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount.

(2) *Termination of force-placed insurance.*

(i) *Termination and refund.* Within 30 days of receipt by a member bank, or a servicer acting on its behalf, of a confirmation of a borrower's existing flood insurance coverage, the member bank or its servicer shall:

(A) Notify the insurance provider to terminate any insurance purchased by the member bank or its servicer under paragraph (g)(1) of this section; and

(B) Refund to the borrower all premiums paid by the borrower for any insurance purchased by the member bank or its servicer under paragraph (g)(1) of this section during any period during which the borrower's flood insurance coverage and the insurance coverage purchased by the member bank or its servicer were each in effect, and any related fees charged to the borrower with respect to the insurance purchased by the member bank or its servicer during such period.

(ii) *Sufficiency of demonstration.* For purposes of confirming a borrower's existing flood insurance coverage under paragraph (g)(2) of this section, a member bank or its servicer shall accept from the borrower an insurance policy declarations page that includes the existing flood insurance policy number and the identity of, and contact information for, the insurance company or agent.

3–219

(h) *Determination fees.*

(1) *General.* Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4129), any member bank, or a servicer acting on behalf of the bank, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

(2) *Borrower fee.* The determination fee authorized by paragraph (h)(1) of this section may be charged to the borrower if the determination:

(i) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(ii) Reflects the Administrator of FEMA's revision or updating of flood plain areas or flood-risk zones;

(iii) Reflects the Administrator of FEMA's publication of a notice or compendium that:

(A) Affects the area in which the building or mobile home securing the loan is located; or

(B) By determination of the Administrator of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(iv) Results in the purchase of flood insurance coverage by the lender or its servicer on behalf of the borrower under paragraph (g) of this section.

(3) *Purchaser or transferee fee.* The determination fee authorized by paragraph (h)(1) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

3–220

(i) *Notice of special flood hazards and availability of Federal disaster relief assistance.* When a member bank makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the bank shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the Act for the collateral securing the loan.

(1) *Contents of notice.* The written notice must include the following information:

(i) A warning, in a form approved by the Administrator of FEMA, that the building or the mobile home is or will be located in a special flood hazard area;

(ii) A description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a(b));

(iii) A statement, where applicable, that flood insurance coverage is available

from private insurance companies that issue standard flood insurance policies on behalf of the NFIP or directly from the NFIP;

(iv) A statement that flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP also may be available from a private insurance company that issues policies on behalf of the company;

(v) A statement that the borrower is encouraged to compare the flood insurance coverage, deductibles, exclusions, conditions, and premiums associated with flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance companies and that the borrower should direct inquiries regarding the availability, cost, and comparisons of flood insurance coverage to an insurance agent; and

(vi) A statement whether Federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a Federally declared disaster.

3–221

(2) *Timing of notice.* The member bank shall provide the notice required by paragraph (i)(1) of this section to the borrower within a reasonable time before the completion of the transaction, and to the servicer as promptly as practicable after the bank provides notice to the borrower and in any event no later than the time the bank provides other similar notices to the servicer concerning hazard insurance and taxes. Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

(3) *Record of receipt.* The member bank shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the bank owns the loan.

(4) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (i)(1) of this section, a member bank may obtain satisfactory written assurance from a seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has provided such notice to the purchaser or lessee. The member bank shall retain a record of the written assurance from the seller or lessor for the period of time the bank owns the loan.

(5) *Use of sample form of notice.* A member bank will be considered to be in compliance with the requirement for notice to the borrower of this paragraph (i) of this section by providing written notice to the borrower containing the language presented in appendix A of this section within a reasonable time before the completion of the transaction. The notice presented in appendix A of this section satisfies the borrower notice requirements of the Act.

3–222

(j) *Notice of servicer's identity.*

(1) *Notice requirement.* When a member bank makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the bank shall notify the Administrator of FEMA (or the Administrator's designee) in writing of the identity of the servicer of the loan. The Administrator of FEMA has designated the insurance provider to receive the member bank's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee.

(2) *Transfer of servicing rights.* The member bank shall notify the Administrator of FEMA (or the Administrator's designee) of any change in the servicer of a loan described in paragraph (j)(1) of this section within 60 days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee. Upon any change in the servicing of a loan described in paragraph (j)(1) of this section, the duty to provide notice under this paragraph (j)(2) of this section shall transfer to the transferee servicer.

3–223

Appendix A to Section 208.25—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

We are giving you this notice to inform you that:

The building or mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

The area has been identified by the Director of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's *Flood Insurance Rate Map* or the *Flood Hazard Boundary Map* for the following community: _____.

This area has a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan, the risk of a 100-year flood in a special flood hazard area is 26 percent (26%). Federal law allows a lender and borrower jointly to request the Administrator of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

_____ The community in which the property securing the loan is located participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan. If you fail to purchase or renew flood insurance on the property, Federal law authorizes and requires us to purchase the flood insurance for you at your expense.

- At a minimum, flood insurance purchased must cover *the lesser of*:
  (1) the outstanding principal balance of the loan; *or*
  (2) the maximum amount of coverage allowed for the type of property under the NFIP.

  Flood insurance coverage under the NFIP is limited to the building or mobile home and any personal property that secures your loan and not the land itself.
- Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.
- Although you may not be required to maintain flood insurance on all structures, you may still wish to do so, and your mortgage lender may still require you to do so to protect the collateral securing the mortgage. If you choose not to maintain flood insurance on a structure and it floods, you are responsible for all flood losses relating to that structure.

Availability of Private Flood Insurance Coverage

Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP may be available from private insurers that do not participate in the NFIP. You should compare the flood insurance coverage, deductibles, exclusions, conditions, and premiums associated with flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance companies and contact an insurance agent as to the availability, cost, and comparisons of flood insurance coverage.

[Escrow Requirement for Residential Loans

Federal law may require a lender or its servicer to escrow all premiums and fees for flood insurance that covers any residential building or mobile home securing a loan that is located in an area with special flood hazards. If your lender notifies you that an escrow account is required for your loan, then you must pay your flood insurance premiums and fees to the lender or its servicer with the same frequency as you make loan payments for the duration of your loan. These premiums

and fees will be deposited in the escrow account, which will be used to pay the flood insurance provider.]

_____ Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally declared flood disaster.

3–224

Appendix B to Section 208.25—Sample Clause for Option to Escrow for Outstanding Loans

Escrow Option Clause
You have the option to escrow all premiums and fees for the payment on your flood insurance policy that covers any residential building or mobile home that is located in an area with special flood hazards and that secures your loan. If you choose this option:

- Your payments will be deposited in an escrow account to be paid to the flood insurance provider.
- The escrow amount for flood insurance will be added to the regular mortgage payment that you make to your lender or its servicer.
- The payments you make into the escrow account will accumulate over time and the funds will be used to pay your flood insurance policy when your lender or servicer receives a notice from your flood insurance provider that the flood insurance premium is due.

To choose this option, follow the instructions below. If you have any questions about the option, contact [Insert Name of Lender or Servicer] at [Insert Contact Information].

[Insert Instructions for Selecting to Escrow]

3–250

SUBPART C—BANK SECURITIES AND SECURITIES-RELATED ACTIVITIES

SECTION 208.30—Authority, Purpose, and Scope

(a) *Authority.* Subpart C of Regulation H (12 CFR 208, subpart C) is issued by the Board of Governors of the Federal Reserve System under 12 USC 24, 92a, 93a; sections 1818 and 1831p-1(a)(2) of the FDI Act (12 USC 1818, 1831p-1(a)(2)); and sections 78b, 78l(b), 78l(g), 78l(i), 78o-4(c)(5), 78o-5, 78q, 78q-1, and 78w of the Securities Exchange Act of 1934 (15 USC 78b, 78l(b), 78l(g), 78l(i), 78o-4(c)(5), 78o-5, 78q, 78q-1, 78w).

(b) *Purpose and scope.* This subpart C describes the requirements imposed upon member banks acting as transfer agents, registered clearing agencies, or sellers of securities under the Securities Exchange Act of 1934. This subpart C also describes the reporting requirements imposed on member banks whose securities are subject to registration under the Securities Exchange Act of 1934.

3–251

SECTION 208.31—State Member Banks as Transfer Agents

(a) The rules adopted by the Securities and Exchange Commission (SEC) pursuant to section 17A of the Securities Exchange Act of 1934 (15 USC 78q-1) prescribing procedures for registration of transfer agents for which the SEC is the appropriate regulatory agency (17 CFR 240.17Ac2-1) apply to member bank transfer agents. References to the ''Commission'' are deemed to refer to the Board.

(b) The rules adopted by the SEC pursuant to section 17A prescribing operational and reporting requirements for transfer agents (17 CFR 240.17Ac2-2 and 240.17Ad-1 through 240.17Ad-16) apply to member bank transfer agents.

3–252

SECTION 208.32—Notice of Disciplinary Sanctions Imposed by Registered Clearing Agency

(a) *Notice requirement.* Any member bank or any of its subsidiaries that is a registered clearing agency pursuant to section 17A(b) of the Securities Exchange Act of 1934 (the act), and that—

(1) imposes any final disciplinary sanction on any participant therein;

(2) denies participation to any applicant; or

(3) prohibits or limits any person in respect to access to services offered by the clearing agency,

shall file with the Board (and the appropriate regulatory agency, if other than the Board, for a participant or applicant) notice thereof in the manner prescribed in this section.

3–253

(b) *Notice of final disciplinary actions.*

(1) Any registered clearing agency for which the Board is the appropriate regulatory agency that takes any final disciplinary action with respect to any participant shall promptly file a notice thereof with the Board in accordance with paragraph (c) of this section. For the purposes of this paragraph (b), ''final disciplinary action'' means the imposition of any disciplinary sanction pursuant to section 17A(b)(3)(G) of the act, or other action of a registered clearing agency which, after notice and opportunity for hearing, results in final disposition of charges of—

(i) one or more violations of the rules of the registered clearing agency; or

(ii) acts or practices constituting a statutory disqualification of a type defined in paragraph (iv) or (v) (except prior convictions) of section 3(a)(39) of the act.

(2) However, if a registered clearing agency fee schedule specifies certain charges for errors made by its participants in giving instructions to the registered clearing agency which are de minimis on a per-error basis, and whose purpose is, in part, to provide revenues to the clearing agency to compensate it for effort expended in beginning to process an erroneous instruction, such error charges shall not be considered a final disciplinary action for purposes of this paragraph (b).

3–254

(c) *Contents of final-disciplinary-action notice.* Any notice filed pursuant to paragraph (b) of this section shall consist of the following, as appropriate:

(1) the name of the respondent and the respondent's last known address, as reflected on the records of the clearing agency, and the name of the person, committee, or other organizational unit that brought the charges. However, identifying information as to any respondent found not to have violated a provision covered by a charge may be deleted insofar as the notice reports the disposition of that charge and, prior to the filing of the notice, the respondent does not request that identifying information be included in the notice;

(2) a statement describing the investigative or other origin of the action;

(3) as charged in the proceeding, the specific provision or provisions of the rules of the clearing agency violated by the respondent, or the statutory disqualification referred to in paragraph (b)(2) of this section, and a statement describing the answer of the respondent to the charges;

(4) a statement setting forth findings of fact with respect to any act or practice in which the respondent was charged with having engaged in or omitted; the conclusion of the clearing agency as to whether the respondent violated any rule or was subject to a statutory disqualification as charged; and a statement of the clearing agency in support of its resolution of the principal issues raised in the proceedings;

(5) a statement describing any sanction imposed, the reasons therefor, and the date upon which the sanction became or will become effective; and

(6) such other matters as the clearing agency may deem relevant.

3–255

(d) *Notice of final denial, prohibition, termination, or limitation based on qualification or administrative rules.*

(1) Any registered clearing agency, for which the Board is the appropriate regulatory agency, that takes any final action that denies or conditions the participation of any person, or prohibits or limits access, to services offered by the clearing agency, shall promptly file notice thereof with the Board (and the appropriate regulatory agency, if other than the Board, for the affected person) in accordance with paragraph (e) of this section; but such action shall not be considered a final disciplinary action for purposes of paragraph (b) of this section where the action is based on an alleged failure of such person to—

(i) comply with the qualification standards prescribed by the rules of the registered clearing agency pursuant to section 17A(b)(4)(B) of the act; or

(ii) comply with any administrative requirements of the registered clearing agency (including failure to pay entry or other dues or fees, or to file prescribed forms or reports) not involving charges of violations that may lead to a disciplinary sanction.

(2) However, no such action shall be considered final pursuant to this paragraph (d) that results merely from a notice of such failure to comply to the person affected, if such person has not sought an adjudication of the matter, including a hearing, or otherwise exhausted the administrative remedies within the registered clearing agency with respect to such a matter.

