

admission to the Federal Reserve System, and, in addition, such other conditions as may be considered necessary or advisable in the particular case:

(1) Such bank at all times shall conduct its business and exercise its powers with due regard to the safety of its depositors, and, except with the permission of the Board of Governors of the Federal Reserve System, such bank shall not cause or permit any change to be made in the general character of its business or in the scope of the corporate powers exercised by it at the time of admission to membership.⁶

(2) The net capital and surplus funds of such bank shall be adequate in relation to the character and condition of its assets and to its deposit liabilities and other corporate responsibilities.

(b) The acquisition by a member State bank of the assets of another institution through merger, consolidation, or purchase may result in a change in the general character of its business or in the scope of its corporate powers within the meaning of the condition set forth in paragraph (a)(1) of this section, and if at any time a bank subject to such condition anticipates making any such acquisition a detailed report setting forth all the facts in connection with the transaction shall be made promptly to the Federal Reserve Bank of the district in which such bank is located.

(c) If at any time, in the light of all the circumstances, the aggregate amount of a member State bank's net

capital and surplus funds appears to be inadequate, the bank, within such period as shall be deemed by the Board to be reasonable for this purpose, shall increase the amount thereof to an amount which in the judgment of the Board shall be adequate in relation to the character and condition of its assets and to its deposit liabilities and other corporate responsibilities.

§208.8 Banking practices.

(a) *Scope.* No State member bank shall engage in practices which are unsafe or unsound or which result in a violation of law, rule, or regulation, or which violate any condition imposed by or agreements entered into with the Board. This section outlines certain of the practices in which State member banks should not engage.

(b) *Waiver.* A State member bank has the right to petition the Board to waive the conditions of this §208.8. A waiver may be granted upon a showing of good cause. The Board in its discretion may choose to limit, among other items, the scope, duration, and timing of the waiver.

(c) *Effect on other banking practices.* Nothing in this section shall be construed as restricting in any manner the Board's authority to deal with any banking practice which is deemed to be unsafe or unsound or otherwise not in accordance with law, rule, or regulation or which violates any condition imposed in writing by the Board in connection with the granting of any application or other request by a State member bank, or any written agreement entered into by such bank with the Board. Compliance with the provisions of this section shall neither relieve a State member bank of its duty to conduct all operations in a safe and sound manner nor prevent the Board from taking whatever action it deems necessary and desirable to deal with general or specific acts or practices which, although perhaps not violating the provisions of this section, are considered nevertheless to be an unsafe or unsound banking practice.

(d) *Letters of credit and acceptances—*
(1) *Definitions.* For the purpose of this paragraph, *standby letters of credit* include every letter of credit (or similar

⁶For many years, the Board prescribed, as standard conditions of membership, a condition which, in general, prohibited banks from engaging as a business in the sale of real estate loans to the public and certain conditions relating to the exercise of trust powers, including one which prohibited self-dealing in the investment of trust funds. The elimination of these conditions as standard conditions of membership does not reflect any change in the Board's position as to the undesirability of the practices formerly prohibited by such conditions; and attention is called to the fact that engaging as a business in the sale of real estate loans to the public or failing to conduct trust business in accordance with the applicable State laws and sound principles of trust administration may constitute unsafe or unsound practices and violate the condition set forth in this paragraph.

arrangement however named or designated) which represents an obligation to the beneficiary on the part of the issuer (i) to repay money borrowed by or advanced to or for the account of the account party or (ii) to make payment on account of any evidence of indebtedness undertaken by the account party, or (iii) to make payment on account of any default by the account party in the performance of an obligation.^{6a} An *ineligible acceptance* is a time draft accepted by a bank, which does not meet the requirements for discount with a Federal Reserve Bank.

(2) *Restrictions.* (i) A State member bank shall not issue, extend, or amend a standby letter of credit (or other similar arrangement, however named or described) or make an ineligible acceptance or grant any other extension of credit if, in the aggregate, the amount of all standby letters of credit and ineligible acceptances issued, renewed, extended, or amended on or after the effective date of this amendment, when combined with other extensions of credit issued by the bank would exceed the legal limitations on loans imposed by the State (including limitations to any one customer or on aggregate extensions of credit) or exceed legal limits pertaining to loans to affiliates under Federal law (12 U.S.C. 371(c)): *Provided*, That, if any State has a separate limitation on the issuance of letters of credit or acceptances which apply to a standby letter of credit or to ineligible acceptances respectively, then the separate limitation shall apply in lieu of the standard loan limitation.

