

§ 264b.8

acceptance with the Office of the Secretary for disposition or retention under § 264b.8.

§ 264b.8 Disposition or retention of gifts and decorations deposited with the Office of the Secretary.

(a) The Office of the Secretary may dispose of gifts and decorations deposited under §§ 264b.6(a) and 264b.7(b) by returning them to the donors or by handling them in accordance with instructions from the General Services Administration under applicable law.

(b) The Office of the Secretary may approve and retain gifts and decorations deposited under §§ 264b.6(a) and 264b.7(b) for official use. The Office of the Secretary must dispose of a gift within 30 days of the termination of its official use in accordance with instructions from the General Services Administration under applicable law.

§ 264b.9 Enforcement.

(a) The Administrative Governor, after consultation with the General Counsel, must report to the Attorney General cases in which there is reason to believe that a Board employee has violated the Act.

(b) The Attorney General may bring a civil action in any district court of the United States against a Board employee who knowingly solicits or accepts a gift from a foreign government in violation of the Act, or who fails to deposit or report such a gift as required by the Act. The court may assess a maximum penalty of the retail value of a gift improperly solicited or received plus \$5,000.

§ 264b.10 Certain grants excluded.

This part does not apply to grants and other forms of assistance to which § 108A of the Mutual Educational and Cultural Exchange Act of 1961 applies. See 22 U.S.C. 2458a.

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

Sec.

- 265.1 Authority, purpose, and scope.
- 265.2 Delegation of functions generally.
- 265.3 Board review of delegated actions.
- 265.4 Functions delegated to Board members.

12 CFR Ch. II (1–1–15 Edition)

265.5 Functions delegated to Secretary of the Board.

265.6 Functions delegated to General Counsel.

265.7 Functions delegated to Director of Division of Banking Supervision and Regulation.

265.8 Functions delegated to the Staff Director of the Division of International Finance.

265.9 Functions delegated to the Director of Division of Consumer and Community Affairs.

265.10 Functions delegated to Secretary of Federal Open Market Committee.

265.11 Functions delegated to Federal Reserve Banks.

AUTHORITY: 12 U.S.C. 248(i) and (k).

SOURCE: 56 FR 25619, June 5, 1991, unless otherwise noted.

§ 265.1 Authority, purpose, and scope.

(a) Pursuant to section 11(k) of the Federal Reserve Act (12 U.S.C. 248(k)), the Board of Governors of the Federal Reserve System (the “Board”) may delegate, by published order or rule, any of its functions other than those relating to rulemaking or pertaining principally to monetary and credit policies to Board members and employees, Reserve Banks, or administrative law judges. Pursuant to section 11(i) of the Federal Reserve Act (12 U.S.C. 248(i)), the Board may make all rules and regulations necessary to enable it to effectively perform the duties, functions, or services specified in that Act. Pursuant to section 5(b) of the Bank Holding Company Act (12 U.S.C. 1844(b)), the Board is authorized to issue such regulations and orders as may be necessary to enable it to administer and carry out the purposes of this Act and prevent evasions thereof. Other provisions of Federal law also may authorize specific delegations by the Board.

(b) The Board’s Rules Regarding Delegation of Authority (12 CFR part 265) detail the responsibilities that the Board has delegated. The table of contents, titles, and headings that appear in these rules are used solely for their descriptive convenience. Section 265.4 addresses the specific functions delegated to Board members. The functions that have been delegated to Board employees are set forth in §§ 265.5, 265.6, 265.7, 265.8, and 265.9. The functions that have been delegated to the Secretary of the Federal Open Market

Federal Reserve System

§ 265.4

Committee are set forth in § 265.10. The functions that have been delegated to the Reserve Banks are set forth in § 265.11. Provisions for review of any action taken pursuant to delegated authority are found in § 265.3. Except as otherwise indicated in these rules, the Board will review a delegated action only if a Board member, at his or her own initiative, requests a review.

§ 265.2 Delegation of functions generally.

(a) The Board has determined to delegate authority to exercise the functions described in this part.

(b) The Chairman of the Board shall assign responsibility for performing such delegated functions.

§ 265.3 Board review of delegated actions.

(a) *Request by Board member.* The Board shall review any action taken at a delegated level upon the vote of one member of the Board, either on the member's own initiative or on the basis of a petition for review by any person claiming to be adversely affected by the delegated action.

(b) *Petition for review.* A petition for review of a delegated action must be received by the Secretary of the Board not later than the fifth day following the date of the delegated action.