3–256

(e) *Contents of notice required by paragraph (d) of this section.* Any notice filed pursuant to paragraph (d) of this section shall consist of the following, as appropriate:

(1) the name of each person concerned and each person's last known address, as reflected in the records of the clearing agency;

(2) the specific grounds upon which the action of the clearing agency was based, and a statement describing the answer of the person concerned;

(3) a statement setting forth findings of fact and conclusions as to each alleged failure of the person to comply with qualification standards or administrative obligations, and a statement of the clearing agency in support of its resolution of the principal issues raised in the proceeding;

(4) the date upon which such action became or will become effective; and

(5) such other matters as the clearing agency deems relevant.

3–257

(f) *Notice of final action based on prior adjudicated statutory disqualifications.* Any registered clearing agency for which the Board is the appropriate regulatory agency that takes any final action shall promptly file notice thereof with the Board (and the appropriate regulatory agency, if other than the Board, for the affected person) in accordance with paragraph (g) of this section, where the final action—

(1) denies or conditions participation to any person, or prohibits or limits access to services offered by the clearing agency; and

(2) is based upon a statutory disqualification of a type defined in paragraph (A), (B), or (C) of section 3(a)(39) of the act, consisting of a prior conviction, as described in subparagraph (E) of section 3(a)(39) of the act. However, no such action shall be considered final pursuant to this paragraph (f) that results merely from a notice of such disqualification to the person affected, if such person has not sought an adjudication of the matter, including a hearing, or otherwise exhausted the administrative remedies within the clearing agency with respect to such a matter.

3–258

(g) *Contents of notice required by paragraph (f) of this section.* Any notice filed pursuant to paragraph (f) of this section shall consist of the following, as appropriate:

(1) the name of each person concerned and each person's last known address, as reflected in the records of the clearing agency;

(2) a statement setting forth the principal issues raised, the answer of any person concerned, and a statement of the clearing agency in support of its resolution of the principal issues raised in the proceeding;

(3) any description furnished by or on behalf of the person concerned of the activities engaged in by the person since the adjudication upon which the disqualification is based;
(4) a copy of the order or decision of the court, appropriate regulatory agency, or self-regulatory organization that adjudicated the matter giving rise to the statutory disqualification;
(5) the nature of the action taken and the date upon which such action is to be made effective; and
(6) such other matters as the clearing agency deems relevant.

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(h) *Notice of summary suspension of participation.* Any registered clearing agency for which the Board is the appropriate regulatory agency that summarily suspends or closes the accounts of a participant pursuant to the provisions of section 17A(b)(5)(C) of the act shall, within one business day after such action becomes effective, file notice thereof with the Board and the appropriate regulatory agency for the participant, if other than the Board, of such action in accordance with paragraph (i) of this section.

3–260

(i) *Contents of notice of summary suspension.* Any notice pursuant to paragraph (h) of this section shall contain at least the following information, as appropriate:
(1) the name of the participant concerned and the participant's last known address, as reflected in the records of the clearing agency;
(2) the date upon which the summary action became or will become effective;
(3) if the summary action is based upon the provisions of section 17A(b)(5)(C)(i) of the act, a copy of the relevant order or decision of the self-regulatory organization, if available to the clearing agency;
(4) if the summary action is based upon the provisions of section 17A(b)(5)(C)(ii) of the act, a statement describing the default of any delivery of funds or securities to the clearing agency;
(5) if the summary action is based upon the provisions of section 17A(b)(5)(C)(iii) of the act, a statement describing the financial or operating difficulty of the participant based upon which the clearing agency determined that the suspension and closing of accounts was necessary for the protection of the clearing agency, its participants, creditors, or investors;
(6) the nature and effective date of the suspension; and
(7) such other matters as the clearing agency deems relevant.

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SECTION 208.33—Application for Stay or Review of Disciplinary Sanctions Imposed by Registered Clearing Agency

(a) *Stays.* The rules adopted by the Securities and Exchange Commission (SEC) pursuant to section 19 of the Securities Exchange Act of 1934 (15 USC 78s) regarding applications by persons for whom the SEC is the appropriate regulatory agency for stays of disciplinary sanctions or summary suspensions imposed by registered clearing agencies (17 CFR 240.19d-2) apply to applications by member banks. References to the ''Commission'' are deemed to refer to the Board.

(b) *Reviews.* The regulations adopted by the Securities and Exchange Commission pursuant to section 19 of the Securities and Exchange Act of 1934 (15 USC 78s) regarding applications by persons for whom the SEC is the appropriate regulatory agency for reviews of final disciplinary sanctions, denials of participation, or prohibitions or limitations of access to services imposed by registered clearing agencies (17 CFR 240.19d-3(a)-(f)) apply to applications by member banks. References to the ''Commission'' are deemed to refer to the Board. The Board's Uniform Rules of Practice and Procedure (12 CFR 263) apply to review proceedings under this section 208.33 to the extent not inconsistent with this section 208.33.

3–262

SECTION 208.34—Recordkeeping and Confirmation of Certain Securities Transactions Effected by State Member Banks

(a) *Exceptions and safe and sound operations.*

(1) A state member bank may be excepted from one or more of the requirements of this section if it meets one of the following conditions of paragraphs (a)(1)(i) through (a)(1)(iv) of this section:

(i) *De minimis transactions*. The requirements of paragraphs (c)(2) through (c)(4) and paragraphs (e)(1) through (e)(3) of this section shall not apply to banks having an average of less than 200 securities transactions per year for customers over the prior three-calendar-year period, exclusive of transactions in government securities;

(ii) *Government securities*. The recordkeeping requirements of paragraph (c) of this section shall not apply to banks effecting fewer than 500 government securities brokerage transactions per year; provided that this exception shall not apply to government securities transactions by a state member bank that has filed a written notice, or is required to file notice, with the Federal Reserve Board that it acts as a government securities broker or a government securities dealer;

(iii) *Municipal securities*. The municipal securities activities of a state member bank that are subject to regulations promulgated by the Municipal Securities Rulemaking Board shall not be subject to the requirements of this section; and

(iv) *Foreign branches*. The requirements of this section shall not apply to the activities of foreign branches of a state member bank.

(2) Every state member bank qualifying for an exemption under paragraph (a)(1) of this section that conducts securities transactions for customers shall, to ensure safe and sound operations, maintain effective systems of records and controls regarding its customer securities transactions that clearly and accurately reflect appropriate information and provide an adequate basis for an audit of the information.

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(b) *Definitions.* For purposes of this section—

(1) *Asset-backed security* shall mean a security that is serviced primarily by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to ensure the servicing or timely distribution of proceeds to the security holders.

(2) *Collective investment fund* shall mean funds held by a state member bank as fiduciary and, consistent with local law, invested collectively as follows:

(i) in a common trust fund maintained by such bank exclusively for the collective investment and reinvestment of monies contributed thereto by the bank in its capacity as trustee, executor, administrator, guardian, or custodian under the Uniform Gifts to Minors Acts; or

(ii) in a fund consisting solely of assets of retirement, pension, profit-sharing, stock-bonus, or similar trusts which are exempt from federal income taxation under the Internal Revenue Code (26 USC).

(3) *Completion of the transaction* effected by or through a state member bank shall mean—

(i) for purchase transactions, the time when the customer pays the bank any part of the purchase price (or the time when the bank makes the book-entry for any part of the purchase price if applicable); however, if the customer pays for the security prior to the time payment is requested or becomes due, then the transaction shall be completed when the bank transfers the security into the account of the customer; and

(ii) for sale transactions, the time when the bank transfers the security out of the account of the customer or, if the security is not in the bank's custody, then the time when the security is delivered to the bank; however, if the customer delivers the security to the bank prior to the time delivery is requested or becomes due,

then the transaction shall be completed when the bank makes payment into the account of the customer.

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(4) *Crossing of buy and sell orders* shall mean a security transaction in which the same bank acts as agent for both the buyer and the seller.

(5) *Customer* shall mean any person or account, including any agency, trust, estate, guardianship, or other fiduciary account, for which a state member bank effects or participates in effecting the purchase or sale of securities, but shall not include a broker, dealer, bank acting as a broker or dealer, municipal securities broker or dealer, or issuer of the securities which are the subject of the transactions.

(6) *Debt security* as used in paragraph (c) of this section shall mean any security, such as a bond, debenture, note, or any other similar instrument which evidences a liability of the issuer (including any security of this type that is convertible into stock or similar security) and fractional or participation interests in one or more of any of the foregoing; provided, however, that securities issued by an investment company registered under the Investment Company Act of 1940, 15 USC 80a-1 et seq., shall not be included in this definition.

(7) *Government security* shall mean—

(i) a security that is a direct obligation of, or obligation guaranteed as to principal and interest by, the United States;

(ii) a security that is issued or guaranteed by a corporation in which the United States has a direct or indirect interest and which is designated by the secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors;

(iii) a security issued or guaranteed as to principal and interest by any corporation whose securities are designated, by statute specifically naming the corporation, to constitute exempt securities within the meaning of the laws administered by the Securities and Exchange Commission; or

(iv) any put, call, straddle, option, or privilege on a security as described in paragraphs (b)(7)(i), (ii), or (iii) of this section other than a put, call, straddle, option, or privilege that is traded on one or more national securities exchanges, or for which quotations are disseminated through an automated quotation system operated by a registered securities association.

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(8) *Investment discretion* with respect to an account shall mean if the state member bank, directly or indirectly, is authorized to determine what securities or other property shall be purchased or sold by or for the account, or makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions.

(9) *Municipal security* shall mean a security which is a direct obligation of, or obligation guaranteed as to principal or interest by, a state or any political subdivision thereof, or any agency or instrumentality of a state or any political subdivision thereof, or any municipal corporate instrumentality of one or more states, or any security which is an industrial development bond (as defined in 26 USC 103(c)(2)) the interest on which is excludable from gross income under 26 USC 103(a)(1), by reason of the application of paragraph (4) or (6) of 26 USC 103(c) (determined as if paragraphs (4)(A), (5), and (7) were not included in 26 USC 103(c)), paragraph (1) of 26 USC 103(c) does not apply to such security.

(10) *Periodic plan* shall mean—

(i) a written authorization for a state member bank to act as agent to purchase or sell for a customer a specific security or securities, in a specific amount (calculated in security units or dollars) or to the extent of dividends and funds available, at specific time intervals, and setting forth the commission or charges to be paid by the customer or the manner of calculating them (including dividend reinvestment plans, automatic investment plans, and employee stock purchase plans); or

(ii) any prearranged, automatic transfer

or sweep of funds from a deposit account to purchase a security, or any prearranged, automatic redemption or sale of a security with the funds being transferred into a deposit account (including cash-management sweep services).

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(11) *Security* shall mean—

(i) any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, for a security, any put, call, straddle, option, or privilege on any security, or group or index of securities (including any interest therein or based on the value thereof), any instrument commonly known as a ''security''; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing;

(ii) but does not include a deposit or share account in a federally or state insured depository institution, a loan participation, a letter of credit or other form of bank indebtedness incurred in the ordinary course of business, currency, any note, draft, bill of exchange, or banker's acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited, units of a collective investment fund, interests in a variable amount (master) note of a borrower of prime credit, or U.S. savings bonds.

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(c) *Recordkeeping.* Except as provided in paragraph (a) of this section, every state member bank effecting securities transactions for customers, including transactions in government securities, and municipal securities transactions by banks not subject to registration as municipal securities dealers, shall maintain the following records with respect to such transactions for at least three years. Nothing contained in this section shall require a bank to maintain the records required by this paragraph in any given manner, provided that the information required to be shown is clearly and accurately reflected and provides an adequate basis for the audit of such information. Records may be maintained in hard copy, automated, or electronic form provided the records are easily retrievable, readily available for inspection, and capable of being reproduced in a hard copy. A bank may contract with third-party service providers, including broker-dealers, to maintain records required under this part:

(1) chronological records of original entry containing an itemized daily record of all purchases and sales of securities. The records of original entry shall show the account or customer for which each such transaction was effected, the description of the securities, the unit and aggregate purchase or sale price (if any), the trade date and the name or other designation of the broker-dealer or other person from whom purchased or to whom sold;

(2) account records for each customer which shall reflect all purchases and sales of securities, all receipts and deliveries of securities, and all receipts and disbursements of cash with respect to transactions in securities for such account and all other debits and credits pertaining to transactions in securities;

(3) a separate memorandum (order ticket) of each order to purchase or sell securities (whether executed or cancelled), which shall include—

(i) the account(s) for which the transaction was effected;

(ii) whether the transaction was a market order, limit order, or subject to special instructions;

(iii) the time the order was received by the trader or other bank employee responsible for effecting the transaction;

(iv) the time the order was placed with the broker-dealer, or if there was no broker-dealer, the time the order was executed or canceled;

(v) the price at which the order was executed; and

(vi) the broker-dealer utilized;

(4) a record of all broker-dealers selected by the bank to effect securities transactions and the amount of commissions paid or allocated to each such broker during the calendar year; and

(5) a copy of the written notification required by paragraphs (d) and (e) of this section.