(ii) No State member bank shall issue a standby letter of credit or ineligible acceptance unless the credit standing of the account party under any letter of credit, and the customer of an ineligible acceptance, is the subject of credit analysis equivalent to that applica-

ble to a potential borrower in an ordinary loan situation.

(iii) If several banks participate in the issuance of a standby letter of credit or ineligible acceptance under a *bona fide* binding agreement which provides that, regardless of any event, each participant shall be liable only up to a certain percentage or certain amount of the total amount of the standby letter of credit or ineligible acceptance issued, a State member bank need only include the amount of its participation for purposes of this section; otherwise, the entire amount of the letter of credit or acceptance must be included.

(3) *Disclosure; recordkeeping.* The amount of all outstanding standby letters of credit and ineligible acceptances, regardless of when issued, shall be adequately disclosed in the bank's published financial statements.

Each State member bank shall maintain adequate control and subsidiary records of its standby letters of credit comparable to the records maintained in connection with the bank's direct loans so that at all times the bank's potential liability thereunder and the bank's compliance with this paragraph (d) may be readily determined.

(4) *Exceptions.* A standby letter of credit is not subject to the restrictions set forth above in the following situations:

(i) Prior to or at the time of issuance of the credit, the issuing bank is paid an amount equal to the bank's maximum liability under the standby letter of credit; or

(ii) Prior to or at the time of issuance, the bank has set aside sufficient funds in a segregated, clearly earmarked deposit account to cover the bank's maximum liability under the standby letter of credit.

(e) [Reserved]

(f) *State member banks as transfer agents.* (1) On or after December 1, 1975, no State member bank or any of its subsidiaries shall act as transfer agent, as defined in section 3(a)(25) of the Securities Exchange Act of 1934, (*Act*) with respect to any security registered under section 12 of the Act or which would be required to be registered except for the exemption from registration provided by subsection (g)(2)(B) or (g)(2)(G) of that section, unless it shall

^{6a} As defined, *standby letter of credit* would not include (1) commercial letters of credit and similar instruments where the issuing bank expects the beneficiary to draw upon the issuer and which do not *guaranty* payment of a money obligation or (2) a guaranty or similar obligation issued by a foreign branch in accordance with and subject to the limitations of Regulation K.

have filed a registration statement with the Board in conformity with the requirements of Form TA-1, which registration statement shall have become effective as hereinafter provided. Any registration statement filed by a State member bank or its subsidiary shall become effective on the thirtieth day after filing with the Board unless the Board takes affirmative action to accelerate, deny or postpone such registration in accordance with the provisions of section 17A(c) of the Act. Such filings with the Board will constitute filings with the Securities and Exchange Commission for purposes of section 17(c)(1) of the Act.

(2) If the information contained in Form TA-1 becomes inaccurate, misleading or incomplete for any reason, the bank or its subsidiary shall, within sixty calendar days thereafter, file an amendment to Form TA-1 correcting the inaccurate, misleading or incomplete information.

(3) Each registration statement on Form TA-1 or amendment thereto shall constitute a *report* or *application* within the meaning of sections 17, 17A(c) and 32(a) of the Act.

(g) *State member banks as registered clearing agencies*—(1) *Requirement of notice.* Any State, member bank or any of its subsidiaries that is a registered clearing agency pursuant to section 17A(b) of the Securities Exchange Act of 1934 (the *Act*), which imposes any final disciplinary sanction on any participant therein, denies participation to any applicant or prohibits or limits any person in respect to access to services offered by such registered clearing agency, shall file with the Board and the appropriate regulatory agency (if other than the Board) for a participant or applicant notice thereof in the manner prescribed herein.

(2) *Notice of final disciplinary action.* Any registered clearing agency for which the Board is the appropriate regulatory agency that takes any final disciplinary action with respect to any participant shall promptly file a notice thereof with the Board in accordance with paragraph (g)(3) of this section. For the purposes of this paragraph *final disciplinary action* shall mean the imposition of any disciplinary sanction pursuant to section 17A(b)(3)(G) of the Act

or other action of a registered clearing agency which, after notice and opportunity for hearing, results in any final disposition of charges of:

(i) One or more violations of the rules of such registered clearing agency; or

(ii) Acts or practices constituting a statutory disqualification of a type defined in paragraph (iv) or (v) (except prior convictions) of section 3(a)(39) of the Act.

However, if a registered clearing agency fee schedule specifies certain charges for errors made by its participants in giving instructions to the registered clearing agency which are de minimis on a per error basis and whose purpose is in part to provide revenues to the registered clearing agency to compensate it for effort expended in beginning to process an erroneous instruction, such error charges shall not be considered a *final disciplinary action* for purposes of this paragraph.

