

[Federal Register: December 29, 1994]

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FEDERAL DEPOSIT INSURANCE CORPORATION  
12 CFR Part 335

RIN 3064-AB32

Securities of Nonmember Insured Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

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**SUMMARY:** The Federal Deposit Insurance Corporation (FDIC) is amending its securities disclosure regulations. The amendments relate to registration and reporting requirements for non-member insured banks with securities registered under section 12 of the Securities Exchange Act of 1934 (Exchange Act or Act).

Section 12(i) of the Exchange Act requires that the FDIC issue regulations substantially similar to those of the Securities and Exchange Commission (SEC) or publish its reasons for not doing so. These amendments are intended to comply with section 12(i) and to update the regulations. The SEC has amended its Exchange Act regulations, relating to Small Business Initiatives, Executive Compensation Disclosure, and Regulation of Communications Among Shareholders. The FDIC is amending its Exchange Act regulations to incorporate, in substance, the SEC changes noted above.

**DATES:** Effective Date. These amendments are effective on July 1, 1995.

Early Compliance. These amendments may be immediately followed by the affected party.

**FOR FURTHER INFORMATION CONTACT:** M. Eric Dohm, Staff Accountant, Division of Supervision (202-898-8921) or Gerald J. Gervino, Senior Attorney, Legal Division (202-898-3723), Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:**

## Background

Section 12(i) of the Exchange Act grants authority to the FDIC to promulgate regulations applicable to the securities of insured banks (including foreign banks having an insured branch) which are neither members of the Federal Reserve System nor District banks (Nonmember Banks). These regulations must be substantially similar to the SEC's regulations under sections 12 (securities registration), 13 (periodic reporting), 14(a) (proxies and proxy solicitation), 14(c) (information statements), 14(d) (tender offers), 14(f) (arrangements for changes in directors), and 16 (beneficial ownership and reporting) of the Exchange Act. Section 12(i) does not require the FDIC to promulgate substantially similar regulations in the event that the FDIC finds that implementation of such regulation is not necessary or appropriate in the public interest or for protection of investors and the FDIC publishes such findings with detailed reasons therefor in the Federal Register. This amendment is intended to satisfy that requirement.

## Amendments to Part 335

### A. Small Business Initiatives

Recognizing that smaller banks are disproportionately affected by complexities in the disclosure requirements of banks registered under section 12 of the Exchange Act, the FDIC is revising its regulations by permitting "small business issuers" (as defined under the SEC's Exchange Act rules) to provide financial and other item disclosure in conformance with Regulation S-B of the Securities and Exchange Commission (17 CFR Part 228) in lieu of certain disclosure requirements in FDIC Forms F-1, F-2, F-4, F-5, F-5A and the annual report to security holders. The definition of "small business issuer", generally includes banks with annual revenues of less than \$25 million, whose voting stock does not have a public float of \$25 million or more.

For additional information and discussion, reference is made to the preamble contained in "Small Business Initiatives", SEC Release No. 34-30968, 57 FR 36442 (August 13, 1992); and in "Additional Small Business Initiatives", SEC Release No. 34-32231, 58 FR 26509 (May 4, 1993).

### B. Executive Compensation Disclosure

The SEC's regulations, as referenced by these amended Exchange Act rules, require disclosure of the compensation of the chief executive officer (CEO) regardless of the amount of compensation, and the four most highly compensated senior executive officers, excluding the CEO, who earn more than \$100,000 per year in salary and bonus. Additionally,

the regulations require a comprehensive three year compensation table, a table which discloses awards granted pursuant to long term incentive plans, and two disclosure tables relative to options and stock appreciation rights. The SEC's regulations also require:

(a) Disclosure of all forms of director compensation, employment contracts and termination agreements which require payments in excess of \$100,000;

(b) A compensation committee report to shareholders which details compensation policies and the basis for the CEO's compensation for the last fiscal year;

(c) Proxy statement disclosure of the existence of certain relationships between directors and the bank if specific circumstances exist; and

(d) A graphical chart, which illustrates for the previous five years, the cumulative total return to shareholders, of stock appreciation and dividends.

For additional information and discussion, reference is made to the preamble contained in "Executive Compensation Disclosure", SEC Release No. 34-31327, 57 FR 48125 (October 21, 1992); in "Executive Compensation Disclosure", SEC Release No. 34-32723, 58 FR 42882 (August 12, 1993); and in "Executive Compensation Disclosure", SEC Release No. 34-33229, 58 FR 63010 (November 29, 1993).

