

# Federal Reserve

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Monday  
December 30, 1996

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## Part II

### Department of the Treasury

Comptroller of the Currency

12 CFR Part 12

### Federal Reserve System

12 CFR Parts 208 and 211

### Federal Deposit Insurance Corporation

12 CFR Part 342

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Qualification Requirements for  
Transactions in Certain Securities,  
Proposed Rule and Proposed Information  
Collection Comment Request; Notice

**DEPARTMENT OF THE TREASURY****Office of the Comptroller of the Currency****12 CFR Part 12**

[Docket No. 96-29]

RIN 1557-AB42

**FEDERAL RESERVE SYSTEM****12 CFR Parts 208 and 211**

[Docket No. R-0950]

**FEDERAL DEPOSIT INSURANCE CORPORATION****12 CFR Part 342**

RIN 3064-AB85

**Qualification Requirements for Transactions in Certain Securities**

**AGENCIES:** Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation.

**ACTION:** Joint notice of proposed rulemaking.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (banking agencies) propose to adopt a qualification regulation for those banks that engage in bank-direct retail sales or recommendations of certain securities through their employees. Because banks are not required to register as a broker-dealer under the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78 *et seq.* (Securities Exchange Act), the proposed regulation establishes requirements for banks and bank securities representatives that are consistent with the professional qualification requirements for broker-dealers and registered representatives under the Securities Exchange Act and rules thereunder and the rules of the securities self regulatory organizations (SSROs). The banking agencies invite comment on all aspects of the proposal as well as on the specific issues identified in the "Section-by-Section Summary and Request for Comment."

In a separate document published elsewhere in this separate part of the Federal Register as a companion Notice of Forms, the banking agencies are proposing to adopt four forms to be used in connection with the regulation: Form SB (Uniform Notice for Sponsoring Bank), Form SBW (Uniform Notice for Sponsoring Bank Withdrawal), Form

U-4B (Uniform Application for Bank Securities Representative Registration or Transfer), and Form U-5B (Uniform Termination Notice for Bank Securities Representative Registration). The proposed forms are based on the uniform forms used in the securities industry for broker-dealers and their registered representatives. The use of these proposed forms, along with this proposed regulation, will promote the safe and sound operation of bank retail securities sales programs and customer protection by standardizing the qualification requirements of bank personnel engaged in the retail sale of certain securities.

**DATES:** Comments on the proposed regulation must be received by February 28, 1997.

**ADDRESSES:** Comments should be directed to:

*OCC:* Communications Division, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington DC 20219, Attention: Docket No. 96-29. Comments will be available for public inspection and photocopying at the same location. In addition, comments may be sent by facsimile transmission to FAX number (202) 874-5274 or by Internet mail to REGS.COMMENTS@OCC.TREAS.GOV.

*Board:* William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, N.W., Washington, D.C. 20551, Attention: Docket No. R-0950, or delivered to room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. Comments may be inspected in room MP-500 between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in § 261.8 of the Board of Governors' rules regarding availability of information, 12 CFR 261.8.

*FDIC:* Jerry L. Langley, Executive Secretary, Attention: Room F-402, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand delivered to Room F-402, 1776 F Street, N.W., Washington, DC 20429, on business days between 8:30 a.m. and 5:00 p.m. or transmitted by fax or the internet. The FDIC's fax number is (202) 898-3838 and its Internet address is: COMMENTS@FDIC.GOV. Comments will be available for inspection and photocopying in Room 100, 801 17th Street, NW, Washington, DC between 9:00 a.m. and 5:00 p.m. on business days.

**FOR FURTHER INFORMATION CONTACT:**

*OCC:* Joseph W. Malott, Examiner, Capital Markets (202) 874-5070, and Joel Miller, Senior Attorney, Securities and Corporate Practices (202) 874-5210.

*Board:* Howard Amer, Assistant Director, Division of Banking Supervision and Regulation (202) 452-2958, and Angela Desmond, Senior Counsel, Division of Banking Supervision and Regulation (202) 452-3497.

*FDIC:* William A. Stark, Assistant Director, Division of Supervision (202) 898-6972; Lisa D. Arquette, Senior Capital Markets Specialist, Division of Supervision, (202) 898-8633; Ann Hume Loikow, Counsel, Regulations and Legislation Section, Legal Division, (202) 898-3796; and Patrick J. McCarty, Counsel, Regulations and Legislation Section, Legal Division, (202) 898-8708.

**SUPPLEMENTARY INFORMATION:****Background**

In recent years, sales of securities and other nondeposit investment products on bank premises have increased as banks have made these products available to retail customers either directly as brokers<sup>1</sup> or through third parties. As this business has evolved, both the banking agencies and the banking industry have identified the need for banks to manage the reputational and legal risks to banks that could result from customer confusion, to disclose that these investment products are not guaranteed by the bank or insured by the FDIC, and to ensure that banks are aware of the application of the antifraud provisions of the Federal securities laws if material misstatements or omissions occur in connection with sales of securities on bank premises. These concerns arise whether the bank is selling directly to customers or whether SEC-regulated broker-dealers are selling on bank premises.<sup>2</sup>

To address these needs, in 1994, the banking agencies and the Office of Thrift Supervision issued the Interagency Statement on Retail Sales of Nondeposit Investment Products (Interagency Statement), which sets forth guidelines for conducting sales of nondeposit investment products, consistent with principles of safety and

<sup>1</sup> Banks specifically are excluded from the definition of "broker" in section 3(a)(4) of the Securities Exchange Act, 15 U.S.C. 78c(a)(4), and may engage in brokerage transactions without having to register with the Securities and Exchange Commission (SEC).

<sup>2</sup> It is estimated that approximately 87 percent of all sales of securities on bank premises are effected by SEC-regulated broker-dealers. See U.S. General Accounting Office, Report to Congressional Requesters: *Bank Mutual Funds Sales Practices and Regulatory Issues* GAO/GGD-95-210, at p. 52 (September 1995); U.S. General Accounting Office, Report to Congressional Requesters: *Banks' Securities Activities—Oversight Differs Depending on Activity and Regulator*, GAO/GGD-95-214, at p. 25 (September 1995).

soundness and customer protection.<sup>3</sup> Among other things, the Interagency Statement provides that banks that engage in the retail recommendation or sale of securities should provide sales personnel with training that is the substantive equivalent of that provided to their securities industry counterparts.

Since adoption of the Interagency Statement, industry participants have commented that it is difficult to measure their compliance with the equivalent training requirement when there are no objective measures of a bank salesperson's training comparable to that provided by the securities industry professional qualifications examinations for broker-dealer sales personnel. To address this issue, the banking agencies approached the SSROs that own the examinations that pertain to the sale of mutual funds<sup>4</sup> and general securities products<sup>5</sup> and requested that the SSROs make the Investment Company/Variable Contracts Products Limited Representative Qualification Examination (Series 6 Examination) and the General Securities Registered Representative Examination (Series 7 Examination) available to bank personnel. The SSROs agreed on the condition that the banking agencies adopt regulations establishing registration and qualification requirements analogous to those applicable to the securities industry.

Adoption of a qualifications regulation for banks and their employees who make retail solicitations, recommendations, purchases, or sales of securities will provide a number of benefits in addition to ensuring compliance with the equivalent training requirements of the Interagency Statement. The regulation will ensure that bank sales representatives have adequate product and regulatory knowledge pertaining to those securities being recommended and sold at the retail level. This will promote the safe and sound operation of bank-sponsored sales programs and enhance customer protection. The regulation also will enhance the banking

agencies' ability to identify and restrict individuals who are subject to a statutory disqualification and therefore not qualified under the securities laws from soliciting, recommending, purchasing, or selling securities at the retail level on behalf of banks.

Moreover, adoption of the proposed qualification requirements is likely to facilitate individuals seeking to move between banks and broker-dealers without losing their qualifications to sell certain securities in either industry.<sup>6</sup> This would create additional efficiencies for banks and securities firms and opportunities for their employees.

Accordingly, the banking agencies propose to adopt qualification regulations that establish filing requirements for banks and registration, testing, and continuing education requirements for bank securities representatives that are analogous to the professional qualification requirements for broker-dealers under the Securities Exchange Act, and rules thereunder, and the rules of the SSROs. Any filing required to be made to a banking agency will be made at the NASD, which will maintain all information in its Central Registration Depository (CRD), the national/state computer-based registry for broker-dealers and securities personnel.

The proposed use of securities industry qualification examinations and continuing education materials will not alter the statutory scheme for banks or their brokerage activities. No SSRO, including the NASD, obtains jurisdiction over any sponsoring bank or bank securities representative as a result of the proposed rule or the submission of filings to the appropriate Federal banking agency at the NASD. Legal and supervisory authority over banks remains vested exclusively with the appropriate Federal banking agency.

#### Authority to Issue Regulation

This rulemaking is authorized pursuant to the banking agencies' statutory authority under section 8 of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. 1818, to prevent unsafe and unsound practices by, and to adopt regulations defining safe and

sound practices for, banks under their respective jurisdictions.<sup>7</sup> In addition, the banking agencies have the authority to prescribe specific operational and managerial standards, as deemed appropriate, pursuant to section 39p-1(a)(2) of the FDIA, 12 U.S.C. 831p-1(a)(2).

#### Section-by-Section Summary and Request for Comment

##### Definitions

##### Appropriate Qualification Examination.

The proposal defines "appropriate qualification examination" as the Series 6 Examination or the Series 7 Examination, both of which are administered by the NASD.

The Series 6 Examination is the appropriate qualification examination for a bank employee engaged solely in covered transactions of open-end investment company shares, original distribution closed-end investment company shares, unit investment trusts, or variable contracts, including variable life insurance contracts and variable annuity contracts. The Series 7 Examination is the appropriate examination for a bank securities representative who effects transactions in other securities, such as equities and corporate bonds, in addition to the products covered by the Series 6 Examination. A person who passes the Series 7 Examination need not pass the Series 6 Examination.

##### Bank

The proposal defines "bank" as each institution regulated by the banking agencies, respectively, but does not include affiliates, subsidiaries, or foreign branches of such institutions. ("Foreign branches" located in any Territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands, however, are included in the definition of "bank.") Bank subsidiaries and affiliates engaged in securities sales are already registered with the SEC and are subject to the rules and requirements of the SEC and SSROs.

