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(ii) Execute transactions in securities for customers; or

(iii) Process orders for notification and/or settlement purposes, or perform other back office functions with respect to securities transactions effected for customers; provided that procedures established under this paragraph (g)(1)(iii) should provide for supervision and reporting lines that are separate from supervision of personnel under paragraphs (g)(1)(i) and (g)(1)(ii) of this section;

(2) For the fair and equitable allocation of securities and prices to accounts when orders for the same security are received at approximately the same time and are placed for execution either individually or in combination;

(3) Where applicable and where permissible under local law, for the crossing of buy and sell orders on a fair and equitable basis to the parties to the transaction; and

(4) That bank officers and employees who make investment recommendations or decisions for the accounts of customers, who participate in the determination of such recommendations or decisions, or who, in connection with their duties, obtain information concerning which securities are being purchased or sold or recommended for such action, must report to the bank, within ten 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. Excluded from this requirement are transactions for the benefit of the officer or employee over which the officer or employee has no direct or indirect influence or control, transactions in mutual fund shares, and all transactions involving in the aggregate $10,000 or less during the calendar quarter. For purposes of this paragraph (g)(4), the term securities does not include government securities.

§ 208.35 Qualification requirements for transactions in certain securities. [Reserved]

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

(a) *Filing, disclosure and other requirements*—(1) *General.* Except as otherwise provided in this section, a member bank whose securities 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—

(i) Sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the 1934 Act (15 U.S.C. 78f(m), 78l, 78m, 78n(a), (c), (d) and (f), and 78p); and

(ii) Sections 302, 303, 304, 306, 401(b), 404, 406 and 407 of the Sarbanes-Oxley Act of 2002 (codified at 15 U.S.C. 7241, 7242, 7243, 7244, 7261, 7262, 7264 and 7265).

(2) *References to the Commission*. Any references to the ''Securities and Exchange Commission'' or the ''Commission'' in the rules, regulations and forms described in paragraph (a)(1) of this section shall with respect to securities issued by member banks be deemed to refer to the Board unless the context otherwise requires.

(b) *Elections permitted for 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 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 the 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 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 (17 CFR 210.10–01), in the Management's Discussion and Analysis of Financial Condition and Results of Operations section of Form 10–Q.

(c) *Required filings.* (1) *Place and timing of filing.* 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) *Filing fees.* No filing fees specified by the Commission's rules shall be paid to the Board.

(3) *Public inspection.* Copies of the registration statement, definitive proxy solicitation materials, reports, and annual reports to shareholders required by this section (exclusive of exhibits) shall 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.

(d) *Confidentiality of filing.* 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 following procedure:

(1) 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 omitted and filed separately with the Board.

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

(i) 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

(ii) An application making objection to the disclosure of the confidential portion. The application shall be on a sheet or sheets separate from the confidential portion, and shall:

(A) Identify the portion of the statement, report, or document that has been omitted;

(B) Include a statement of the grounds of objection; and

(C) Include the name of each exchange, if any, with which the statement, report, or document is filed.

(3) 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.

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

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

(6) If the Board determines not to sustain the objection because disclosure of the confidential portion is in the public interest, a finding and determination to that effect shall be entered

and notice of the finding and determination sent by registered or certified mail to the person.

(7) If the Board determines not to sustain the objection, pursuant to paragraph (d)(6) of this section, the confidential portion shall be made available to the public:

(i) 15 days after notice of the Board's determination not to sustain the objection has been given, as required by paragraph (d)(6) 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; or

(ii) 60 days after notice of the Board's determination not to sustain the objection has been given as required by paragraph (d)(6) of this section and the person filing the objection has filed with the Board a written statement of intent 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

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

(8) 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.

[63 FR 37646, July 13, 1998, as amended at 67 FR 57941, Sept. 13, 2002; 68 FR 4096, Jan. 28, 2003]

§ 208.37 Government securities sales practices.

(a) *Scope.* This subpart is applicable to state member banks that have filed notice as, or are required to file notice as, government securities brokers or dealers pursuant to section 15C of the Securities Exchange Act (15 U.S.C. 78o-5) and Department of the Treasury rules under section 15C (17 CFR 400.1(d) and part 401).

(b) *Definitions.* For purposes of this section:

(1) *Bank that is a government securities broker or dealer* means a state member bank that has filed notice, or is required to file notice, as a government securities broker or dealer pursuant to section 15C of the Securities Exchange Act (15 U.S.C. 78o-5) and Department of the Treasury rules under section 15C (17 CFR 400.1(d) and Part 401).

(2) *Customer* does not include a broker or dealer or a government securities broker or dealer.

(3) *Government security* has the same meaning as this term has in section 3(a)(42) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(42)).

(4) *Non-institutional customer* means any customer other than:

(i) A bank, savings association, insurance company, or registered investment company;

(ii) An investment adviser registered under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3); or

(iii) Any entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least $50 million.

(c) *Business conduct.* A bank that is a government securities broker or dealer shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business as a government securities broker or dealer.

(d) *Recommendations to customers.* In recommending to a customer the purchase, sale or exchange of a government security, a bank that is a government securities broker or dealer shall have reasonable grounds for believing that the recommendation is suitable for the customer upon the basis of the facts, if any, disclosed by the customer as to the customer's other security holdings and as to the customer'ancial situation and needs.

(e) *Customer information.* Prior to the execution of a transaction recommended to a non-institutional customer, a bank that is a government securities broker or dealer shall make reasonable efforts to obtain information concerning:

(1) The customer's financial status;

(2) The customer's tax status;

(3) The customer's investment objectives; and

(4) Such other information used or considered to be reasonable by the bank in making recommendations to the customer.