### C. Regulation of Communications Among Shareholders

These amendments to the proxy rules and other related provisions will improve the effectiveness of the proxy-voting process and its effect on corporate governance of nonmember insured banks subject to Part 335. These amendments are the result of an effort to eliminate from the FDIC proxy rules, any unnecessary regulatory impediments to communication among shareholders and others and to the effective use of shareholder voting rights. Accordingly, the FDIC is revising its rules relative to the solicitation of proxy authority to allow management and other persons seeking proxy authority to get their case to the shareholders in a more efficient and effective manner. The FDIC has determined that modifications in the current rules are desirable to achieve the purposes set forth in the Exchange Act.

The revisions eliminate Form F-6--Form for Statement in Election Contests (Sec. 335.221) and also adopt new Form F-6A--Notice of Exempt Solicitation (Sec. 335.222). Disclosures relative to each participant in an election contest, which were previously provided on Forms F-6, are now required to be included on Form F-5--Form for Proxy Statement (Sec. 335.212). Form F-6A requirements apply to large shareholders who are disinterested in the subject matter of a shareholder vote and who are engaging in certain solicitations which are exempt from the regulatory requirements of the proxy rules.

It should also be noted that the FDIC retains its existing rules which generally require the filing of preliminary proxy material and preliminary information statements with the FDIC for staff review and comment, prior to distribution of the definitive materials. The FDIC is amending its rules, however, to require that preliminary materials be deemed immediately available for public inspection upon filing, unless confidential treatment is obtained pursuant to Sec. 335.204(f)(2).

The amendments will make the FDIC's proxy and related disclosure rules substantially similar to the SEC's recently amended comparable rules. Prior to amendment of its rules, the SEC conducted an extensive three-year examination focused on the role of its former proxy and disclosure rules in impeding shareholder communication and participation. As a result of its examination, the SEC concluded that the demonstrated effect of its rules as previously written was contrary to Congress's intent that the rules assure fair, and effective shareholder suffrage. For additional information and discussion, reference is made to the preamble contained in "Regulation of Communications Among Shareholders", SEC Rel. No. 34-31326, 57 FR 48276 (October 22, 1992).

#### D. Other

As described previously, the FDIC is eliminating Form F-6--Form For Statement In Election Contests (Sec. 335.221) and also proposes to adopt new Form F-6A--Notice Of Exempt Solicitation (Sec. 335.222). In addition, several technical amendments will correct various errors which appear in the Code of Federal Regulations.

#### Public Comment

The Board requested comment on all aspects of the proposed rule, particularly those provisions specifically mentioned above. 59 FR 22555 (May 2, 1994).

The FDIC received six comment letters in response to its solicitation. All of the commenters were favorable to the adoption of the proposed amendments, as a whole. One commenter, offering otherwise favorable views, objected to the public availability of preliminary proxy material under the amendments.

In conjunction with this rule, the FDIC also sought written comments relative to the following: Should the FDIC consider proposing a revision to Part 335, to incorporate by cross-reference the comparable rules of the SEC, rather than continue to maintain the separate but substantially similar body of rules contained in Part 335 as is done presently? Interested persons were asked to address: (1) The benefits and disadvantages of cross-referencing as a method for assuring substantial similarity between the FDIC's and the SEC's

regulations; (2) the potential cost savings or cost burden of cross-referencing; (3) whether the FDIC should continue to review preliminary proxy materials and information statements; and (4) any other issues regarding a cross-referencing proposal which commenters believe pertinent. Written comments were invited to be submitted during a 60-day comment period.

All of the commenters supported cross-referencing to some extent. Two felt that the FDIC should be careful to adopt or preserve regulations different from those of the SEC, where FDIC drafted regulations would be more appropriate for banks. None provided an estimate of cost savings from the cross-referencing procedure. One commenter indicated that if this cross-referencing procedure is adopted, the FDIC should provide notice to banks filing under Part 335 that the SEC has amended rules applicable to banks by cross-reference. The only commenter who addressed the question of advance filing of preliminary proxy material, felt that advance filing should be continued.