(3) *Content of notice required by paragraph (g)(2).* Any notice filed pursuant to paragraph (g)(2) of this section shall consist of the following, as appropriate:

(i) The name of the respondent concerned together with the respondent's last known address as reflected on the records of the registered clearing agency and the name of the person, committee, or other organizational unit that brought the charges involved; except that, as to any respondent who has been found not to have violated a provision covered by a charge, identifying information with respect to such person may be deleted insofar as the notice reports the disposition of that charge and, prior to the filing of the notice, the respondent does not request that identifying information be included in the notice.

(ii) A statement describing the investigative or other origin of the action;

(iii) As charged in the proceeding, the specific provision or provisions of the rules of the registered clearing agency violated by such person or the statutory disqualification referred to in paragraph (g)(2)(ii) of this section and a statement describing the answer of the respondent to the charges;

(iv) A statement setting forth findings of fact with respect to any act or practice in which such respondent was charged with having engaged in or

omitted; the conclusion of the registered clearing agency as to whether such respondent violated any rule or was subject to a statutory disqualification as charged; and a statement of the registered clearing agency in support of its resolution of the principal issues raised in the proceedings;

(v) A statement describing any sanction imposed, the reasons therefor, and the date upon which such sanction has or will become effective; and

(vi) Such other matters as the registered clearing agency may deem relevant.

(4) *Notice of final denial, prohibition, termination or limitation based on qualification or administrative rules.* Any registered clearing agency for which the Board is the appropriate regulatory agency that takes any final action which denies participation to, or conditions the participation of, any person or prohibits or limits any person with respect to access to services offered by the clearing agency based on an alleged failure of such person to:

(i) Comply with the qualification standards prescribed by the rules of such registered clearing agency pursuant to section 17A(b)(4)(B) of the Act; or

(ii) Comply with any administrative requirements of such registered clearing agency (including failure to pay entry or other dues or fees or to file prescribed forms or reports) not involving charges of violations which may lead to a disciplinary sanction shall not considered a *final disciplinary action* for purposes of paragraph (g)(2) of this section, but notice thereof shall be promptly filed with the Board and the appropriate regulatory agency (if other than the Board) for the affected person in accordance with paragraph (g)(5) of this section; provided however, that no such action shall be considered *final* pursuant to this subparagraph that results merely from, a notice of such failure to the person affected, if such person has not sought an adjudication of the matter, including a hearing, or otherwise exhausted his administrative remedies within the registered clearing agency with respect to such a matter.

(5) *Content of notice required by paragraph (g)(4).* Any notice filed pursuant

to paragraph (g)(4) of this section shall consist of the following, as appropriate:

(i) The name of each person concerned together with each such person's last known address as reflected in the records of the registered clearing agency;

(ii) The specific grounds upon which the action of the registered clearing agency was based, and a statement describing the answer of the person concerned;

(iii) A statement setting forth findings of fact and conclusions as to each alleged failure of the person to comply with qualification standards, or comply with administrative obligations, and a statement of the registered clearing agency in support of the resolution of the principal issues raised in the proceeding;

(iv) The date upon which such action has or will become effective; and

(v) Such other matters as the registered clearing agency deems relevant.

(6) *Notice of final action based upon prior adjudicated statutory disqualifications.* Any registered clearing agency for which the Board is the appropriate regulatory agency that takes any final action with respect to any person that:

(i) Denies or conditions participation to any person or prohibits or limits access to service offered by such registered clearing agency; and

(ii) Is based upon a statutory disqualification of a type defined in paragraph (A), (B) or (C) of section 3(a)(39) of the Act of consisting of a prior conviction as described in subparagraph (E) of said section 3(a)(39) shall promptly file notice thereof with the Board and the appropriate regulatory agency (if other than the Board) for the affected person in accordance with paragraph (g)(7) of this section; provided, however, that no such action shall be considered *final* pursuant to this paragraph which results merely from a notice of such failure to the person affected, if such person has not sought an adjudication of the matter, including a hearing, or otherwise exhausted his administrative remedies within the registered clearing agency with respect to such a matter.