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(d) *Content and time of notification.* Every state member bank effecting a securities transaction for a customer shall give or send to such customer either of the following types of notifications at or before completion of the transaction or, if the bank uses a broker-dealer's confirmation, within one business day from the bank's receipt of the broker-dealer's confirmation:

(1) a copy of the confirmation of a broker-dealer relating to the securities transaction; and if the bank is to receive remuneration from the customer or any other source in connection with the transaction, and the remuneration is not determined pursuant to a prior written agreement between the bank and the customer, a statement of the source and the amount of any remuneration to be received; or

(2) a written notification disclosing—

(i) the name of the bank;

(ii) the name of the customer;

(iii) whether the bank is acting as agent for such customer, as agent for both such customer and some other person, as principal for its own account, or in any other capacity;

(iv) the date of execution and a statement that the time of execution will be furnished within a reasonable time upon written request of such customer specifying the identity, price, and number of shares or units (or principal amount in the case of debt securities) of such security purchased or sold by such customer;

(v) the amount of any remuneration received or to be received, directly or indirectly, by any broker-dealer from such customer in connection with the transaction;

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(vi) the amount of any remuneration received or to be received by the bank from the customer and the source and amount of any other remuneration to be received by the bank in connection with the transaction, unless remuneration is determined pursuant to a written agreement between the bank and the customer, provided, however, in the case of government securities and municipal securities, this paragraph (d)(2)(vi) shall apply only with respect to remuneration received by the bank in an agency transaction. If the bank elects not to disclose the source and amount of remuneration it has or will receive from a party other than the customer pursuant to this paragraph (d)(2)(vi), the written notification must disclose whether the bank has received or will receive remuneration from a party other than the customer, and that the bank will furnish within a reasonable time the source and amount of this remuneration upon written request of the customer. This election is not available, however, if, with respect to a purchase, the bank was participating in a distribution of that security; or with respect to a sale, the bank was participating in a tender offer for that security;

(vii) the name of the broker-dealer utilized; or, where there is no broker-dealer, the name of the person from whom the security was purchased or to whom it was sold, or the fact that such information will be furnished within a reasonable time upon written request;

(viii) in the case of a transaction in a debt security subject to redemption before maturity, a statement to the effect that the debt security may be redeemed in whole or in part before maturity, that the redemption could affect the yield represented and that additional information is available upon request;

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(ix) in the case of a transaction in a debt security effected exclusively on the basis of a dollar price—

(A) the dollar price at which the transaction was effected;

(B) the yield to maturity calculated from the dollar price; provided, however, that this paragraph (c)(2)(ix)(B) shall not apply to a transaction in a debt security that either has a maturity date that may be extended by the issuer with a variable interest payable thereon, or is an asset-backed security that represents an interest in or is secured by a pool of receivables or other financial assets that are subject to continuous prepayment;

(x) in the case of a transaction in a debt security effected on the basis of yield—

(A) the yield at which the transaction was effected, including the percentage amount and its characterization (e.g., current yield, yield to maturity, or yield to call) and if effected at yield to call, the type of call, the call date, and the call price; and

(B) the dollar price calculated from the yield at which the transaction was effected; and

(C) if effected on a basis other than yield to maturity and the yield to maturity is lower than the represented yield, the yield to maturity as well as the represented yield; provided, however, that this paragraph (c)(2)(x)(C) shall not apply to a transaction in a debt security that either has a maturity date that may be extended by the issuer with a variable interest rate payable thereon, or is an asset-backed security that represents an interest in or is secured by a pool of receivables or other financial assets that are subject to continuous prepayment;

(xi) in the case of a transaction in a debt security that is an asset-backed security which represents an interest in or is secured by a pool of receivables or other financial assets that are subject continuously to prepayment, a statement indicating that the actual yield of such asset-backed security may vary according to the rate at which the underlying receivables or other financial assets are prepaid and a statement of the fact that information concerning the factors that affect yield (including at a minimum, the estimated yield, weighted average life, and the prepayment assumptions underlying yield) will be furnished upon written request of such customer; and

(xii) in the case of a transaction in a debt security, other than a government security, that the security is unrated by a nationally recognized statistical rating organization, if that is the case.

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(e) *Notification by agreement; alternative forms and times of notification.* A state member bank may elect to use the following alternative procedures if a transaction is effected for—

(1) accounts (except periodic plans) where the bank does not exercise investment discretion and the bank and the customer agree in writing to a different arrangement as to the time and content of the notification; provided, however, that such agreement makes clear the customer's right to receive the written notification pursuant to paragraph (c) of this section at no additional cost to the customer;

(2) accounts (except collective investment funds) where the bank exercises investment discretion in other than an agency capacity, in which instance the bank shall, upon request of the person having the power to terminate the account or, if there is no such person, upon the request of any person holding a vested beneficial interest in such account, give or send to such person the written notification within a reasonable time. The bank may charge such person a reasonable fee for providing this information;

(3) accounts where the bank exercises investment discretion in an agency capacity, in which instance—

(i) the bank shall give or send to each customer not less frequently than once every three months an itemized statement which shall specify the funds and securi-

ties in the custody or possession of the bank at the end of such period and all debits, credits, and transactions in the customer's accounts during such period; and

(ii) if requested by the customer, the bank shall give or send to each customer within a reasonable time the written notification described in paragraph (c) of this section. The bank may charge a reasonable fee for providing the information described in paragraph (c) of this section;

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(4) a collective investment fund, in which instance the bank shall at least annually furnish a copy of a financial report of the fund, or provide notice that a copy of such report is available and will be furnished upon request, to each person to whom a regular periodic accounting would ordinarily be rendered with respect to each participating account. This report shall be based upon an audit made by independent public accountants or internal auditors responsible only to the board of directors of the bank;

(5) a periodic plan, in which instance the bank—

(i) shall (except for a cash-management sweep service) give or send to the customer a written statement not less than every three months if there are no securities transactions in the account, showing the customer's funds and securities in the custody or possession of the bank; all service charges and commissions paid by the customer in connection with the transaction; and all other debits and credits of the customer's account involved in the transaction; or

(ii) shall for a cash-management sweep service or similar periodic plan as defined in section 208.34(b)(10)(ii) give or send its customer a written statement in the same form as prescribed in paragraph (e)(3) above for each month in which a purchase or sale of a security takes place in a deposit account and not less than once every three months if there are no securities transactions in the account subject to any other applicable laws or regulations;

(6) upon the written request of the customer the bank shall furnish the information described in paragraph (d) of this section, except that any such information relating to remuneration paid in connection with the transaction need not be provided to the customer when paid by a source other than the customer. The bank may charge a reasonable fee for providing the information described in paragraph (d) of this section.

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(f) *Settlement of securities transactions.* All contracts for the purchase or sale of a security shall provide for completion of the transaction within the number of business days in the standard settlement cycle for the security followed by registered broker-dealers in the United States unless otherwise agreed to by the parties at the time of the transaction.

(g) *Securities trading policies and procedures.* Every state member bank effecting securities transactions for customers shall establish written policies and procedures providing—

(1) assignment of responsibility for supervision of all officers or employees who—

(i) transmit orders to or place orders with broker-dealers;

(ii) execute transactions in securities for customers; or

(iii) process orders for notification and/or settlement purposes, or perform other back-office functions with respect to securities transactions effected for customers; provided that procedures established under this paragraph (g)(1)(iii) should provide for supervision and reporting lines that are separate from supervision of personnel under paragraphs (g)(1)(i) and (g)(1)(ii) of this section;

(2) for the fair and equitable allocation of securities and prices to accounts when orders for the same security are received at approximately the same time and are placed for execution either individually or in combination;

(3) where applicable and where permissible under local law, for the crossing of buy and sell orders on a fair and equitable basis to the parties to the transaction; and

(4) that bank officers and employees who

make investment recommendations or decisions for the accounts of customers, who participate in the determination of such recommendations or decisions, or who, in connection with their duties, obtain information concerning which securities are being purchased or sold or recommended for such action, must report to the bank, within 10 days after the end of the calendar quarter, all transactions in securities made by them or on their behalf, either at the bank or elsewhere in which they have a beneficial interest. The report shall identify the securities purchased or sold and indicate the dates of the transactions and whether the transactions were purchases or sales. Excluded from this requirement are transactions for the benefit of the officer or employee over which the officer or employee has no direct or indirect influence or control, transactions in mutual fund shares, and all transactions involving in the aggregate $10,000 or less during the calendar quarter. For purposes of this paragraph (g)(4), the term securities does not include government securities.

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SECTION 208.35—Qualification Requirements for Transactions in Certain Securities

[Reserved]

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SECTION 208.36—Reporting Requirements for State Member Banks Subject to the Securities Exchange Act of 1934

(a) *Filing, disclosure, and other requirements.*

(1) *General.* Except as otherwise provided in this section, a member bank whose securities are subject to registration pursuant to section 12(b) or section 12(g) of the Securities Exchange Act of 1934 (the 1934 act) (15 U.S.C. 78*l*(b) and (g)) shall comply with the rules, regulations, and forms adopted by the Securities and Exchange Commission (Commission) pursuant to—

(i) sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the 1934 Act (15 U.S.C. 78f(m), 78*l*, 78m, 78n(a), (c), (d), and (f), and 78p); and

(ii) sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002 (codified at 15 U.S.C. 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265).

(2) *References to the Commission.* Any references to the ''Securities and Exchange Commission'' or the ''Commission'' in the rules, regulations, and forms described in paragraph (a)(1) of this section shall with respect to securities issued by member banks be deemed to refer to the Board unless the context otherwise requires.

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(b) *Elections permitted for member banks with total assets of $150 million or less.*

(1) Notwithstanding paragraph (a) of this section or the rules and regulations promulgated by the Commission pursuant to the 1934 act, a member bank that has total assets of $150 million or less as of the end of its most recent fiscal year, and no foreign offices, may elect to substitute for the financial statements required by the Commission's Form 10-Q, the balance sheet and income statement from the quarterly report of condition required to be filed by the bank with the Board under section 9 of the Federal Reserve Act (12 U.S.C. 324) (Federal Financial Institutions Examination Council Form 033 or 034).

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(2) A member bank qualifying for and electing to file financial statements from its quarterly report of condition pursuant to paragraph (b)(1) of this section in its Form 10-Q shall include earnings per share or net loss per share data prepared in accordance with GAAP and disclose any material contingencies, as required by article 10 of the Commission's Regulation S-X (17 CFR 210.10-01), in the Management's Discussion and Analysis of Financial Condition and Results of Operations section of Form 10-Q.

(3) Notwithstanding paragraph (b)(1) of this section, a member bank may, from December 2, 2020, through December 31, 2021,

make the election described in paragraph (b)(1) of this section if it has no foreign offices and had total assets of $150 million or less, determined based on the lesser of total assets as of December 31, 2019, and total assets as of the end of the bank's most recent fiscal year. The relief provided under this paragraph (b)(3) of this section does not apply to a member bank if the Board determines that permitting the member bank to determine its assets in accordance with that paragraph would not be commensurate with the risk profile of the member bank. When making this determination, the Board will consider all relevant factors, including the extent of asset growth of the member bank since December 31, 2019; the causes of such growth, including whether growth occurred as a result of mergers or acquisitions; whether such growth is likely to be temporary or permanent; whether the member bank has become involved in any additional activities since December 31, 2019; the asset size of any parent companies; and the type of assets held by the member bank. In making a determination pursuant to this paragraph (b)(3), the Board will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in 12 CFR 263.202.

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(c) *Required filings.*

(1) *Place and timing of filing.* All papers required to be filed with the Board, pursuant to the 1934 act or regulations thereunder, shall be submitted to the Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Material may be filed by delivery to the Board, through the mails, or otherwise. The date on which papers are actually received by the Board shall be the date of filing thereof if all of the requirements with respect to the filing have been complied with.

(2) *Filing fees.* No filing fees specified by the Commission's rules shall be paid to the Board.

(3) *Public inspection.* Copies of the registration statement, definitive proxy solicitation materials, reports, and annual reports to shareholders required by this section (exclusive of exhibits) shall be available for public inspection at the Board's offices in Washington, D.C., as well as at the Federal Reserve Banks of New York, Chicago, and San Francisco and at the Reserve Bank in the District in which the reporting bank is located.