##### Bank Securities Representative

The proposal defines "bank securities representative" as any bank officer, director, or employee (collectively, employee) who engages in covered transactions or is designated as the supervisor of a bank employee engaged

<sup>3</sup> 5 Fed. Bnkg. L. Rep. (CCH) PP 70-001, *et seq.*; Federal Reserve Supervisory Letter, SR 94-11 (FIS) (February 17, 1994); Federal Reserve Supervisory Letter, 95-46 (SPE) (September 14, 1995), interpreting the Interagency Statement; OCC Bulletin 94-13 (Nondeposit Investment Sales Examination Procedures) (February 24, 1994); OCC Bulletin 95-52 (Clarification of Interagency Guidelines) (September 22, 1995); FDIC Financial Institutions Letter 9-94 (February 17, 1994); and FDIC Financial Institutions Letter 61-95 (September 13, 1995).

<sup>4</sup> The National Association of Securities Dealers, Inc. (NASD).

<sup>5</sup> The NASD, New York Stock Exchange, Inc. (NYSE), and Municipal Securities Rulemaking Board (MSRB).

<sup>6</sup> Under current SSRO rules, a bank securities representative seeking to move to a broker-dealer must request a waiver from the examination requirements from his or her designated SSRO. To the extent a bank securities representative seeks to engage in the recommendation or sale of municipal securities, the MSRB's 90-day apprenticeship requirement applies. See MSRB Rule G-3(a)(iii). To the extent a bank securities representative seeks to become a candidate for registration with an exchange, a training requirement may be required. See, e.g., NYSE Rule 345.15(2).

<sup>7</sup> *Independent Bankers Association v. Heimann*, 613 F.2d 1164, 1168-69 (D.C. Cir. 1979), *cert. denied*, 449 U.S. 823; see also *National Petroleum Refiners Assoc. v. FTC*, 482 F.2d 672, 680-81 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 951 (1973).

in covered transactions. Each employee seeking to qualify as a bank securities representative must be sponsored by his or her employing bank. A sponsoring bank must file proposed Form U-4B on behalf of its employees. The Form U-4B includes an application for a bank employee to take either the Series 6 or Series 7 Examination.

Under the section captioned "Optional Designation as a Bank Securities Representative," a bank also may choose to have legal, compliance, and audit personnel take a qualification examination. Even though those individuals are not engaged in retail sales or recommendations of securities, for purposes of this regulation, they will be deemed to be bank securities representatives if they pass a qualification examination and will be required to comply with all the other provisions of the regulation to maintain their registration.

#### Continuing Education

The proposal defines "continuing education" as the course of study specified in the section captioned "Continuing Education and Training Requirements." These requirements correspond to SSRO continuing education requirements applicable to registered representatives.

#### Covered Product

The proposal defines "covered product" as having the same meaning as "security" as defined at section 3(a)(10) of the Securities Exchange Act, 15 U.S.C. 78c(a)(10). The definition specifically excludes a government security as defined at section 3(a)(42) of the Securities Exchange Act, 15 U.S.C. 78c(a)(42), because the government securities markets already are subject to a comprehensive statutory and regulatory scheme that addresses the concerns underlying the proposed rule.<sup>8</sup> The definition specifically states that deposits, as defined in section 3(l) of the FDIA, 12 U.S.C. 1813(l), are not covered products.

#### Covered Transaction

The proposal defines "covered transaction" as a retail solicitation, recommendation, purchase, or sale of a covered product by a bank through its employee regardless of the means

<sup>8</sup> See Section 15C of the Securities Exchange Act, 15 U.S.C. 78o-5, and SEC and Treasury rules adopted thereunder. In addition, the banking agencies recently issued a notice of proposed rulemaking, titled Government Securities Sales Practices, that would establish standards concerning the recommendations to customers and the conduct of business by a bank that is a government securities broker or dealer. 61 FR 18470 (April 25, 1996).

through which the solicitation, recommendation, purchase, or sale occurs.<sup>9</sup> For instance, a transaction that takes place via telephone, mail, or other electronic means such as the Internet is included in the definition. Sales personnel in a bank's dealer department who engage in covered transactions (i.e., a retail solicitation, recommendation, purchase, or sale of securities other than government or municipal securities) must comply with this regulation. The term "covered transaction" does not differentiate between those banks that engage in only occasional or a limited number of covered transactions for a retail customer and those banks that establish programs for the retail sale of covered products. Therefore, consistent with the current requirements applicable to the securities industry, all banks that engage in covered transactions, regardless of frequency or volume, would be considered to be in the business of effecting covered transactions and would be required to comply with the regulation.<sup>10</sup>

Consistent with the scope of the Interagency Statement, the term does not include a sale to a fiduciary account administered by a bank, such as statutory and written trust accounts, employee benefit plans, and other types of pension plans normally administered by a trust department. Self-directed IRAs, certain types of Keogh accounts, and other accounts where the customer retains investment discretion are, however, included in the term. Sales of municipal securities by dealer banks registered under section 15B of the Securities Exchange Act, 15 U.S.C. 78o0044, also are excluded because the bank and its sales personnel already are subject to registration and professional qualifications requirements under the Securities Exchange Act and the rules of the MSRB.

Consistent with Rule 3a4-1 promulgated under the Securities Exchange Act, 17 CFR 240.3a4-1, equity and debt offerings by banks of their own securities, such as mutual-to-stock conversions, also are excluded from the definition of "covered transaction" if the securities offerings are consistent with the conditions set forth in that

<sup>9</sup> Under the Interagency Statement, bank employees located in the routine deposit taking area are generally prohibited from soliciting or recommending nondeposit investment products. Such employees may, however, direct or refer bank customers to bank securities representatives and may receive a fee from the bank for such referral.

<sup>10</sup> The scope of the regulation is intended to be the same as that for SEC-regulated broker-dealers. If the SEC liberalizes the registration or other professional qualification requirements for such broker-dealers, the banking agencies will interpret the regulation in a similar manner.

Rule.<sup>11</sup> These offerings tend to be infrequent and generally are subject to special oversight by the banking agencies. Banks engaged solely in the direct retail sale of their own securities are therefore not required to become sponsoring banks. However, if a bank has filed Form SB and becomes a sponsoring bank, it must use its bank securities representatives to solicit, recommend or sell its own securities.

#### Disciplinary Action

The proposal defines "disciplinary action" for purposes of this regulation as an action resulting in: (1) an employee being "subject to disqualification;" (2) a civil money penalty or fine of \$5,000 or more by the SEC or an SSRO; (3) a civil money penalty of \$5,000 or more by a banking agency pursuant to 12 U.S.C. 1818 for either a violation of a securities law or regulation, or an unsafe or unsound practice related to a covered transaction; (4) an agreement with the SEC, an SSRO, or a banking agency in connection with a disciplinary proceeding; or (5) an order by the SEC, an SSRO, or a banking agency to enter the continuing education program.

Disciplinary actions must be reported on the forms referred to in the companion Notice of Forms that is being published with this proposal. Information on disciplinary actions will be available to the public. Bank securities representatives that are subject to a disciplinary action as defined under the regulation will be subject to additional continuing education requirements that begin as of the date of the disciplinary action. The "\$5,000 or more" figure used in the definition is consistent with the threshold used in the definition of "disciplinary action" in the SSRO rules.

#### NASD

The proposal defines "NASD" as the National Association of Securities Dealers, Inc., which is an SSRO

<sup>11</sup> The bank employee must not be subject to a statutory disqualification under the Securities Exchange Act of 1934, may not receive a commission or other remuneration for selling bank securities, and may not be an associated person of a broker or dealer. In addition, the bank employee must restrict his or her offer and sale activities to certain groups or entities. Further, the bank employee must perform primarily other substantial duties on behalf of the bank, not be an associated person of a broker or dealer within the last 12 months or participate in selling an offering of any issuers securities more than once every 12 months. Finally, a bank employee must restrict his or her activities to preparing and delivering written communications or other means which do not involve oral solicitations, responding to inquiries initiated by a potential purchaser, and performing ministerial and clerical work in effecting any transaction.

registered under section 15A of the Securities Exchange Act, 15 U.S.C. 78o, and NASD Regulation, Inc., the regulatory subsidiary of NASD. The NASD will accept filings and maintain in the CRD information filed with the banking agencies under this regulation.

#### Sponsoring Bank

The proposal defines "sponsoring bank" as a bank that engages or seeks to engage in the business of effecting covered transactions. A bank that enters into an agreement with a registered broker-dealer enabling registered representatives of the broker-dealer to engage in covered transactions with bank customers, regardless of location, is not a "sponsoring bank," even though the broker-dealer may use dual employees employed by both the bank and the broker-dealer.

#### Subject to Disqualification

The proposal defines the term "subject to disqualification" as having the same meaning as "statutory disqualification" in section 3(a)(39) of the Securities Exchange Act, 15 U.S.C. 78c(a)(39). Individuals who are subject to an order of removal, prohibition, or suspension by a Federal banking agency pursuant to section 8 (e) or (g) of the FDIA, 12 U.S.C. 1818 (e) or (g), or banks or individuals subject to an order or temporary order pursuant to section 8 (b) or (c) of the FDIA, 12 U.S.C. 1818 (b) or (c), that restricts their fiduciary or securities activities at a depository institution or are subject to a prohibition pursuant to section 19 of the FDIA, 12 U.S.C. 1829(a), are also subject to disqualification. The definition, therefore, makes a bank employee or sponsoring bank subject to disqualification if the employee or bank has been barred, suspended, or enjoined from the banking or securities industries; convicted of any felony in the past 10 years; convicted of a felony or misdemeanor involving the purchase or sale of a security, or other financial crime (such as theft, robbery, or misappropriation of funds); or restricted in his or her employment pursuant to Section 19(a) of the FDIA, 12 U.S.C. 1829(a).

#### Qualification Requirements

##### Disqualifications

The proposal sets forth the qualification requirements for both sponsoring banks and bank employees. A bank that is or becomes subject to disqualification shall not engage in a covered transaction unless the appropriate banking agency has granted the bank relief from being subject to

disqualification and permits the bank to engage in covered transactions. This section also prohibits a bank employee who is, or becomes, subject to disqualification from engaging in covered transactions unless the employee's sponsoring bank has applied for and obtained the banking agency's approval for that employee to act as a bank securities representative.

#### Sponsoring Bank Notices

This section requires a bank seeking to engage in covered sales to file a notice. A bank is required to file a completed Form SB<sup>12</sup> with the appropriate Federal banking agency at the NASD containing the bank's name, address, bank identification number, and contact person. Upon receipt of a Form SB, the sponsoring bank will be assigned a unique CRD number for use on all of the filings required under the proposed regulation. Banks that choose to terminate their status as sponsoring banks must file the Form SBW with the appropriate banking agency at the NASD.