(7) *Content of notice required by paragraph (g)(6) of this section.* Any notice filed pursuant to paragraph (g)(6) of

this section shall consist of the following, as appropriate:

(i) The name of the person concerned, together with each such person's last known address as reflected in the records of the registered clearing agency;

(ii) A statement setting forth the principal issues raised, the answer of any person concerned, and a statement of the registered clearing agency in support of its resolution of the principal issues raised in the proceeding;

(iii) Any description furnished by or on behalf of the person concerned of the activities engaged in by the person since the adjudication upon which the disqualification is based;

(iv) A copy of the order or decision of the court, the appropriate regulatory agency or the self-regulatory organization which adjudicated the matter giving rise to such statutory disqualification;

(v) The nature of the action taken and the date upon which such action is to be made effective; and

(vi) Such other matters as the registered clearing agency deems relevant.

(8) *Notice of summary suspension of participation.* Any registered clearing agency for which the Board is the appropriate regulatory agency that summarily suspends or closes the accounts of a participant pursuant to the provisions of section 17A(b)(5)(C) of the Act shall within one business day after the effectiveness of such action file notice thereof with the Board and the appropriate regulatory agency for the participant (if other than the Board) of such action in accordance with paragraph (g)(9) of this section.

(9) *Content of notice of summary suspension of participation.* Any notice pursuant to paragraph (g)(8) of this section shall contain at least the following information, as appropriate:

(i) The name of the participant concerned together with the participant's last known address as reflected in the records of the registered clearing agency;

(ii) The date upon which such summary action has or will become effective;

(iii) If such summary action is based upon the provisions of section 17A(b)(5)(C)(i) of the Act, a copy of the

relevant order or decision of the self-regulatory organization if available to the registered clearing agency;

(iv) If such summary action is based upon the provisions of section 17A(b)(5)(C)(ii) of the Act, a statement describing the default of any delivery of funds or securities to the registered clearing agency;

(v) If such summary action is based upon the provisions of section 17A(b)(5)(C)(iii) of the Act, a statement describing the financial or operating difficulty of the participant based upon which the registered clearing agency determined that such suspension and closing of accounts was necessary for the protection of the clearing agency, its participants, creditors or investors;

(vi) The nature and effective date of the suspension; and

(vii) Such other matters as the registered clearing agency deems relevant.

(h) *Applications for stays of disciplinary sanctions or summary suspensions by a registered clearing agency.* If a registered clearing agency for which the Securities and Exchange Commission is not the appropriate regulatory agency imposes any final disciplinary sanction pursuant to section 17A(b)(3)(G) of the Act, or summarily suspends or limits or prohibits access pursuant to section 17A(b)(5)(C) of the Act, any participant aggrieved thereby for which the Board is the appropriate regulatory agency may file with the Board, by telegram or otherwise, a request for a stay of imposition of such action. Such request shall be in writing and shall include a statement as to why such stay should be granted.

(i) *Application for review of final disciplinary sanctions, denials of participation or prohibitions or limitations of access to services imposed by registered clearing agencies—(1) Scope.* Proceedings on an application to the Board under section 19(d)(2) of the Act by a person that is subject to the Board's jurisdiction for review of any action by a registered clearing agency for which the Securities and Exchange Commission is not the appropriate regulatory agency shall be governed by this paragraph.

(2) *Procedure.* (i) An application for review pursuant to section 19(d)(2) of the Act shall be filed with the Board within 30 days after notice is filed by

the registered clearing agency pursuant to section 19(d)(1) of the Act and received by the aggrieved person applying for review, or within such longer period as the Board may determine. The Secretary of the Board shall serve a copy of the application on the registered clearing agency, which shall, within ten days after receipt of the application, certify and file with the Board one copy of the record upon which the action complained was taken, together with three copies of an index to such record. The Secretary shall serve upon the parties copies of such index and any papers subsequently filed.

(ii) Within 20 days after receipt of a copy of the index, the applicant shall file a brief or other statement in support of his application which shall state the specific grounds on which the application is based, the particular findings of the registered clearing agency to which objection is taken, and the relief sought. Any application not perfected by such timely brief or statement may be dismissed as abandoned.

(iii) Within 20 days after receipt of the applicant's brief or statement the registered clearing agency may file an answer thereto, and within 10 days of receipt of any such answer the applicant may file a reply. Any such papers not filed within the time provided by items (i), (ii), or (iii) will not be received except upon special permission of the Board.

(iv) On its own motion, the Board may direct that the record under review be supplemented with such additional evidence as it may deem relevant. Nevertheless, the registered clearing agency and persons who may be aggrieved by such clearing agency's action shall not be entitled to adduce evidence not presented in the proceedings before the registered clearing agency unless it is shown to the satisfaction of the Board that such additional evidence is material and that there were reasonable grounds for failure to present such evidence in the proceedings before the registered clearing agency. Any request for leave to adduce additional evidence shall be filed promptly so as not to delay the disposition of the proceeding.

