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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 344

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Extension of Time Period for Quarterly Reporting of Bank Officers' and Certain Employees' Personal Securities Transactions

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Notice of proposed rule with request for comment.

SUMMARY: The FDIC proposes to amend its rule concerning the period of time that officers and all employees of state nonmember banks who make or participate in investment decisions for the accounts of customers ("certain employees") have to report their personal securities transactions after the end of the calendar quarter. The revision to 12 CFR § 344.9(a)(3) would extend the time period from 10-business days to 30-calendar days after the end of the calendar quarter for bank officers and certain employees to report personal securities transactions to the bank. This revision reflects certain developments in Federal securities regulations.

DATES: Comments on the rule must be received by [INSERT DATE 60 DAYS AFTER PUBLICATION IN FEDERAL REGISTER].

ADDRESSES:

You may submit comments, by any of the following methods:

- Agency Web Site: http://www.FDIC.gov/regulations/laws/federal/notices.html. Follow instructions for submitting comments on the Agency Web Site.

- E-mail: Comments@FDIC.gov. Include "Part 344 Revision" on the subject line of the message.
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, DC 20429.
- Hand Delivery: Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All comments received will be posted generally without change to http://www.fdic.gov/regulations/laws/federal/propose.html, including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E-1022, 3502 North Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

FOR FURTHER INFORMATION CONTACT:

Serena L. Owens, Chief, Planning and Program Development, (202) 898-8996; or Anthony J. DiMilo, Trust Examination Specialist, (202) 898-7496, in the Division of Supervision and Consumer Protection; Julia E. Paris, Attorney, (202) 898-3821, in the Legal Division.

SUPPLEMENTARY INFORMATION:

I. Background

The FDIC's recordkeeping and confirmation requirements for effecting securities transactions are set forth in 12 CFR Part 344. Part 344 includes a provision that state nonmember banks effecting such transactions must establish written policies and procedures for supervising all officers and all employees of state nonmember banks who, in connection with their duties, make or participate in investment decisions for the accounts of customers ("certain employees"). At the time Part 344 originally was adopted, it reflected the U.S. Securities and Exchange Commission's ("SEC") recommendations contained in the *Final Report of the Securities and Exchange Commission on Bank Securities Activities* (June 30, 1977) and generally was patterned after SEC regulations.[1] Section 344.9(a)(3) requires officers and certain employees to report to the bank all securities transactions made by them or on their behalf in which they have a beneficial interest within 10-business days after the end of the calendar quarter. As adopted, this provision was intended to be comparable to the SEC's Rule 17j-1 of the Investment Company Act of 1940, which required "access persons" to report personal securities transactions quarterly and originally mandated a 10-business day period for reporting.[2] Contemporaneous to the FDIC's original rulemaking, the Office of the Comptroller of the Currency ("OCC") and the Board of Governors of the Federal Reserve System adopted substantially similar rules concerning quarterly reporting requirements that mandated a 10 day time period for reporting.[3] In 2002, the Office of the Thrift Supervision adopted a substantially similar regulation.[4]

The SEC, in July 2004, amended Rule 17j-1 to extend the reporting time period to 30-calendar days after the end of the calendar quarter.[5] The effective date of the SEC's amendments to Rule 17j-1 was August 31, 2004, with a compliance date of January 7,

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[1] 44 Fed. Reg. 43260, 43263 (July 24, 1979); see 45 Fed. Reg. 73898 (Nov. 7, 1980) (SEC final rule 17j-1 adopting investment advisor code of ethics and disclosure requirements for "access persons," as defined by 17 CFR § 270.17-j-1(a)(1)).
[2] See 17 CFR § 270.17j-1(c)(2) (1998); 45 Fed. Reg. 73898 (Nov. 7, 1980).
[3] See 12 CFR §§ 12.7(a)(4) (OCC's current rule), 208.34(g)(4) (FRB's current rule).
[4] 67 Fed. Reg. 76299 (Dec. 12, 2002); 12 CFR § 551.150(a) (OTS's current rule).
[5] 69 Fed. Reg. 41696 (July 9, 2004).

