

FEDERAL RESERVE SYSTEM**12 CFR Part 209****[Regulation I; Docket No. R-0966]****Issue and Cancellation of Federal Reserve Bank Capital Stock****AGENCY:** Board of Governors of the Federal Reserve System.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Board of Governors of the Federal Reserve System is proposing to amend its Regulation I regarding the issue and cancellation of Federal Reserve Bank Capital Stock in order to reduce regulatory burden and simplify and update requirements. This proposal to modernize Regulation I is in accordance with the Board's policy of regular review of its regulations and the Board's review of its regulations pursuant to section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994.

DATES: Comments must be received by May 30, 1997.

ADDRESSES: Comments, which should refer to Docket No. R-0966, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street N.W. 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's Rules Regarding the Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Rick Heyke, Staff Attorney (202/452-3688), Legal Division, Board of Governors; Elizabeth Tacik, Accountant (202/452-2303), Division of Reserve Bank Operations and Payment Systems, Board of Governors; or Anthony Scafide, Manager (215/574-6546), Wholesale Payments Division, Federal Reserve Bank of Philadelphia. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:**Background**

As part of its policy of regular review of its regulations, and consistent with section 303 of the Riegle Community

Development and Regulatory Improvement Act of 1994 (Riegle Act), the Board of Governors of the Federal Reserve System (Board) is proposing to amend its Regulation I regarding issue and cancellation of Federal Reserve Bank capital stock (12 CFR part 209). Section 303 of the Riegle Act requires each federal banking agency to review and streamline its regulations and written policies to improve efficiency, reduce unnecessary costs, and remove inconsistencies and outmoded and duplicative requirements. The proposed amendments are designed to reduce regulatory burden and simplify and update the Regulation.

The principal amendments being proposed are described below. In general, the amendments simplify, modernize, and condense the Regulation, and reflect the replacement of share certificates by a book-entry system. The amendments also codify Board and staff interpretations. Finally, the amendments delete the many references to specific forms. Many of these references are incorrect because the forms no longer exist or no longer have the same identification numbers.

Banks Desiring To Become Member Banks

Proposed § 209.2 combines and condenses existing §§ 209.1 and 209.2 regarding national and state bank applications. Existing § 209.1 also specifies the amount of Reserve Bank stock for which national banks should apply, but the proposal combines all references to amount in proposed § 209.4 and deletes repetitive explanations. Proposed § 209.2 also includes a subsection (c) that will specify the Reserve Bank of which a bank may become a member and that is the subject of a separate request for comment. See 62 FR 11117.

Cessation of Membership

Proposed § 209.3 combines and simplifies existing §§ 209.5(b) (merger of a member bank into a state nonmember bank), 209.6 (conversion of a national bank into a state nonmember bank), 209.7 (insolvency), 209.8 (voluntary liquidation), 209.9(b) (national bank in the hands of a conservator to be liquidated), 209.10 (closed state member banks not in liquidation), 209.11 (voluntary withdrawal from membership by state bank), and 209.12 (involuntary termination of state bank membership).

The Regulation previously distinguished between insolvency and voluntary liquidation (where the bank or receiver was required to file for cancellation of Reserve Bank stock

within three months), other cessation of business by state member banks (where failure by the bank to file for cancellation within 60 days commenced a process whereby the Board might order termination of membership), and other cases such as voluntary withdrawal, merger into a nonmember bank, or conversion of a national bank into a nonmember state bank (where the regulation imposed no specific timing requirement for filing an application for cancellation of Reserve Bank stock). Proposed 209.3(a) provides instead that all such banks (or receivers) shall file promptly for cancellation of Reserve Bank stock, failing which the Board may order the membership of the bank terminated under 209.3(b).

Section 6(2) of the Act (12 U.S.C. 288) provides that the Comptroller of the Currency may appoint a receiver for a national bank that has discontinued banking operations for 60 days but has not gone into liquidation, if the Comptroller deems it advisable. The existing regulation includes in § 209.9(a) a provision for the appropriate Reserve Bank to notify the Office of the Comptroller of the Currency in the event a national bank has ceased business for 60 days but has not gone into liquidation, together with a statement of reasons why a receiver should be appointed. The proposal omits this provision. The appropriate procedures for communication among the Board, the Reserve Bank, and the Comptroller's office in such a case would depend on the facts and circumstances of the particular case.

