

DATE: September 11, 2007

MEMORANDUM TO: Board of Directors

FROM: Sandra L. Thompson
Director
Division of Supervision and Consumer Protection

SUBJECT: Final Rule Adopting Amendment to Part 344 to Extend the
Time Period to Report Quarterly Personal Securities
Transactions

Recommendation:

Staff recommends that the Board of Directors adopt as a final rule an amendment to Part 344, specifically 12 CFR § 344.9(a)(3), that extends the time period from 10-business days to 30-calendar days for officers and certain employees of state nonmember banks to report personal securities transactions to the bank, and approve for publication in the *Federal Register* the attached final rule. Pursuant to the Board's June 19, 2007, resolution, the proposed amendment was published as a Notice of Proposed Rulemaking in the *Federal Register* on June 27, 2007, and one comment in support of the proposal was received. This amendment makes the quarterly personal securities transactions reporting rule contained in Part 344 consistent with the U.S. Securities and Exchange Commission's ("SEC") comparable regulations. It also is consistent with the Office of the Comptroller of the Currency's ("OCC") recently-proposed amendment to its rule, and the Office of Thrift Supervision's ("OTS") recently-published interim rule.

Background:

Part 344

Part 344 of the FDIC's regulations governs recordkeeping and confirmation requirements with respect to effecting securities transactions for customers, and it provides that state nonmember banks effecting such transactions establish written policies and procedures for supervising all officers and all employees who make or participate in investment decisions for the accounts of customers (typically in a trust department).

Concur: _____
Sara A. Kelsey, General Counsel

As adopted,¹ this rule reflected the SEC's recommendations contained in the *Final Report of the Securities and Exchange Commission on Bank Securities Activities* (June 30, 1977) and generally was patterned after the SEC's rule intended to deter conflicts of interest and self-dealing.² Section 344.9(a)(3) requires bank officers and employees who make or participate in investment decisions for the accounts of customers ("certain employees") to report to the bank all securities transactions made by them or on their behalf in which they have a beneficial interest within 10-business days after the end of the calendar quarter.³

The SEC, in July 2004, amended Rule 17j-1 as part of a revision of its rules related to codes of ethics for "access persons" subject to the Investment Company Act of 1940 and recordkeeping provisions.⁴ In amending Rule 17j-1, the SEC extended the quarterly reporting time period from 10-business days to 30-calendar days after the end of the calendar quarter.⁵ This amendment was intended to allow persons required to file quarterly personal transaction reports to use brokerage statements as the basis of their reports.⁶ The effective date of the SEC's amendments to Rule 17j-1 was August 31, 2004, with a compliance date of January 7, 2005.

Since that time, the FDIC and two other Federal banking agencies have taken steps to align their personal securities reporting requirement with the SEC's revised rule. On June 1, 2007, the OTS published in the *Federal Register* an interim rule amending its reporting requirement for personal transactions in securities to "no later than 30-calendar" days after the end of the calendar quarter, effective July 1, 2007.⁷ As part of a Notice of Proposed Rulemaking published in the *Federal Register*, the OCC, on July 3, 2007, proposed to amend its personal securities reporting requirement to "the deadline specified in SEC rule 17j-1 (17 CFR 270.17j-1) for quarterly transaction reports."⁸

On June 19, 2007, the FDIC's Board of Directors approved publication in the *Federal Register* of a Notice of Proposed Rulemaking amending its rule to conform to the

¹ Part 344 was originally adopted in July 1979 to establish uniform procedures for recordkeeping and confirmation requirements for securities transactions effected by banks. 44 Fed. Reg. 43260, 43263 (July 24, 1979) (Final Recordkeeping and Confirmation Requirements Rule); see 12 CFR § 344.6(d) (1980). The FRB and OCC concurrently adopted substantially similar rules. See 12 CFR § 208.8(k) (FRB regulation); 12 CFR § 12.7(d) (OCC regulation).

²44 Fed. Reg. 43260, 43263 (July 24, 1979); see 45 Fed. Reg. 73898 (Nov. 7, 1980) (adopting SEC's Rule 17j-1 (17 CFR § 270.17j-1)).

³ 12 CFR § 344.9(a)(3).

⁴ 69 Fed. Reg. 41696 (July 9, 2004).

⁵ Id. at 41699.

⁶ 69 Fed. Reg. at 41699, n. 33.

⁷ 72 Fed. Reg. 30,473, 30, 474 (June 1, 2007) (amending 12 C.F.R. § 551.150(a)).

⁸ 72 Fed. Reg. 36,550, 36575 (July 3, 2007) (amending 12 CFR §12.7(a)(4)).

SEC's rule and requesting public comments for a 60-day comment period.⁹ One comment has been received. The commenter supported the proposed amendment and endorsed the FDIC's desire to make its reporting requirement consistent with the SEC's Rule 17j-1.

Discussion

The final rule would amend section 344.9(a)(3) to extend the reporting-time period to 30-calendar days, conform to the requirements of current SEC Rule 17j-1, and facilitate more practical and accurate reporting of quarterly personal securities transactions. Moreover, it would be consistent with recent amendments or proposed amendments to the OTS's and OCC's rules for personal securities transactions reporting. Accordingly, staff recommends that the Board adopt the amendment as a final rule and approve for publication in the *Federal Register* the attached final rule amending section 344.9(a)(3).

Staff Contacts:

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ATTACHMENTS:

Resolution

Federal Register Notice

⁹ See 72 Fed. Reg. 35,204, 35,205 (June 27, 2007).