In the interest of bringing our rules into similarity with the current SEC rules, the FDIC is adopting the rules as previously proposed, prior to publication of any comprehensive proposal to incorporate by cross-reference the comparable rules of the SEC. Recognizing the above noted response to its request for comment, the FDIC intends to take further action. Since the previously published request for comments concerning a comprehensive cross-referencing proposal was a general notice, the FDIC intends to publish for comment, a proposal to effect a comprehensive revision of Part 335. The revision would incorporate by cross-reference the comparable rules of the SEC rather than continue to maintain the separate but substantially similar body of rules as presently contained in Part 335. A comprehensive revision would generally make all relevant SEC Exchange Act regulations, and amendments thereto, applicable to registered Nonmember banks unless the FDIC acts to vary specific requirements applicable to such banks from the provisions of the SEC regulations. The FDIC intends to publish for comment, a proposed revision of Part 335 to comprehensively cross-reference the SEC's Exchange Act rules, in the near future.

#### Regulatory Flexibility Act

The Board hereby certifies that the rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Therefore, the provisions of that Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603 and 604) do not apply. This rule will not impose significant burdens on depository institutions of any size and would not have the type of impact

addressed by the Act.

### Paperwork Reduction Act

The collection of information contained in this rule has been reviewed and approved by the Office of Management and Budget under control number 3064-0030, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

The revisions to the collection of information in this rule are found in Sec. 335.102, Sec. 335.201, Sec. 335.202, Sec. 335.203, Sec. 335.204, Sec. 335.205, Sec. 335.207, Sec. 335.210, Sec. 335.212, Sec. 335.213, Sec. 335.214, Sec. 335.220, Sec. 335.221, Sec. 335.222, Sec. 335.301, Sec. 335.309a, Sec. 335.310, Sec. 335.312, Sec. 335.321, Sec. 335.330, Sec. 335.331, and Sec. 335.622. The most significant of these revisions relate to executive compensation disclosure, small business initiatives, and communications among shareholders. The revisions remove Sec. 335.221, eliminating Form F-6--Form For Statement In Election Contests. The previous disclosure requirements of the Form F-6 are now included in Form F-5 (Sec. 335.212). The requirement to file Form F-6A--Notice Of Exempt Solicitation (Sec. 335.222), is also added. It is estimated that, relative to the final rule, the aggregate effect of all changes in burden is de minimis and that the changes counterbalance each other.

The total estimated reporting burden for all collections of information in this final regulation is summarized as follows:

Number of Respondents: 4,368  
Number of Responses Per Respondent: 1.42  
Total Annual Responses: 6,214  
Hours Per Response: 8.89  
Total Annual Burden Hours: 55,276

Comments on the accuracy of the burden estimate, and suggestions for reducing the burden, should be directed to the Office of Management and Budget, Paperwork Reduction Project (3064-0030), Washington, DC 20503, with copies of such comments to Steven F. Hanft, Office of the Executive Secretary, room F-400, 550 17th Street, NW., Washington, DC 20429.

### Cost Benefit Analysis

These amendments will significantly reduce the costs and burdens that have been imposed on "small business issuers", those who wish to communicate with shareholders, and others regarding management performance and matters submitted to a shareholder vote. Costs will also be reduced by the changes to the proxy statement delivery

requirements. The amendments should result in cash and manpower savings for "small business issuers" and all those who will no longer be required to prepare and file proxy materials with the FDIC pursuant to the new exemptions for solicitations not seeking proxy authority. Even those who will be required to submit a Notice of Exempt Solicitation (new Form F-6A) will have a significantly reduced compliance burden. The amendments to the shareholder list provisions should not change substantially the costs or burdens to either the bank registrant or the requesting party. While some additional disclosure will be required relative to executive compensation, stock performance, and tabulation procedures and voting results, the overall cost resulting from these changes to banks should be minimal and is outweighed in any event by the benefits to shareholders and investors at large resulting from the enhanced information.

#### Statutory Basis

The revisions to the FDIC's rules under sections 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the Exchange Act, are being adopted by the FDIC pursuant to Exchange Act section 12(i).

#### List of Subjects in 12 CFR Part 335

Accounting, Banks, banking, Confidential business information, Reporting and recordkeeping requirements, Securities.

#### Text of Final Rules

In accordance with the foregoing, Part 335 of chapter III of title 12 of the Code of Federal Regulations is amended as follows:

#### PART 335--SECURITIES OF NONMEMBER INSURED BANKS

1. The authority citation for part 335 continues to read as follows:

Authority: Sec. 12(i) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78l(i)).