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(d) *Confidentiality of filing.* Any person filing any statement, report, or document under the 1934 act may make written objection to the public disclosure of any information contained therein in accordance with the following procedure:

(1) The person shall omit from the statement, report, or document, when it is filed, the portion thereof that the person desires to keep undisclosed (hereinafter called the confidential portion). The person 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 Board.

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

(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 Board. Each copy of the confidential portion 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; and

(ii) an application making objection to the disclosure of the confidential portion. The application shall be on a sheet or sheets separate from the confidential portion, and shall—

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

(B) include a statement of the grounds of objection; and

(C) include the name of each exchange, if any, with which the statement, report, or document is filed.

(3) 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 Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

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(4) Pending the determination by the Board on the objection filed in accordance with this paragraph, the confidential portion shall not be disclosed by the Board.

(5) If the Board determines to sustain the objection, a notation to that effect shall be made at the appropriate place in the statement, report, or document.

(6) If the Board determines not to sustain the objection because disclosure of the confidential portion is in the public interest, a finding and determination to that effect shall be entered and notice of the finding and determination sent by registered or certified mail to the person.

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(7) If the Board determines not to sustain the objection, pursuant to paragraph (d)(6) of this section, the confidential portion shall be made available to the public—

(i) 15 days after notice of the Board's determination not to sustain the objection has been given, as required by paragraph (d)(6) of this section, provided that the person filing the objection has not previously filed with the Board a written statement that he intends, in good faith, to seek judicial review of the finding and determination; or

(ii) 60 days after notice of the Board's determination not to sustain the objection has been given as required by paragraph (d)(6) of this section and the person filing the objection has filed with the Board a written statement of intent to seek judicial review of the finding and determination, but has failed to file a petition for judicial review of the Board's determination; or

(iii) upon final judicial determination, if adverse to the party filing the objection.

(8) 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 Board.

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SECTION 208.37—Government Securities Sales Practices

(a) *Scope.* This subpart is applicable to state member banks that have filed notice as, or are required to file notice as, government securities brokers or dealers pursuant to section 15C of the Securities Exchange Act (15 U.S.C. 78o-5) and Department of the Treasury rules under section 15C (17 CFR 400.1(d) and 401).

(b) *Definitions.* For purposes of this section:

(1) *Bank that is a government securities broker or dealer* means a state member bank that has filed notice, or is required to file notice, as a government securities broker or dealer pursuant to section 15C of the Securities Exchange Act (15 U.S.C. 78o-5) and Department of the Treasury rules under section 15C (17 CFR 400.1(d) and 401).

(2) *Customer* does not include a broker or dealer or a government securities broker or dealer.

(3) *Government security* has the same meaning as this term has in section 3(a)(42) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(42)).

(4) *Non-institutional customer* means any customer other than—

(i) a bank, savings association, insurance company, or registered investment company;

(ii) an investment adviser registered under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3); or

(iii) any entity (whether a natural person,

corporation, partnership, trust, or otherwise) with total assets of at least $50 million.

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(c) *Business conduct.* A bank that is a government securities broker or dealer shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business as a government securities broker or dealer.

(d) *Recommendations to customers.* In recommending to a customer the purchase, sale, or exchange of a government security, a bank that is a government securities broker or dealer shall have reasonable grounds for believing that the recommendation is suitable for the customer upon the basis of the facts, if any, disclosed by the customer as to the customer's other security holdings and as to the customer's financial situation and needs.

(e) *Customer information.* Prior to the execution of a transaction recommended to a noninstitutional customer, a bank that is a government securities broker or dealer shall make reasonable efforts to obtain information concerning—

(1) the customer's financial status;

(2) the customer's tax status;

(3) the customer's investment objectives; and

(4) such other information used or considered to be reasonable by the bank in making recommendations to the customer.

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SUBPART D—PROMPT CORRECTIVE ACTION

SECTION 208.40—Authority, Purpose, Scope, Other Supervisory Authority, and Disclosure of Capital Categories

(a) *Authority.* Subpart D of Regulation H (12 CFR 208, subpart D) is issued by the Board of Governers of the Federal Reserve System (Board) under section 38 (section 38) of the FDI Act as added by section 131 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102-242, 105 Stat. 2236 (1991)) (12 U.S.C. 1831o).

(b) *Purpose and scope.* This subpart D defines the capital measures and capital levels that are used for determining the supervisory actions authorized under section 38 of the FDI Act. (Section 38 of the FDI Act establishes a framework of supervisory actions for insured depository institutions that are not adequately capitalized). This subpart also establishes procedures for submission and review of capital-restoration plans and for issuance and review of directives and orders pursuant to section 38. Certain of the provisions of this subpart apply to officers, directors, and employees of state member banks. Other provisions apply to any company that controls a member bank and to the affiliates of the member bank.

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(c) *Other supervisory authority.* Neither section 38 nor this subpart in any way limits the authority of the Board under any other provision of law to take supervisory actions to address unsafe or unsound practices or conditions, deficient capital levels, violations of law, or other practices. Action under section 38 of the FDI Act and this subpart may be taken independently of, in conjunction with, or in addition to any other enforcement action available to the Board, including issuance of cease-and-desist orders, capital directives, approval or denial of applications or notices, assessment of civil money penalties, or any other actions authorized by law.

(d) *Disclosure of capital categories.* The assignment of a bank under this subpart within a particular capital category is for purposes of implementing and applying the provisions of section 38. Unless permitted by the Board or otherwise required by law, no bank may state in any advertisement or promotional material its capital category under this subpart or that the Board or any other federal banking agency has assigned the bank to a particular capital category.

(e) *Timing.* The calculation of the definitions of common equity tier 1 capital, the common equity tier 1 risk-based capital ratio, the leverage ratio, the supplementary leverage ratio, tangible equity, tier 1 capital, the tier 1 risk-based capital ratio, total assets, total leverage exposure, the total risk-based capital ratio, and

total risk-weighted assets under this subpart is subject to the timing provisions at 12 CFR 217.1(f) and the transitions at 12 CFR part 217, subpart G.

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SECTION 208.41—Definitions for Purposes of This Subpart

For purposes of this subpart, except as modified in this section or unless the context otherwise requires, the terms used have the same meanings as set forth in section 38 and section 3 of the FDI Act.

(a) *Advanced approaches bank* means a bank that is described in section 217.100(b)(1) of Regulation Q (12 CFR 217.100(b)(1)).

(b) *Bank* means an insured depository institution as defined in section 3 of the FDI Act (12 U.S.C. 1813).

(c) *Common equity tier 1 capital* means the amount of capital as defined in section 217.2 of Regulation Q (12 CFR 217.2).

(d) *Common equity tier 1 risk-based capital ratio* means the ratio of common equity tier 1 capital to total risk-weighted assets, as calculated in accordance with section 217.10(b)(1) or section 217.10(c)(1) of Regulation Q (12 CFR 217.10(b)(1), 12 CFR 217.10(c)(1)), as applicable.

(e) *Control.*

(1) *Control* has the same meaning assigned to it in section 2 of the Bank Holding Company Act (12 U.S.C. 1841), and the term controlled shall be construed consistently with the term control.

(2) *Exclusion for fiduciary ownership.* No insured depository institution or company controls another insured depository institution or company by virtue of its ownership or control of shares in a fiduciary capacity. Shares shall not be deemed to have been acquired in a fiduciary capacity if the acquiring insured depository institution or company has sole discretionary authority to exercise voting rights with respect to the shares.

(3) *Exclusion for debts previously contracted.* No insured depository institution or company controls another insured depository institution or company by virtue of its ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith, until two years after the date of acquisition. The two-year period may be extended at the discretion of the appropriate Federal banking agency for up to three one-year periods.

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(f) *Controlling person* means any person having control of an insured depository institution and any company controlled by that person.

(g) *Global systemically important BHC* has the same meaning as in section 217.2 of Regulation Q (12 CFR 217.2).

(h) *Leverage ratio* means the ratio of tier 1 capital to average total consolidated assets, as calculated in accordance with section 217.10 of Regulation Q (12 CFR 217.10).

(i) *Management fee* means any payment of money or provision of any other thing of value to a company or individual for the provision of management services or advice to the bank, or related overhead expenses, including payments related to supervisory, executive, managerial, or policy making functions, other than compensation to an individual in the individual's capacity as an officer or employee of the bank.

(j) *Supplementary leverage ratio* means the ratio of tier 1 capital to total leverage exposure, as calculated in accordance with section 217.10 of Regulation Q (12 CFR 217.10).

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(k) *Tangible equity* means the amount of tier 1 capital, plus the amount of outstanding perpetual preferred stock (including related surplus) not included in tier 1 capital.

(*l*) *Tier 1 capital* means the amount of capital as defined in section 217.20 of Regulation Q (12 CFR 217.20).

(*m*) *Tier 1 risk-based capital ratio* means the ratio of tier 1 capital to total risk-weighted assets, as calculated in accordance with section 217.10(b)(2) or section 217.10(c)(2) of

Regulation Q (12 CFR 217.10(b)(2), 12 CFR 217.10(c)(2)), as applicable.

(n) *Total assets* means quarterly average total assets as reported in a bank's Call Report, minus items deducted from tier 1 capital. At its discretion the Federal Reserve may calculate total assets using a bank's period-end assets rather than quarterly average assets.

(o) *Total leverage exposure* means the total leverage exposure, as calculated in accordance with section 217.11 of Regulation Q (12 CFR 217.11).

(p) *Total risk-based capital ratio* means the ratio of total capital to total risk-weighted assets, as calculated in accordance with section 217.10(b)(3) or section 217.10(c)(3) of Regulation Q (12 CFR 217.10(b)(3), 12 CFR 217.10(c)(3)), as applicable.

(q) *Total risk-weighted assets* means standardized total risk-weighted assets, and for an advanced approaches bank also includes advanced approaches total risk-weighted assets, as defined in section 217.2 of Regulation Q (12 CFR 217.2).

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SECTION 208.42—Notice of Capital Category

(a) *Effective date of determination of capital category.* A member bank shall be deemed to be within a given capital category for purposes of section 38 of the FDI Act and this subpart as of the date the bank is notified of, or is deemed to have notice of, its capital category, pursuant to subsection (b).

(b) *Notice of capital category.* A member bank shall be deemed to have been notified of its capital levels and its capital category as of the most recent date—

(1) a Report of Condition and Income (''call report'') is required to be filed with the Board;

(2) a final report of examination is delivered to the bank; or

(3) written notice is provided by the Board to the bank of its capital category for purposes of section 38 of the FDI Act and this subpart or that the bank's capital category has changed as provided in paragraph (c) of this section or section 208.43(c) of this part.

3–331

(c) *Adjustments to reported capital levels and capital category.*

(1) *Notice of adjustment by bank.* A member bank shall provide the Board with written notice that an adjustment to the bank's capital category may have occurred no later than 15 calendar days following the date that any material event has occurred that would cause the bank to be placed in a lower capital category from the category assigned to the bank for purposes of section 38 and this subpart on the basis of the bank's most recent call report or report of examination.

(2) *Determination by the Board to change capital category.* After receiving notice pursuant to paragraph (c)(1) of this section, the Board shall determine whether to change the capital category of the bank and shall notify the bank of the Board's determination.

3–332

SECTION 208.43—Capital Measures and Capital-Category Definitions

(a) *Capital measures.*

(1) For purposes of section 38 of the FDI Act and this subpart, the relevant capital measures are:

(i) Total Risk-Based Capital Measure: The total risk-based capital ratio;

(ii) Tier 1 Risk-Based Capital Measure: The tier 1 risk-based capital ratio;

(iii) Common Equity Tier 1 Capital Measure: The common equity tier 1 risk-based capital ratio; and

(iv) Leverage Measure:

(A) The leverage ratio; and

(B) With respect to an advanced approaches bank, on January 1, 2018, and thereafter, the supplementary leverage ratio.

(C) With respect to any bank that is a subsidiary (as defined in section 217.2 of this chapter) of a global systemically important BHC, on January 1,

2018, and thereafter, the supplementary leverage ratio.

(2) For a qualifying community banking organization (as defined in section 217.12 of this chapter), that has elected to use the community bank leverage ratio framework (as defined in section 217.12 of this chapter), the leverage ratio calculated in accordance with section 217.12(b) of this chapter is used to determine the well capitalized capital category under paragraph (b)(1)(i)(A) through (D) of this section.