#### Sponsoring Bank Requirements

This section requires a bank sponsoring an employee to act as a bank securities representative to ensure that each employee engaged in a covered transaction is not subject to disqualification and has passed the appropriate qualification examination. A sponsoring bank also must make independent inquiry regarding the background of each sponsored employee. A sponsoring bank should, at a minimum, consult the employee's employers from the last three years and should investigate the good character, business repute, qualifications, and experience of any person the bank intends to sponsor. The sponsoring bank also must complete the designated portion of the Form U-4B and file it, along with a fingerprint card for the employee with the appropriate Federal banking agency at the NASD. The NASD in turn will submit the fingerprint record cards to the Federal Bureau of Investigation for review. A fingerprint card will be required each time an individual is hired by a bank to act as a bank securities representative and will be used to check whether the employee has a civil or criminal record that could subject the individual to disqualification.<sup>13</sup>

<sup>12</sup> Form SB, Form SBW, Form U-4B, and Form U-5B are published elsewhere in this separate part of the Federal Register contemporaneously with the proposed regulation.

<sup>13</sup> The securities industry is subject to fingerprinting requirements under section 17f of the Securities Exchange Act, 15 U.S.C. 78q(f)(2), and

A bank may not sponsor an employee to become a bank securities representative if the individual is "subject to disqualification" unless the bank has applied for and received approval from the appropriate banking agency for the individual to engage in covered transactions. The banking agencies will consider, on a case-by-case basis, whether it is in the public interest to authorize either a sponsoring bank that, or a bank employee who, is, or becomes, subject to disqualification to engage in covered transactions. The banking agencies anticipate they will consider factors such as those detailed in SEC Rules of Practice, Rule 193, 17 CFR 201.193 (Applications by Barred Individuals for Consent to Associate), in their evaluation of the particular facts and circumstances. The banking agencies seek comment on whether additional factors should be considered for banks and persons who are, or become, "subject to disqualification." The banking agencies may adopt various processes for considering these applications.

With the exception of those bank employees sponsored under the optional designation as a Bank Securities Representative provision, a bank may not sponsor an employee to become a bank securities representative if the bank does not intend for that individual to engage in the solicitation, recommendation, purchase, or sale of covered products or to supervise covered transactions.

A sponsoring bank is required to file a Form U-5B when a bank securities representative ceases to be an employee of the bank for any reason or ceases to engage in covered sales on behalf of the bank. A bank must provide a copy of Form U-5B and subsequent amendments to the employee.

A sponsoring bank is required to designate one or more individuals, as necessary, to supervise the activities of its bank securities representatives. A supervisor designated by a sponsoring bank need not engage in covered sales but must comply with the qualification requirements for bank securities representatives. Supervisors must take and pass the appropriate qualification examination (either the Series 6 or Series 7 Examination) for the bank securities representatives they supervise.

The banking agencies request comment on whether supervisors should be required to take one of the securities industry supervisor's (principal's) examinations. Commenters

Rule 17f-2 promulgated thereunder, 15 CFR 240.17f-2.

are requested to discuss whether the General Securities Principal's Examination (Series 24), which focuses on the management of an investment banking or securities business, including supervision, solicitation, conduct of business, and training of registered representatives, is relevant or whether one of the other supervisor's examinations (Series 26—Investment Company Products/Variable Contracts Limited Principal; Series 28—Introducing Broker/Dealer Financial and Operations Principal; or Series 8—General Securities Sales Supervisor Examination, for example) would be more appropriate for individuals supervising bank securities representatives whose activities and product offerings are likely to be more limited.

#### Bank Securities Representative Requirements

This section requires a bank employee seeking to qualify as a bank securities representative to complete designated portions of the Form U-4B and submit this form and a fingerprint card to his or her sponsoring bank. The employee then must pass the appropriate qualification examination and the sponsoring bank must receive approval from the appropriate Federal banking agency prior to the employee engaging in covered transactions. Fingerprint cards and completed Forms U-4B must be filed for employees transferring registration from another sponsoring bank or securities firm but the employee will not have to retake an examination. The Form U-4B requires disclosure of personal and employment information, including whether the employee has been the subject of any disciplinary action (as that term is defined in the proposed regulation) or certain types of customer complaints involving claims of greater than \$5,000 or settlements of \$10,000 or more. A bank securities representative must advise his or her sponsoring bank within 30 days of an event that renders any information filed on a Form U-4B or U-5B incomplete or inaccurate and must cooperate with the sponsoring bank in filing an amendment to the Form.

Any employee who fails an examination will be permitted to retake the test after a period of 30 days has elapsed from the date of the prior examination, except that any employee who fails to pass an examination three or more times in succession (and each additional time thereafter) must wait 180 days from the date of the last attempt before he or she may again retake the exam. A bank securities representative who has not engaged in

covered transactions for a period of two years, or who has not supervised a bank sales representative for a period of two years, must pass the appropriate examination before engaging in covered transactions again. An employee engaged in legal, compliance, internal audit, or similar responsibilities related to covered transactions who has taken an examination pursuant to the optional designation provision and who does not perform any of those functions for a period of two years also must retake the examination before engaging in covered transactions.

#### Examination Exemptions

This section establishes two exemptions from the examination requirements. First, a bank employee who is qualified as a registered representative pursuant to the rules of an SSRO at the time he or she seeks to qualify as a bank securities representative will not have to retake the examination. As noted earlier, however, a bank securities representative seeking to transfer employment from a sponsoring bank to a broker-dealer will have to apply to the appropriate SSRO for a waiver from retaking any examinations required under applicable SSRO rules and policies.

Second, a sponsoring bank may apply in writing to its appropriate Federal banking agency on behalf of an employee for a waiver of the examination requirement. Applications will be approved only in exceptional cases where good cause is shown. In considering these requests, the banking agencies may accept other evidence of an employee's qualifications to act as a bank securities representative. Advanced age, physical infirmity, or experience in fields ancillary to the investment banking or securities business, would not individually of themselves constitute sufficient grounds to waive the examination requirement. The banking agencies intend to exercise their waiver authority in a manner consistent with the waiver policies of the SSROs.<sup>14</sup> Any bank employee who is eligible for the examination exemption under this paragraph still must satisfy all other qualification, reporting and continuing education requirements of the regulation. A bank securities representative who obtains an examination waiver from a banking agency under this section and who subsequently seeks to work in the securities industry may be required to

take an examination or apply to the appropriate SSRO for a waiver of that examination requirement.

#### Approval of Bank Securities Representative Applications

This section prohibits a sponsoring bank from permitting an employee to act as a bank securities representative until the appropriate banking agency has notified the sponsoring bank that the bank employee's Form U-4B application has been approved. The appropriate banking agency will approve the registrations of bank employees whose applications do not disclose grounds for disqualification and who pass the appropriate qualification examination. Registration may be revoked if, for example, the fingerprint record identifies any action or item indicating that the individual is subject to disqualification.

#### Grace Period

This section establishes a one-year grace period following the adoption of the final rule for banks and bank employees to comply with the regulation. The grace period will permit banks to file the required notices and arrange for testing and registration of employees without unduly interrupting bank operations. Any bank that is not in compliance with the rule after the grace period expires must cease engaging in covered transactions until the rule's requirements are met. Similarly, any individual who engages in covered transactions who has not complied with all testing and registration requirements by the end of the grace period must cease all covered transaction activities until such requirements are met.

#### Filing Requirements, Amendments, and Record Retention

This section requires all filings made with the banking agencies under the regulation to be made at the NASD.<sup>15</sup> The NASD ultimately will maintain this filing information on its CRD, the computer-based registry for broker-dealers and securities personnel. Information on the CRD will be made available to the public on the same basis that the NASD makes information regarding broker-dealers and registered representatives available through its Public Disclosure Program.<sup>16</sup> The

<sup>14</sup> See, e.g., NASD Membership and Registration Rule 1070 (Qualification Examinations and Waiver of Requirements), NASD Manual (CCH), p. 3291.

<sup>15</sup> Filings submitted by mail should be sent to the NASD address indicated on the Forms SB, SBW, U-4B and U-5B. When the NASD's CRD becomes available to sponsoring banks, banks will either be required to purchase personal computer software from the NASD to make and access filings directly or will be required to utilize a private service bureau or vendor to make electronic filings.

<sup>16</sup> This information includes disclosure of any investment-related consumer-initiated complaint or

banking agencies expect that members of the public will be able to inquire about the record of sponsoring banks and bank securities representatives using the NASD's toll free telephone number or other means that may become available for CRD inquiries.

The NASD charges cost-based fees for processing all filings, administering tests taken by bank employees, processing fingerprint cards, and for access to the CRD. While the exact fees the NASD will charge sponsoring banks have not yet been established, the banking agencies anticipate that these fees will be consistent with those levied by the NASD upon broker-dealers for comparable services.<sup>17</sup> The NASD may also charge sponsoring banks an initial software modification fee in order to provide banks access to the CRD.

This section also provides that all information submitted on any filing made under the regulation must be true, current, complete, and not misleading at the time and in light of the circumstances under which it is reported. A sponsoring bank must submit an amended filing within 30 days after it learns of any fact or circumstance that causes a filing to be inaccurate or incomplete.

This section further establishes record retention requirements for filings made under the regulation. A bank must retain copies of Forms U-4B and U-5B filed on behalf of any bank employee for at least three years after the employee ceases to act as a bank securities representative or terminates his or her employment with the sponsoring bank. A bank must retain copies of Forms SB and SBW and any applications for waiver of being subject to disqualification for at least three years after it files a Form SBW and terminates covered sales.

The banking agencies welcome comment regarding the timing and content of the proposed filing requirements, including the public availability of information regarding sponsoring banks and their bank securities representatives.

proceeding that: (1) alleges compensatory damages of \$5,000 or more, fraud, or wrongful taking of property; or (2) was settled or decided against a sponsoring bank or bank securities representative for \$10,000 or more, or found fraud or the wrongful taking of property. See Form U-4 (Uniform Application for Securities Industry Registration or Transfer) Question 221.

<sup>17</sup> See generally Schedule A (Section 2) to the NASD By-Laws, NASD Manual (CCH), pp. 1101-03. The NASD may also levy an initial fee to defray the cost of modifying the CRD database for banks. An additional nominal fee may also be collected by the NASD on behalf of the MSRB to defray the MSRB's cost of developing questions for the Series 7 Examination.

#### *Optional Designation as a Bank Securities Representative*

Consistent with SSRO rules, a bank may choose to sponsor an employee engaged in legal, compliance, internal audit, or similar responsibilities for covered transactions, or who provides administrative support functions for bank securities representatives, to take a qualification examination. Under these circumstances, the employee must meet the registration, testing, reporting, and continuing education requirements of a bank securities representative. As long as the individual fills one of the enumerated positions or engages in covered transactions for a sponsoring bank, the employee's registration will remain active.

