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electronic means; if the communication is made orally, the Secretary shall cause a written record to be made without delay. An action taken between meetings has the force and effect of an action at a meeting: *Provided, however,* That if a meeting is held before the execution of any operations pursuant to the action, the action is null and void unless it is ratified and confirmed by the Committee at such meeting.

(c) *Delegations of authority.* In special circumstances, the Committee may delegate authority to take an action, subject to such instructions or guidelines as the Committee deems proper. Such delegations of authority may be made to the Chairman; to a subcommittee consisting of the Chairman and the Vice Chairman of the Committee and the Vice Chairman of the Board (or in the absence of the Chairman or of the Vice Chairman of the Board the members of the Board designated by the Chairman as alternates, and in the absence of the Vice Chairman of the Committee the alternate for the Vice Chairman); or to any other member or members of the Committee. An action taken pursuant to such a delegation of authority has the force and effect of an action taken by the Committee.

(d) *Technical changes to Committee rules.* The Secretary of the Committee (or the acting secretary) is authorized to make technical corrections, such as spelling, grammar, construction, and organization (including removal of obsolete provisions and references), to the Committee's rules, regulations, and orders and other records of Committee action but only with the concurrence of the Committee's General Counsel.

(e) *Effective date.* Committee action ordinarily is made effective as of the time it is taken because the nature of the subject matter and the action taken is such that the public interest and the proper discharge of the Committee's responsibilities so require. Occasionally, however, the Committee may specify that an action is to be effective at some different time.

[38 FR 2754, Jan. 30, 1973, as amended at 65 FR 6320, Feb. 9, 2000; 70 FR 7841, Feb. 16, 2005]

### § 272.5 Notice and public procedure.

There ordinarily is no published notice of proposed action by the Committee or public procedure thereon, as described in section 553 of title 5 of the United States Code, because such notice and procedure are impracticable, unnecessary, or contrary to the public interest.

## PART 281—STATEMENTS OF POLICY

### § 281.1 Policy regarding the Government in the Sunshine Act.

On September 13, 1976, there was enacted into law the Government in the Sunshine Act, Pub. L. No. 94–409, 90 Stat. 1241 (''Sunshine Act''), established for the purpose of providing the public with the ''fullest practicable information regarding the decision-making processes of the Federal Government * * * while protecting the rights of individuals and the ability of the Government to carry out its responsibilities.''[1] The Sunshine Act applies only to those Federal agencies that are defined in section 552(e) of Title 5 of the United States Code and ''headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency.''[2]

The Federal Open Market Committee (''FOMC'') is a separate and independent statutory body within the Federal Reserve System. In no respect is it an agent or ''subdivision'' of the Board of Governors of the Federal Reserve System (''Board of Governors''). It was originally established by the Banking Act of 1933 and restructured in its present form by the Banking Act of 1935 and subsequent legislation in 1942 (generally see 12 U.S.C. 263(a)). The FOMC's membership is composed of the seven members of the Board of Governors and five representatives of the Federal Reserve Banks who are selected annually in accordance with the procedures set forth in Section 12A of the Federal Reserve Act, 12 U.S.C. 263(a). Members of the Board of Governors serve in an ex officio capacity on the FOMC by reason of their appointment as Members of the Board of Governors, not as a result of an appointment ''to such position'' (the FOMC) by the President. Representatives of the Reserve Banks serve on the FOMC not as a result of an appointment ''to such position'' by the President, but rather by virtue of their positions with the

[1] Government in the Sunshine Act, Pub. L. 94–409, sec. 2, 90 Stat. 1241 (1976).

[2] Government in the Sunshine Act, Pub. L. 94–409, sec. 3(a), 90 Stat. 1241 (1976).

Reserve Banks and their selection pursuant to Section 12A of the Federal Reserve Act. It is clear therefore that the FOMC does not fall within the scope of an ''agency'' or ''subdivision'' as defined in the Sunshine Act and consequently is not subject to the provisions of that Act.

As explained below, the Act would not require the FOMC to hold its meetings in open session even if the FOMC were covered by the Act. However, despite the conclusion reached that the Sunshine Act does not apply to the FOMC, the FOMC has determined that its procedures and timing of public disclosure already are conducted in accordance with the spirit of the Sunshine Act, as that Act would apply to deliberations of the nature engaged in by the FOMC.

In the foregoing regard, the FOMC has noted that while the Act calls generally for open meetings of multi-member Federal agencies, 10 specific exemptions from the open meeting requirement are provided to assure the ability of the Government to carry out its responsibilities. Among the exemptions provided is that which authorizes any agency operating under the Act to conduct closed meetings where the subject of a meeting involves information ''the premature disclosure of which would—in the case of an agency which regulates currencies, securities, commodities, or financial institutions, be likely to lead to significant financial speculation in currencies, securities, or commodities.''[3]

As to meetings closed under such exemption, the Act requires the maintenance of either a transcript, electronic recording or minutes and sets forth specified, detailed requirements as to the contents and timing of disclosure of certain portions or all of such minutes. The Act permits the withholding from the public of the minutes where disclosure would be likely to produce adverse consequences of the nature described in the relevant exemptions.

[3]Government in the Sunshine Act, Pub. L. 94–409, sec. 3(a), 90 Stat. 1242 (1976).

The FOMC has reviewed the agenda of its monthly meetings for the past three years and has determined that all such meetings could have been closed pursuant to the exemption dealing with finanical speculation or other exemptions set forth in the Sunshine Act. The FOMC has further determined that virtually all of its substantive deliberations could have been preserved pursuant to the Act's minutes requirements and that such minutes could similarly have been protected against premature disclosure under the provisions of the Act.

The FOMC's deliberations are currently reported by means of a document entitled ''Record of Policy Actions'' which is released to the public approximately one month after the meeting to which it relates. The Record of Policy Actions complies with the Act's minutes requirements in that it contains a full and accurate report of all matters of policy discussed and views presented, clearly sets forth all policy actions taken by the FOMC and the reasons therefor, and includes the votes by individual members on each policy action. The timing of release of the Record of Policy Actions is fully consistent with the Act's provisions assuring against premature release of any item of discussion in an agency's minutes that contains information of a sensitive financial nature. In fact, by releasing the comprehensive Record of Policy Actions to the public approximately a month after each meeting, the FOMC exceeds the publication requirements that would be mandated by the letter of the Sunshine Act.

Recognizing the Congressional purpose underlying the enactment of the Sunshine Act, the FOMC has determined to continue its current practice and timing of public disclosures in the conviction that its operations thus conducted are consistent with the intent and spirit of the Sunshine Act.

(12 U.S.C. 263; 5 U.S.C. 552)

[42 FR 13300, Mar. 10, 1977. Redesignated at 70 FR 7841, Feb. 16, 2005]