(c) *Notice of review.* The Secretary shall give notice of review by the Board of a delegated action to any person with respect to whom the action was taken not later than the tenth day following the date of the delegated action. Upon receiving notice, such person may not proceed further in reliance upon the delegated action until notified of the outcome of the review by the Board.

(d) *By action of a delegee.* A delegee may submit any matter to the Board for determination if the delegee considers it appropriate because of the importance or complexity of the matter.

§ 265.4 Functions delegated to Board members.

(a) *Individual members.* Any Board member designated by the Chairman is authorized:

(1) *Review of denial of access to Board records; FOIA.* To review and determine

an appeal of denial of access to Board records under the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a), and the Board's rules regarding such access (12 CFR parts 261 and 261a, respectively).

(2) *Approval of amendments to notice of charges or cease and desist orders.* To approve (after receiving recommendations of the Director of the Division of Banking Supervision and Regulation and the General Counsel) amendments to any notice, temporary order, or proposed order previously approved by the Board in a specific formal enforcement matter (including a notice of charges or removal notice) or any proposed or temporary cease and desist order previously approved by the Board under 12 U.S.C. 1818 (b) and (c).

(3) *Requests for permission to appeal rulings.* (i) To act, when requested by the Secretary, upon any request under § 263.10(e) of the Board's Rules of Practice for Hearings (12 CFR part 263) for special permission to appeal from a ruling of the presiding officer on any motion made at a hearing conducted under the rules, and if special permission is granted, the merits of the appeal shall be presented to the Board for decision.

(ii) Notwithstanding § 265.3 of this part, the denial of special permission to appeal a ruling may be reviewed by the Board only if a Board member requests a review within two days of the denial. No person claiming to be adversely affected by the denial shall have any right to petition the Board or any Board member for review or reconsideration of the denial.

(4) *Extension of time period for final Board action.* To extend for an additional 180 days the 180-day period within which final Board action is required on an application pursuant to section 7(d) of the International Banking Act.

(b) *Three member Action Committee.* Any three Board members designated from time to time by the Chairman (the "Action Committee") are authorized:

(1) *Absence of quorum.* To act, upon certification by the Secretary of the Board of an absence of a quorum of the Board present in person, by unanimous vote on any matter that the Chairman has certified must be acted upon

§ 265.5

12 CFR Ch. II (1–1–15 Edition)

promptly in order to avoid delay that would be inconsistent with the public interest except for matters:

- (i) Relating to rulemaking;
- (ii) Pertaining principally to monetary and credit policies; and
- (iii) For which a statute expressly requires the affirmative vote of more than three Board members.

(2) [Reserved]

[56 FR 25619, June 5, 1991, as amended at 56 FR 67154, Dec. 30, 1991; 62 FR 14793, Mar. 28, 1997]

§ 265.5 Functions delegated to Secretary of the Board.

The Secretary of the Board (or the Acting Secretary) is authorized:

(a) *Procedure—(1) Extension of time period for public participation in proposed regulations.* To extend, when appropriate under the Board's Rules of Procedure (12 CFR 262.2 (a) and (b)), the time period for public participation with respect to proposed regulations of the Board.

(2) *Extension of time period in notices, orders, rules, or regulations.* (i) To grant or deny requests to extend any time period in any notice, order, rule, or regulation of the Board relating to filing information, comments, opposition, briefs, exceptions, or other matters, in connection with any application, request or petition for the Board's approval, authority, determination, or permission, or any other action by the Board.

(ii) Notwithstanding § 265.3 of this part, no person claiming to be adversely affected by any such extension of time by the Secretary shall have the right to petition the Board or any Board member for review or reconsideration of the extension.

(3) *Conforming citations and references in Board rules and regulations.* (i) To conform references to administrative positions or units in Board rules and regulations with changes in the administrative structure of the Board and in the government and agencies of the United States.

(ii) To conform citations and references in Board rules and regulations with other regulatory or statutory changes adopted or promulgated by the Board or by the government or agencies of the United States.

(4) *Technical corrections in Board rules and regulations.* To make technical corrections, such as spelling, grammar, construction, and organization (including removal of obsolete provisions and consolidation of related provisions), to the Board's rules, regulations, and orders and other records of Board action but only with the concurrence of the Board's General Counsel.

(b) *Availability of information—(1) FOIA requests.* To make available, upon request, information in Board records and consider requests for confidential treatment of information in Board records under the Freedom of Information Act (5 U.S.C. 552) and under the Board's Rules Regarding Availability of Information (12 CFR part 261).