#### *Applications by Banks and Bank Employees Subject to Disqualification*

A bank may file a written application with the appropriate banking agency seeking relief from a disqualification on behalf of itself or an employee. The appropriate banking agency may permit the bank or the employee to engage in covered transactions or act as a bank securities representative if the bank demonstrates to the banking agency why granting relief from a disqualification is consistent with safety and soundness, the public interest, and the protection of investors. In cases in which a disqualification results from an action brought under 12 U.S.C. 1818 or by operation of law under 12 U.S.C. 1829, applications for relief must be sought pursuant to those sections.

Relief granted under this section will not result in the permanent elimination of a disqualification but instead represents approval of a sponsoring bank, or employment as a bank securities representative with the sponsoring bank, under specified terms and conditions. For example, if a bank obtains relief for an employee under this section and the employee later becomes employed by another bank, that bank will have to seek relief from disqualification on behalf of the employee and agree to any special terms or conditions imposed by the appropriate Federal banking agency. Any material change in the terms or conditions under which relief is granted would require the sponsoring bank to seek appropriate relief on behalf of the employee.

#### *Continuing Education and Training Requirements*

This section imposes continuing education requirements upon bank securities representatives and

sponsoring banks that are comparable to requirements for broker-dealers.

#### *Bank Securities Representative Requirements*

The first subsection requires a bank securities representative to complete the securities industry's computerized training program "Regulatory Element" covering securities regulation issues following the individual's second, fifth, and tenth anniversaries of passing the appropriate qualification examination. If an SSRO takes a disciplinary action against an individual based upon activities prior to that person becoming a bank securities representative, a banking agency takes a disciplinary action against a bank securities representative, or an individual is otherwise the subject of a disciplinary action, then the bank securities representative must take the continuing education training program within 120 days of the occurrence of a disciplinary action and following the second, fifth, and tenth anniversaries of the occurrence of a disciplinary action.<sup>18</sup> The proposed regulation requires a bank securities representative who does not comply with the continuing education requirements to cease activities until the representative meets the requirements.

#### *Sponsoring Bank Requirements*

The second subsection incorporates the requirements of the SSROs' "Firm Element" and requires sponsoring banks to develop in-house education programs appropriate to the size, structure, scope of products offered, and the bank's policies and procedures for covered transactions. These programs should address, at a minimum, the general investment features of the products and services being offered as well as associated risk factors, suitability and sales practice considerations, and applicable regulatory requirements (including the Interagency Statement). While a bank may choose to use commercial training material and outside vendors to assist in meeting this education requirement, the bank must ensure that the material or program meets the content standards of the proposed rule.

#### *Confidentiality of Qualification Examinations*

This section requires banks and bank employees to maintain the confidentiality of the professional qualification examinations and not to

<sup>18</sup> This is consistent with comparable SSRO rules. See, e.g., NASD Membership and Registration Rule 1120(a)(3), NASD Manual (CCH) pp. 3381-82.

act in a manner that could compromise the integrity of an examination.

#### Paperwork Reduction Act

The banking agencies invite comment on:

(1) Whether the proposed collection of information contained in this notice of proposed rulemaking is necessary for the proper performance of each agency's functions, including whether the information has practical utility;

(2) the accuracy of each agency's estimate of the burden of the proposed information collection;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Respondents/recordkeepers are not required to respond to this collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

OCC: The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the OMB for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1557-0142), Washington, DC 20503, with copies to the Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

The collection of information requirements in this proposed rule are found in § 12.12 (c)(1)(iii), (c)(3), and (e)(2), § 12.13 (c) and (d), § 12.15, and § 12.16 (a)(4) and (b)(3).<sup>19</sup> This information is required to identify national banks as sponsoring banks, to qualify bank employees to take the appropriate qualification examination, and to terminate the status as a sponsoring bank or licensed bank securities representative. The information also is required to evidence compliance with the registration and information collection requirements set forth in the proposed regulation. The OCC will use the information to monitor the securities activities in national banks and to assess the qualifications of a national bank employee that wishes to become a bank securities representative.

<sup>19</sup>The Paperwork Reduction Act analysis of the required forms appears in the companion Notice of Forms published by the banking agencies elsewhere in this separate part of the Federal Register.

The likely respondents/recordkeepers are national banks.

*Estimated average annual burden hours per respondent/recordkeeper:* 18 hours.

*Estimated number of respondents:* 120 national banks.

*Estimated total annual reporting and recordkeeping burden:* 2,184 hours.

*Start-up costs to respondents:* None.

Certain records pertaining to the sponsoring bank's filings are to be maintained for the period of time respondent/recordkeeper serves as a sponsoring bank, plus three years thereafter. Records pertaining to bank employees are to be retained for not less than three years after the employee terminates employment with the sponsoring bank or ceases to act as a bank securities representative.

Board: In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; see also 5 CFR 1320 Appendix A Item 1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. Send comments on the collections of information to: the Office of Management and Budget, Paperwork Reduction Project (7100-0282), Washington DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington DC 20551.

The requirements in this proposed collection of information will be included in 12 CFR 208. This information collection is needed to register state member banks (Form SB), to qualify certain bank employees to take the appropriate qualification examination (Form U-4B), and to terminate the bank's status as a registered bank (Form SBW) or the employee's status as a licensed bank securities representative (Form U-5B). The Federal Reserve will use the information to monitor the securities sales activities of state member banks and to assess the qualifications of state member bank employees to become registered bank securities representatives. This information collection will be mandatory. The likely respondents are state member banks. Small businesses will not be affected.

The Federal Reserve may not conduct or sponsor, and an organization (or a person) is not required to respond to, any collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection is 7100-0282.

The reporting burden imposed by the proposed rule is estimated to be 18.2 hours per response. It is estimated that there will be 100 respondents/recordkeepers and a total of 1,820 hours of annual paperwork burden. This burden represents the time needed to complete the four proposed reporting forms: U-4B, U-5B, SB, and SBW. The estimated burden is averaged over the estimated number of filings during the first three years that the proposed rule will be in effect, with most of the filings presumed to occur in the first year, as qualification and registration programs are set up, and with the burden for the second and third years representing estimated turnover in registered bank securities representatives. The estimated burden is further averaged over the size distribution of the likely respondents. The burden associated with other requirements of the proposed rule is discussed in a separate notice published in this issue.

FDIC: The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1557-0142), Washington DC 20503, with copies of such comments to be sent to Steven F. Hanft, Office of the Executive Secretary, Room F-454, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, DC 20429.

The collection of information requirements in this proposed rule are found in 12 CFR 342.3(b), 342.3(c) (1) and (3), (e)(2), 342.4(c) and (d), 342.6 and 342.7. The collections consist of notice filings for the Sponsoring Bank as well as registration applications on behalf of the Bank Securities Representative, 342.3 (b) and (c); examination exemption requests, 342.3(e); required amendments to Sponsoring Bank notices and Bank Securities Representative registrations, 342.4(c); records which the Sponsoring Bank must retain with respect to notice filings, Bank Securities Representative registrations, applications for relief from being "subject to disqualification," and any amendments or other filings submitted, 342.4(d); applications by Sponsoring Banks for relief for itself or a Bank Securities Representative, from being "subject to disqualification," 342.6; and continuing education training programs by Sponsoring Banks and attendance/compliance by Bank Securities Representatives with respect



to such continuing education requirements, 342.7.

The likely respondents/recordkeepers are insured nonmember banks.

*Estimated average annual burden hours per respondent/recordkeeper:* 18 hours.

*Estimated number of respondents and/or recordkeepers:* 70 state nonmember banks.

*Estimated total annual reporting and recordkeeping burden:* 1260 hours.

*Start-up costs to respondents:* None.

Records are to be maintained for the period of time respondent/recordkeeper serves as a sponsoring bank.

#### Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), the initial regulatory flexibility analysis otherwise required under section 603 of the RFA (5 U.S.C. 603) is not required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and the agency publishes such certification and a succinct statement explaining the reasons for such certification in the Federal Register along with its general notice of proposed rulemaking.

The banking agencies hereby certify that the proposal will not have a significant economic impact on a substantial number of small entities. The proposal should result in a net benefit to all banks regardless of size that elect to engage in securities activities through licensed bank securities representatives, but the economic impact on small banks will not be significant. Most banks with total assets of under \$100 million will not engage in securities activities in a manner covered by this regulation. Rather, a small bank typically will use either a registered broker/dealer who has rented space on the bank's premises or an "introducing broker" who will refer a customer to a dealer that can effect the desired transaction. The few banks with total assets under \$100 million that choose to have employees licensed under the proposal will incur costs associated with the securities activities. However, a bank will incur these costs only if it elects to engage in securities activities through bank securities representatives.

#### Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action as defined in Executive Order 12866.

#### Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4, 109 Stat. 48 (1995) (Unfunded Mandates Act), requires that covered agencies prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires covered agencies to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

The OCC has determined that the proposal will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than \$100 million in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

#### List of Subjects

##### *12 CFR Part 12*

National banks, Reporting and recordkeeping requirements, Securities.

##### *12 CFR Part 208*

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

##### *12 CFR Part 211*

Exports, Federal Reserve System, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

##### *12 CFR Part 342*

Banks, banking, Reporting and recordkeeping requirements, Securities.

Office of the Comptroller of the Currency

#### **12 CFR Chapter I**

#### Authority and Issuance

For the reasons set forth in the joint preamble, part 12 of chapter I of title 12 of the Code of Federal Regulations is proposed to be amended to read as follows:

#### **PART 12—RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR SECURITIES TRANSACTIONS; QUALIFICATION REQUIREMENTS FOR TRANSACTIONS IN CERTAIN SECURITIES**

1. The part heading is revised to read as set forth above.

1a. The authority citation for part 12 is revised to read as follows:

Authority: 12 U.S.C. 24, 92a, 93a, 1818, and 1831p-1(a)(2).

2. Sections 12.1 through 12.7 are designed as subpart A and a new subpart heading is added to read as follows:

##### **Subpart A—Recordkeeping and Confirmation Requirements for Securities Transactions**

3. In the first line of § 12.1(a), the word "part" is changed to "subpart."

4. In the introductory text to § 12.2, the word "part" is changed to "subpart."

5. In the introductory text to § 12.7, the word "part" is changed to "subpart."

6. A new subpart B, consisting of §§ 12.10 through 12.17, is added to read as follows:

##### **Subpart B—Qualification Requirements for Transactions in Certain Securities**

Sec.

