

**PART 349—REPORTS AND PUBLIC DISCLOSURE OF INDEBTEDNESS OF EXECUTIVE OFFICERS AND PRINCIPAL SHAREHOLDERS TO A STATE NONMEMBER BANK AND ITS CORRESPONDENT BANKS**

Sec.

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AUTHORITY: Sec. 2 (9 “Seventh” and “Tenth”), Pub. L. 797, 64 Stat. 881, as amended by sec. 309, Pub. L. 95-630, 92 Stat. 3677 (12 U.S.C. 1819 “Seventh” and “Tenth”); secs. 428(b) and 429, Pub. L. 97-320, 96 Stat. 1526, 1527.

SOURCE: 48 FR 57114, Dec. 28, 1983, unless otherwise noted.

**§ 349.1 Purpose and scope.**

Section 106(b)(2) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972(2)) (*BHCA Amendments*) prohibits—(1) preferential lending by a bank to executive officers, directors, and principal shareholders of another bank when there is a correspondent account relationship between the banks, or (2) the opening of a correspondent account relationship between banks when there is a preferential extension of credit by one of the banks to an executive officer, director, or principal shareholder of the other bank. Section 106(b)(2) also imposes requirements on executive officers and principal shareholders to submit reports on their indebtedness to correspondent banks to the board of directors of their bank. Section 7(k) of the Federal Deposit Insurance Act (12 U.S.C. 1817(k)) and section 106(b)(2)(G)(ii) of the BHCA Amendments (12 U.S.C. 1972(2)(G)(ii)) authorize the Federal banking agencies to issue rules and regulations, including definitions of terms, to require the reporting and public disclosure of information by a bank or an executive officer or principal shareholder thereof concerning extensions of credit by the bank or its correspondent banks to any of the reporting bank’s executive officers or principal shareholders, or the related interests of such persons. This part 349 implements the authorization

of the latter sections to require such reporting and disclosure by insured State nonmember banks and their executive officers and principal shareholders.

**§ 349.2 Definitions.**

For the purposes of the reporting and disclosure requirements of this part 349, the following definitions apply:

(a) *Bank* has the meanings provided in (1) 12 U.S.C. 1841(c), and includes a branch or agency of a foreign bank, or a commercial lending company controlled by a foreign bank or by a company that controls a foreign bank, where the branch or agency is maintained in a State of the United States or in the District of Columbia or the commercial lending company is organized under State law, and (2) 12 U.S.C. 1972(2)(H)(i). Notwithstanding the foregoing, with respect to disclosures made pursuant to paragraph (a)(1) of § 349.4 and with respect to copies of requests maintained pursuant to paragraph (c) of § 349.4, *bank* shall mean *State nonmember bank* as defined in 12 U.S.C. 1813(b), including a *mutual savings bank* as defined in 12 U.S.C. 1813(f).

(b) *Capital stock and unimpaired surplus* shall have the meaning provided in § 215.2(f) of Federal Reserve Board Regulation O, subpart A (12 CFR 215.2(f)). Notwithstanding the foregoing, with respect to *mutual savings banks*, the term *total equity capital* found in 12 CFR 215.2(f) shall mean *total surplus accounts*.

(c) *Company, control of a company or bank, executive officer,*<sup>1</sup> *extension of credit, immediate family, and person* have the meanings provided in §§ 215.2 and 215.3 of subpart A of Federal Reserve Board Regulation O (12 CFR 215.2 and 215.3). All references to the term *member bank* in §§ 215.2 and 215.3 shall be deemed to refer to an insured State nonmember bank for the purposes of this part 349.

(d) *Correspondent account* is an account that is maintained by an insured

<sup>1</sup>For the purposes of this part 349, executive officers of an insured State nonmember bank do not include an executive officer of a bank holding company of which such bank is a subsidiary or of any other subsidiary of the bank holding company, unless the executive officer is also an executive officer of the insured State nonmember bank.

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State nonmember bank with another bank for the deposit or placement of funds. A correspondent account does not include:

(1) Time deposits at prevailing market rates; or

(2) An account maintained in the ordinary course of business solely for the purpose of effecting Federal funds transactions at prevailing market rates or making Eurodollar placements at prevailing market rates.

(e) *Correspondent bank* means a bank that maintains one or more correspondent accounts for an insured State nonmember bank during a calendar year that in the aggregate exceed an average daily balance during that year of \$100,000 or one-half of one percent of the insured State nonmember bank's total deposits (as reported in its first Consolidated Report of Condition during that calendar year), whichever amount is smaller.

(f) *Indebtedness* means an extension of credit, but does not include:

(1) Commercial paper, bonds, debentures and other types of marketable securities issued in the ordinary course of business; or

(2) Consumer credit (as defined in 12 CFR 226.2(p)), in an aggregate amount of \$5,000 or less from each of the insured State nonmember bank's correspondent banks, provided the indebtedness is incurred under terms that are not more favorable than those offered to the general public.

(g) *Maximum amount of indebtedness* means, at the option of the reporting person, either (1) the highest outstanding indebtedness during the calendar year for which the report is made, or (2) the highest end of the month indebtedness outstanding during the calendar year for which the report is made.

(h) For the purpose of this part 349, *principal shareholder* and *related interest* have the meanings provided in §215.10(a) of Federal Reserve Board Regulation O, subpart A (12 CFR 215.10(a)), except that the term *principal shareholder* is synonymous with the term *stockholder of record* as that term is used in the reporting provisions of 12 U.S.C. 1972(2)(G)(i). All references to the term *member bank* in §215.10(a) shall be deemed to refer to an insured

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State nonmember bank for the purposes of this part 349.

#### § 349.3 Reports by executive officers and principal shareholders.

(a) *Annual report*. If during any calendar year an executive officer or principal shareholder of an insured State nonmember bank or a related interest of such a person has outstanding an extension of credit from a correspondent bank, the executive officer or principal shareholder must make a written report to the board of directors of the insured State nonmember bank on or before January 31 of the following year.<sup>2</sup>

(b) *Contents of report*. The report required by this section shall include the following information:

(1) The maximum amount of indebtedness of the executive officer or principal shareholder and of each of that person's related interests to each of the insured State nonmember bank's correspondent banks during the calendar year; and

(2) The amount of indebtedness of the executive officer or principal shareholder and of each of that person's related interests outstanding to each of the insured State nonmember bank's correspondent banks not more than ten business days before the report required by this section is filed;<sup>3</sup> and

(3) A description of the terms and conditions (including the range of interest rates, the original amount and date, maturity date, payment terms, security, if any, and any other unusual terms or conditions) of each extension of credit included in the indebtedness reported under paragraph (b)(1) of this section.

(c) *Retention of reports*. The reports required by this section must ordinarily be retained at the insured State

<sup>2</sup>Persons reporting under this section are not required to include information on extensions of credit that are fully described in a report by a person they control or a person that controls them, provided they identify their relationship with such other person.

<sup>3</sup>If the amount of indebtedness outstanding to a correspondent bank ten days before the filing of the report is not available or cannot be readily ascertained, an estimate of the amount of indebtedness may be filed with the report, provided that the report is supplemented within the next 30 days with the actual amount of indebtedness.