DATE: April 20, 2007

MEMORANDUM TO: Board of Directors

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

SUBJECT: Proposed Amendment of Part 344 to Extend the Time Period to Report Quarterly Personal Securities Trading

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Recommendation:

Staff recommends that the Board of Directors approve for publication in the *Federal Register* for a 60-day public comment period the attached Notice of Proposed Rulemaking with request for public comment that would amend Part 344, specifically 12 CFR § 344.9(a)(3), by extending 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. This amendment would make the quarterly personal securities transactions reporting requirements contained in Part 344 of the FDIC's regulations consistent with the U.S. Securities and Exchange Commission's ("SEC") comparable regulations. It also would be consistent with the Office of the Comptroller of the Currency's ("OCC") recent interpretation of its own substantially-similar rule, and the positions of the Board of Governors of the Federal Reserve System ("FRB") and Office of Thrift Supervision ("OTS").

Concur: ____________________________
Sara A. Kelsey, General Counsel

Background:

Part 344

As originally adopted in 1979, 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).[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 was patterned after the SEC's rules, particularly those rules 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]

In 1997, the FDIC amended Part 344.[4] The FRB and OCC published substantially similar amendments to their respective regulations contemporaneous with the FDIC's amendments.[5] Like the other federal banking agencies, the FDIC sought,

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[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(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).

[2] 44 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] 62 Fed. Reg. 9915 (Mar. 5, 1997).

[5] See 61 Fed. Reg. 63958 (Dec. 2, 1996) (OCC's final rule); 60 Fed. Reg. 66759 (Dec. 26, 1995) (FRB's final rule).

among other things, to modernize its regulations and incorporate regulatory changes made by other regulators in order to promote uniformity.[6] None of these changes modified the 10-business day time period for quarterly reporting of personal securities transactions. At the time, the SEC's Rule 17j-1 of the Investment Company Act of 1940 ('IC Act") contained a comparable provision related to quarterly personal securities reporting by "access persons"[7] that also mandated a 10-business day time period for reporting.[8]

The SEC, in July 2004, amended Rule 17j-1 as part of a reformation of its rules related to codes of ethics for "access persons" subject to the IC Act and recordkeeping provisions.[9] 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.[10] This amendment was intended to allow persons required to file quarterly reports to use brokerage statements as the basis of their reports.[11] The effective date of the SEC's amendments to Rule 17j-1 was August 31, 2004, with a compliance date of January 7, 2005. To date, none of the federal banking agencies have amended their quarterly transaction reporting rules to conform to the SEC's 2004 amendment to Rule 17j-1 as to the timing of the quarterly reporting requirement.[12]

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[6] 62 Fed. Reg. 9915 (Mar. 5, 1997).
[7] Rule 17j-1(a)(1) defines "access person" as (1) "any advisory person of a fund or of a fund's investment advisor"; and (2) "any director, officer . . . who, in the ordinary course of business, makes, participates or obtains information regarding the purchase or sale of covered securities by the fund . . . , or whose functions or duties in the ordinary course of business relate to the making of any recommendation to the fund."
[8] See 17 CFR § 270.17j-1(c)(2) (1998).
[9] 69 Fed. Reg. 41696 (July 9, 2004).
[10] Id. at 41699.
[11] 69 Fed. Reg. at 41699, n. 33.
[12] See 12 CFR §§ 12.7(a)(4) (OCC's current rule), 208.34(g)(4) (FRB's current rule), 344.9(a)(3) (FDIC's current rule), 551.150 (a) (OTS's current rule).

However, in May 2006, the OCC issued an Interpretative Letter in response to a proponent's request for waiver of the 10-business day time period for officers and certain bank employees to report personal securities trading after the close of the calendar quarter.[13] In granting the waiver request, the OCC acknowledged that, although its current reporting requirement did not reflect the SEC's 2004 amendments to Rule 17j-1, the OCC's intention is to administer its rule "in a fashion consistent with comparable SEC Rule 17j-1."[14] Accordingly, the OCC granted the proponent's waiver request and permitted each of its bank officers and certain employees to report their personal securities transactions to the bank within 30-calendar days after the end of the calendar quarter.

Recently, the staffs of the OCC, OTS, and FRB have indicated to the FDIC their intention to revise their respective rules to be consistent with the 30-calendar day reporting requirement of the SEC's amended Rule 17j-1.

Discussion

Description of the Proposed Amendment to Section 344.9(a)(3)

The purpose in amending section 344.9(a)(3) to extend the reporting-time period to 30-calendar days is to conform to the timing requirements of current SEC Rule 17j-1 and to facilitate more practical and accurate reporting of quarterly personal securities transactions. It is estimated that this amendment will benefit banks that effect securities transactions by allowing their employees to use brokerage statements as the basis of their quarterly reports, thereby increasing the accuracy of the reports. It does not appear that

[13]Interpretative Letter No. 1062 (May 2006); see 12 CFR § 12.7(a)(4).
[14]Interpretative Letter No. 1062 (May 2006).

this amendment would burden any bank. Accordingly, staff recommends that the Board approve the publication in the *Federal Register* of the attached Notice of Proposed Rulemaking to amend section 344.9(a)(3) for a 60-day public comment period.

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Resolution
Federal Register Notice