12.10 Scope.

12.11 Definitions.

12.12 Qualification requirements.

12.13 Filing requirements, amendments, and record retention.

12.14 Optional designation as a bank securities representative.

12.15 Applications by banks and bank employees "subject to disqualification."

12.16 Continuing education and training requirements.

12.17 Confidentiality of qualification examinations.

##### **Subpart B—Qualification Requirements for Transactions in Certain Securities**

#### **§ 12.10 Scope.**

This subpart is issued by the Comptroller of the Currency pursuant to 12 U.S.C. 24, 93a, 1818 and 1831p-1(a)(2). It contains rules prescribing operational and managerial standards for national banks, and prescribes training and qualification requirements for bank employees making retail solicitations, recommendations, purchases, or sales of certain securities on behalf of a national bank. It applies to all national banks that engage through bank employees in bank-direct retail

solicitations, recommendations, purchases, or sales of certain securities.

#### § 12.11 Definitions.

For purposes of this subpart:

(a) *Appropriate qualification examination* means either the Investment Company/Variable Contracts Products Limited Representative Qualification Examination (Series 6 Examination) or the General Securities Registered Representative Examination (Series 7 Examination), both of which are administered by the NASD. The Series 6 Examination is the appropriate qualification examination for a bank employee engaged solely in covered transactions of open-end investment company shares, original distribution closed-end investment company shares, unit investment trusts, or variable contracts, including variable life insurance contracts and variable annuity contracts. The Series 7 Examination is the appropriate qualification examination for a bank employee soliciting, recommending, purchasing, or selling any other covered product.

(b) *Bank* means any national banking association, any District bank, or any Federal branch or agency of a foreign bank. The term "bank" shall not include a branch of a bank located outside of any State, as defined in section 3(a)(3) of the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1813(a)(3).

(c) *Bank securities representative* means any bank officer, director, or employee (collectively referred to as "employee") who engages in a covered transaction or is designated as the supervisor of a bank securities representative who engages in a covered transaction.

(d) *Continuing education requirements* means the course of study specified in § 12.16.

(e) *Covered product* has the same meaning as "security" as defined at section 3(a)(10) of the Securities Exchange Act, 15 U.S.C. 78c(a)(10). The term shall not include any product that is a deposit as defined in section 3(l) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(l), or any "government security" as defined at section 3(a)(42) of the Securities Exchange Act, 15 U.S.C. 78c(a)(42).

(f) *Covered transaction* means a retail solicitation, recommendation, purchase, or sale of a covered product by a bank through its employee regardless of the means through which the solicitation, recommendation, purchase, or sale occurs. The term shall not include a covered transaction involving a fiduciary account administered by a bank, a sale of a municipal security by

a municipal securities dealer bank registered under section 15B of the Securities Exchange Act, 15 U.S.C. 78o-4, or a transaction by a bank in its own securities consistent with the conditions set forth in Securities Exchange Act Rule 3a4-1(a)(4), 17 CFR 240.3a4-1(a)(4).

(g) *Disciplinary action* means an action resulting in:

(1) An individual being "subject to disqualification" as defined in this subpart;

(2) A civil money penalty or fine of \$5,000 or more by the Securities and Exchange Commission (SEC) or a securities self regulatory organization (SSRO) as defined in section 3(a)(26) of the Securities Exchange Act, 15 U.S.C. 78c(a)(26);

(3) A civil money penalty of \$5,000 or more by a Federal banking agency pursuant to section 8 of the Federal Deposit Insurance Act, 12 U.S.C. 1818, for a securities law violation, or an unsafe or unsound practice related to a covered transaction;

(4) An agreement with the SEC, an SSRO, or Federal banking agency, in connection with a disciplinary proceeding; or

(5) An order by the SEC, an SSRO, or a Federal banking agency to enter the continuing education program.

(h) *NASD* means the National Association of Securities Dealers, Inc., which is an SSRO registered under section 15A of the Securities Exchange Act, 15 U.S.C. 78o, and NASD Regulation, Inc., the regulatory subsidiary of the NASD.

(i) *Sponsoring bank* means a bank that engages in or seeks to engage in the business of effecting covered transactions.

(j) *Subject to disqualification* means:

(1) Subject to a "statutory disqualification" as that term is used in section 3(a)(39) of the Securities Exchange Act, 15 U.S.C. 78c(a)(39);

(2) Subject to an order of removal, prohibition, or suspension by a Federal banking agency pursuant to 12 U.S.C. 1818(e) or (g);

(3) Subject to an order or temporary order pursuant to 12 U.S.C. 1818(b) or (c) that restricts the fiduciary or securities activities of a bank or individual; or

(4) Subject to a prohibition pursuant to 12 U.S.C. 1829(a).

#### § 12.12 Qualification requirements.

(a) *Disqualifications.* (1) A bank shall not engage in a covered transaction if it is, or becomes, subject to disqualification, unless it has applied for and received approval to engage in covered transactions from the OCC pursuant to § 12.15.

(2) No bank securities representative shall engage in a covered transaction if he or she is, or becomes, subject to disqualification, unless the bank that employs the bank securities representative has applied for and received approval from the OCC pursuant to § 12.15 for that person to qualify as a bank securities representative.

(b) *Sponsoring bank notices.* (1) A bank seeking to engage in covered transactions shall file a completed Uniform Notice for Sponsoring Bank (Form SB).

(2) A bank seeking to terminate its status as a Sponsoring Bank shall file a Uniform Request for Sponsoring Bank Withdrawal (Form SBW).

(c) *Sponsoring bank requirements.* (1) A bank seeking to sponsor an employee as a bank securities representatives shall:

(i) Make independent inquiry into the individual's employment history, including contacting the employee's previous employers for the past three years and investigating the character, business reputation, qualifications, and experience of the individual;

(ii) Review, complete as appropriate, and file the Uniform Application for Bank Securities Representative Registration or Transfer (Form U-4B) and amendments thereto on behalf of the employee; and

(iii) File a fingerprint record for the employee.

(2) A bank may not sponsor an employee to qualify as a bank securities representative or permit a previously qualified bank securities representative to engage in covered transactions if the individual is, or becomes, subject to disqualification unless the sponsoring bank has applied and received approval for the individual to engage in covered transactions from the OCC under § 12.15. A bank shall not sponsor an employee to qualify as a bank securities representative if it does not intend for the employee to engage in or supervise covered transactions or participate in one of the activities enumerated in § 12.14.

(3) A sponsoring bank shall file a Uniform Termination Notice for Bank Securities Representative Registration (Form U-5B) when the employment of a bank securities representative terminates or when a bank securities representative ceases to engage in covered transactions on behalf of the bank. The Form U-5B shall be filed within 30 days of such termination or cessation and a copy of the Form U-5B, and of any amendments to the Form U-5B, shall be provided concurrently to

the former bank securities representative.

(4) A sponsoring bank shall designate one or more bank securities representatives, as necessary, to supervise the sponsoring bank's covered transactions. A supervisor designated under this subpart shall pass the appropriate qualification examination for any bank securities representative(s) under his or her supervision.

(d) *Bank securities representative requirements.* (1) A bank employee seeking to qualify as a bank securities representative shall complete the Form U-4B, provide a fingerprint record, and pass the appropriate qualification examination.

(2) A bank employee who is eligible for an examination exemption under paragraph (e) of this section must complete a Form U-4B and receive approval under paragraph (f) of this section prior to being qualified as a bank securities representative.

(3) A bank employee who fails to pass the appropriate qualification examination may take the examination again after a period of 30 calendar days has elapsed from the date of the prior examination. However, any bank employee who fails to pass an examination three or more times in succession may not take the examination until 180 days has elapsed from the date of his or her last attempt to pass the examination.

(4) A bank employee shall advise the sponsoring bank within 30 days of any event or occurrence that causes any information on the Form U-4B or Form U-5B to become inaccurate or incomplete and shall cooperate with the sponsoring bank in filing an amendment to the relevant form.

(5) A bank securities representative who does not engage in or supervise covered transactions for a period of two years must retake and pass the appropriate qualification examination prior to acting as a bank securities representative. A bank securities representative is deemed to be engaging in covered transactions if the employee acts in one of the capacities listed in § 12.14.

(e) *Examination exemptions.* (1) A bank employee is not required to take the appropriate qualification examination if he or she already has qualified by taking that examination pursuant to the rules of an SSRO and remains qualified as a registered representative.

(2) Upon written request from a sponsoring bank, the OCC may, in exceptional cases and where good cause is shown, waive the appropriate qualification examination requirement

for a bank employee and may accept other evidence of the employee's qualifications to act as a bank securities representative. Advanced age, physical infirmity, or experience in fields ancillary to the investment banking or securities business generally are insufficient for the OCC to waive the examination requirement.

(f) *Approval of bank securities representative qualifications.* No sponsoring bank may permit any bank employee to, and no bank employee shall, act as a bank securities representative until the OCC has approved the bank employee's application for registration or transfer on Form U-4B.

(g) *Grace period.* These qualification requirements apply to all banks and bank employees with respect to covered transactions transacted after [Date One Year After Effective Date of the Final Rule]. Any bank or bank employee that is not in compliance with this subpart after the grace period shall cease engaging in covered transactions until the requirements are met.

**§ 12.13 Filing requirements, amendments, and record retention.**

(a) All filings required under this subpart shall be filed with the OCC at the NASD.

(b) All information submitted on any filing required under this subpart must be true, current, complete, and not misleading at the time and in light of the circumstances under which it is reported.

(c) A bank shall file an amendment no later than 30 days after learning of facts or circumstances causing a filing to be inaccurate or incomplete.

(d)(1) A bank shall retain copies of all filings made on Forms U-4B and U-5B, including amendments, for not less than three years after the employee terminates employment with the sponsoring bank or ceases to act as a bank securities representative.

(2) A bank shall retain copies of all filings made on Forms SB and SBW and any applications under § 12.15, including amendments, for not less than three years after the bank terminates its status as a sponsoring bank.

**§ 12.14 Optional designation as a bank securities representative.**

A bank may sponsor an employee who is engaged in legal, compliance, internal audit, or similar responsibilities related to covered transactions or who provides administrative support functions for a bank securities representative, and who is not subject to disqualification (unless a waiver is granted pursuant to § 12.15), to take

either the Series 6 or Series 7 Examination. Such sponsored employee must meet all filing and continuing education requirements in order to be deemed to be a bank securities representative for purposes of this subpart.

**§ 12.15 Applications by banks and bank employees "subject to disqualification."**

A sponsoring bank may seek, by written application to the OCC on behalf of itself or an employee, relief from being subject to disqualification and permission to engage in covered transactions or to qualify as a bank securities representative, as appropriate. The OCC may, consistent with safety and soundness, the public interest, and the protection of investors, grant such relief consistent with its enforcement powers and on such terms and conditions as the OCC considers necessary or appropriate.