2. Section 335.102 is amended by revising the first sentence of paragraph (y); by redesignating paragraphs (oo), (pp), (qq), (rr) and (ss) as paragraphs (pp), (qq), (rr), (ss) and (tt); by adding a new paragraph (oo); and by republishing newly designated paragraph (pp) introductory text and revising newly designated paragraph (pp)(3) to read as follows:

Sec. 335.102 Definitions.

\* \* \* \* \*

(y) The term officer or principal officer or executive officer means Chairman of the Board of Directors, Vice Chairman of the Board, Chairman of the Executive Committee, President, Vice President (except as indicated in the next sentence), Cashier, Treasurer, Secretary, Comptroller, and any other person who participates in major policymaking functions of the bank. \* \* \*

\* \* \* \* \*

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

(pp) The terms solicit and solicitation mean:

\* \* \* \* \*

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

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

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

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

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

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

(B) Is directed to persons to whom the security holder owes a fiduciary duty in connection with the voting of securities of a bank held by the security holder; or

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

\* \* \* \* \*

3. Section 335.201 is amended by revising the reference ``(See 12 CFR 335.102 (gg) and (oo))'' in paragraph (a) to read ``(See 12 CFR 335.102 (gg) and (pp))''; and adding paragraph (d) to read as follows:

Sec. 335.201 Requirement of statement.



\* \* \* \* \*

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

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

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

4. Section 335.202 is amended by revising the introductory text; adding new paragraph (f); and removing the Note at the end of the section to read as follows:

#### Sec. 335.202 Exceptions.

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

\* \* \* \* \*

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

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

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

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

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

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

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

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

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

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

5. Section 335.203 is amended by adding a "Note to Small Business Issuers" following the introductory text of paragraph (a); and removing paragraph (c) and Instructions 1, 2 and 3 following paragraph (c) to read as follows:

Sec. 335.203 Annual report to security holders to accompany statements.

(a) \* \* \*

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

\* \* \* \* \*

6. Section 335.204 is amended by revising paragraph (f); revising the reference "Sec. 335.220(e)" to read "Sec. 335.220(c)" in each place it appears in paragraph (h); and adding new paragraph (l), to read as follows:

Sec. 335.204 Material required to be filed.

\* \* \* \* \*

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

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

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

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

\* \* \* \* \*

(l) Solicitations subject to Sec. 335.202(f). (1) Any person who:  
(i) Engages in a solicitation pursuant to Sec. 335.202(f); and  
(ii) At the commencement of that solicitation owns beneficially securities of the class which is the subject of the solicitation with a market value of over Sec. 5 million, shall furnish or mail to the FDIC, not later than three days after the date the written solicitation is first sent or given to any security holder, three copies of a statement containing the information specified in the Notice of Exempt Solicitation (Form F-6A, Sec. 335.222) which statement shall attach as an exhibit all written soliciting materials. Three copies of an amendment to such statement shall be furnished or mailed to the FDIC, in connection with dissemination of any additional communications, not later than three days after the date the additional material is first sent or given to any security holder. Three copies of the Notice of Exempt Proxy Solicitation and amendments thereto shall, at the same time the materials are furnished or mailed to the FDIC, be furnished or mailed to each national securities exchange upon which any class of securities of the bank is listed and registered.

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

vide publication disseminated on a regular basis.

7. Section 335.205 is amended by revising paragraphs (a)(3) and (a)(4) to read as follows:

Sec. 335.205 Solicitation prior to furnishing required proxy statement.

(a) \* \* \*

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

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

\* \* \* \* \*

8. Section 335.207 is amended by revising paragraph (a); revising the first sentence of paragraph (b)(1); redesignating paragraph (d) introductory text and paragraphs (d)(1) through (d)(4) as paragraph (d)(1) introductory text and paragraphs (d)(1)(i) through (d)(1)(iv); republishing newly designated paragraph (d)(1) introductory text; designating paragraph (d) concluding text as paragraph (d)(2) and revising it; and adding a new paragraph (f), to read as follows:

Sec. 335.207 Requirements as to proxy.

(a) The form of proxy:

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

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

(3) Shall identify clearly and impartially each separate matter intended to be acted upon, whether or not related to or conditioned on the approval of other matters, and whether proposed by the bank or by security holders. No reference need be made, however, to matters as to which discretionary authority is conferred under paragraph (c) of this section.

