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FEDERAL DEPOSIT INSURANCE CORPORATION

5 CFR Part 3201

RIN 3064-AA08, 3209-AA15

Supplemental Standards of Ethical Conduct For Employees of the Federal Deposit Insurance Corporation

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule; amendment.

SUMMARY: The FDIC, with the concurrence of the Office of Government Ethics (OGE), is amending the Supplemental Standards of Ethical Conduct for Employees of the Federal Deposit Insurance Corporation to allow certain employees in the FDIC's Division of Supervision (DOS) and Division of Compliance and Consumer Affairs (DCA) to obtain credit cards from State chartered nonmember banks that are headquartered outside the geographical jurisdiction of the field office to which the employee is assigned. The FDIC is also making minor changes in its Supplemental Standards to conform them to previous organizational changes.

EFFECTIVE DATE: January 27, 1997.

FOR FURTHER INFORMATION CONTACT: Richard M. Handy, Assistant Executive Secretary (Ethics), Office of the Executive Secretary of the Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429; telephone (202) 898-7271.

SUPPLEMENTARY INFORMATION:

I. Background

The FDIC is the primary regulator for State chartered banks that are not members of the Federal Reserve System. FDIC bank examinations are generally conducted by examiners assigned to the FDIC's DOS or DCA. Both divisions maintain numerous field offices that

report to one of eight regional offices. The responsibility for examining any particular State nonmember bank belongs to the field office whose geographical jurisdiction includes that bank's headquarters. Bank examination reports and recommendations are sent from the field office to its regional office for approval.

In order to minimize potential conflicts of interest between examiners and the banks they examine, the FDIC's ethics regulations have traditionally prohibited examiners from obtaining credit from State nonmember banks. Since 1988, the FDIC's employee ethics regulation has made an exception to the general prohibition to allow examiners in the field offices and regional offices to accept credit in the form of credit cards from State nonmember banks headquartered outside the FDIC region to which they are assigned, subject to certain conditions. Also since 1988, an exception for headquarters employees subject to the general credit restriction has allowed them to obtain credit cards from any State nonmember bank. Any employee who avails him or herself of the credit card exception was required to disqualify him or herself from taking any official action affecting the State nonmember bank that issued the credit card. The disqualification requirement prevents employees from taking actions that would constitute a conflict of interest for the employee, thus avoiding violations of the Federal conflict of interest statute (18 U.S.C. 208) or subpart D of the Office of Government Ethics' Standards of Ethical Conduct for Executive Branch Employees that apply to FDIC employees, 5 CFR part 2635. See also OGE's recent final 18 U.S.C. 208 regulation, 61 FR 6830-66851 (part III) (December 18, 1996). The general State nonmember bank credit prohibition and its exception are consistent with, but not the same as, 18 U.S.C. 213 which prohibits examiners from accepting credit from any institution that they have previously examined.

The FDIC's employee ethics regulation (5 CFR part 3201) was comprehensively revised in 1995 to supplement OGE's executive branch-wide employee ethics regulation. See 60 FR 20171-20178 (April 25, 1995), as amended at 61 FR 35915-35916 (July 9, 1996). The FDIC's present general credit restriction applies to designated DOS

and DCA employees, most but not all of whom are bank examiners. See § 3201.102(c)(1). The credit card exception for headquarters employees which allows them to acquire credit cards from any State nonmember bank, subject to the disqualification requirement, is at § 3201.102(c)(1)(i). The credit card exception for employees assigned to DOS and DCA regional and field offices that allows them to acquire credit cards from State nonmember banks headquartered outside their region of assignment, subject to the disqualification requirement, is at § 3201.102(c)(1)(ii).

Thus, at present, employees of all field offices within a region are prohibited from getting any credit, including a credit card, from any State nonmember bank headquartered in their region, even from banks that are examined by a different field office than the one to which they are assigned. The narrowness of the credit card exception has allowed management the maximum flexibility to assign employees within their region as staffing needs require. This is because, in most cases, the combination of the broad credit restriction and the narrow exception to it has meant that most examiners assigned to a region have no credit from any State nonmember bank located within that region. Absent disqualifications that result from an extension of credit, the employees can be assigned to work on any bank within the region as well as their field office as the need arises.

However, the current § 3201.102(c)(1)(ii) prohibition and narrow exception has kept DOS and DCA employees from obtaining credit that many citizens consider important in conducting their personal business. For example, in certain cases, department stores have transferred their customer credit accounts to State nonmember banks from which examiners in the region of the bank's headquarters are prohibited from accepting credit cards. In other cases, nationally chartered banks from whom DOS and DCA employees can generally obtain credit issue their credit cards through State chartered nonmember banks. In such cases, DOS and DCA employees covered by § 3201.102(c)(1)(ii) are prohibited from accepting credit available to others.