(2) *Annual reports on Privacy Act.* To approve annual reports required by the Privacy Act (5 U.S.C. 552a(p)) from the Board to the Office of Management and Budget for inclusion in the President's annual consolidated report to Congress.

(3) *Report on prime rate of commercial banks.* To determine and report, under 26 U.S.C. (IRC) 6621, to the Secretary of the Treasury the average predominant prime rate quoted by commercial banks to large businesses.

(c) *Bank holding companies; Change in bank control; Mergers—(1) Reports on competitive factors in bank mergers.* To furnish reports on competitive factors involved in a bank merger to the Comptroller of the Currency and the Federal Deposit Insurance Corporation under the provisions of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)); The Bank Holding Company Act (12 U.S.C. 1842(a), 1843(c)(14)); the Bank Service Corporation Act (12 U.S.C. 1865(a), (b), 1867(d)); the Change in Bank Control Act (12 U.S.C. 1817(j)); and the Federal Reserve Act (12 U.S.C. 321 *et seq.*, 601–604a, 611 *et seq.*).

(2) *Reserve Bank director interlocks.* To take actions the Reserve Bank could take except for the fact that the Reserve Bank may not act because a director, senior officer, or principal shareholder of any holding company, bank, or company involved in the transaction is a director of that Reserve Bank or branch of the Reserve Bank.

Federal Reserve System

§ 265.5

(3) *Application approval under section 5(d)(3) of the FDI Act.* To approve applications pursuant to section 5(d)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1815(d)(3)), in those cases in which the appropriate Federal Reserve Bank concludes that, because of unusual considerations, or for other good cause, it should not take action.

(d) *International banking—(1) Establishment of foreign branch or foreign agency or of Edge or Agreement Corporations.* To approve, under sections 25 and 25A of the Federal Reserve Act (12 U.S.C. 601 and 604) and Regulation K (12 CFR part 211), the establishment, directly or indirectly, of a foreign branch or agency by a member bank or an Edge or Agreement Corporation if all of the following conditions are met:

(i) The appropriate Reserve Bank and relevant divisions of the Board's staff recommend approval;

(ii) No significant policy issue is raised on which the Board has not expressed its view; and

(iii) The application is not for the applicant's first full-service branch in a foreign country.

(2) *Acquisition of foreign company or U.S. company financing exports.* To grant, under sections 25 and 25A of the Federal Reserve Act (12 U.S.C. 601 and 604) and section 4(c)(13) of the Bank Holding Company Act (12 U.S.C. 1843(c)(13)) and the Board's Regulations K and Y (12 CFR parts 211 and 225), specific consent to the acquisition, either directly or indirectly, by a member bank, an Edge or Agreement corporation, or a bank holding company of stock of a company chartered under the laws of a foreign country or a company chartered under the laws of a state of the United States that is organized and operated for the purpose of financing exports from the United States, and to approve any such acquisition that may exceed the limitations of section 25A of the Federal Reserve Act based on the company's capital and surplus, if all of the following conditions are met:

(i) The appropriate Reserve Bank and all relevant divisions of the Board's staff recommend approval;

(ii) No significant policy issue is raised on which the Board has not expressed its view;

(iii) The acquisition does not result, either directly or indirectly, in the bank, corporation, or bank holding company acquiring effective control of the company, except that this condition need not be met if:

(A) The company is to perform nominee, fiduciary, or other services incidental to the activities of a foreign branch or affiliate of the bank holding company, or corporation; or

(B) The stock is being acquired from the parent bank or bank holding company, or subsidiary Edge or Agreement corporation, as the case may be, and the selling parent or subsidiary holds the stock with the consent of the Board pursuant to Regulations K and Y (12 CFR parts 211 and 225).

(3) *Investments in Edge and Agreement Corporations.* To approve an application by a member bank to invest more than 10 percent of capital and surplus in Edge and agreement corporation subsidiaries, provided that:

(i) The member bank's total investment, including the retained earnings of the Edge and agreement corporation subsidiaries, does not exceed 20 percent of the bank's capital and surplus or would not exceed that level as a result of the proposal; and

(ii) The proposal raises no significant policy or supervisory issues.