(b)(1) Means shall be provided in the form of proxy whereby the person solicited is afforded an opportunity to specify by boxes a choice between approval or disapproval of, or abstention with respect

to each separate matter referred to therein as intended to be acted upon, other than elections to office. \* \* \*

\* \* \* \* \*

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

\* \* \* \* \*

(2) A person shall not be deemed to be a bona fide nominee and he shall not be named as such unless he has consented to being named in the proxy statement and to serve if elected. Provided, however, that nothing in this section shall prevent any person soliciting in support of nominees who, if elected, would constitute a minority of the board of directors, from seeking authority to vote for nominees named in the bank's proxy statement, so long as the soliciting party:

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

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

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

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

\* \* \* \* \*

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

9. Section 335.210 is revised to read as follows:

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

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

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

(i) Notification as to whether the bank has elected to mail the security holder's soliciting materials or provide a security holder list if the election under paragraph (b) of this section is to be made by the bank;

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

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

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

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

(ii) Deliver the following information to the requesting security holder within five business days of receipt of the request: A reasonably current list of the names, addresses and security positions of the record holders, including banks, brokers and similar entities, holding securities in the same class or classes as holders which have been or are to be solicited on management's behalf, or any more limited group of such holders designated by the security holder if available or retrievable under the bank's or its transfer agent's security holder data systems; the most recent list of names, addresses and security positions of beneficial owners as specified in Sec. 335.214(b), in the possession, or which subsequently comes into the possession, of the bank. All security holder list information shall be in the form requested by the security holder to the extent that such form is available to the bank without undue burden or expense. The bank shall furnish the security holder with updated record holder information on a daily basis or, if not available on a daily basis, at the shortest reasonable intervals, provided, however, the bank need not provide beneficial or record holder information more current than the record date for the meeting or action.

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

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

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

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

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

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

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

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

10. Section 335.212 is amended by adding in Form F-5 Proxy Statement "Note to Small Business Issuers" after "General Instructions"; revising paragraph (a)(2) in Item 3, and adding Instruction 3 to Item 3; revising paragraphs (a)(2) and (b) in Item 4,

and adding an instruction at the end of Item 4; revising the text preceding the table in paragraph (d)(2) in Item 5; revising paragraph (a) in Item 7; removing paragraphs (b), (c), (d), (e), and (h), and all instructions and general instructions to paragraphs (a), (b), (c), (d), (e), and (h) in Item 7, and redesignating paragraphs (f), (g), and (i) of Item 7 as paragraphs (b), (c), and (d) respectively; revising Item 9, the instructions to Item 9 and Item 18; and removing the "Option Disclosure Instruction" and the following option disclosure table along with notes thereto, which follow Item 21, to read as follows:

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

### Form F-5--Proxy Statement General Instructions

\* \* \* \* \*

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

### Information Required in Statement

\* \* \* \* \*

### Item 3--Persons Making the Solicitation

(a) \* \* \*

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

\* \* \* \* \*

Instructions. \* \* \*

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



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

- (i) The bank;
- (ii) Any director of the bank, and any nominee for whose election as a director proxies are solicited;
- (iii) Any committee or group which solicits proxies, any member of such committee or group, and any person whether or not named as a member who, acting alone or with one or more other persons, directly or indirectly takes the initiative, or engages, in organizing, directing, or arranging for the financing of any such committee or group;
- (iv) Any person who finances or joins with another to finance the solicitation of proxies, except persons who contribute not more than \$500 and who are not otherwise participants;
- (v) Any person who lends money or furnishes credit or enters into any other arrangements, pursuant to any contract or understanding with a participant, for the purpose of financing or otherwise inducing the purchase, sale, holding or voting of securities of the bank by any participant or other persons, in support of or in opposition to a participant; except that such terms do not include a bank, broker or dealer who, in the ordinary course of business, lends money or executes orders for the purchase or sale of securities and who is not otherwise a participant; and
- (vi) Any person who solicits proxies.

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

- (i) Any person or organization retained or employed by a participant to solicit security holders and whose activities are limited to the duties required to be performed in the course of such employment;
- (ii) Any person who merely transmits proxy soliciting material or performs other ministerial or clerical duties;
- (iii) Any person employed by a participant in the capacity of attorney, accountant, or advertising, public relations or financial adviser, and whose activities are limited to the duties required to be performed in the course of such employment;
- (iv) Any person regularly employed as an officer or employee of the bank or any of its subsidiaries who is not otherwise a participant; or
- (v) Any officer or director of, or any person regularly employed by, any other participant, if such officer, director or employee is not otherwise a participant.