In order to alleviate somewhat the difficulty in obtaining credit card credit by employees covered by § 3201.102(c)(1)(ii), the FDIC has determined to modify the exception to the prohibition in a way that still maintains protection against potential conflicts of interest. Specifically, the FDIC has determined to expand the § 3201.102(c)(1)(ii) exception to allow employees assigned to a field office to obtain credit cards from State nonmember banks that are headquartered outside their field office's geographical examination responsibility. Thus, for example, an employee assigned to one of the 17 field offices within the Atlanta Regional Office will be able to obtain credit card credit from State nonmember banks headquartered in the other 16 field offices within the region that were previously not allowed. Potential conflicts of interest will still be avoided by continuing the requirement that any employee who obtains credit card credit pursuant to the newly expanded exception shall disqualify him or herself from taking any official action regarding the issuer of that credit.

The broadened exception to the § 3201.102(c)(1) prohibition may reduce FDIC management's flexibility, in certain cases, to reassign employees to different offices. However, management has determined that the increased availability of credit to its employees is worth the increased effort required. Similarly, employees who obtain previously prohibited credit as a result of this change must recognize that their ability to accept assignments will be narrowed to the extent that they use this expanded exception to the rule.

The change in the exception would not affect DOS or DCA employees assigned to the Washington office who would continue to be allowed by § 3201.102(c)(1)(i) to obtain credit through the use of a credit card from any State nonmember bank. Nor will the change affect DOS or DCA employees whose official assignment is to a regional office. Since those employees can take action affecting any State nonmember bank within their region, they will still be permitted to obtain credit cards only from State nonmember banks headquartered outside their region of assignment.

The FDIC is also making a couple of other minor changes in § 3201.102 to reflect organizational changes that have occurred since the regulation was finalized. First, § 3201.102(c)(2), which identifies the employees to whom the credit restriction of § 102(c)(1) applies, is amended to delete two references to the positions of Executive Director for

Supervision, Resolutions, and Compliance and Regional Manager which no longer exist. Second, the FDIC is amending § 3201.102(d) which prohibits employees of certain FDIC divisions who have certain listed official duties from accepting credit from an FDIC-insured depository institution for two years after their last participation in an official matter affecting that institution. The amendment adds to the list of divisions covered by § 3201.102(d) the Division of Insurance which was created after the FDIC's supplemental employee ethics regulation was made final and substitutes the new Division of Resolutions and Receiverships for the former Division of Depositor and Asset Services and the Division of Resolutions.

II. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(a)(2), (b) and (d), the Board of Directors has found that good cause exists for waiving the regular notice of proposed rulemaking and 30-day delayed effective date as to this final rule amendment. This action is being taken because it is in the public interest that this rule, which concerns matters of agency organization, practice and procedure and which relieves certain restrictions placed on FDIC employees, become effective on the date of publication.

Regulatory Flexibility Act

The Board of Directors has concluded that the amendment to the rule will not impose a significant economic hardship on small institutions. Therefore, the Board of Directors hereby certifies pursuant to § 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that the amended regulation will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

The Board of Directors has determined that the amended regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 5 CFR Part 3201

Administrative practice and procedure, Conflict of interests, Government employees, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Federal Deposit Insurance Corporation, with the concurrence of

the Office of Government Ethics, is amending 5 CFR part 3201 as follows:

PART 3201—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE FEDERAL DEPOSIT INSURANCE CORPORATION

1. The authority citation for part 3201 continues to read as follows:

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 12 U.S.C. 1819(a), 1822; 26 U.S.C. 1043; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403, 2635.502, and 2635.803.

2. Section 3201.102 is amended as set forth below:

- A. Removing the word "and" at the end of paragraph (c)(1)(i);
- B. Revising paragraph (c)(1)(ii);
- C. Adding a new paragraph (c)(1)(iii);
- D. Removing the words "the Executive Director for Supervision, Resolutions, and Compliance," in both places in which they appear and the words "Regional Manager," where it appears in paragraph (c)(2); and
- E. Amending paragraph (c)(3) by removing the phrase "(c)(1)(i) or (c)(1)(ii)" and adding in its place the phrase "(c)(1)(i), (c)(1)(ii), or (c)(1)(iii);" and

F. Amending paragraph (d)(2) by removing the words "Division of Depositor and Asset Services, Division of Resolutions" and adding in their place "Division of Resolutions and Receiverships," and adding "Division of Insurance," before the words "Legal Division." The revised paragraph (c)(1)(ii) and the added paragraph (c)(1)(iii) read as follows:

§ 3201.102 Extensions of credit from FDIC-insured depository institutions.