Amounts and Payments

Proposed § 209.4(a) combines in one section the requirement for amount of total subscription for Reserve Bank stock (other than for a mutual savings bank) on becoming a member or on a change in capital stock and surplus. The Federal Reserve Act (the Act) requires member banks (other than mutual savings banks) to subscribe for Reserve Bank capital stock in an amount equal to 6 percent of their capital stock and surplus. Member banks are required to pay in half this amount and half is subject to call by the Reserve Bank.

Proposed § 209.4(b) defines member bank capital stock and surplus as capital stock and paid-in surplus. Retained earnings continue to be generally excluded from this definition, thereby minimizing member banks' adjustments in their Reserve Bank stock holdings. The Federal Reserve System experienced approximately 1500 adjustments in Reserve Bank capital stock as a result of changes in member bank capital stock and surplus in 1992.

The Board estimates that this number would increase substantially if it were necessary to adjust for changes in retained earnings of member banks. Although retained earnings are generally excluded from the definition, the regulation incorporates previous guidance requiring a deficit in retained earnings to be subtracted from capital stock and surplus unless the deficit is relatively small and the appropriate Reserve Bank is satisfied that it will be extinguished by accumulation of earnings or formal reduction of surplus, in which case the adjustment of Reserve Bank stock may be deferred until the end of the quarter in which the deficit arises.

Section 5 of the Act provides that Federal Reserve Bank stock shall be adjusted from time to time as member banks increase or decrease capital stock and surplus. The Act does not specify whether this adjustment must be done immediately or can be done periodically after a number of changes in a member bank's capital stock and surplus have occurred or when such changes become in the aggregate significant. There is a burden associated with adjusting banks' Reserve Stock positions to reflect small changes in the banks' capital accounts. The Board seeks comment on how frequently, or after how much cumulative dollar or percentage change, member banks should be required to adjust their Reserve Bank capital stock holdings.

Proposed § 209.4(c) is a condensed version of existing § 209.4 specifying that mutual savings banks are required to subscribe for Reserve Bank stock in an amount equal to 0.6 percent of total deposits rather than 6 percent of capital and surplus. Mutual savings banks not permitted to hold Reserve Bank stock are required to maintain a deposit at the Reserve Bank in the same amount pending a change in state law to permit purchase of the stock.

Proposed §§ 209.4 (d) and (e) specify that transactions in Reserve Bank capital stock between member banks and the Reserve Bank take place at the subscription price plus accrued dividends at the rate of one-half of one percent per month (provided that the total price paid on redemption of Reserve Bank stock does not exceed the book value of such stock). Under section 5 of the Act (12 U.S.C. 287), banks applying for Reserve Bank capital stock are required to pay the subscription price plus accrued dividends for such stock. Under sections 5, 6, and 9(10) of the Act (12 U.S.C. 287, 288 and 328), Reserve Banks redeeming their capital stock from member banks which are in voluntary liquidation or which have

been declared insolvent and for which a receiver has been appointed, or from state member banks on voluntary withdrawal from or involuntary termination of membership, are required to pay a price equal to the cash subscription price originally paid plus accrued dividends, but may not pay a price exceeding the book value of the Reserve Bank stock. The Act is silent on whether accrued dividends are payable by Reserve Banks in other cases such as merger into nonmember banks. In cases where the Act requires accrued dividends, it specifies that they shall accrue at one-half percent per completed month but is silent on whether dividends should be prorated to accrue within a month.

In practice, Reserve Banks have included accrued dividends in both purchases and redemptions, including intra-month accrued dividends, and the proposal applies the concept of accrued dividends to all transactions in Reserve Bank capital stock.¹ The proposal also continues the Board's practice of accruing dividends within a month.

The Board seeks comment on the appropriate method of computing accrued dividends. Generally the Reserve Banks have accrued intra-month dividends on the basis of the actual number of days elapsed within a month divided by the number of actual days in the month. This method results in different daily accruals depending on the number of days in the month for which intra-month accrued dividends are calculated. The Board requests comment on whether adopting another method, such as use of a standard 30-day month, would simplify the computation.

Proposed § 209.4(e)(2) specifies that in the case of any cancellation of Reserve Bank stock under Regulation I, the Reserve Bank may first apply the proceeds to any liability of the member bank to the Reserve Bank, and pay over the remainder to the bank or receiver as appropriate. This replaces a similar requirement in existing § 209.5(b), and clarifies that the principle may apply to partial as well as total cancellations.