**§ 12.16 Continuing education and training requirements.**

A bank securities representative and a sponsoring bank shall comply with the following continuing education requirements:

(a) *Bank securities representative requirements.* (1) Each bank securities representative shall complete, within 120 days of the second, fifth, and tenth anniversaries of passing the appropriate qualification examination, the Continuing Education Program administered by the NASD.

(2) The required training intervals for bank securities representatives who were registered with an SSRO prior to being employed by the sponsoring bank are measured from the date of SSRO registration. The bank securities representative requirements of the continuing education requirement will be met as of the tenth anniversary of a bank securities representative's registration with a banking agency and/or SSRO, provided the bank securities representative is not subject to paragraph (a)(4) of this section.

(3) If a bank securities representative has been subject to a disciplinary action within the ten years prior to the effective date of this subpart, or at any time since that effective date, the bank securities representative must complete the Continuing Education Program administered by the NASD within 120 days of the disciplinary action and no later than the second, fifth, and tenth anniversaries of the disciplinary action.

(4) Unless otherwise determined by the OCC, any bank securities representative who does not complete the requirements within the prescribed time frames may not perform any bank

securities representative duties. The OCC may, upon application and a showing of good cause, allow additional time for a bank securities representative to satisfy the Continuing Education program requirements.

(b) *Sponsoring bank requirements.* (1) A sponsoring bank shall not permit any employee to act as a bank securities representative unless the employee has complied with the requirements set forth in paragraphs (a)(1) through (a)(4) of this section.

(2) A sponsoring bank shall maintain a continuing education program for its bank securities representatives. A sponsoring bank, at least annually, shall evaluate and prioritize its training needs and develop or update, as appropriate, a written training plan. The plan must take into consideration the bank's size, organizational structure, and scope of business activities. Programs used to implement a sponsoring bank's training plan must be appropriate for the business of that bank and, at a minimum, must cover the following matters concerning securities products, services, and strategies offered by the bank:

- (i) General investment features and associated risk factors;
- (ii) Suitability and sales practice considerations;
- (iii) Applicable regulatory requirements; and
- (iv) Bank policies and procedures for covered transactions.

(3) A sponsoring bank shall administer its continuing education programs in accordance with its annual evaluation and written plan and must maintain records documenting the content of the programs and completion of the programs by its bank securities representatives.

#### **§ 12.17 Confidentiality of qualification examinations.**

Every bank and bank employee shall maintain the confidentiality of qualification examinations and shall not remove from an examination center, reproduce, disclose, receive from or pass to any person, or use for study or any other purposes, any portion of an examination, whether of a present or past series, that would compromise the integrity of the examinations, or use in any manner and at any time the questions or answers to the examination.

Dated: December 10, 1996.  
Eugene A. Ludwig,  
*Comptroller of the Currency.*

Federal Reserve System

#### **12 CFR Part 208**

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR Parts 208 and 211 as follows:

### **PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)**

1. The authority citation for part 208 is revised to read as follows:

Authority: 12 U.S.C. 36, 248, 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1823(j), 1828(o), 1831p–1, 1831p–1(a)(2), 1831r–1, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 781(b), 781(g), 781(l), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. A new § 208.25 is added at the end of Subpart A to read as follows:

#### **§ 208.25 Qualification requirements for transactions in certain securities.**

(a) *Scope.* This section contains rules prescribing operational and managerial standards for state member banks, prescribes training and qualification requirements for bank employees making retail solicitations, recommendations, purchases, or sales of certain securities on behalf of a state member bank. It applies to all state member banks that engage through bank employees in bank-direct retail solicitations, recommendations, purchases, or sales of certain securities.

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

(1) *Appropriate qualification examination* means either the Investment Company/Variable Contracts Products Limited Representative Qualification Examination (Series 6 Examination) or the General Securities Registered Representative Examination (Series 7 Examination), both of which are administered by the National Association of Securities Dealers, Inc. (NASD). The Series 6 Examination is the appropriate qualification examination for a bank employee engaged solely in covered transactions of open-end investment company shares, original distribution closed-end investment company shares, unit investment trusts, or variable contracts, including variable life insurance contracts and variable annuity contracts. The Series 7 Examination is the appropriate qualification examination for a bank employee soliciting, recommending, purchasing, or selling any other covered product.

(2) *Bank* means any state member bank. The term *bank* shall not include a branch of a bank located outside of any State, as defined in section 3(a)(3) of the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1813(a)(3).

(3) *Bank securities representative* means any bank officer, director, or employee (collectively referred to as employee) who engages in a covered transactions or is designated as the supervisor of a bank securities representative who engages in a covered transaction.

(4) *Continuing education requirements* means the course of study specified in paragraph (g) of this section.

(5) *Covered product* has the same meaning as "security" as defined at section 3(a)(10) of the Securities Exchange Act, 15 U.S.C. 78c(a)(10). The term shall not include any product that is a deposit as defined in section 3(l) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(l), or any "government security" as defined at section 3(a)(42) of the Securities Exchange Act, 15 U.S.C. 78c(a)(42).

(6) *Covered transaction* means a retail solicitation, recommendation, purchase, or sale of a covered product by a bank through its employee regardless of the means through which the solicitation, recommendation, purchase, or sale occurs. The term shall not include a such a transaction in a covered product to a fiduciary account administered by a bank, a sale of a municipal security by a municipal securities dealer bank registered under section 15B of the Securities Exchange Act, 15 U.S.C. 78o–4, or a transaction by a bank in its own securities consistent with the conditions set forth in Securities Exchange Act Rule 3a4–1(a)(4), 17 CFR 240.3a4–1(a)(4).

(7) *Disciplinary action* means an action resulting in:

(i) An individual being *subject to disqualification* as defined in paragraph (b)(10) of this section;

(ii) A civil money penalty or fine of \$5,000 or more by the Securities and Exchange Commission (SEC) or a securities self-regulatory organization (SSRO) as defined in section 3(a)(26) of the Securities Exchange Act, 15 U.S.C. 78c(a)(26);

(iii) A civil money penalty of \$5,000 or more by a Federal banking agency pursuant to section 8 of the Federal Deposit Insurance Act, 12 U.S.C. 1818, for a securities law violation, or an unsafe or unsound practice related to a covered transaction;

(iv) An agreement with the SEC, an SSRO, Federal banking agency, in connection with a disciplinary proceeding; or

(v) An order by the SEC, an SSRO, or a Federal banking agency to enter the continuing education program.

(8) *NASD* means the National Association of Securities Dealers, Inc., which is an SSRO registered under section 15A of the Securities Exchange Act, 15 U.S.C. 78o, and NASD Regulation, Inc., the regulatory subsidiary of the NASD.

(9) *Sponsoring bank* means a bank that engages in or seeks to engage in the business of effecting covered transactions.

(10) *Subject to disqualification* means subject to:

(i) A "statutory disqualification" as that term is used in section 3(a)(39) of the Securities Exchange Act, 15 U.S.C. 78c(a)(39);

(ii) An order of removal, prohibition, or suspension by a Federal banking agency pursuant to 12 U.S.C. 1818 (e) or (g);

(iii) An order or temporary order pursuant to 12 U.S.C. 1818 (b) or (c) that restricts the fiduciary or securities activities of a bank or individual; or

(iv) A prohibition pursuant to 12 U.S.C. 1829(a).

(c) *Qualification requirements*—(1) *Disqualifications*. (i) A bank shall not engage in a covered transaction if it is, or becomes, subject to disqualification, unless it has applied for and received approval to engage in covered transactions from the Board pursuant to paragraph (h) of this section.

(ii) No bank securities representative shall engage in a covered transaction if he or she is, or becomes, subject to disqualification, unless the bank that employs the bank securities representative has applied for and received approval from the Board pursuant to paragraph h of this section for that person to qualify as a bank securities representative.

(2) *Sponsoring bank notices*. (i) A bank seeking to engage in covered transactions shall file a completed Uniform Notice for Sponsoring Bank (Form SB).

(ii) A bank seeking to terminate its status as a Sponsoring Bank shall file a Uniform Request for Sponsoring Bank Withdrawal (Form SBW).

(3) *Sponsoring bank requirements*. (i) A bank seeking to sponsor an employee as a bank securities representative shall:

(A) Make independent inquiry into the individual's employment history, including contacting the employee's previous employers for the past three years and investigating the character,

business reputation, qualifications and experience of the individual;

(B) Review, complete as appropriate, and file the Uniform Application for Bank Securities Representative Registration or Transfer (Form U-4B) and amendments thereto on behalf of the employee; and

(C) File a fingerprint record for the employee.

(ii) A bank may not sponsor an employee to qualify as a bank securities representative or permit a previously qualified bank securities representative to engage in covered transactions if the individual is, or becomes, subject to disqualification unless the sponsoring bank has applied and received approval for the individual to engage in covered transactions from the Board under paragraph (h) of this section. A bank shall not sponsor an employee to qualify as a bank securities representative if it does not intend for the employee to engage in or supervise covered transactions or participate in one of the activities enumerated in paragraph (e) of this section.

(iii) A sponsoring bank shall file a Uniform Termination Notice for Bank Securities Representative Registration (Form U-5B) when the employment of a bank securities representative terminates or when a bank securities representative ceases to engage in covered transactions on behalf of the bank. The Form U-5B shall be filed within 30 days of such termination or cessation and a copy of the Form U-5B, and of any amendments to the Form U-5B, shall be provided to the former bank securities representative.

(iv) A sponsoring bank shall designate one or more bank securities representatives to supervise the sponsoring bank's covered transactions. A supervisor designated under this section shall pass the appropriate qualification examination for any bank securities representative(s) under his or her supervision.

(4) *Bank securities representative requirements*. (i) A bank employee seeking to qualify as a bank securities representative shall complete the designated sections of the Form U-4B, provide a fingerprint record, and pass the appropriate qualification examination.

(ii) A bank employee who is eligible for an examination exemption under paragraph (c)(5)(i) of this section must complete a Form U-4B and receive approval under paragraph (c)(6) of this section prior to being qualified as a bank securities representative.

(iii) A bank employee who fails to pass the appropriate qualification examination may take the examination

again after a period of 30 calendar days has elapsed from the date of the prior examination. However, any bank employee who fails to pass an examination three or more times in succession may not take the examination until 180 days has elapsed from the date of his or her last attempt to pass the examination.

(iv) A bank employee shall advise the sponsoring bank within 30 days of any event or occurrence that causes any information on the Form U-4B or Form U-5B to become inaccurate or incomplete and shall cooperate with the sponsoring bank in filing an amendment to the relevant form.