(e) *Member banks—(1) Waiver of penalty for early withdrawals of time deposits.* To permit depository institutions to waive the penalty for early withdrawal of time deposits under section 19(j) of the Federal Reserve Act (12 U.S.C. 371b) and §204.2 of Regulation D (12 CFR part 204) if the following conditions are met:

(i) The President declares an area of major disaster or emergency area pursuant to section 301 of the Disaster Relief Act of 1974 (42 U.S.C. 5141);

(ii) The waiver is limited to depositors suffering disaster or emergency related losses in the officially designated area; and

(iii) The appropriate Reserve Bank and all relevant divisions of the Board's staff recommend approval.

(2) [Reserved]

(f) *Location of institution.* To determine the Federal Reserve District in which an institution is located pursuant to §204.3(b)(2)(ii) of Regulation D

§ 265.6

(12 CFR part 204) or § 209.15(b) of Regulation I (12 CFR part 209) if:

(1) The relevant Federal Reserve Banks and the institution agree on the specific Reserve Bank in which the institution should hold stock or with which the institution should maintain reserve balances; and

(2) The agreed-upon location does not raise any significant policy issues.

[56 FR 25619, June 5, 1991, as amended at 56 FR 67153, 67154, Dec. 30, 1991; 58 FR 26509, May 4, 1993; 62 FR 34617, June 27, 1997; 66 FR 58655, Nov. 23, 2001]

§ 265.6 Functions delegated to General Counsel.

The Board's general counsel (or the general counsel's delegee) is authorized:

(a) *Procedure*—(1) *Reconsideration of Board action.* Pursuant to § 262.3(i) of this chapter (Rules of Procedure) to determine whether or not to grant a request for reconsideration or whether to deny a request for stay of the effective date of any action taken by the Board with respect to an action as provided in that part.

(2) *Public meetings.* To order, after consulting with the directors of other interested divisions of the Board and the appropriate Reserve Bank, that a public meeting or other proceeding be held, under § 262.25 of the Board's Rules of Procedure (12 CFR part 262), in connection with any application or notice filed with the Board, and to designate the presiding officer in the proceeding under terms and conditions the General Counsel deems appropriate.

(3) *Designation of Board counsel for hearings.* To designate Board staff attorneys as Board counsel in any proceeding ordered by the Board in accordance with § 263.6 of the Board's Rules of Practice for Hearings (12 CFR part 263).

(4) *Oaths, depositions, subpoenas.* To take, or authorize designated persons to take, with the concurrence of the Director of the Division of Banking Supervision and Regulation, actions permitted under 12 U.S.C. 1818(n), 1820(c), and 12 U.S.C. 1844(f), including administering oaths and affirmations, taking depositions, and issuing, revoking, quashing, or modifying subpoenas duces tecum.

12 CFR Ch. II (1–1–15 Edition)

(b) *Availability of Information*—(1) *FOIA requests.* To make available information of the Board of the nature and in the circumstances described in the Board's Rules Regarding Availability of Information (12 CFR part 261).

(2) *Disclosure to foreign authorities.* To make the determinations required for disclosure of information to a foreign bank regulatory or supervisory authority, and to obtain, to the extent necessary, the agreement of such authority to maintain the confidentiality of such information to the extent possible under applicable law.

(3) *Assistance to foreign authorities.* To approve requests for assistance from any foreign bank regulatory or supervisory authority that is conducting an investigation regarding violations of any law or regulation relating to banking matters or currency transactions administered or enforced by such authority, and to make the determinations required for any investigation or collection of information and evidence pertinent to such request. In deciding whether to approve requests for assistance under this paragraph, the General Counsel shall consider:

(i) Whether the requesting authority has agreed to provide reciprocal assistance with respect to banking matters within the jurisdiction of any appropriate Federal banking agency;

(ii) Whether compliance with the request would prejudice the public interest of the United States; and

(iii) Whether the request is consistent with the requirement that the Board conduct any such investigation in compliance with the laws of the United States and the policies and procedures of the Board.

(c) *Bank holding companies; Change in bank control; Mergers*—(1) *Control determinations under section 2(g) of BHC Act.* To determine whether a company that transfers shares under section 2(g) of the Bank Holding Company Act (12 U.S.C. 1841(g)) is incapable of controlling the transferee.

(2) *Control determinations under section 4(c)(8) of BHC Act.* To determine, or issue an order for a hearing to determine, whether a company engaged in financial, fiduciary, or insurance activities falls within the exemption in section 4(c)(8) of the Bank Holding

Federal Reserve System

§ 265.6

Company Act (12 U.S.C. 1843(c)(8)), permitting retention or acquisition of control thereof by a bank holding company.