(b) *Capital categories.* For purposes of section 38 of the FDI Act and this subpart, a member bank is deemed to be:

(1) (i) ''We ll capitalized'' if:

(A) Total Risk-Based Capital Measure: The bank has a total risk-based capital ratio of 10.0 percent or greater; and

(B) Tier 1 Risk-Based Capital Measure: The bank has a tier 1 risk-based capital ratio of 8.0 percent or greater; and

(C) Common Equity Tier 1 Capital Measure: The bank has a common equity tier 1 risk-based capital ratio of 6.5 percent or greater; and

(D) Leverage Measure:

(*1*) The bank has a leverage ratio of 5.0 percent or greater; and

(*2*) Beginning on January 1, 2018, with respect to any bank that is a subsidiary of a global systemically important BHC under the definition of ''subsidiary'' in section 217.2 of this chapter, the bank has a supplementary leverage ratio of 6.0 percent or greater; and

(E) The bank is not subject to any written agreement, order, capital directive, or prompt corrective action directive issued by the Board pursuant to section 8 of the FDI Act, the International Lending Supervision Act of 1983 (12 U.S.C. 3907), or section 38 of the FDI Act, or any regulation thereunder, to meet and maintain a specific capital level for any capital measure.

(ii) A qualifying community banking organization, as defined in section 217.12 of this chapter, that has elected to use the community bank leverage ratio framework under section 217.12 of this chapter, shall be considered to have met the capital ratio requirements for the well capitalized capital category in paragraph (b)(1)(i)(A) through (D) of this section.

(2) ''Adequately capitalized'' if:

(i) Total Risk-Based Capital Measure: the bank has a total risk-based capital ratio of 8.0 percent or greater;

(ii) Tier 1 Risk-Based Capital Measure: the bank has a tier 1 risk-based capital ratio of 6.0 percent or greater;

(iii) Common Equity Tier 1 Capital Measure: the bank has a common equity tier 1 risk-based capital ratio of 4.5 percent or greater;

(iv) Leverage Measure:

(A) The bank has a leverage ratio of 4.0 percent or greater; and

(B) With respect to an advanced approaches bank or bank that is a Category III Board-regulated institution (as defined in section 217.2 of this chapter), the bank has a supplementary leverage ratio of 3.0 percent or greater; and

(v) The bank does not meet the definition of a ''well capitalized'' bank.

(3) ''Undercapitalized'' if:

(i) Total Risk-Based Capital Measure: the bank has a total risk-based capital ratio of less than 8.0 percent;

(ii) Tier 1 Risk-Based Capital Measure: the bank has a tier 1 risk-based capital ratio of less than 6.0 percent;

(iii) Common Equity Tier 1 Capital Measure: the bank has a common equity tier 1 risk-based capital ratio of less than 4.5 percent; or

(iv) Leverage Measure:

(A) The bank has a leverage ratio of less than 4.0 percent; or

(B) With respect to an advanced approaches bank or bank that is a Category III Board-regulated institution (as defined in section 217.2 of this chapter), the bank has a supplementary leverage ratio of less than 3.0 percent.

(4) ''Significantly undercapitalized'' if:

(i) Total Risk-Based Capital Measure: the

bank has a total risk-based capital ratio of less than 6.0 percent;

(ii) Tier 1 Risk-Based Capital Measure: the bank has a tier 1 risk-based capital ratio of less than 4.0 percent;

(iii) Common Equity Tier 1 Capital Measure: the bank has a common equity tier 1 risk-based capital ratio of less than 3.0 percent; or

(iv) Leverage Measure: the bank has a leverage ratio of less than 3.0 percent.

(5) ''Critically undercapitalized'' if the bank has a ratio of tangible equity to total assets that is equal to or less than 2.0 percent.

3–333

(c) *Reclassification based on supervisory criteria other than capital.* The Board may reclassify a well-capitalized member bank as adequately capitalized and may require an adequately capitalized or an undercapitalized state member bank to comply with certain mandatory or discretionary supervisory actions as if the bank were in the next lower capital category (except that the Board may not reclassify a significantly undercapitalized bank as critically undercapitalized) (each of these actions are hereinafter referred to generally as ''reclassifications'') in the following circumstances:

(1) *Unsafe or unsound condition.* The Board has determined, after notice and opportunity for hearing pursuant to 12 CFR 263.203 of this chapter, that the bank is in unsafe or unsound condition; or

(2) *Unsafe or unsound practice.* The Board has determined, after notice and opportunity for hearing pursuant to 12 CFR 263.203, that, in the most recent examination of the bank, the bank received and has not corrected, a less-than-satisfactory rating for any of the categories of asset quality, management, earnings, liquidity, or sensitivity to market risk.

3–334

SECTION 208.44—Capital-Restoration Plans

(a) *Schedule for filing plan.*

(1) *In general.* A member bank shall file a written capital-restoration plan with the appropriate Reserve Bank within 45 days of the date that the bank receives notice or is deemed to have notice that the bank is undercapitalized, significantly undercapitalized, or critically undercapitalized, unless the Board notifies the bank in writing that the plan is to be filed within a different period. An adequately capitalized bank that has been required pursuant to section 208.43(c) to comply with supervisory actions as if the bank were undercapitalized is not required to submit a capital-restoration plan solely by virtue of the reclassification.

(2) *Additional capital-restoration plans.* Notwithstanding paragraph (a)(1) of this section, a bank that has already submitted and is operating under a capital-restoration plan approved under section 38 and this subpart is not required to submit an additional capital-restoration plan based on a revised calculation of its capital measures or a reclassification of the institution under section 208.33(c) unless the Board notifies the bank that it must submit a new or revised capital plan. A bank that is notified that it must submit a new or revised capital-restoration plan shall file the plan in writing with the appropriate Reserve Bank within 45 days of receiving such notice, unless the Board notifies the bank in writing that the plan is to be filed within a different period.

3–335

(b) *Contents of plan.* All financial data submitted in connection with a capital-restoration plan shall be prepared in accordance with the instructions provided on the call report, unless the Board instructs otherwise. The capital-restoration plan shall include all of the information required to be filed under section 38(e)(2) of the FDI Act. A bank that is required to submit a capital-restoration plan as the result of a reclassification of the bank pursuant to section 208.43(c) shall include a description of the steps the bank will take to correct the unsafe or unsound condition or practice. No plan shall be accepted unless it includes any performance guarantee described in section 38(e)(2)(C) of that act by each company that controls the bank.

(c) *Review of capital-restoration plans.* Within 60 days after receiving a capital-restoration plan under this subpart, the Board shall provide written notice to the bank of whether the plan has been approved. The Board may extend the time within which notice regarding approval of a plan shall be provided.

3–336

(d) *Disapproval of capital plan.* If the Board does not approve a capital-restoration plan, the bank shall submit a revised capital-restoration plan within the time specified by the Board. Upon receiving notice that its capital-restoration plan has not been approved, any undercapitalized member bank (as defined in section 208.43(b)(3)) shall be subject to all of the provisions of section 38 and this subpart applicable to significantly undercapitalized institutions. These provisions shall be applicable until such time as the Board approves a new or revised capital-restoration plan submitted by the bank.

(e) *Failure to submit capital-restoration plan.* A member bank that is undercapitalized (as defined in section 208.33(b)(3)) and that fails to submit a written capital-restoration plan within the period provided in this section shall, upon the expiration of that period, be subject to all of the provisions of section 38 and this subpart applicable to significantly undercapitalized institutions.

3–337

(f) *Failure to implement capital-restoration plan.* Any undercapitalized member bank that fails in any material respect to implement a capital-restoration plan shall be subject to all of the provisions of section 38 and this subpart applicable to significantly undercapitalized institutions.

(g) *Amendment of capital plan.* A bank that has filed an approved capital-restoration plan may, after prior written notice to and approval by the Board, amend the plan to reflect a change in circumstance. Until such time as a proposed amendment has been approved, the bank shall implement the capital-restoration plan as approved prior to the proposed amendment.

(h) *Notice to FDIC.* Within 45 days of the effective date of Board approval of a capital-restoration plan, or any amendment to a capital-restoration plan, the Board shall provide a copy of the plan or amendment to the Federal Deposit Insurance Corporation.

3–338

(i) *Performance guarantee by companies that control a bank.*

(1) *Limitation on liability.*

(i) *Amount limitation.* The aggregate liability under the guarantee provided under section 38 and this subpart for all companies that control a specific member bank that is required to submit a capital-restoration plan under this subpart shall be limited to the lesser of—

(A) an amount equal to 5.0 percent of the bank's total assets at the time the bank was notified or deemed to have notice that the bank was undercapitalized; or

(B) the amount necessary to restore the relevant capital measures of the bank to the levels required for the bank to be classified as adequately capitalized, as those capital measures and levels are defined at the time that the bank initially fails to comply with a capital-restoration plan under this subpart.

(ii) *Limit on duration.* The guarantee and limit of liability under section 38 and this subpart shall expire after the Board notifies the bank that it has remained adequately capitalized for each of four consecutive calendar quarters. The expiration or fulfillment by a company of a guarantee of a capital-restoration plan shall not limit the liability of the company under any guarantee required or provided in connection with any capital-restoration plan filed by the same bank after expiration of the first guarantee.

(iii) *Collection on guarantee.* Each company that controls a bank shall be jointly and severally liable for the guarantee for such bank as required under section 38 and this subpart, and the Board may require and collect payment of the full

amount of that guarantee from any or all of the companies issuing the guarantee.

3–339

(2) *Failure to provide guarantee.* In the event that a bank that is controlled by any company submits a capital-restoration plan that does not contain the guarantee required under section 38(e)(2) of the FDI Act, the bank shall, upon submission of the plan, be subject to the provisions of section 38 and this subpart that are applicable to banks that have not submitted an acceptable capital-restoration plan.

(3) *Failure to perform guarantee.* Failure by any company that controls a bank to perform fully its guarantee of any capital plan shall constitute a material failure to implement the plan for purposes of section 38(f) of the FDI Act. Upon such failure, the bank shall be subject to the provisions of section 38 and this subpart that are applicable to banks that have failed in a material respect to implement a capital-restoration plan.

3–340

SECTION 208.45—Mandatory and Discretionary Supervisory Actions under Section 38

(a) *Mandatory supervisory actions.*

(1) *Provisions applicable to all banks.* All state member banks are subject to the restrictions contained in section 38(d) of the FDI Act on payment of capital distributions and management fees.

(2) *Provisions applicable to undercapitalized, significantly undercapitalized, and critically undercapitalized banks.* Immediately upon receiving notice or being deemed to have notice, as provided in section 208.42 or section 208.44 of this subpart, that the bank is undercapitalized, significantly undercapitalized, or critically undercapitalized, the bank shall become subject to the provisions of section 38 of the FDI Act—

(i) restricting payment of capital distributions and management fees (section 38(d));

(ii) requiring that the Board monitor the condition of the bank (section 38(e)(1));

(iii) requiring submission of a capital-restoration plan within the schedule established in this subpart (section 38(e)(2));

(iv) restricting the growth of the bank's assets (section 38(e)(3)); and

(v) requiring prior approval of certain expansion proposals (section 38(e)(4)).

3–341

(3) *Additional provisions applicable to significantly undercapitalize and critically undercapitalized banks.* In addition to the provisions of section 38 of the FDI Act described in paragraph (a)(2) of this section, immediately upon receiving notice or being deemed to have notice, as provided in section 208.42 or section 208.44, that the bank is significantly undercapitalized, or critically undercapitalized, or that the bank is subject to the provisions applicable to institutions that are significantly undercapitalized because the bank failed to submit or implement in any material respect an acceptable capital-restoration plan, the bank shall become subject to the provisions of section 38 of the FDI Act that restrict compensation paid to senior executive officers of the institution (section 38(f)(4)).

(4) *Additional provisions applicable to critically undercapitalized banks.* In addition to the provisions of section 38 of the FDI Act described in paragraphs (a)(2) and (a)(3) of this section, immediately upon receiving notice or being deemed to have notice, as provided in section 208.32, that the bank is critically undercapitalized, the bank shall become subject to the provisions of section 38 of the FDI Act—

(i) restricting the activities of the bank (section 38(h)(1)); and

(ii) restricting payments on subordinated debt of the bank (section 38(h)(2)).

3–342

(b) *Discretionary supervisory actions.* In taking any action under section 38 that is within the Board's discretion to take in connection with (1) a state member bank that is deemed to be undercapitalized, significantly undercapi-

talized, or critically undercapitalized, or has been reclassified as undercapitalized, or significantly undercapitalized; (2) an officer or director of such bank; or (3) a company that controls such bank, the Board shall follow the procedures for issuing directives under 12 CFR 263.202 and 263.204, unless otherwise provided in section 38 or this subpart.

3–360

SUBPART E—REAL ESTATE LENDING, APPRAISAL STANDARDS, AND MINIMUM REQUIREMENTS FOR APPRAISAL MANAGEMENT COMPANIES

SECTION 208.50—Authority, Purpose, and Scope

(a) *Authority.* Subpart E of Regulation H (12 CFR part 208, subpart E) is issued by the Board of Governors of the Federal Reserve System pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991, (12 U.S.C. 1828(o)), Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act, (12 U.S.C. 3331-3351), and section 1473 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, (12 U.S.C. 3353).

