

the bank proposes to defer loss including for each such loan or property, the following information:

(A) The name of the borrower, the amount of the loan that resulted in the loss, and the amount of the loss;

(B) The date on which the loss was declared;

(C) The basis upon which the loss resulted from a qualified agricultural loan;

(vii) A certification by the bank's chief executive officer that there is no evidence that the losses resulted from fraud or criminal abuse by the bank, its officers, directors, or principal shareholders;

(viii) A copy of a resolution by the bank's Board of Directors authorizing submission of the proposal; and

(ix) Such other information as the Accepting Official may require.

(g) *Revocation of eligibility.* The failure to comply with any condition in an acceptance or with the capital restoration plan is grounds for revocation of acceptance for loss amortization and for an administrative action against the bank under 12 U.S.C. 1818(b). Additionally, acceptance of a bank for loss amortization will not foreclose any administrative action against the bank that the Board may deem appropriate.

[Reg. H, 52 FR 42090, Nov. 3, 1987, as amended at 53 FR 20812, June 7, 1988]

§ 208.16 Reporting requirements for State member banks subject to the Securities Exchange Act of 1934.

(a) *Filing requirements.* Except as otherwise provided in this section, a State member bank the securities of which are subject to registration pursuant to section 12(b) or section 12(g) of the Securities Exchange Act of 1934 (the *1934 Act*) (15 U.S.C. 78l (b) and (g)) shall comply with the rules, regulations and forms adopted by the Securities and Exchange Commission (*Commission*) pursuant to sections 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the 1934 Act (15 U.S.C. 78l, 78m, 78n(a), (c), (d), (f) and 78p). The term *Commission* as used in those rules and regulations shall with respect to securities issued by State member banks be deemed to refer to the Board unless the context otherwise requires.

(b) *Elections permitted of State member banks with total assets of \$150 million or less.* (1) Notwithstanding paragraph (a) of this section or the rules and regulations promulgated by the Commission pursuant to the 1934 Act, a State member bank that has total assets of \$150 million or less as of the end of its most recent fiscal year and no foreign offices may elect to substitute for the financial statements required by the Commission's Form 10-Q the balance sheet and income statement from the quarterly report of condition required to be filed by such bank with the Board under section 9 of the Federal Reserve Act (12 U.S.C. 324) (Federal Financial Institutions Examination Council Form 033 or 034).

(2) A State member bank may not elect to file financial statements from its quarterly report of condition pursuant to paragraph (b)(1) of this section if the amounts reported for net income, total assets or total equity capital in those statements, which are prepared on the basis of Federal bank regulatory reporting standards, would differ materially from such amounts reported in financial statements prepared in accordance with generally accepted accounting principles (*GAAP*).

(3) A State member bank qualifying for and electing to file financial statements from its quarterly report of condition pursuant to paragraph (b)(1) of this section in its form 10-Q shall include earnings per share or net loss per share data prepared in accordance with GAAP and disclose any material contingencies as required by Article 10 of the Commission's Regulation S-X (15 CFR 210.10-01), in the Management's Discussion and Analysis of Financial Condition and Results of Operations section of Form 10-Q.

(c) *Filing instructions, inspection of documents, and nondisclosure of certain information filed.* (1) All papers required to be filed with the Board pursuant to the 1934 Act or regulations thereunder shall be submitted to the Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Material may be filed by delivery to the Board, through the mails, or otherwise. The date on which papers

are actually received by the Board shall be the date of filing thereof if all of the requirements with respect to the filing have been complied with.

(2) No filing fees specified by the Commission's rules shall be paid to the Board.

(3) Copies of the registration statement, definitive proxy solicitation materials, reports and annual reports to shareholders required by this section (exclusive of exhibits) will be available for public inspection at the Board's offices in Washington, DC, as well as at the Federal Reserve Banks of New York, Chicago, and San Francisco and at the Reserve Bank in the district in which the reporting bank is located.

(4) Any person filing any statement, report, or document under the 1934 Act may make written objection to the public disclosure of any information contained therein in accordance with the procedure set forth below:

(i) The person shall omit from the statement, report, or document, when it is filed, the portion thereof that the person desires to keep undisclosed (hereinafter called the confidential portion). The person shall indicate at the appropriate place in the statement, report, or document that the confidential portion has been so omitted and filed separately with the Board.