(3) *Notices under CBC Act.* To revoke acceptance of and return as incomplete a notice filed under the Change in Bank Control Act (12 U.S.C. 1817(j)) or to extend the time during which action must be taken on a notice where the General Counsel determines, with the concurrence of the Director of the Division of Banking Supervision and Regulation, that the notice is materially incomplete under that Act or Regulation Y (12 CFR part 225) or contains material information that is substantially inaccurate.

(4) *Tax certifications.* To make prior and final certification for federal tax purposes (26 U.S.C. (IRC) 1101–1103, 6158) with respect to distributions pursuant to the Bank Holding Company Act (12 U.S.C. 1841 *et seq.*).

(d) *Management interlocks*—(1) *General exceptions.* To grant exceptions from the prohibitions of Regulation L (12 CFR part 212) when the primary federal supervisor of the depository institution in need of management assistance approves.

(2) *Temporary exceptions.* To grant requests, after consultation with the Director for the Division of Banking Supervision and Regulation, for temporary director interlocks under Regulation L (12 CFR part 212) for newly chartered banks, banks in low income areas, minority banks, women's banks, organizations experiencing conditions endangering their safety or soundness, organizations sponsoring a credit union, and organizations that lose thirty percent or more of their directors or management officials due to changes in circumstances.

(e) *Consent enforcement orders.* With the concurrence of the director of the Board's Division of Banking Supervision and Regulation (or the Director's delegee):

(1) To enter into a cease-and-desist order, removal and prohibition order, or civil money penalty assessment order with a bank holding company or any nonbanking subsidiary thereof, with a state member bank, or with any other person or entity subject to the Board's jurisdiction, when the order

has been consented to by the institution or individual subject to the order;

(2) To stay, modify, terminate, or suspend an order issued pursuant to paragraph (e)(1) of this section.

(f) *International banking*—(1) *After-the-fact applications.* With the concurrence of the Board's Director of the Division of Banking Supervision and Regulation, to grant a request by a foreign bank to establish a branch, agency, commercial lending company, or representative office through certain acquisitions, mergers, consolidations, or similar transactions, in conjunction with which:

(i) The foreign bank would be required to file an after-the-fact application for the Board's approval under §211.24(a)(6) of Regulation K (12 CFR 211.24(a)(6)); or

(ii) The General Counsel may waive the requirement for an after-the-fact application if:

(A) The surviving foreign bank commits to wind down the U.S. operations of the acquired foreign bank; and

(B) The merger or consolidation raises no significant policy or supervisory issues.

(2) To modify the requirement that a foreign bank that has submitted an application or notice to establish a branch, agency, commercial lending company, or representative office pursuant to §211.24(a)(6) of Regulation K (12 CFR 211.24(a)(6)) shall publish notice of the application or notice in a newspaper of general circulation in the community in which the applicant or notificant proposes to engage in business, as provided in §211.24(b)(2) of Regulation K (12 CFR 211.24(b)(2)).

(3) With the concurrence of the Board's Director of the Division of Banking Supervision and Regulation, to grant a request for an exemption under section 4(c)(9) of the Bank Holding Company Act (12 U.S.C. 1843(c)(9)), provided that the request raises no significant policy or supervisory issues that the Board has not already considered.

(4) To return applications and notices filed under the International Banking Act for informational deficits.

(5) To determine that an entity qualifies as a “special-purpose foreign government-owned bank” for purposes of § 211.24(d)(3) (12 CFR 211.24(d)(3)).

(g) *Conflicts of interest waivers.* To issue individual conflicts of interest waivers under 18 U.S.C. 208(b)(1) to employees and officials other than Board members.

[56 FR 25619, June 5, 1991, as amended at 56 FR 67154, Dec. 30, 1991; 57 FR 6789, Feb. 28, 1992; 57 FR 13002, Apr. 15, 1992; 58 FR 6363, Jan. 28, 1993; 58 FR 26509, May 4, 1993; 58 FR 53394, Oct. 15, 1993; 60 FR 10307, Feb. 24, 1995; 61 FR 13395, Mar. 27, 1996; 62 FR 45150, Aug. 26, 1997; 66 FR 54397, Oct. 26, 2001]

§ 265.7 Functions delegated to Director of Division of Banking Supervision and Regulation.