The Share Register

Proposed § 209.5 revises the share register provision of the Regulation to reflect the modern book-entry and

¹ Under sections 6 and 9(10) of the Act, the Board is under no obligation to pay unearned accrued dividends on redemption of Reserve Bank capital stock from insolvent member banks for which a receiver has been appointed or from state member banks on voluntary withdrawal from or involuntary termination of membership. See, e.g., Board Interpretation of April 17, 1925, X-4322, and related note, published in Federal Reserve Regulatory Service at 3-500.

electronic records systems the Reserve Banks have implemented. This change permits eliminating the numerous and confusing provisions of the existing Regulation that deal with the circumstances under which share certificates may be retained or must be submitted for reissue. For example, existing § 209.13(a) requires a member bank to surrender its certificate in the event of a change in name for the Reserve Bank to issue a new certificate in the new name. Existing § 209.5(a) includes a lengthy footnote explaining the difference between transfer of Reserve Bank stock certificates by purchase and by operation of law, because a new certificate is not required in the case of transfer by operation of law. Under the proposal, the Reserve Bank in each case need merely change the name of the stockholder in its records.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking. Two of the requirements of an initial regulatory flexibility analysis (5 U.S.C. 603(b))—a description of the reasons why action by the agency is being considered and a statement of the objectives of, and legal basis for, the proposed rule—are contained in "Background" above. The proposed rules do not overlap with other federal rules.

Another requirement for the initial regulatory flexibility analysis is a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply. The proposal will apply to all member banks regardless of size.

The amendments are burden-reducing. Therefore, the Board believes that the amendments will not have a significant adverse economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act notice of 1995 (44 U.S.C. Ch. 3506; 5 CFR Part 1320, Appendix A.1), the Board has reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the proposed rule.

List of Subjects in 12 CFR Part 209

Banks and banking, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, the Board proposes to revise part 209 of chapter II of title 12 to read as follows:

PART 209—ISSUE AND CANCELLATION OF FEDERAL RESERVE BANK CAPITAL STOCK (REGULATION I)

Sec.

- 209.1 Authority, purpose, and scope.
- 209.2 Banks desiring to become member banks.
- 209.3 Cessation of membership.
- 209.4 Amounts and payments.
- 209.5 The share register.

Authority: 12 U.S.C. 248, 321–338, 466, 486.

§ 209.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued pursuant to 12 U.S.C. 248, 321–338, 466, and 486.

(b) *Purpose.* The purpose of this part is to implement the provisions of the Federal Reserve Act relating to the issuance and cancellation of Federal Reserve Bank stock upon becoming or ceasing to be a member bank, or upon changes in the capital and surplus of a member bank, of the Federal Reserve System.

(c) *Scope.* This part applies to member banks of the Federal Reserve System, to national banks in process of organization, and to state banks applying for membership. National banks and locally-incorporated banks located in United States dependencies and possessions are eligible (with the consent of the Board) but not required to apply for membership under section 19(h) of the Federal Reserve Act, 12 U.S.C. 466.¹

§ 209.2 Banks desiring to become member banks.

(a) *Application for stock or deposit.* Each national bank in process of organization,² each nonmember state bank converting into a national bank, and each nonmember state bank applying for membership in the Federal Reserve System under Regulation H, 12 CFR part 208, shall file with the Federal

Reserve Bank in whose district it is located an application for stock (or deposit in the case of mutual savings banks not authorized to purchase Reserve Bank stock³) in the Reserve Bank. The bank shall pay for the stock (or deposit) in accordance with § 209.4.

(b) *Issuance of stock; acceptance of deposit.* Upon authorization to commence business by the Comptroller of the Currency in the case of a national bank in organization or upon approval of conversion by the Comptroller of the Currency in the case of a state nonmember bank converting to a national bank, and when all applicable requirements have been complied with in the case of a state bank approved for membership, the Reserve Bank shall issue the appropriate number of shares by crediting the bank with the appropriate number of shares on its books. In the case of a mutual savings bank not authorized to purchase Reserve Bank shares, the Reserve Bank shall accept the deposit in place of issuing shares. The bank's membership shall become effective on the date of such issuance or acceptance.

(c) *Location of bank.* Placeholder for location of bank.

§ 209.3 Cessation of membership.