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

(a) \* \* \*

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

\* \* \* \* \*

(b) Solicitations subject to Sec. 335.220.

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

(i) Name and business address of the participant.

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

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

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

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

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

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

(viii) State whether or not the participant is, or was within the past year, a party to any contract, arrangements or understandings with any person with respect to any securities of the bank, including, but not limited to joint ventures, loan or option arrangements, puts or calls, guarantees against loss or guarantees of profit, division of losses or profits, or the giving or

withholding of proxies. If so, name the parties to such contracts, arrangements or understandings and give the details thereof.

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

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

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

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

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

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

(2) With respect to any person, other than a director or executive officer of the bank acting solely in that capacity, who is a party to an arrangement or understanding pursuant to which a nominee for election as director is proposed to be elected, describe any substantial interest, direct or indirect, by security holdings or otherwise, that such person has in any matter to be acted upon at the meeting, and furnish the information called for by paragraphs (b)(1) (xi) and (xii) of this item.

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

#### Item 5--Voting Securities and Principal Holders Thereof

\* \* \* \* \*

(d) \* \* \*

(2) Security ownership of management. Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, as to each class of equity securities of the bank or any of its parents or subsidiaries other than directors' qualifying shares, beneficially owned by all directors and nominees, naming them, each of the named executive officers as defined in 17 CFR 229.402(a)(3), and directors and executive officers of the bank as a group, without naming them. Show in column (3) the total number of shares beneficially owned and in column (4) the percent of class so owned. Of the number of shares shown in column (3), indicate, by footnote or otherwise, the amount of shares with respect to which such persons have a right to acquire

beneficial ownership as specified in Sec. 335.403(d)(1).

\* \* \* \* \*

Item 7--Compensation and Other Transactions With Management and Others

\* \* \* \* \*

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

\* \* \* \* \*

Item 9--Compensation Plans

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

(a) Plans subject to security holder action.

(1) Describe briefly the material features of the plan being acted upon, identify each class of persons who will be eligible to participate therein, indicate the approximate number of persons in each such class, and state the basis of such participation.

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

New Plan Benefits

Plan Name

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

Instruction to New Plan Benefits Table

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

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

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

(B) All current executive officers as a group;

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

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

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

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

(B) All current executive officers as a group;

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

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

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

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

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

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

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

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

(A) The title and amount of securities underlying such options,

warrants or rights;

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

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

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

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

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

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

(B) All current executive officers as a group;

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

(D) Each nominee for election as a director;

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

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

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

Instructions to Item 9.

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

2. If action is to be taken with respect to a material amendment or modification of an existing plan, the item shall be answered with respect to the plan as proposed to be amended or modified and shall indicate any material differences from the existing plan.

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

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

\* \* \* \* \*

## Item 18. Voting Procedures

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

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

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

\* \* \* \* \*

11. Section 335.213 is amended by adding 2 paragraphs of text to follow the existing text in the Note preceding Item 1 to read as follows:

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

Form F-5A--Information Statement

Note: \* \* \*

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

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

\* \* \* \* \*

12. Section 335.214 is amended by revising the introductory text in paragraph (a); by revising paragraphs (a)(1)(i)(A), (a)(3), (a)(4), (a)(5), Note 2 and Note 3 to paragraph (a), paragraph (d), and adding a

new Note 4 to paragraph (a); by revising the reference ``17 CFR 240.14b-1(c) or 17 CFR 240.14b-2(e) (2) and (3)" in paragraph (a)(1)(i)(C) to read ``17 CFR 240.14b-1(b)(3) or 17 CFR 240.14b-2(b)(4) (ii) and (iii)"; by revising the reference ``17 CFR 240.14b-1(c) and 17 CFR 240.14b-2(e) (2) and (3)" in paragraph (a)(1)(ii)(A), the introductory text to paragraph (b), and paragraph (c) to read ``17 CFR 240.14b-1(b)(3) and 17 CFR 240.14b-2(b)(4) (ii) and (iii)"; by revising the reference ``17 CFR 240.14b-2(a)(1)" to read ``17 CFR 240.14b-2(b)(1)(i)" in paragraph (a)(2); and by revising the reference ``17 CFR 240.14b-2(e)(1)" to read ``17 CFR 240.14b-2(b)(4)(i)" in paragraph (b)(1) to read as follows:

Sec. 335.214 Obligation of banks in communicating with beneficial owners.