(v) A bank securities representative who does not engage in or supervise covered transactions for a period of two years must retake and pass the appropriate qualification examination prior to acting as a bank securities representative. A bank securities representative is deemed to be engaging in covered transactions if the employee acts in one of the capacities listed in paragraph (e) of this section.

(5) *Examination exemptions*. (i) A bank employee is not required to take the appropriate qualification examination if he or she already has qualified by taking that examination pursuant to the rules of an SSRO and remains qualified as a registered representative.

(ii) Upon written request from a sponsoring bank, the Board may, in exceptional cases and where good cause is shown, waive the appropriate qualification examination requirement for a bank employee and may accept other evidence of the employee's qualifications to act as a bank securities representative. Advanced age, physical infirmity, or experience in fields ancillary to the investment banking or securities business generally are insufficient for the Board to waive the examination requirement.

(6) *Approval of bank securities representative qualifications*. No sponsoring bank may permit any bank employee to, and no bank employee shall, act as a bank securities representative until the Board has approved the bank employee's application for registration or transfer on Form U-4B.

(7) *Grace period*. These qualification requirements apply to all banks and bank employees with respect to covered transactions transacted after Date One Year After Effective Date of the Final Rule. Any bank or bank employee that is not in compliance with this section after the grace period shall cease engaging in covered transactions until the requirements are met.

(d) *Filing requirements, amendments, and record retention.* (1) All filings required under this section shall be filed with the Board at the NASD.

(2) All information submitted under this section must be true, current, complete, and not misleading at the time and in light of the circumstances under which it is reported.

(3) A bank shall file an amendment no later than 30 days after learning of facts or circumstances causing a filing to be inaccurate or incomplete.

(4) A bank shall retain copies of all filings:

(i) Made on Forms U-4B and U-5B, including amendments, for not less than three years after the employee terminates employment with the sponsoring bank or ceases to act as a bank securities representative; and

(ii) Made on Forms SB and SBW and any applications under paragraph (f) of this section including amendments for not less than three years after the bank terminates its status as a sponsoring bank.

(e) *Optional designation as a bank securities representative.* A bank may sponsor an employee who is engaged in legal, compliance, internal audit, or similar responsibilities related to covered transactions or who provides administrative support functions for a bank securities representative, and who is not subject to disqualification (unless a waiver is granted pursuant to paragraph (f) of this section), to take the appropriate qualification examination. Such sponsored employee must meet all filing and continuing education requirements of this section in order to be deemed to be a bank securities representative for purposes of this section.

(f) *Applications by banks and bank employees "subject to disqualification."* A sponsoring bank may seek, by written application to the Board on behalf of itself or an employee, relief from being subject to disqualification and permission to engage in covered transactions or to qualify as a bank securities representative, as appropriate. The Board may, consistent with safety and soundness, the public interest, and the protection of investors, grant such relief consistent with its enforcement powers and on such terms and conditions as the Board considers necessary or appropriate.

(g) *Continuing education and training requirements.* A bank securities representative and a sponsoring bank shall comply with the following continuing education requirements:

(1) *Bank securities representative requirements.* (i) Each bank securities representative shall complete, within

120 days of the second, fifth, and tenth anniversaries of passing the appropriate qualification examination, the Continuing Education Program administered by the NASD.

(ii) The required training intervals for bank securities representatives who were registered with an SSRO prior to being employed by the sponsoring bank are measured from the date of SSRO registration. The bank securities representative requirements of the continuing education requirement will be met as of the tenth anniversary of a bank securities representative's registration with a banking agency and/or SSRO, provided the bank securities representative is not subject to paragraph (g)(1)(iv) of this section.

(iii) If a bank securities representative has been subject to a disciplinary action within the ten years prior to the effective date of this section, or at any time since that effective date, the bank securities representative must complete the Continuing Education Program administered by the NASD within 120 days of the disciplinary action and no later than the second, fifth, and tenth anniversaries of the disciplinary action.

(iv) Unless otherwise determined by the Board, any bank securities representative who does not complete the requirements within the prescribed time frames may not perform any bank securities representative duties. The Board may, upon application and a showing of good cause, allow additional time for a bank securities representative to satisfy the Continuing Education program requirements of the bank securities representative requirements.

(2) *Sponsoring bank requirements.* (i) A sponsoring bank shall not permit any employee to act as a bank securities representative unless the employee has complied with the requirements set forth in paragraph (g)(1) of this section.

(ii) A sponsoring bank shall maintain a continuing education program for its bank securities representatives. A sponsoring bank, at least annually, shall evaluate and prioritize its training needs and develop or update, as appropriate, a written training plan. The plan must take into consideration the bank's size, organizational structure, and scope of business activities. Programs used to implement a sponsoring bank's training plan must be appropriate for the business of that bank and, at a minimum, must cover the following matters concerning securities products, services, and strategies offered by the bank:

(A) General investment features and associated risk factors;

(B) Suitability and sales practice considerations;

(C) Applicable regulatory requirements; and

(D) Bank policies and procedures for covered transactions.

(iii) A sponsoring bank shall administer its continuing education programs in accordance with its annual evaluation and written plan and must maintain records documenting the content of the programs and completion of the programs by its bank securities representatives.

(h) *Confidentiality of qualification examinations.* Every bank and bank employee shall maintain the confidentiality of qualification examinations and shall not remove from an examination center, reproduce, disclose, receive from or pass to any person, or use for study or any other purposes, any portion of an examination, whether of a present or past series, that would compromise the integrity of the examinations, or use in any manner and at any time, the questions or answers to the examination.

#### **PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)**

1. The authority citation for Part 211 continues to read as follows:

Authority: 12 U.S.C. 221 *et seq.*, 1818, 1841 *et seq.*, 3101 *et seq.*, 3901 *et seq.*

2. Section 211.28 is amended as follows:

- a. The section heading is revised;
- b. Paragraphs (a) and (b) are redesignated as paragraphs (a)(1) and (a)(2) respectively;
- c. A heading is added to paragraph (a);
- d. All references to "paragraph (a)" and "paragraph (b)" are revised to read "paragraph (a)(1)" and "paragraph (a)(2)" respectively; and,
- e. A new paragraph (b) is added.

The revisions and additions read as follows:

#### **§ 211.28 Provisions applicable to state branches and agencies.**

(a) *Limitation on loans to one borrower—(1) Limitation.* \* \* \*

\* \* \* \* \*

(b) *Retail securities transactions—(1) Requirements.* To the extent that an uninsured state branch or a state agency is excluded from the definition of "broker" under section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)) and engages in an activity that would constitute a covered transaction as defined in § 208.25 of the Board's Regulation H (12 CFR 208.25) for a state member bank, the state branch or agency shall be subject to the

requirements of 12 CFR 208.25 in the same manner that such requirements apply to a state member bank.

(2) *Exception.* Nothing in paragraph (b)(1) of this section is intended to apply the requirements of 12 CFR 208.25 to the lawful deposit-taking activities of an uninsured state branch or state agency.

By order of the Board of Governors of the Federal Reserve System, December 11, 1996.  
William W. Wiles,  
Secretary of the Board.

Federal Deposit Insurance Corporation  
**12 CFR Part 342**

Authority and Issuance

For the reasons set forth in the joint preamble, part 342 of title 12 of the Code of Federal Regulations is proposed to be added as follows:

**PART 342—QUALIFICATION REQUIREMENTS FOR TRANSACTIONS IN CERTAIN SECURITIES**

Sec.

342.1 Scope.

342.2 Definitions.

342.3 Qualification requirements.

342.4 Filing requirements, amendments, and record retention.

342.5 Optional designation as a bank securities representative.

342.6 Applications by banks and bank employees "subject to disqualification."

342.7 Continuing education and training requirements.

342.8 Confidentiality of qualification examinations.

Authority: 12 U.S.C. 1818 and 1831p-1(a)(2)

**§ 342.1 Scope.**

This part is issued by the Federal Deposit Insurance Corporation (the Corporation) pursuant to 12 U.S.C. 1818 and 1831p-1(a)(2). It contains rules prescribing operational and managerial standards for state nonmember insured banks (except a District bank) or a foreign bank having an insured branch, and prescribes training and qualification requirements for bank employees making retail solicitations, recommendations, purchases, or sales of certain securities on behalf of a state nonmember insured bank (except a District bank) or a foreign bank having an insured branch. It applies to all state nonmember insured banks (except a District bank) or a foreign bank having an insured branch that engage through bank employees in bank-direct retail solicitations, recommendations, purchases, or sales of certain securities.

**§ 342.2 Definitions.**

For purposes of this part:

(a) *Appropriate qualification examination* means either the

Investment Company/Variable Contracts Products Limited Representative Qualification Examination (Series 6 Examination) or the General Securities Registered Representative Examination (Series 7 Examination), both of which are administered by the NASD. The Series 6 Examination is the appropriate qualification examination for a bank employee engaged solely in covered transactions of open-end investment company shares, original distribution closed-end investment company shares, unit investment trusts, or variable contracts, including variable life insurance contracts and variable annuity contracts. The Series 7 Examination is the appropriate qualification examination for a bank employee soliciting, recommending, purchasing, or selling any other covered product.

(b) *Bank* means any State nonmember insured bank (except a District bank) or a foreign bank having an insured branch. The term "bank" shall not include a branch of a bank located outside of any State, as defined in section 3(a)(3) of the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1813(a)(3).

(c) *Bank securities representative* means any bank officer, director, or employee (collectively referred to as "employee") who engages in a covered transaction or is designated as the supervisor of a bank securities representative who engages in a covered transaction.

(d) *Continuing education requirements* means the course of study specified in § 342.7.

(e) *Covered product* has the same meaning as "security" as defined at section 3(a)(10) of the Securities Exchange Act, 15 U.S.C. 78c(a)(10). The term shall not include any product that is a deposit as defined in section 3(l) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(l), or any "government security" as defined at section 3(a)(42) of the Securities Exchange Act, 15 U.S.C. 78c(a)(42).

(f) *Covered transaction* means a retail solicitation, recommendation, purchase, or sale of a covered product by a bank through its employee regardless of the means through which the solicitation, recommendation, purchase, or sale occurs. The term shall not include a covered transaction involving a fiduciary account administered by a bank, a sale of a municipal security by a municipal securities dealer bank registered under section 15B of the Securities Exchange Act, 15 U.S.C. 78o-4, or a transaction by a bank in its own securities consistent with the conditions set forth in Securities Exchange Act

Rule 3a4-1(a)(4), 17 CFR 240.3a4-1(a)(4).