The Board’s Director of the Division of Banking Supervision and Regulation (or the Director’s delegee) is authorized:

(a) *Procedure*—(1) *Cease and desist orders.* To refuse, with the prior concurrence of the appropriate Reserve Bank and the Board’s General Counsel, an application to the Board to stay, modify, terminate, or set aside any effective cease and desist order previously issued by the Board under section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)), or any written agreement between the Board or the Reserve Bank and a bank holding company or any nonbanking subsidiary thereof or a state member bank.

(2) *Modification of commitments or conditions.* To grant or deny requests for modifying, including extending the time for, performing a commitment or condition relied on by the Board or its delegee in taking any action under the Bank Holding Company Act, the Bank Merger Act, the Change in Bank Control Act of 1978, the Federal Reserve Act, or the International Banking Act. In acting on such requests, the Board’s Director may take into account changed circumstances and good faith efforts to fulfill the commitments or conditions, and shall consult with the directors of other interested divisions where appropriate. The Board’s Director may not take any action that would be inconsistent with or result in an evasion of the provisions of the Board’s original action.

(3) *Notice of insufficient capital.* To issue, with the concurrence of the Board’s General Counsel, a notice that a state member bank or bank holding company has insufficient capital and which directs the bank or company to file with its regional Reserve Bank a capital improvement plan under subpart D of the Board’s Rules of Practice for Hearings (12 CFR part 263).

(4) *Obtaining possession or control of securities; extending time period.* To approve, under § 403.5(g) of the Treasury Department regulations (17 CFR part 403) implementing the Government Securities Act of 1986, as amended (Pub. L. 95–571), the application of a member bank, a state branch or agency of a foreign bank, a foreign bank, or a commercial lending company owned or controlled by a foreign bank, to extend for one or more limited periods commensurate with the circumstances the 30-day time period specified in 17 CFR 403.5(c)(1)(iii), provided the Director is satisfied that the applicant is acting in good faith and that exceptional circumstances warrant such action.

(b) *Availability of Information*—(1) *FOIA requests.* To make available information of the Board of the nature and in the circumstances described in § 261.11 of the Board’s Rules Regarding Availability of Information (12 CFR part 261).

(2) *FOIA; Availability of information.* To make available, under the Board’s Rules Regarding Availability of Information (12 CFR part 261), reports and other information of the Board acquired pursuant to the Board’s Regulations G, T, U, and X (12 CFR parts 207, 220, 221, 224) of the nature and in circumstances described in §§ 261.8(a) (2) and (3) of these rules.

(c) *Bank holding companies; Change in bank control; Mergers*—(1) *Bank holding company registration forms and annual reports.* To promulgate registration forms and annual reports and other forms for use in connection with the Bank Holding Company Act, after receiving clearance from the Office of Management and Budget (where necessary), under section 5 of the Bank Holding Company Act (12 U.S.C. 1844) and in accordance with 5 U.S.C. 553.

(2) *Emergency action.* To take actions the Reserve Bank could take under this

Federal Reserve System

§ 265.7

part at §§ 265.11(c)(2)(ii) and 265.11(c)(3)(iii) if immediate or expeditious action is required to avert failure of a bank or savings association or because of an emergency pursuant to sections 3(a) and 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1842(a), 1843(c)(8)) on the Change in Bank Control Act (12 U.S.C. 1817(j)).

(3) *Waiver of notice.* To waive, dispense with, modify or excuse the failure to comply with the requirement for publication and solicitation of public comment regarding a notice filed under the Change in Bank Control Act (12 U.S.C. 1817(j)), with the concurrence of the Board's General Counsel, provided a written finding is made that such disclosure would seriously threaten the safety or soundness of a bank holding company or a bank.

(4) *Notices for addition or change of directors or officers.* Under section 914(a) of the Financial Institutions Reform, Recovery and Enforcement Act (12 U.S.C. 1831i) and subpart H of Regulation Y (12 CFR part 225), provided that no senior officer or director or proposed senior officer or director of the notificant is also a director of the Reserve Bank or a branch of the Reserve Bank:

(i) To determine the informational sufficiency of notices filed pursuant to § 225.72 of Regulation Y (12 CFR part 225); and

(ii) To waive the prior notice requirements of that section.

(5) *ERISA violations.* To provide the Department of Labor written notification of possible significant violations of the Employee Retirement Income Security Act (ERISA) by bank holding companies, in accordance with section 3004(b) of ERISA and the Interagency Agreement adopted to implement its provisions.

(6) *Appraisal not required.* To determine pursuant to 12 CFR 225.63(b)(12) that the services of an appraiser are not necessary in order to protect Federal financial and public policy interests in real estate-related financial transactions or to protect the safety and soundness of an institution.