(a) *Application for cancellation.* Any bank that desires to withdraw from membership in a Federal Reserve Bank, voluntarily liquidates or ceases business, is merged or consolidated into a nonmember bank, or is involuntarily liquidated by a receiver or conservator or otherwise, shall promptly file with its Reserve Bank an application for cancellation of all its Reserve Bank stock (or withdrawal of its deposit, as the case may be) and payment therefor in accordance with § 209.4.

(b) *Involuntary termination of membership.* If an application is not filed promptly after a cessation of business by a state member bank, a vote to place a member bank in voluntary liquidation, or the appointment of a receiver for (or a determination to liquidate the bank by a conservator of) a member bank, the Board may, after notice and an opportunity for hearing where required under Section 9(9) of the Federal Reserve Act (12 U.S.C. 327),

order the membership of the bank terminated and all of its Reserve Bank stock canceled.

(c) *Effective date of cancellation.*

Cancellation in whole of a bank's Reserve Bank capital stock shall be effective, in the case of:

- (1) Voluntary withdrawal from membership by a state bank, as of the date of such withdrawal;
- (2) Merger into, consolidation with, or (for a national bank) conversion into, a State nonmember bank, as of the effective date of the merger, consolidation, or conversion; and
- (3) Involuntary termination of membership, as of the date the Board issues the order of termination.

(d) *Merger of member banks.* Upon a merger or consolidation of member banks, the surviving bank shall instruct the relevant Reserve Bank to cancel all the shares previously held by any nonsurviving bank. To the extent appropriate, proceeds payable under § 209.4 may be applied to purchase additional shares in the name of the surviving bank.

(e) *Voluntary withdrawal.* Any bank withdrawing voluntarily from membership shall give 6 months written notice, and shall not cause the withdrawal of more than 25 percent of any Reserve Bank's capital stock in any calendar year, without waivers of these requirements from the Board of Governors.

§ 209.4 Amounts and payments.

(a) *Amount of subscription.* The total subscription of a member bank (other than a mutual savings bank) shall equal six percent of its capital and surplus. Whenever any member bank (other than a mutual savings bank) experiences an increase or decrease in capital and surplus, it shall file with the appropriate Reserve Bank an application for issue or cancellation of Reserve Bank capital stock in order to adjust its Reserve Bank capital stock subscription to equal six percent of the member bank's capital and surplus.

(b) *Capital Stock and Surplus defined.* Capital stock and surplus of a member bank at the end of a quarter means the paid-up capital stock and surplus of the bank, less any deficit in its retained earnings account, all as shown on the bank's call report as of the end of the quarter. A Reserve Bank may permit a member bank to disregard a relatively small deficit in its retained earnings account until the end of the quarter in which the deficit arises if the Reserve Bank is satisfied that the deficit will be extinguished by accumulation of earnings or by a formal reduction of surplus.

¹ If such a bank desires to become a member bank under the provisions of section 19(h) of the Federal Reserve Act, it should communicate with the Federal Reserve Bank with which it desires to do business.

² A new national bank organized by the Federal Deposit Insurance Corporation under section 11(n) of the Federal Deposit Insurance Act (12 U.S.C. 1821(n)) should not apply until in the process of issuing stock pursuant to section 11(n)(15) of that act. Reserve Bank approval of such an application shall not be effective until the issuance of a certificate by the Comptroller of the Currency pursuant to section 11(n)(16) of that act.

³ A mutual savings bank not authorized to purchase Federal Reserve Bank stock may apply for membership evidenced initially by a deposit. [See § 208.4(c) of Regulation H, 12 CFR 208.4(c), and §§ 208.3(a)(2) and 208.3(b) of Regulation H as proposed to be amended and published elsewhere in today's **Federal Register**.] The membership of the savings bank shall be terminated if the laws under which it is organized are not amended to authorize such purchase at the first session of the legislature after its admission, or if it fails to purchase such stock within six months after such an amendment.

(c) *Mutual savings banks.* The total subscription of a member bank that is a mutual savings bank shall equal six-tenths of 1 percent of its total deposit liabilities as shown on its most recent report of condition. Whenever any member bank that is a mutual savings bank experiences an increase or decrease in total deposit liabilities as shown on its most recent report of condition, it shall file with the appropriate Reserve Bank an application for issue or cancellation of Reserve Bank capital stock in order to adjust its Reserve Bank capital stock subscription to equal six-tenths of one percent of its total deposit liabilities. A mutual savings bank that is applying for or has a deposit with the appropriate Reserve Bank in lieu of Reserve Bank capital stock shall file for acceptance or adjustment of its deposit in a like manner.