(ii) The person shall file with the copies of the statement, report, or document filed with the Board:

(A) As many copies of the confidential portion, each clearly marked "CONFIDENTIAL TREATMENT", as there are copies of the statement, report, or document filed with the Board. Each copy of the confidential portion shall contain the complete text of the item and, notwithstanding that the confidential portion does not constitute the whole of the answer, the entire answer thereto; except that in case the confidential portion is part of a financial statement or schedule, only the particular financial statement or schedule need be included. All copies of the confidential portion shall be in the same form as the remainder of the statement, report, or document; and

(B) An application making objection to the disclosure of the confidential portion. Such application shall be on a sheet or sheets separate from the con-

fidential portion, and shall (1) identify the portion of the statement, report, or document that has been omitted, (2) include a statement of the grounds of objection, and (3) include the name of each exchange, if any, with which the statement, report, or document is filed. The copies of the confidential portion and the application filed in accordance with this paragraph shall be enclosed in a separate envelope marked "CONFIDENTIAL TREATMENT" and addressed to Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551.

(iii) Pending the determination by the Board on the objection filed in accordance with this paragraph, the confidential portion will not be disclosed by the Board.

(iv) If the Board determines that the objection shall be sustained, a notation to that effect will be made at the appropriate place in the statement, report, or document.

(v) If the Board determines that the objection shall not be sustained because disclosure of the confidential portion is in the public interest, a finding and determination to that effect will be entered and notice of the finding and determination will be sent by registered or certified mail to the person.

(vi) If the Board determines that the objection shall not be sustained pursuant to paragraph (c)(4)(v) of this section, the confidential portion shall be made available to the public:

(A) 15 days after notice of the Board's determination not to sustain the objection has been given as required by paragraph (c)(4)(v) of this section, provided that the person filing the objection has not previously filed with the Board a written statement that he intends in good faith to seek judicial review of the finding and determination;

(B) 60 days after notice of the Board's determination not to sustain the objection has been given as required by paragraph (c)(4)(v) of this section and the person filing the objection has filed with the Board a written statement that he intends to seek judicial review of the finding and determination but has failed to file a petition for judicial review of the Board's determination; or

(C) Upon final judicial determination, if adverse to the party filing the objection.

(vii) If the confidential portion is made available to the public, a copy thereof shall be attached to each copy of the statement, report, or document filed with the Board.

[Reg. H, 52 FR 49376, Dec. 31, 1987]

§ 208.17 Disclosure of financial information by state member banks.

(a) *Purpose and scope.* The purpose of this section is to facilitate the dissemination of publicly available information regarding the financial condition of state member banks, state licensed agencies of foreign banks, and state licensed branches of foreign banks that are not insured by the Federal Deposit Insurance Corporation. This section requires all state-chartered banks that are members of the Federal Reserve System and all other covered institutions:

(1) To make year-end Call Reports or Reports of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks or, in the case of state member banks, other alternative financial information, available to shareholders, customers, and the general public upon request; and

(2) To advise shareholders and the public of the availability of this information.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Call Report* means the Consolidated Reports of Condition and Income (OMB No. 7100-0036) filed pursuant to 12 U.S.C. 324 and § 208.10 of this regulation (12 CFR 208.10).

(2) *State member bank* means a bank that is chartered by a State and is a member of the Federal Reserve System.

(3) *Other covered institutions* means state licensed agencies of foreign banks, or state licensed branches of foreign banks that are not insured by the Federal Deposit Insurance Corporation.

(c) *Availability of financial information*—(1) *Shareholders.* Each state member bank shall advise its shareholders, by a written announcement, which may be included in the notice of the

annual shareholders' meeting, that one copy of certain financial information is available free of charge upon request. The announcement shall include, at a minimum, an address or telephone number to which requests may be directed.

(2) *General public.* State member banks and other covered institutions shall use reasonable means at their disposal to advise the public of the availability of information pursuant to this section. Bankers' banks, as defined by the Federal Reserve Act, as amended by the Monetary Control Act of 1980 (title I of Pub. L. 96-221), and 12 CFR 204.121, are exempt from this requirement. The notification to the public shall state that one copy of the information is available free of charge upon request and state an address or telephone number to which requests may be directed.

(d) *Financial information to be provided by state member banks.* The bank shall have discretion to determine which type of information, identified in this subsection, to release. The bank shall make the information it chooses to release available as soon as is reasonably possible but not later than April 1 of the year immediately following the end of the year to which the most recently available information pertains. State member banks shall fulfill the requirements of this section by providing, upon request, at least one free copy to each requestor of the following information:

(1) Copies of their entire Call Report for the most recent year end and the prior year end, excluding any information for which confidential treatment is permitted pursuant to the Call Report instructions; or

(2) Copies of only the following schedules from their Call Reports for the most recent year end and the prior year end, excluding any information for which confidential treatment is permitted pursuant to the Call Report instructions:

- (i) Schedule RC (Balance Sheet);
- (ii) Schedule RC-N (Past Due and Nonaccrual Loans and Leases);
- (iii) Schedule RI (Income Statement);
- (iv) Schedule RI-A (Changes in Equity Capital); and