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

(1) \* \* \*

(i) \* \* \*

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

\* \* \* \* \*

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

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

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

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

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

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

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



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

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

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

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

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

\* \* \* \* \*

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

Note 3: The attention of banks is called to the fact that banks have an obligation, pursuant to paragraph (d) of this section, to cause proxies (or in lieu thereof requests for voting instructions), proxy soliciting material (or if applicable, copies of the information statement) and annual reports to security holders to be

furnished, in a timely manner, to beneficial owners of exempt employee benefit plan securities.

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

\* \* \* \* \*

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

13. Section 335.220 is amended by removing paragraphs (b) and (c) and redesignating paragraphs (d) through (h) as paragraphs (b) through (f), respectively; and revising newly redesignated paragraphs (b) and (e), to read as follows:

Sec. 335.220 Special provisions applicable to election contests.

\* \* \* \* \*

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

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

(2) The identity of the participants in the solicitation (as defined in Instruction 3 of Item 3 of Form F-5 (Sec. 335.212)) and a description of their interests, direct or indirect, by security holdings or otherwise, are set forth in each communication published,

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

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

Sec. 335.221 [Removed and Reserved]

14. Section 335.221 (Form F-6) is removed and reserved.  
15. Section 335.222 (Form F-6A) is added to subpart B to read as follows:

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

Form F-6A--Notice of Exempt Solicitation

1. Name and address of the Bank:

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2. Name of person relying on exemption:

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3. Address of person relying on exemption:

-----

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

16. Section 335.301 is amended by revising the reference "(27 CFR 249.220f)" to read "(17 CFR 249.220f)"; and adding a "Note to Small Business Issuers" immediately following the existing text to read as follows:

Sec. 335.301 Requirement of registration statement.

\* \* \* \* \*

Note to Small Business Issuers: a "small business issuer", as

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

17. Section 335.309a (Form F-1) is amended by adding a new paragraph immediately preceding the "General Instructions" portion of Form F-1; revising Item 7 and Item 8; and revising paragraphs 7(b)(1), 7(b)(2) and 7(c) under the heading "Instructions as to Exhibits" at the end of the section, to read as follows:

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

Form F-1

\* \* \* \* \*

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

\* \* \* \* \*

Item 7--Compensation of Directors and Executive Officers

Set forth the same information as is required to be furnished by item 7(a) of Form F-5 (Sec. 335.212).

Item 8--Interest of Management and Others in Certain Transactions

Set forth the same information for the past three years, as is required to be furnished by items 7(b), (c) and (d) of Form F-5 (Sec. 335.212).

Note: The information required by items 7(b), (c) and (d) of Form F-5 need not be included for any nominee for election as a director.

\* \* \* \* \*

Instructions as to Exhibits

\* \* \* \* \*

7. \* \* \*

(b) \* \* \*

(1) Directors, officers, promoters, voting trustees, or security holders named in answer to item 5 are parties thereto except where the contract merely involves purchase or sale of current assets having a determinable market price, at such price.

(2) It calls for the acquisition or sale of fixed assets for a consideration exceeding 15 percent of the value of all fixed assets of the bank and its subsidiaries.

\* \* \* \* \*

(c) Any management contract or any compensatory plan, contract or arrangement, including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing (or if not set forth in any formal document, a written description thereof) in which any director or any of the named executive officers of the bank, as defined by 17 CFR 229.402(a)(3), participates shall be deemed material and shall be filed; and any other management contract or any other compensatory plan, contract, or arrangement in which any other executive officer of the bank participates shall be filed unless immaterial in amount or significance except as follows: Notwithstanding the above, any compensatory plan, contract, or arrangement which pursuant to its terms is available to employees, officers or directors generally and which in operation provides for the same method of allocation of benefits between management and nonmanagement participants.

\* \* \* \* \*

18. Section 335.310 is amended by adding a ``Note to Small Business Issuers'' immediately following paragraph (c) to read as follows:

Sec. 335.310 Requirement of annual reports and annual reports of predecessors.

\* \* \* \* \*

Note to Small Business Issuers: a ``small business issuer'', as defined under 17 CFR 240.12b-2 has the option of providing the disclosure required by SEC Form 10-KSB, optional form for annual and transitional reports of small business issuers (17 CFR 249.310b), in lieu of the disclosure requirements set forth in Form F-2 (Sec. 335.312). The definition of ``small business issuer'', generally includes banks with annual revenues of less than \$25 million, whose voting stock does not have a public float of \$25 million or more.