2005. To date, no federal banking agency has amended its rule to conform to the SEC's amended Rule 17j-1 of the Investment Company Act of 1940.[6]

II. Description of Proposal

Consistent with the 2004 amendments to SEC's Rule 17j-1, the FDIC proposes to amend section 344.9(a)(3) to extend to 30-calendar days after the end of the calendar quarter the time period for reporting quarterly personal securities transactions. In addition, the FDIC proposes this amendment in order to promote practical and uniform recordkeeping requirements consistent with the purpose of Part 344.[7]

III. Regulatory Analysis and Procedure

A. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act (12 U.S.C. § 4809) requires the FDIC to use "plain language" in all proposed and final rules published after January 1, 2000. The FDIC invites comments on whether the proposal is clearly stated and effectively organized, and how the FDIC might make the proposed text easier to understand.

B. Regulatory Flexibility Act

In accordance with section 3(a) of the Regulatory Flexibility Act ("RFA"), 5 U.S.C. § 603(a)), the FDIC must publish an initial regulatory flexibility analysis with this rulemaking or certify that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA

[6] See 12 CFR §§ 12.7(a)(4) (OCC's current rule), 208.34(g)(4) (FRB's current rule), 551.150(a) (OTS's final rule). However, in OCC Interpretative Letter No. 1062 (May 2006), the OCC granted a waiver of its 10-day reporting time period in favor of a 30-calendar day time period in order to be consistent with revised Rule 17j-1.

[7] See 60 Fed. Reg. 7111 (Feb. 7, 1995) (amending Part 344 to include express waiver authority in order to tailor application of rule to promote practical compliance without undermining intent of Part 344).

analysis or certification, financial institutions with total assets of $165 million or less are considered to be "small entities." For the reasons set forth below, the FDIC hereby certifies pursuant to 5 U.S.C. § 605(b) that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed rule would amend the FDIC's rule to extend to 30-calendar days after the end of the calendar quarter the period of time for officers and certain employees of state nonmember banks to report their personal securities transactions. In effect, it would extend the existing time period to give these individuals more latitude to report their quarterly securities transactions and to allow state nonmember banks more time to comply with Part 344. The propose rule does not impose any new or different substantive requirements that are not already imposed under Part 344. Accordingly, if adopted in final form, the proposed rule would not impose any additional burden or economic impact on small entities.

C. Paperwork Reduction Act

No new collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. § 3501 et seq.) are contained in the proposed rule.

D. The Treasury and General Government Appropriations Act of 1999 – Assessment of Federal Rules and Policies on Families

The FDIC has determined that this proposal will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Public Law 105-277, 112 Stat. 2681).

LIST OF SUBJECTS

12 CFR Part 344

Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the FDIC proposes to amend Chapter III, Part 344, Section 344.9(a)(3):

Part 344 – RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR SECURITIES TRANSACTIONS

1. The authority citation for Part 344 continues to read as follows:

   AUTHORITY: 12 U.S.C. §§ 1817, 1818, and 1819.

2. In Section 344.9, subsection (a)(3) is revised to read as follows:

§ 344.9 Personal securities trading reporting by bank officers and employees.

* * *

(a)(3) In connection with their duties, obtain information concerning which securities are being purchased or sold or recommend such action, must report to the bank, within 30-calendar days after the end of the calendar quarter, all transactions in securities made by them or on their behalf, either at the bank or elsewhere in which they have a beneficial interest. The report shall identify the securities purchased or sold and indicate the dates of the transactions and whether the transactions were purchases or sales.

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By Order of the Board of Directors.

Dated at Washington, DC, the ___ day of _______, 2007

FEDERAL DEPOSIT INSURANCE CORPORATION

Executive Secretary
(SEAL)