(d) *International banking—(1) Foreign bank reports.* To require submission of a report of condition respecting any foreign bank in which a member bank

holds stock acquired under § 211.5(b) of Regulation K (12 CFR part 211) and section 25 of the Federal Reserve Act (12 U.S.C. 602).

(2) *Edge corporation reports.* To require submission and publication of reports by an Edge corporation under section 25A of the Federal Reserve Act (12 U.S.C. 625).

(3) *Capital stock of Edge corporation; articles of association; additional investments in Agreement corporation.* To approve under sections 25 and 25A as of the Federal Reserve Act (12 U.S.C. 601 and 604), increases and decreases in the capital stock of and amendments to the articles of association of an Edge corporation and additional investments by a member bank in the stock of an Agreement corporation.

(4) *Authority under general-consent and prior-notice procedures.* (i) With regard to a prior notice to establish a branch in a foreign country under § 211.3 of Regulation K (12 CFR 211.3):

(A) To waive the notice period;

(B) To suspend the notice period;

(C) To determine not to object to the notice; or

(D) To require the notificant to file an application for the Board's specific consent.

(ii) With regard to a prior notice to make an investment under § 211.9(f) of Regulation K (12 CFR 211.9(f)):

(A) To waive the notice period;

(B) To suspend the notice period; or

(C) To require the notificant to file an application for the Board's specific consent.

(iii) With regard to a prior notice of a foreign bank to establish certain U.S. offices under § 211.24(a)(2)(i) of Regulation K (12 CFR 211.24(a)(2)(i)):

(A) To waive the notice period;

(B) To suspend the notice period; or

(C) To require the notificant to file an application for the Board's specific consent.

(iv) To suspend the ability:

(A) Of a foreign banking organization to establish an office under the prior-notice procedures in § 211.24(a)(2)(i) of Regulation K (12 CFR 211.24(a)(2)(i)) or the general-consent procedures in § 211.24(a)(3) of Regulation K (12 CFR 211.24(a)(3));

(B) Of a U.S. banking organization to establish a foreign branch under the

prior-notice or general-consent procedures in §211.3(b) of Regulation K (12 CFR 211.3(b));

(C) Of an investor to make investments under the general-consent or prior-notice procedures in §211.9 of Regulation K (12 CFR 211.9); and

(D) Of an eligible investor to make an investment in an export trading company under the general-consent procedures in §211.34(b) of Regulation K (12 CFR 211.34(b)).

(5) *Investment by foreign subsidiaries in U.S. affiliates.* To permit, after consultation with the Board's General Counsel, a foreign subsidiary of a bank holding company to invest in shares of a U.S. affiliate of the bank holding company where the investment is made as part of an internal corporate reorganization or an internal transfer of funds, subject to any conditions and terms the Director and General Counsel deem appropriate and consistent with the purposes of Regulation K (12 CFR part 211).

(6) *Allocated transfer risk reserves.* To determine the need for establishing and the amount of any allocated transfer risk reserve against specific international assets, and notify the banking institutions of the determination and the amount of the reserve and whether the reserve may be reduced under subpart D of Regulation K (12 CFR part 211).

(7) *Underwriting and dealing authority outside the United States; hedging techniques.* To approve, under §211.5(d)(14) of Regulation K (12 CFR part 211):

(i) Requests for authority to engage in the activities of underwriting, distributing, and dealing in shares outside the United States, provided that the Director has determined that the internal procedures and operations of the organization and the effect of the proposed activities on capital adequacy are consistent with approval.

(ii) Hedging methods authorized under §211.5(d)(14)(iii)(A) of Regulation K (12 CFR part 211).

(8) *Conduct and coordination of examinations.* To authorize the conduct of examinations of the U.S. offices and affiliates of foreign banks as provided in sections 7(c) and 10(c) of the IBA (12 U.S.C. 3105(c), 3107(c)), and, where appropriate, to coordinate those exami-

nations with examinations of the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the state entity that is authorized to supervise or regulate a state branch, state agency, commercial lending company, or representative office.

(9) *Allowing use of general-consent procedures.* To allow an investor that is not well-capitalized and well-managed to make investments under the general-consent procedures in §211.9 or 211.34(b) of Regulation K (12 CFR 211.9 or 211.34(b)), provided that:

(i) The investor has implemented measures to become well-capitalized and well-managed;

(ii) Granting such authority raises no significant policy or supervisory concerns; and

(iii) Authority granted by the Director under this paragraph (d)(9) expires after one year, but may be renewed.