* * * * *

(c) * * *

(1) * * *

(ii) For an employee assigned to a regional office, credit extended by an FDIC-insured State nonmember bank headquartered outside the employee's region of official assignment through the use of a credit card on the same terms and conditions as are offered to the general public; and

(iii) For an employee assigned to a field office, credit extended by an FDIC-insured State nonmember bank headquartered outside the employee's field office of official assignment through the use of a credit card on the same terms and conditions as are offered to the general public.

* * * * *

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

By Order of the Board of Directors.
Federal Deposit Insurance Corporation.
Jerry L. Langley,
Executive Secretary.

Concurred in this 17th day of January
1997.

Stephen D. Potts,

Director, Office of Government Ethics.

[FR Doc. 97-1867 Filed 1-24-97; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221, and 224

[Regulations G, T, U and X]

Securities Credit Transactions; List of Marginable OTC Stocks; List of Foreign Margin Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Marginable OTC Stocks (OTC List) is composed of stocks traded over-the-counter (OTC) in the United States that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List of Foreign Margin Stocks (Foreign List) is composed of foreign equity securities that have met the Board's eligibility criteria under Regulation T. The OTC List and the Foreign List are published four times a year by the Board. This document sets forth additions to and deletions from the previous OTC List and the previous Foreign List.

EFFECTIVE DATE: February 10, 1997.

FOR FURTHER INFORMATION CONTACT:

Peggy Wolfrum, Securities Regulation Analyst, Division of Banking Supervision and Regulation, (202) 452-2781, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD) at (202) 452-3544.

SUPPLEMENTARY INFORMATION: Listed below are the deletions from and additions to the Board's OTC List, which was last published on October 28, 1996 (61 FR 55555), and became effective November 12, 1996. A copy of the complete OTC List is available from the Federal Reserve Banks.

The OTC List includes those stocks traded over-the-counter in the United States that meet the criteria in Regulations G, T and U (12 CFR Parts 207, 220 and 221, respectively). This determination also affects the

applicability of Regulation X (12 CFR Part 224). These stocks have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulation in the same fashion as exchange-traded securities. The OTC List also includes any OTC stock designated for trading in the national market system (NMS security) under rules approved by the Securities and Exchange Commission (SEC). Additional OTC stocks may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable upon the effective date of their NMS designation. The names of these stocks are available at the SEC and at the National Association of Securities Dealers, Inc. and will be incorporated into the Board's next quarterly publication of the OTC List.

Also listed below are the deletions from and additions to the Foreign List which was last published on October 28, 1996 (61 FR 55555) and became effective November 12, 1996. A copy of the complete Foreign List is available from the Federal Reserve banks.

Public Comment and Deferred Effective Date

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the Lists specified in 12 CFR 207.6(a) and (b), 220.17(a), (b), (c) and (d), and 221.7(a) and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of these Lists as soon as possible. The Board has responded to a request by the public and allowed approximately a two-week delay before the Lists are effective.

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 220

Banks, Banking, Brokers, Credit, Margin, Margin requirements, Investments, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 221

Banks, Banking, Credit, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 224

Banks, Banking, Borrowers, Credit, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6 (Regulation G), 12 CFR 220.2 and 220.17 (Regulation T), and 12 CFR 221.2(j) and 221.7 (Regulation U), there is set forth below a listing of deletions from and additions to the OTC List and the Foreign List.

Deletions From the List Of Marginable OTC Stocks

Stocks Removed for Failing Continued Listing Requirements

50-OFF STORES, INC.

\$.01 par common

ASTROSYSTEMS, INC.

\$.10 par common

BRADLEY PHARMACEUTICALS, INC.

Class A, warrants (expire 11-12-96)

Class B, warrants (expire 11-12-96)

Class D, warrants (expire 12-09-96)

CAM-NET COMMUNICATIONS

NETWORK, INC.

No par common

CREATIVE TECHNOLOGIES CORP.

\$.03 par common

CRYOMEDICAL SCIENCES, INC.

\$.001 par common

D & N FINANCIAL CORPORATION

Warrants (expire 12-31-96)

EDMARK CORPORATION

No par common

EMBREX, INC.

Warrants (expire 11-07-96)

ENCON SYSTEMS, INC.

\$.01 par common

EUROMED, INC.

\$.01 par common

EVERGREEN MEDIA CORPORATION

6% convertible exchangeable preferred

FIRST COMMERCE CORPORATION

\$25.00 par cumulative preferred

GENSIA, INC.

Warrants (expire 12-31-96)

Rights (expire 12-31-96)

GENZYME CORPORATION