(d) *Payment for subscriptions.* Upon approval by the Reserve Bank of an application for capital stock (or for a deposit in lieu thereof), the applying bank shall pay the Reserve Bank one-half of the subscription amount plus accrued dividends at the rate of one half of one percent per month. Upon payment (and in the case of a national banks in organization or state nonmember bank converting into a national bank, upon authorization or approval by the Comptroller of the Currency), the Reserve Bank shall issue the appropriate number of shares by crediting the bank with the appropriate number of shares on its books. In the case of a mutual savings bank not authorized to purchase Reserve Bank stock, the Reserve Bank will accept the deposit or addition to the deposit in place of issuing shares. The remaining half of the subscription or additional subscription (including subscriptions for deposits or additions to deposits) shall be subject to call by the Board.

(e) *Payment for cancellations.* (1) Upon approval of an application for cancellation of Reserve Bank capital stock, the Reserve Bank shall reduce the bank's shareholding on the Reserve Bank's books by the number of shares required to be canceled and shall pay therefor a sum equal to the cash subscription paid on the canceled stock plus accrued dividends at the rate of one half of one percent per month, such sum not to exceed the book value of the stock.⁴

(2) In the case of any cancellation of Reserve Bank stock under this Part, the Reserve Bank may first apply such sum to any liability of the bank to the Reserve Bank and pay over the remainder to the bank (or receiver or conservator, as appropriate).

§ 209.5 The share register.

(a) *Electronic or written record.* A member bank's holding of Reserve Bank capital stock shall be represented by one (or at the option of the Reserve Bank, more than one) notation on the Reserve Bank's books. Such books may be electronic or in writing. Upon any issue or cancellation of Reserve Bank capital stock, the Reserve Bank shall record the member bank's new share position in its books (or eliminate the bank's share position from its books, as the case may be).

(b) *Certification.* A Reserve Bank may certify on request as to the number of shares held by a member bank and purchased before March 28, 1942, or as to the purchase and cancellation dates and prices of shares cancelled, as the case may be.

By order of the Board of Governors of the Federal Reserve System, March 20, 1997.

William W. Wiles,

Secretary of the Board.

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12 CFR Part 216

[Regulation P; Docket No. R-0965]

Security Procedures

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing to remove Regulation P, which is no longer necessary since its provisions have been incorporated into Regulation H (Membership of State Banking Institutions in the Federal Reserve System), as proposed by the Board elsewhere in today's **Federal Register**. Regulation P requires each bank to adopt appropriate security procedures.

DATES: Comments must be received by May 30, 1997.

ADDRESSES: Comments, which should refer to Docket No. R-0965, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments addressed to Mr. Wiles also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to

the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. 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's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Jean Anderson, Staff Attorney, Legal Division (202/452-3707). For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act)

Section 303(a) of the CDRI Act (12 U.S.C. 4803(a)) requires the Board, as well as the other federal banking agencies, to review its regulations and written policies in order to streamline and modify these regulations and policies to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. The Board has reviewed its Regulation P with this purpose in mind, and, is proposing to rescind Regulation P in order to meet the goals of section 303(a).

Regulation P implements the requirements of the Bank Protection Act of 1968 (BPA). The BPA requires the federal financial institution supervisory agencies to establish minimum standards for bank security devices and procedures to discourage bank crime and to assist in the identification of persons who commit such crimes. 12 U.S.C. 1882. To implement this statute a uniform regulation (Regulation P) was adopted in 1969 by each of the supervisory agencies—Comptroller of the Currency, Federal Deposit Insurance Corporation, Federal Home Loan Bank Board (now known as the Office of Thrift Supervision), and the Board. As originally proposed, Regulation P included a list of security devices that banks were required to adopt. On March 1, 1991 (55 FR 13069)(1991 Amendments), the supervisory agencies amended their rules to incorporate amendments made to the BPA by the Financial Institutions Reform Recovery and Enforcement Act of 1989 (FIRREA) and to address the fact that many of the required security devices had been rendered obsolete by virtue of technological advances.

⁴ Under sections 6 and 9(10) of the Act, the Board is under no obligation to pay unearned accrued dividends on redemption of Reserve Bank capital stock from insolvent member banks for which a receiver has been appointed or from state member banks on voluntary withdrawal from or involuntary termination of membership.