(g) *Disciplinary action* means an action resulting in:

(1) An individual being "subject to disqualification" as defined in this part;

(2) A civil money penalty or fine of \$5,000 or more by the Securities and Exchange Commission (SEC) or a securities self-regulatory organization (SSRO) as defined in section 3(a)(26) of the Securities Exchange Act, 15 U.S.C. 78c(a)(26);

(3) A civil money penalty of \$5,000 or more by a Federal banking agency pursuant to section 8 of the Federal Deposit Insurance Act, 12 U.S.C. 1818, for a securities law violation, or an unsafe or unsound practice related to a covered transaction;

(4) An agreement with the SEC, an SSRO, or Federal banking agency, in connection with a disciplinary proceeding; or

(5) An order by the SEC, an SSRO, or a Federal banking agency to enter the continuing education program.

(h) *NASD* means the National Association of Securities Dealers, Inc., which is an SSRO registered under section 15A of the Securities Exchange Act, 15 U.S.C. 78o, and NASD Regulation, Inc., the regulatory subsidiary of the NASD.

(i) *Sponsoring bank* means a bank that engages in or seeks to engage in the business of effecting covered transactions.

(j) *Subject to disqualification* means:

(1) a "Statutory disqualification" as that term is used in section 3(a)(39) of the Securities Exchange Act, 15 U.S.C. 78c(a)(39);

(2) An order of removal, prohibition, or suspension by a Federal banking agency pursuant to 12 U.S.C. 1818(e) or (g);

(3) An order or temporary order pursuant to 12 U.S.C. 1818 (b) or (c) that restricts the fiduciary or securities activities of a bank or individual; or

(4) A prohibition pursuant to 12 U.S.C. 1829(a).

**§ 342.3 Qualification requirements.**

(a) *Disqualifications.* (1) A bank shall not engage in a covered transaction if it is, or becomes, subject to disqualification, unless it has applied for and received approval to engage in covered transactions from the Corporation pursuant to § 342.6.

(2) No bank securities representative shall engage in a covered transaction if he or she is, or becomes, subject to disqualification, unless the bank that employs the bank securities representative has applied for and received approval from the Corporation



pursuant to § 342.6 for that person to qualify as a bank securities representative.

(b) *Sponsoring bank notices.* (1) A bank seeking to engage in covered transactions shall file a completed Uniform Notice for Sponsoring Bank (Form SB).

(2) A bank seeking to terminate its status as a Sponsoring Bank shall file a Uniform Notice for Sponsoring Bank Withdrawal (Form SBW).

(c) *Sponsoring bank requirements.* (1) A bank seeking to sponsor an employee as a bank securities representative shall:

(i) Make independent inquiry into the individual's employment history, including contacting the employee's previous employers for the past three years and investigating the character, business reputation, qualifications, and experience of the individual;

(ii) Review, complete as appropriate, and file the Uniform Application for Bank Securities Representative Registration or Transfer (Form U-4B) and amendments thereto on behalf of the employee; and

(iii) File a fingerprint record for the employee.

(2) A bank may not sponsor an employee to qualify as a bank securities representative or permit a previously qualified bank securities representative to engage in covered transactions if the individual is, or becomes, subject to disqualification unless the sponsoring bank has applied and received approval for the individual to engage in covered transactions from the Corporation under § 342.6. A bank shall not sponsor an employee to qualify as a bank securities representative if it does not intend for the employee to engage in or supervise covered transactions or participate in one of the activities enumerated in § 342.5.

(3) A sponsoring bank shall file a Uniform Termination Notice for Bank Securities Representative Registration (Form U-5B) when the employment of a bank securities representative terminates or when a bank securities representative ceases to engage in covered transactions on behalf of the bank. The Form U-5B shall be filed within 30 days of such termination or cessation and a copy of the Form U-5B, and of any amendments to the Form U-5B, shall be provided concurrently to the former bank securities representative.

(4) A sponsoring bank shall designate one or more bank securities representatives, as necessary, to supervise the sponsoring bank's covered transactions. A supervisor designated under this part shall pass the appropriate qualification examination

for any bank securities representative(s) under his or her supervision.

(d) *Bank securities representative requirements.* (1) A bank employee seeking to qualify as a bank securities representative shall complete the Form U-4B, provide a fingerprint record, and pass the appropriate qualification examination.

(2) A bank employee who is eligible for an examination exemption under paragraph (e) of this section must complete a Form U-4B and receive approval under paragraph (f) of this section prior to being qualified as a bank securities representative.

(3) A bank employee who fails to pass the appropriate qualification examination may take the examination again after a period of 30 calendar days has elapsed from the date of the prior examination. However, any bank employee who fails to pass an examination three or more times in succession may not take the examination until 180 days has elapsed from the date of his or her last attempt to pass the examination.

(4) A bank employee shall advise the sponsoring bank within 30 days of any event or occurrence that causes any information on the Form U-4B or Form U-5B to become inaccurate or incomplete and shall cooperate with the sponsoring bank in filing an amendment to the relevant form.

(5) A bank securities representative who does not engage in or supervise covered transactions for a period of two years must retake and pass the appropriate qualification examination prior to acting as a bank securities representative. A bank securities representative is deemed to be engaging in covered transactions if the employee acts in one of the capacities listed in § 342.5.

(e) *Examination exemptions.* (1) A bank employee is not required to take the appropriate qualification examination if he or she already has qualified by taking that examination pursuant to the rules of an SSRO and remains qualified as a registered representative.

(2) Upon written request from a sponsoring bank, the Corporation may, in exceptional cases and where good cause is shown, waive the appropriate qualification examination requirement for a bank employee and may accept other evidence of the employee's qualifications to act as a bank securities representative. Advanced age, physical infirmity, or experience in fields ancillary to the investment banking or securities business generally are insufficient for the Corporation to waive the examination requirement.

(f) *Approval of bank securities representative qualifications.* No sponsoring bank may permit any bank employee to, and no bank employee shall, act as a bank securities representative until the Corporation has approved the bank employee's application for registration or transfer on Form U-4B.

(g) *Grace period.* These qualification requirements apply to all banks and bank employees with respect to covered transactions transacted after Date one year after effective date of the Final Rule. Any bank or bank employee that is not in compliance with this part after the grace period shall cease engaging in covered transactions until the requirements are met.

#### **§ 342.4 Filing requirements, amendments, and record retention.**

(a) All filings required under this part shall be filed with the Corporation at the NASD.

(b) All information submitted on any filing required under this part must be true, current, complete, and not misleading at the time and in light of the circumstances under which it is reported.

(c) A bank shall file an amendment no later than 30 days after learning of facts or circumstances causing a filing to be inaccurate or incomplete.

(d)(1) A bank shall retain copies of all filings made on Forms U-4B and U-5B, including amendments, for not less than three years after the employee terminates employment with the sponsoring bank or ceases to act as a bank securities representative.

(2) A bank shall retain copies of all filings made on Forms SB and SBW and any applications under § 342.6, including amendments, for not less than three years after the bank terminates its status as a sponsoring bank.

#### **§ 342.5 Optional designation as a bank securities representative.**

A bank may sponsor an employee who is engaged in legal, compliance, internal audit, or similar responsibilities related to covered transactions or who provides administrative support functions for a bank securities representative, and who is not subject to disqualification (unless a waiver is granted pursuant to § 342.6), to take the appropriate qualification examination. Such sponsored employee must meet all filing and continuing education requirements in order to be deemed to be a bank securities representative for purposes of this part.



**§ 342.6 Applications by banks and bank employees "subject to disqualification."**

A sponsoring bank may seek, by written application to the Corporation on behalf of itself or an employee, relief from being subject to disqualification and permission to engage in covered transactions or to qualify as a bank securities representative, as appropriate. The Corporation may, consistent with safety and soundness, the public interest, and the protection of investors, grant such relief consistent with its enforcement powers and on such terms and conditions as the Corporation considers necessary or appropriate.

**§ 342.7 Continuing education and training requirements.**

A bank securities representative and a sponsoring bank shall comply with the following continuing education requirements:

(a) *Bank securities representative requirements.* (1) Each bank securities representative shall complete, within 120 days of the second, fifth, and tenth anniversaries of passing the appropriate qualification examination, the Continuing Education Program administered by the NASD.

(2) The required training intervals for bank securities representatives who were registered with an SSRO prior to being employed by the sponsoring bank are measured from the date of SSRO registration. The bank securities representative requirements of the continuing education requirement will be met as of the tenth anniversary of a bank securities representative's registration with a banking agency and/or SSRO, provided the bank securities representative is not subject to paragraph (a)(4) of this section.

(3) If a bank securities representative has been subject to a disciplinary action

within the ten years prior to the effective date of this part, or at any time since that effective date, the bank securities representative must complete the Continuing Education Program administered by the NASD within 120 days of the disciplinary action and no later than the second, fifth, and tenth anniversaries of the disciplinary action.

(4) Unless otherwise determined by the Corporation, any bank securities representative who does not complete the requirements within the prescribed time frames may not perform any bank securities representative duties. The Corporation may, upon application and a showing of good cause, allow additional time for a bank securities representative to satisfy the program requirements.

(b) *Sponsoring bank requirements.* (1) A sponsoring bank shall not permit any employee to act as a bank securities representative unless the employee has complied with the requirements set forth in paragraphs (a)(1) through (a)(4) of this section.

(2) A sponsoring bank shall maintain a continuing education program for its bank securities representatives. A sponsoring bank, at least annually, shall evaluate and prioritize its training needs and develop or update, as appropriate, a written training plan. The plan must take into consideration the bank's size, organizational structure, and scope of business activities. Programs used to implement a sponsoring bank's training plan must be appropriate for the business of that bank and, at a minimum, must cover the following matters concerning securities products, services, and strategies offered by the bank:

(i) General investment features and associated risk factors;

(ii) Suitability and sales practice considerations;

(iii) Applicable regulatory requirements; and

(iv) Bank policies and procedures for covered transactions.

(3) A sponsoring bank shall administer its continuing education programs in accordance with its annual evaluation and written plan and must maintain records documenting the content of the programs and completion of the programs by its bank securities representatives. A bank may choose to use commercial training material and outside vendors to assist in meeting this education requirement if it ensures that the training material or program meets the content standards set forth in paragraph (b)(2) of this section.

**§ 342.8 Confidentiality of qualification examinations.**

Every bank and bank employee shall maintain the confidentiality of qualification examinations and shall not remove from an examination center, reproduce, disclose, receive from or pass to any person, or use for study or any other purposes, any portion of an examination, whether of a present or past series, that would compromise the integrity of the examinations, or use in any manner and at any time the questions or answers to the examination.

By Order of the Board of Directors.

Dated at Washington, D.C., this 11th day of December, 1996.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

*Executive Secretary.*

[FR Doc. 96-32326 Filed 12-27-96; 8:45 am]

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