(b) *Purpose and scope.* This subpart prescribes standards for real estate lending to be used by state member banks in adopting internal real estate lending policies. The standards applicable to appraisals rendered in connection with Federally related transactions entered into by member banks and the minimum requirements for appraisal management companies are set forth in 12 CFR part 225, subparts G and M respectively (Regulation Y).

3–361

SECTION 208.51—Real Estate Lending Standards

(a) *Adoption of written policies.* Each state bank that is a member of the Federal Reserve System shall adopt and maintain written policies that establish appropriate limits and standards for extensions of credit that are secured by liens on or interests in real estate, or that are made for the purpose of financing permanent improvements to real estate.

3–362

(b) *Requirements of lending policies.*

(1) Real estate lending policies adopted pursuant to this section shall be—

(i) consistent with safe and sound banking practices;

(ii) appropriate to the size of the institution and the nature and scope of its operations; and

(iii) reviewed and approved by the bank's board of directors at least annually.

(2) The lending policies shall establish—

(i) loan-portfolio-diversification standards;

(ii) prudent-underwriting standards, including loan-to-value limits, that are clear and measurable;

(iii) loan-administration procedures for the bank's real estate portfolio; and

(iv) documentation, approval, and reporting requirements to monitor compliance with the bank's real estate lending policies.

3–363

(c) *Monitoring conditions.* Each member bank shall monitor conditions in the real estate market in its lending area to ensure that its real estate lending policies continue to be appropriate for current market conditions.

(d) *Interagency guidelines.* The real estate lending policies adopted pursuant to this section should reflect consideration of the Interagency Guidelines for Real Estate Lending Policies (contained in appendix C of this part) established by the federal bank and thrift supervisory agencies.

3–370

SUBPART F—MISCELLANEOUS REQUIREMENTS

SECTION 208.60—Authority, Purpose, and Scope

(a) *Authority.* Subpart F of Regulation H (12 CFR 208, subpart F) is issued by the Board of

Governors of the Federal Reserve System under sections 9, 11, 21, 25, and 25A of the Federal Reserve Act (12 USC 321-338a, 248(a), 248(c), 481-486, 601, and 611), section 7 of the International Banking Act (12 USC 3105), section 3 of the Bank Protection Act of 1968 (12 USC 1882), sections 1814, 1816, 1818, 1831o, 1831p-1, and 1831r-1 of the FDI Act (12 USC 1814, 1816, 1818, 1831o, 1831p-1, and 1831r-1), and the Bank Secrecy Act (31 USC 5318).

(b) *Purpose and scope.* This subpart F describes a member bank's obligation to implement security procedures to discourage certain crimes, to file suspicious-activity reports, and to comply with the Bank Secrecy Act's requirements for reporting and recordkeeping of currency and foreign transactions. It also describes the examination schedule for certain small insured member banks.

3–371

SECTION 208.61—Bank Security Procedures

(a) *Authority, purpose, and scope.* Pursuant to section 3 of the Bank Protection Act of 1968 (12 USC 1882), member banks are required to adopt appropriate security procedures to discourage robberies, burglaries, and larcenies, and to assist in the identification and prosecution of persons who commit such acts. It is the responsibility of the member bank's board of directors to comply with the provisions of this section and ensure that a written security program for the bank's main office and branches is developed and implemented.

(b) *Designation of security officer.* Upon becoming a member of the Federal Reserve System, a member bank's board of directors shall designate a security officer who shall have the authority, subject to the approval of the board of directors, to develop, within a reasonable time, but no later than 180 days, and to administer a written security program for each banking office.

3–372

(c) *Security program.*

(1) The security program shall—

(i) establish procedures for opening and closing for business and for the safekeeping of all currency, negotiable securities, and similar valuables at all times;

(ii) establish procedures that will assist in identifying persons committing crimes against the institution and that will preserve evidence that may aid in their identification and prosecution. Such procedures may include, but are not limited to: maintaining a camera that records activity in the banking office; using identification devices, such as prerecorded serial-numbered bills, or chemical and electronic devices; and retaining a record of any robbery, burglary, or larceny committed against the bank;

(iii) provide for initial and periodic training of officers and employees in their responsibilities under the security program and in proper employee conduct during and after a burglary, robbery, or larceny; and

(iv) provide for selecting, testing, operating, and maintaining appropriate security devices, as specified in paragraph (c)(2) of this section.

(2) *Security devices.* Each member bank shall have, at a minimum, the following security devices:

(i) a means of protecting cash and other liquid assets, such as a vault, safe, or other secure space;

(ii) a lighting system for illuminating, during the hours of darkness, the area around the vault, if the vault is visible from outside the banking office;

(iii) tamper-resistant locks on exterior doors and exterior windows that may be opened;

(iv) an alarm system or other appropriate device for promptly notifying the nearest responsible law enforcement officers of an attempted or perpetrated robbery or burglary; and

(v) such other devices as the security officer determines to be appropriate, taking into consideration: the incidence of crimes against financial institutions in the area; the amount of currency and other valuables exposed to robbery, burglary, or larceny; the distance of the banking office from the nearest responsible law en-

forcement officers; the cost of the security devices; other security measures in effect at the banking office; and the physical characteristics of the structure of the banking office and its surroundings.

3–373

(d) *Annual reports.* The security officer for each member bank shall report at least annually to the bank's board of directors on the implementation, administration, and effectiveness of the security program.

(e) *Reserve Banks.* Each Reserve Bank shall develop and maintain a written security program for its main office and branches subject to review and approval of the Board.

3–374

SECTION 208.62—Suspicious-Activity Reports

(a) *Purpose.* This section ensures that a member bank files a suspicious-activity report when it detects a known or suspected violation of federal law, or a suspicious transaction related to a money-laundering activity or a violation of the Bank Secrecy Act. This section applies to all member banks.

(b) *Definitions.* For the purposes of this section:

(1) *FinCEN* means the Financial Crimes Enforcement Network of the Department of the Treasury.

(2) *Institution-affiliated party* means any institution-affiliated party as that term is defined in 12 USC 1786(r), or 1813(u) and 1818(b)(3), (4), or (5).

(3) *SAR* means a suspicious-activity report on the form prescribed by the Board.

3–375

(c) *SARs required.* A member bank shall file a SAR with the appropriate federal law enforcement agencies and the Department of the Treasury in accordance with the form's instructions by sending a completed SAR to FinCEN in the following circumstances:

(1) *Insider abuse involving any amount.* Whenever the member bank detects any known or suspected federal criminal violation, or pattern of criminal violations, committed or attempted against the bank or involving a transaction or transactions conducted through the bank, where the bank believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the bank was used to facilitate a criminal transaction, and the bank has a substantial basis for identifying one of its directors, officers, employees, agents, or other institution-affiliated parties as having committed or aided in the commission of a criminal act regardless of the amount involved in the violation.

(2) *Violations aggregating $5,000 or more where a suspect can be identified.* Whenever the member bank detects any known or suspected federal criminal violation, or pattern of criminal violations, committed or attempted against the bank or involving a transaction or transactions conducted through the bank and involving or aggregating $5,000 or more in funds or other assets, where the bank believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the bank was used to facilitate a criminal transaction, and the bank has a substantial basis for identifying a possible suspect or group of suspects. If it is determined prior to filing this report that the identified suspect or group of suspects has used an ''alias,'' then information regarding the true identity of the suspect or group of suspects, as well as alias identifiers, such as driver's licenses or Social Security numbers, addresses, and telephone numbers, must be reported.

(3) *Violations aggregating $25,000 or more regardless of a potential suspect.* Whenever the member bank detects any known or suspected federal criminal violation, or pattern of criminal violations, committed or attempted against the bank or involving a transaction or transactions conducted through the bank and involving or aggregating $25,000 or more in funds or other assets, where the bank believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the bank was used to facili-

tate a criminal transaction, even though there is no substantial basis for identifying a possible suspect or group of suspects.

(4) *Transactions aggregating $5,000 or more that involve potential money laundering or violations of the Bank Secrecy Act.* Any transaction (which for purposes of this paragraph (c)(4) means a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument or investment security, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected) conducted or attempted by, at or through the state member bank and involving or aggregating $5,000 or more in funds or other assets, if the bank knows, suspects, or has reason to suspect that—

(i) the transaction involves funds derived from illegal activities or is intended or conducted in order to hide or disguise funds or assets derived from illegal activities (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any law or regulation or to avoid any transaction-reporting requirement under federal law;

(ii) the transaction is designed to evade any regulations promulgated under the Bank Secrecy Act; or

(iii) the transaction has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the bank knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

3–376

(d) *Time for reporting.* A member bank is required to file a SAR no later than 30 calendar days after the date of initial detection of facts that may constitute a basis for filing a SAR. If no suspect was identified on the date of detection of the incident requiring the filing, a member bank may delay filing a SAR for an additional 30 calendar days to identify a suspect. In no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction. In situations involving violations requiring immediate attention, such as when a reportable violation is ongoing, the financial institution shall immediately notify, by telephone, an appropriate law enforcement authority and the Board in addition to filing a timely SAR.

(e) *Reports to state and local authorities.* Member banks are encouraged to file a copy of the SAR with state and local law enforcement agencies where appropriate.

(f) *Exceptions.*

(1) A member bank need not file a SAR for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities.

(2) A member bank need not file a SAR for lost, missing, counterfeit, or stolen securities if it files a report pursuant to the reporting requirements of 17 CFR 240.17f-1.

(g) *Retention of records.* A member bank shall maintain a copy of any SAR filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of the filing of the SAR. Supporting documentation shall be identified and maintained by the bank as such, and shall be deemed to have been filed with the SAR. A member bank must make all supporting documentation available to appropriate law enforcement agencies upon request.

3–377

(h) *Notification to board of directors.* The management of a member bank shall promptly notify its board of directors, or a committee thereof, of any report filed pursuant to this section.

(i) *Compliance.* Failure to file a SAR in accordance with this section and the instructions may subject the member bank, its directors, officers, employees, agents, or other institution-affiliated parties to supervisory action.

(j) *Confidentiality of SARs.* SARs are confidential. Any member bank subpoenaed or otherwise requested to disclose a SAR or the

information contained in a SAR shall decline to produce the SAR or to provide any information that would disclose that a SAR has been prepared or filed citing this section, applicable law (e.g., 31 U.S.C. 5318(g)), or both, and notify the Board.

(k) *Safe harbor.* The safe-harbor provisions of 31 U.S.C. 5318(g), which exempts any member bank that makes a disclosure of any possible violation of law or regulation from liability under any law or regulation of the United States, or any constitution, law, or regulation of any state or political subdivision, covers all reports of suspected or known criminal violations and suspicious activities to law enforcement and financial institution supervisory authorities, including supporting documentation, regardless of whether such reports are filed pursuant to this section or are filed on a voluntary basis.

3–378

SECTION 208.63—Procedures for Monitoring Bank Secrecy Act Compliance

(a) *Purpose.* This section is issued to ensure that all state member banks establish and maintain procedures reasonably designed to ensure and monitor their compliance with the provisions of the Bank Secrecy Act (31 U.S.C. 5311 *et seq.*), and the implementing regulations promulgated thereunder by the Department of Treasury at 31 CFR 103,* requiring recordkeeping and reporting of currency transactions.

(b) *Establishment of BSA compliance program.*

(1) *Program requirements.* Each bank shall develop and provide for the continued administration of a program reasonably designed to ensure and monitor compliance with the recordkeeping and reporting requirements set forth in subchapter II of chapter 53 of title 31, United States Code, the Bank Secrecy Act, and the implementing regulations promulgated thereunder by the Department of Treasury at 31 CFR 103.* The compliance program shall be reduced to writing, approved by the board of directors, and noted in the minutes.

(2) *Customer identification program.* Each bank is subject to the requirements of 31 U.S.C. 5318(*l*) and the implementing regulation jointly promulgated by the Board and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program to be implemented as part of the BSA compliance program required under this section.

3–379

(c) *Contents of compliance program.* The compliance program shall, at a minimum—

(1) provide for a system of internal controls to ensure ongoing compliance;

(2) provide for independent testing for compliance to be conducted by bank personnel or by an outside party;

(3) designate an individual or individuals responsible for coordinating and monitoring day-to-day compliance; and

(4) provide training for appropriate personnel.

3–380

SECTION 208.64—Frequency of Examination

(a) *General.* The Federal Reserve examines insured member banks pursuant to authority conferred by 12 U.S.C. 325 and the requirements of 12 U.S.C. 1820(d). The Federal Reserve is required to conduct a full-scope, on-site examination of every insured member bank at least once during each 12-month period.