19. Section 335.312 (Form F-2) is amended by adding a new paragraph immediately following the second line entitled "(Title of class)" in the introductory portion of Form F-2; adding to Item 11, new paragraph (a)(3) to immediately precede the instruction to paragraph (a); and revising paragraph (c)(3)(ii) of Item 11, to read as follows:

Sec. 335.312 Form for annual report of bank (Form F-2)

\* \* \* \* \*

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

\* \* \* \* \*

Item 11--Exhibits, Financial Statement Schedules, and Reports on Form F-3

(a) \* \* \*

(3) Those exhibits required by paragraph (c) of this Item 11. Identify in the list each management contract or compensatory plan or arrangement required to be filed as an exhibit to this form pursuant to paragraph (c)(3)(ii) of this Item 11.

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(ii) Any management contract or any compensatory plan, contract or arrangement, including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing (or if not set forth in any formal document, a written description thereof) in which any director or any of the "named executive officers" of the bank, as defined by 17 CFR 229.402(a)(3), participates shall be deemed material and shall be filed; and any other management contract or any other compensatory plan, contract, or arrangement in which any other executive officer of the bank participates shall be filed unless immaterial in amount or significance except as follows: notwithstanding the above, any compensatory plan, contract, or arrangement which pursuant to its terms is available to employees, officers or directors generally and which in operation provides for the same method of allocation of benefits between management and nonmanagement participants.

\* \* \* \* \*

20. Section 335.321 (Form F-3) is amended by revising paragraph (c)

and Instructions 3 and 4 of Item 9 to read as follows:

Sec. 335.321 Form for current report of a bank (Form F-3).

Form F-3.--Current Report

\* \* \* \* \*

Item 9--Submission of Matters to a Vote of Security Holders.

\* \* \* \* \*

(c) A brief description of each matter voted upon at the meeting and state the number of votes cast for, against or withheld, as well as the number of abstentions and broker non-votes, as to each such matter, including a separate tabulation with respect to each nominee for office.

\* \* \* \* \*

Instructions:

\* \* \* \* \*

3. Paragraph (b) need not be answered if: Proxies for the meeting were solicited pursuant to subpart B of this part; there was no solicitation in opposition to the management's nominees as listed in the proxy statement; and all of such nominees were elected. If the bank did not solicit proxies and the board of directors as previously reported to the FDIC was reelected in its entirety, a statement to that effect in answer to paragraph (b) will suffice as an answer thereto.

4. Paragraph (c) must be answered for all matters voted upon at the meeting, including both contested and uncontested elections of directors.

\* \* \* \* \*

21. Section 335.330 is amended by adding a "Note to Small Business Issuers" at the end of the section to read as follows:

Sec. 335.330 Quarterly reports.

\* \* \* \* \*

Note to Small Business Issuers: a "small business issuer", as defined under 17 CFR 240.12b-2 has the option of providing the disclosure required by SEC Form 10-QSB, optional form for quarterly and transitional reports of small business issuers (17 CFR 249.310b), in lieu of the disclosure requirements set forth in Form F-4 (Sec. 335.330). The definition of "small business issuer", generally includes banks with annual revenues of less than \$25

million, whose voting stock does not have a public float of \$25 million or more.

22. Section 335.331 is amended by adding a new paragraph immediately following the line entitled "(Former name, former address and former fiscal year, if changed since last report)" in the introductory portion of Form F-4 to read as follows:

Sec. 335.331 Form for quarterly report of a bank (Form F-4).

Form F-4

\* \* \* \* \*

Indicate by check mark if the bank, as a "small business issuer" as defined under 17 CFR 240.12b-2, is providing alternative disclosures as permitted for small business issuers in this Form F-4.

\* \* \* \* \*

23. Section 335.622 is amended by revising paragraph (g)(1) to read as follows:

Sec. 335.622 General notes to statement of income.

\* \* \* \* \*

(g) Disclosure of selected quarterly financial data in notes to financial statements--(1) Exemption. This paragraph (g) shall not apply unless the bank meets the tests prescribed by 17 CFR 229.302(a)(5).

\* \* \* \* \*

By Order of the Board of Directors.

Dated at Washington, DC, this 20th day of December, 1994.  
Federal Deposit Insurance Corporation.

Robert E. Feldman,  
Acting Executive Secretary.  
[FR Doc. 94-31661 Filed 12-28-94; 8:45 am]  
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