(v) Oral argument before the Board may be requested by the applicant or the registered clearing agency as follows:

(A) By the applicant with his brief or statement or within 10 days after receipt of the registered clearing agency's answer; or

(B) By the registered clearing agency with its answer.

The Board, in its discretion, may grant or deny any request for oral argument and, where it deems it appropriate to do so, the Board will consider an application on the basis of the papers filed by the parties, without oral argument.

(vi) The Board's Rule of Practice for Formal Hearings shall apply to review proceedings under this rule to the extent that they are not inconsistent with this rule. Attention is directed particularly to §263.21 of the Rules of Practice relating to formal requirements to the papers filed.

(j) *State member banks, and subsidiaries, departments, and divisions thereof, which are municipal securities dealers.* (1) For purposes of this paragraph, the terms herein have the meanings given them in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) and the rules of the Municipal Securities Rulemaking Board. The term Act shall mean the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

(2) On and after October 31, 1977, a State member bank of the Federal Reserve System, or a subsidiary or a department or a division thereof, that is a municipal securities dealer shall not permit a person to be associated with it as a municipal securities principal or municipal securities representative unless it has filed with the Board an original and two copies of Form MSD-4, "Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer." completed in accordance with the instructions contained therein, for that person. Form MSD-4 is prescribed by the Board for purposes of paragraph (b) of Municipal Securities Rulemaking Board Rule G-7, "Information Concerning Associated Persons."

(3) Whenever a municipal securities dealer receives a statement pursuant

to paragraph (c) of Municipal Securities Rulemaking Board Rule G-7, "Information Concerning Associated Persons," from a person for whom it has filed a Form MSD-4 with the Board pursuant to paragraph (j)(2) of this section, such dealer shall within ten days thereafter, file three copies of that statement with the Board accompanied by an original and two copies of a transmittal letter which includes the name of the dealer and a reference to the material transmitted identifying the person involved and is signed by a municipal securities principal associated with the dealer.

(4) Within thirty days after the termination of the association of a municipal securities principal or municipal securities representative with a municipal securities dealer that has filed a Form MSD-4 with the Board for that person pursuant to paragraph (j)(2) of this section, such dealer shall file an original and two copies of a notification of termination with the Board on Form MSD-5, "Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated With a Bank Municipal Securities Dealer," completed in accordance with instructions contained therein.

(5) A municipal securities dealer that files a Form MSD-4, Form MSD-5, or statement with the Board under this paragraph shall retain a copy of each such Form MSD-4, Form MSD-5, or statement until at least three years after the termination of the employment or other association with such dealer of the municipal securities principal or municipal securities representative to whom the form or statement relates.

(6) The date that the Board receives a Form MSD-4, Form MSD-5, or statement filed with the Board under this paragraph shall be the date of filing. Such a form MSD-4, Form MSD-5, or statement which is not prepared and executed in accordance with the applicable requirements may be returned as unacceptable for filing. Acceptance for filing shall not constitute any finding that a Form MSD-4, Form MSD-5 or statement has been completed in accordance with the applicable requirements or that any information re-

ported therein is true, current, complete, or not misleading. Every Form MSD-4, Form MSD-5, or statement filed with the Board under this paragraph shall constitute a filing with the Securities and Exchange Commission for purposes of section 17(c)(1) of the Act (15 U.S.C. 78q(c)(1)) and a *report, application, or document* within the meaning of section 32(a) of the Act (15 U.S.C. 78ff(a)).

(k) [Reserved]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 208.8, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 208.9 Establishment or maintenance of branches.

(a) *In general.* Every State bank which is or hereafter becomes a member of the Federal Reserve System is subject to the provisions of section 9 of the Federal Reserve Act relating to the establishment and maintenance of branches⁷ in the United States or in a dependency or insular possession thereof or in a foreign country. Under the provisions of section 9, member State banks establishing and operating branches in the United States beyond the corporate limits of the city, town, or village in which the parent bank is situated must conform to the same terms, conditions, limitations, and restrictions as are applicable to the establishment of branches by national banks under the provisions of section 5155 of the Revised Statutes of the United States relating to the establishment of branches in the United States, except that the approval of any such branches must be obtained from the Board rather than from the Comptroller of the Currency. The approval of the Board must likewise be obtained before any member State bank establishes any branch after July 15, 1952, within the corporate limits of the city, town, or village in which the parent

⁷ Section 5155 of the Revised Statutes of the United States provides that: (f) The term *branch* as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State or territory of the United States or in the District of Columbia at which deposits are received, or checks paid, or money lent."