(b) *18-month rule for certain small institutions.* The Federal Reserve may conduct a full-scope, on-site examination of an insured member bank at least once during each 18-month period, rather than each 12-month period as provided in paragraph (a) of this section, if the following conditions are satisfied:

(1) the bank has total assets of less than $3 billion;

(2) the bank is well capitalized as defined in subpart D of this part (section 208.43);

(3) at the most recent examination con-

* These statutory provisions and regulations appear at 3–1700.

ducted by either the Federal Reserve or applicable state banking agency, the Federal Reserve—

(i) assigned the bank a rating of 1 or 2 for management as part of the bank's rating under the Uniform Financial Institutions Rating System (commonly referred to as CAMELS); and

(ii) assigned the bank a composite CAMELS rating of 1 or 2 under the Uniform Financial Institutions Rating System;

(4) the bank currently is not subject to a formal enforcement proceeding or order by the Federal Reserve or the FDIC; and

(5) no person acquired control of the bank during the preceding 12-month period in which a full-scope examination would have been required but for this paragraph (b).

(c) *Authority to conduct more frequent examinations.* This section does not limit the authority of the Federal Reserve to examine any member bank as frequently as the agency deems necessary.

(d) (1) Except as provided in paragraph (c) of this section, from December 2, 2020, through December 31, 2021, for purposes of determining eligibility for the extended examination cycle described in paragraph (b) of this section, the total assets of a member bank shall be determined based on the lesser of:

(i) The assets of the member bank as of December 31, 2019; and

(ii) The assets of the member bank as of the end of the most recent calendar quarter.

(2) Nothing in paragraph (d)(1) of this section limits the authority of the Federal Reserve to examine any member bank as frequently as the agency deems necessary pursuant to paragraph (c) of this section.

3–381

SUBPART G—FINANCIAL SUBSIDIARIES OF STATE MEMBER BANKS

SECTION 208.71—What are the requirements to invest in or control a financial subsidiary?

(a) *In general.* A state member bank may control, or hold an interest in, a financial subsidiary only if—

(1) the state member bank and each depository institution affiliate of the state member bank are well capitalized and well managed;

(2) the aggregate consolidated total assets of all financial subsidiaries of the state member bank do not exceed the lesser of—

(i) 45 percent of the consolidated total assets of the parent bank; or

(ii) $50 billion, which dollar amount shall be adjusted according to an indexing mechanism jointly established by the Board and the secretary of the Treasury;

(3) the state member bank, if it is one of the largest 100 insured banks (based on consolidated total assets as of the end of the previous calendar year), meets the debt rating or alternative requirement of paragraph (b) of this section, if applicable; and

(4) the Board or the appropriate Reserve Bank has approved the bank to acquire the interest in or control the financial subsidiary under section 208.76.

3–381.1

(b) *Debt-rating or alternative requirement for 100 largest insured banks.*

(1) *General.* A state member bank meets the debt-rating or alternative requirement of this paragraph (b) if—

(i) the bank has at least one issue of eligible debt outstanding that is currently rated in one of the three highest investment-grade rating categories by a nationally recognized statistical rating organization; or

(ii) if the bank is one of the second 50 largest insured banks (based on consolidated total assets as of the end of the previous calendar year), the bank has a current long-term issuer credit rating from at least one nationally recognized statistical rating organization that is within the three highest investment-grade rating categories used by the organization.

(2) *Financial subsidiaries engaged in financial activities only as an agent.* This paragraph (b) does not apply to a state

member bank if the financial subsidiaries of the bank engage in financial activities described in section 208.72(a)(1) and (2) only in an agency capacity and not directly or indirectly as principal.

3–382

SECTION 208.72—What activities may a financial subsidiary conduct?

(a) *Authorized activities.* A financial subsidiary of a state member bank may engage in only the following activities:

(1) any financial activity listed in section 225.86(a), (b), or (c) of the Board's Regulation Y (12 CFR 225.86(a), (b), or (c));

(2) any activity that the secretary of the Treasury, in consultation with the Board, has determined to be financial in nature or incidental to a financial activity and permissible for financial subsidiaries pursuant to section 5136A(b) of the Revised Statutes of the United States (12 USC 24a(b)); and

(3) any activity that the state member bank is permitted to engage in directly (subject to the same terms and conditions that govern the conduct of the activity by the state member bank).

(b) *Impermissible activities.* Notwithstanding paragraph (a) of this section, a financial subsidiary may not engage as principal in the following activities:

(1) insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death (except to the extent permitted under applicable state law and section 302 or 303(c) of the Gramm-Leach-Bliley Act 15 USC 6712 or 6713(c));

(2) providing or issuing annuities the income of which is subject to tax treatment under section 72 of the Internal Revenue Code (26 U.S.C. 72);

(3) real estate development or real estate investment, unless otherwise expressly authorized by applicable state and federal law; and

(4) any merchant banking or insurance company investment activity permitted for financial holding companies by section 4(k)(4)(H) or (I) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H) and (I)).

3–383

SECTION 208.73—What additional provisions are applicable to state member banks with financial subsidiaries?

(a) *Capital deduction required prior to January 1, 2015, for state member banks that are not advanced approaches banks (as defined in section 208.41).* A state member bank that controls or holds an interest in a financial subsidiary must comply with the following rules in determining its compliance with applicable regulatory capital standards (including the ''well capitalized'' standard of section 208.71(a)(1)):

(1) The bank must not consolidate the assets and liabilities of any financial subsidiary with those of the bank.

(2) For purposes of determining the bank's risk-based capital ratios under appendix A of this part, the bank must—

(i) deduct 50 percent of the aggregate amount of its outstanding equity investment (including retained earnings) in all financial subsidiaries from both the bank's tier 1 capital and tier 2 capital; and

(ii) deduct the entire amount of the bank's outstanding equity investment (including retained earnings) in all financial subsidiaries from the bank's risk-weighted assets.

(3) For purposes of determining the bank's leverage capital ratio under appendix B of this part, the bank must—

(i) deduct 50 percent of the aggregate amount of its outstanding equity investment (including retained earnings) in all financial subsidiaries from the bank's tier 1 capital; and

(ii) deduct the entire amount of the bank's outstanding equity investment (including retained earnings) in all financial subsidiaries from the bank's average total assets.

(4) For purposes of determining the bank's ratio of tangible equity to total assets under section 208.43(b)(5), the bank must deduct the entire amount of the bank's outstanding equity investment (including retained earnings) in all financial subsidiaries from the bank's tangible equity and total assets.

(5) If the deduction from tier 2 capital required by paragraph (a)(2)(i) of this section exceeds the bank's tier 2 capital, any excess must be deducted from the bank's tier 1 capital.

(b) *Capital requirements for advanced approaches banks (as defined in section 208.41) and, after January 1, 2015, all state member banks.* Beginning on January 1, 2014, for a state member bank that is an advanced approaches bank, and beginning on January 1, 2015 for all state member banks, a state member bank that controls or holds an interest in a financial subsidiary must comply with the rules set forth in section 217.22(a)(7) of Regulation Q (12 CFR 217.22(a)(7)) in determining its compliance with applicable regulatory capital standards (including the well capitalized standard of section 208.71(a)(1)).

(c) *Financial-statement disclosure of capital deduction.* Any published financial statement of a state member bank that controls or holds an interest in a financial subsidiary must, in addition to providing information prepared in accordance with generally accepted accounting principles, separately present financial information for the bank reflecting the capital deduction and adjustments required by paragraph (a) of this section.

3–383.1

(d) *Safeguards for the bank.* A state member bank that establishes, controls, or holds an interest in a financial subsidiary must—

(1) establish procedures for identifying and managing financial and operational risks within the state member bank and the financial subsidiary that adequately protect the state member bank from such risks; and

(2) establish and maintain reasonable policies and procedures to preserve the separate corporate identity and limited liability of the state member bank and the financial subsidiary.

(e) *Application of sections 23A and 23B of the Federal Reserve Act.* For purposes of sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c, 371c-1)—

(1) a financial subsidiary of a state member bank shall be deemed an affiliate, and not a subsidiary, of the bank;

(2) the restrictions contained in section 23A(a)(1)(A) of the Federal Reserve Act (12 U.S.C. 371c(a)(1)(A)) shall not apply with respect to covered transactions between the bank and any individual financial subsidiary of the bank;

(3) the bank's investment in a financial subsidiary shall not include retained earnings of the financial subsidiary;

(4) any purchase of, or investment in, the securities of a financial subsidiary by an affiliate of the bank will be considered to be a purchase of, or investment in, such securities by the bank; and

(5) any extension of credit by an affiliate of the bank to a financial subsidiary of the bank will be considered to be an extension of credit by the bank to the financial subsidiary if the Board determines that such treatment is necessary or appropriate to prevent evasions of the Federal Reserve Act and the Gramm-Leach-Bliley Act.

3–383.2

(f) *Application of anti-tying prohibitions.* A financial subsidiary of a state member bank shall be deemed a subsidiary of a bank holding company and not a subsidiary of the bank for purposes of the anti-tying prohibitions of section 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1971 *et seq.*).

3–384

SECTION 208.74—What happens if the state member bank or a depository institution affiliate fails to continue to meet certain requirements?

(a) *Qualifications and safeguards.* The following procedures apply to a state member bank that controls or holds an interest in a financial subsidiary.

(1) *Notice by Board.* If the Board finds that a state member bank or any of its depository institution affiliates fails to continue to be well capitalized and well managed or the state member bank is not in compliance with the asset limitation set forth in section

208.71(a)(2) or the safeguards set forth in section 208.73(c), the Board will notify the state member bank in writing and identify the areas of noncompliance. The Board may provide this notice at any time before or after receiving notice from the state member bank under paragraph (a)(2) of this section.

(2) *Notification by state member bank.* A state member bank must notify the appropriate Reserve Bank in writing within 15 calendar days of becoming aware that any depository institution affiliate of the bank has ceased to be well capitalized and well managed. The notification must identify the depository institution affiliate and the areas(s) of noncompliance.

(3) *Execution of agreement.* Within 45 days after receiving a notice from the Board under paragraph (a)(1) of this section, or such additional period of time as the Board may permit—

(i) the state member bank must execute an agreement acceptable to the Board to comply with all applicable capital, management, asset, and safeguard requirements; and

(ii) any relevant depository institution affiliate of the state member bank must execute an agreement acceptable to its appropriate federal banking agency to comply with all applicable capital and management requirements.

3–384.1

(4) *Agreement requirements.* Any agreement required by paragraph (a)(3)(i) of this section must—

(i) explain the specific actions that the state member bank will take to correct all areas of noncompliance;

(ii) provide a schedule within which each action will be taken; and

(iii) provide any other information the Board may require.

(5) *Imposition of limits.* Until the Board determines that the conditions described in the notice under paragraph (a)(1) of this section are corrected—

(i) the Board may impose any limitations on the conduct or activities of the state member bank or any subsidiary of the bank as the Board determines to be appropriate under the circumstances and consistent with the purposes of section 121 of the Gramm-Leach-Bliley Act, including requiring the Board's prior approval for any financial subsidiary of the bank to acquire any company or engage in any additional activity; and

(ii) the appropriate federal banking agency for any relevant depository institution affiliate may impose any limitations on the conduct or activities of the depository institution or any subsidiary of that institution as the agency determines to be appropriate under the circumstances and consistent with the purposes of section 121 of the Gramm-Leach-Bliley Act.

(6) *Divestiture.* The Board may require a state member bank to divest control of any financial subsidiary if the conditions described in a notice under paragraph (a)(1) of this section are not corrected within 180 days of receipt of the notice or such additional period of time as the Board may permit. Any divestiture must be completed in accordance with any terms and conditions established by the Board.

(7) *Consultation.* The Board will consult with all relevant federal and state regulatory authorities in taking any action under this paragraph (a).

3–384.2

(b) *Debt-rating or alternative requirement.* If a state member bank does not continue to meet any applicable debt-rating or alternative requirement of section 208.71(b), the bank may not, directly or through a subsidiary, purchase or acquire any additional equity capital of any financial subsidiary until the bank restores its compliance with the requirements of that section. For purposes of this paragraph (b), the term ''equity capital'' includes, in addition to any equity instrument, any debt instrument issued by the financial subsidiary if the instrument qualifies as capital of the subsidiary under federal or state law, regulation, or interpretation applicable to the subsidiary.

3–385

SECTION 208.75—What happens if the state member bank or any of its insured depository institution affiliates receives less than a satisfactory CRA rating?

(a) *Limits on establishment of financial subsidiaries and expansion of existing financial subsidiaries.* If a state member bank, or any insured depository institution affiliate of the bank, has received less than a satisfactory rating in meeting community credit needs in its most recent examination under the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq*.)—

(1) the state member bank may not, directly or indirectly, acquire control of any financial subsidiary; and

(2) any financial subsidiary controlled by the state member bank may not commence any additional activity or acquire control, including all or substantially all of the assets, of any company.

(b) *Exception for certain activities.* The prohibition in paragraph (a)(2) of this section does not apply to any activity, or to the acquisition of control of any company that is engaged only in activities, that the state member bank is permitted to conduct directly and that are conducted on the same terms and conditions that govern the conduct of the activity by the state member bank.

(c) *Duration of prohibitions.* The prohibitions described in paragraph (a) of this section shall continue in effect until such time as the state member bank and each insured depository institution affiliate of the state member bank has achieved at least a satisfactory rating in meeting community credit needs in its most recent examination under the Community Reinvestment Act.

3–386

SECTION 208.76—What Federal Reserve approvals are necessary for financial subsidiaries?

(a) *Notice requirements.*

(1) A state member bank may not acquire control of, or an interest in, a financial subsidiary unless it files a notice (in letter form, with enclosures) with the appropriate Reserve Bank.

(2) A state member bank may not engage in any additional activity pursuant to section 208.72(a)(1) or (2) through an existing financial subsidiary unless the state member bank files a notice (in letter form, with enclosures) with the appropriate Reserve Bank.

(b) *Contents of notice.* Any notice required by paragraph (a) of this section must—

(1) in the case of a notice filed under paragraph (a)(1) of this section, describe the transaction(s) through which the bank proposes to acquire control of, or an interest in, the financial subsidiary;

(2) provide the name and head office address of the financial subsidiary;

(3) provide a description of the current and proposed activities of the financial subsidiary and the specific authority permitting each activity;

(4) provide the capital ratios as of the close of the previous calendar quarter for all relevant capital measures, as defined in section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o), for the bank and each of its depository institution affiliates;

(5) certify that the bank and each of its depository institution affiliates was well capitalized at the close of the previous calendar quarter and is well capitalized as of the date the bank files its notice;

(6) certify that the bank and each of its depository institution affiliates is well managed as of the date the bank files its notice;

(7) certify that the bank meets the debt rating or alternative requirement of section 208.71(b), if applicable; and

(8) certify that the bank and its financial subsidiaries are in compliance with the asset limit set forth in section 208.71(a)(2) both before the proposal and on a pro forma basis.

3–386.1

(c) *Insurance activities.*

(1) If a notice filed under paragraph (a) of this section relates to the initial affiliation of the bank with a company engaged in insurance activities, the notice must de-

scribe the type of insurance activity that the company is engaged in or plans to conduct and identify each state where the company holds an insurance license and the state insurance regulatory authority that issued the license.

(2) The appropriate Reserve Bank will send a copy of any notice described in paragraph (c)(1) of this section to the appropriate state insurance regulatory authorities and provide such authorities with an opportunity to comment on the proposal.

(d) *Approval procedures.* A notice filed with the appropriate Reserve Bank under paragraph (a) of this section will be deemed approved on the fifteenth day after receipt of a complete notice by the appropriate Reserve Bank, unless prior to that date the Board or the appropriate Reserve Bank notifies the bank that the notice is approved, that the notice will require additional review, or that the bank does not meet the requirements of this subpart. Any notification of early approval of a notice must be in writing.

3–387

SECTION 208.77—Definitions

The following definitions shall apply to this subpart:

(a) *Affiliate, company, control, and subsidiary.* The terms ''affiliate,'' ''company,'' ''control,'' and ''subsidiary'' have the meanings given those terms in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).

(b) *Appropriate federal banking agency, depository institution, insured bank, and insured depository institution.* The terms ''appropriate federal banking agency,'' ''depository institution,'' ''insured bank,'' and ''insured depository institution'' have the meanings given those terms in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(c) [Reserved].

(d) *Eligible debt.* The term ''eligible debt'' means unsecured debt with an initial maturity of more than 360 days that—

(1) is not supported by any form of credit enhancement, including a guarantee or standby letter of credit; and

(2) is not held in whole or in any significant part by any affiliate, officer, director, principal shareholder, or employee of the bank or any other person acting on behalf of or with funds from the bank or an affiliate of the bank.

3–387.1

(e) *Financial subsidiary.*

(1) *In general.* The term ''financial subsidiary'' means any company that is controlled by one or more insured depository institutions *other than*—

(i) a subsidiary that engages only in activities that the state member bank is permitted to engage in directly and that are conducted on the same terms and conditions that govern the conduct of the activities by the state member bank; or

(ii) a subsidiary that the state member bank is specifically authorized by the express terms of a federal statute (other than section 9 of the Federal Reserve Act (12 U.S.C. 335)), and not by implication or interpretation, to control, such as by section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601-604a or 611-631) or the Bank Service Company Act (12 U.S.C. 1861 *et seq.*)

(2) *Subsidiaries of financial subsidiaries.* A financial subsidiary includes any company that is directly or indirectly controlled by the financial subsidiary.

(f) *Long-term issuer credit rating.* The term ''long-term issuer credit rating'' means a written opinion issued by a nationally recognized statistical rating organization of the bank's overall capacity and willingness to pay on a timely basis its unsecured, dollar-denominated financial obligations maturing in not less than one year.

3–387.2

(g) *Well capitalized.*

(1) *Insured depository institutions.* An insured depository institution is well capitalized if it has and maintains at least the capital levels required to be well capitalized under the capital adequacy regulations or

guidelines adopted by the institution's appropriate federal banking agency under section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o).

(2) *Uninsured depository institutions.* A depository institution the deposits of which are not insured by the Federal Deposit Insurance Corporation is well capitalized if the institution has and maintains at least the capital levels required for an insured depository institution to be well capitalized.

(h) *Well managed.*

(1) *In general.* The term ''well managed'' means—

(i) unless otherwise determined in writing by the appropriate federal banking agency, the institution has received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under an equivalent rating system) and at least a rating of 2 for management (if such rating is given) in connection with its most recent examination or subsequent review by the institution's appropriate federal banking agency (or the appropriate state banking agency in an examination described in section 10(d) of the Federal Deposit Insurance Act (12 U.S.C. 1820(d)); or

(ii) in the case of any depository institution that has not been examined by its appropriate federal banking agency or been subject to an examination by its appropriate state banking agency that meets the requirements of section 10(d) of the Federal Deposit Insurance Act (12 U.S.C. 1820(d)), the existence and use of managerial resources that the appropriate federal banking agency determines are satisfactory.

(2) *Merged depository institutions.*

(i) *Merger involving well-managed institutions.* A depository institution that results from the merger of two or more depository institutions that are well managed will be considered to be well managed unless the appropriate federal banking agency for the resulting depository institution determines otherwise.

(ii) *Merger involving a poorly rated institution.* A depository institution that results from the merger of a well-managed depository institution with one or more depository institutions that are not well managed or that have not been examined shall be considered to be well managed if the appropriate federal banking agency for the resulting depository institution determines that the institution is well managed.

3–387.3

SUBPART H—CONSUMER PROTECTION IN SALES OF INSURANCE

See 6–2800.

SUBPART I—[REMOVED AND RESERVED]

SUBPART J—INTERPRETATIONS

See 3–410.

3–387.91

SUBPART K—FORMS, INSTRUCTIONS, AND REPORTS

SECTION 208.120—Authority, Purpose, and Scope

(a) *Authority.* This subpart is issued by the Board under section 7 of the Federal Deposit Insurance Act, 12 U.S.C. 1817(a)(3) and (12), and section 9 of the Federal Reserve Act, 12 U.S.C. 324.

(b) *Purpose and scope.* This subpart informs a state member bank where it may obtain forms and instructions for reports of conditions and implements 12 U.S.C. 1817(a)(12) to allow reduced reporting for a covered depository institution when such institution makes its reports of condition for the first and third calendar quarters of a year.

3–387.92

SECTION 208.121—Definitions

Covered depository institution means a state member bank that meets all of the following criteria:

(1) Has less than $5 billion in total consolidated assets as reported in its report of condition for the second calendar quarter of the preceding year, except that, during the calendar year 2021, a state member bank shall determine whether it meets the requirement in paragraph (1) of this section by using the lesser of its total consolidated assets as reported in its report of condition as of December 31, 2019, and its total consolidated assets as reported in its report of condition for the second calendar quarter of 2020. The relief provided under this paragraph (1) of this section does not apply to a state member bank if the Board determines that permitting the state member bank to determine its assets in accordance with that paragraph would not be commensurate with the risk profile of the state member bank. When making this determination, the Board will consider all relevant factors, including the extent of asset growth of the state member bank since December 31, 2019; the causes of such growth, including whether growth occurred as a result of mergers or acquisitions; whether such growth is likely to be temporary or permanent; whether the state member bank has become involved in any additional activities since December 31, 2019; the asset size of any parent companies; and the type of assets held by the state member bank. In making a determination pursuant to this paragraph (1), the Board will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in 12 CFR 263.202.

(2) Has no foreign offices, as defined in this section;

(3) Is not required to or has not elected to use 12 CFR part 217, subpart E, to calculate its risk-based capital requirements; and

(4) Is not a large institution or highly complex institution, as such terms are defined in 12 CFR 327.8, or treated as a large institution, as requested under 12 CFR 327.16(f).

Foreign country refers to one or more foreign nations, and includes the overseas territories, dependencies, and insular possessions of those nations and of the United States.

Foreign office means:

(1) A branch or consolidated subsidiary in a foreign country, unless the branch is located on a U.S. military facility;

(2) An international banking facility as such term is defined in 12 CFR 204.8;

(3) A majority-owned Edge Act or Agreement subsidiary including both its U.S. and its foreign offices; and

(4) For an institution chartered or headquartered in any U.S. state or the District of Columbia, a branch or consolidated subsidiary located in a U.S. territory or possession.

Report of condition means the FFIEC 031, FFIEC 041, or FFIEC 051 versions of the Consolidated Report of Condition and Income (Call Report) or the FFIEC 002 (Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks), as applicable, and as they may be amended or superseded from time to time in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Total consolidated assets means total assets as reported in a state member bank's report of condition.

3–387.93

SECTION 208.122—Reporting

(a) A state member bank is required to file the report of condition (Call Report) in accordance with the instructions for these reports. All assets and liabilities, including contingent assets and liabilities, must be reported in, or otherwise taken into account in the preparation of, the Call Report. The Board uses Call Report data to monitor the condition, performance, and risk profile of individual state member banks and the banking industry. Reporting state member banks must also submit annually such information on small business and small farm lending as the Board may need to assess the availability of credit to

these sectors of the economy. The report forms and instructions can be obtained from Federal Reserve District Banks or through the website of the Federal Financial Institutions Examination Council, http://www.ffiec.gov/.

(b) Every insured U.S. branch of a foreign bank is required to file the FFIEC 002 version of the report of condition (Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks) in accordance with the instructions for the report. All assets and liabilities, including contingent assets and liabilities, must be reported in, or otherwise taken into account in the preparation of the report. The Board uses the reported data to monitor the condition, performance, and risk profile of individual insured branches and the banking industry. Insured branches must also submit annually such information on small business and small farm lending as the Board may need to assess the availability of credit to these sectors of the economy. The report forms and instructions can be obtained from Federal Reserve District Banks or through the website of the Federal Financial Institutions Examination Council, http://www.ffiec.gov/.

3–387.94

SECTION 208.123—Reduced Reporting

A covered depository institution may file the FFIEC 051 version of the report of condition, or any successor thereto, which shall provide for reduced reporting for the reports of condition for the first and third calendar quarters for a year.

3–387.95

SECTION 208.124—Reservation of Authority

(a) Notwithstanding section 208.123, the Board in consultation with the applicable state chartering authority may require an otherwise eligible covered depository institution to file the FFIEC 041 version of the report of condition, or any successor thereto, based on an institution-specific determination. In making this determination, the Board may consider criteria including, but not limited to, whether the institution is significantly engaged in one or more complex, specialized, or other higher risk activities, such as those for which limited information is reported in the FFIEC 051 version of the report of condition compared to the FFIEC 041 version of the report of condition. Nothing in this part shall be construed to limit the Board's authority to obtain information from a state member bank.

(b) Nothing in this subpart limits the authority of the Board under any other provision of law or regulation to take supervisory or enforcement action, including action to address unsafe or unsound practices or conditions or violations of law.

3–388

APPENDIX A—[Reserved]

APPENDIX B—[Reserved]

APPENDIX C—Interagency Guidelines for Real Estate Lending Policies

See 3–1577.5.

APPENDIX D-1—Interagency Guidelines Establishing Standards for Safety and Soundness

See 3–1579.3.

APPENDIX D-2—Interagency Guidelines Establishing Information Security Standards

See 3–1571.

APPENDIX E—[Reserved]

APPENDIX F—[Reserved]