(10) *Exceeding general-consent investment limits.* To allow an investor to exceed the general-consent investment limits under §211.9 of Regulation K (12 CFR 211.9), provided that:

(i) The investor demonstrates adequate financial and managerial strength;

(ii) The investor's investment strategy is not unsafe or unsound;

(iii) Granting such authority raises no significant policy or supervisory concerns; and

(iv) Authority granted by the Director under this paragraph (d)(10) expires after one year, but may be renewed.

(11) *Approval of temporary U.S. offices.* To allow a foreign bank to operate a temporary office in the United States, pursuant to §211.24 of Regulation K (12 CFR 211.24), provided that:

(i) There is no direct public access to such office, with respect to any branch or agency function; and

(ii) The proposal raises no significant policy or supervisory issues.

(12) With the concurrence of the General Counsel, to approve applications, notices, exemption requests, waivers and suspensions, and other related matters under Regulation K (12 CFR part 211), where such matters do not raise any significant policy or supervisory issues.

(13) With the concurrence of the General Counsel, to approve:

Federal Reserve System

§ 265.7

(i) The establishment by a bank holding company or member bank of an agreement corporation under section 25 of the Federal Reserve Act; and

(ii) Any initial investment associated with the establishment of such agreement corporation.

(14) With the concurrence of the General Counsel, to determine that an election by a foreign bank to become or to be treated as a financial holding company is effective, provided that:

(i) The foreign bank meets the criteria for becoming or being treated as a financial holding company; and

(ii) The election raised no significant policy or supervisory issues.

(e) *Member banks*—(1) *Membership certification to FDIC*. To certify, under section 4(b) of the Federal Deposit Insurance Act (12 U.S.C. 1814(b)), to the Federal Deposit Insurance Corporation that the factors specified in section 6 of the Act (12 U.S.C. 1816) were considered with respect to the admission of a state-chartered bank to Federal Reserve membership.

(2) *Dollar exchange*. To permit any member bank to accept drafts or bill of exchange drawn upon it for the purpose of furnishing dollar exchange under section 13(12) of the Federal Reserve Act (12 U.S.C. 373).

(3) *ERISA violations*. To provide to the Department of Labor written notification of possible significant violations of the Employee Retirement Income Security Act (ERISA) by member banks, in accordance with section 3004(b) of ERISA and the Interagency Agreement adopted to implement its provisions.

(4) *Examiners*. To select or approve the appointment of Federal Reserve examiners, assistant examiners, and special examiners for the purpose of making examinations for or by the direction of the Board under 12 U.S.C. 325, 338, 625, 1844(c), and 3105(b)(1).

(5) *Capital stock reduction; branch applications; declaration of dividends; investment in bank premises*. To exercise the functions described in § 265.11(e)(5), (11), and (12) of this part (reductions in capital, issuance of subordinated debt, and early retirement of subordinated debt) when the conditions specified in those sections preclude a Reserve Bank from acting on a member bank's re-

quest for action or when the Reserve Bank concludes that it should not take action, and to exercise the functions in § 265.11(e)(3), (4), and (7) of this part (approving branch applications, declaration of dividends, and investment in bank premises) in cases in which the Reserve Bank concludes that it should not take action.

(6) *Security devices; Regulation P*. To exercise the functions described in § 265.11(e)(8) of this part in those cases in which the appropriate Reserve Bank concludes that it should not take action for good cause.

(f) *Securities*—(1) *Registration statements by member banks*. Under section 12(g) of the Securities Exchange Act (15 U.S.C. 78l(g)):

(i) To accelerate the effective date of a registration statement filed by a member bank with respect to its securities;

(ii) To accelerate termination of the registration of a security that is no longer held of record by 300 persons; and

(iii) To extend the time for filing a registration statement by a member bank.

(2) *Exemption from registration*. To issue notices with respect to application by a statement member bank for exemption from registration under section 12(h) of the Securities Exchange Act (15 U.S.C. 78l(h)).

(3) *Accelerating registration of security on national securities exchange*. To accelerate the effective date of an application by a state member bank for registration of a security on a national securities exchange under section 12(d) of the Securities Exchange Act (15 U.S.C. 78l(d)).

(4) *Unlisted trading in security of state member bank*. To issue notices with respect to an application by a national securities exchange for unlisted trading privileges in a security of a state member bank under section 12(f) of the Securities Exchange Act (15 U.S.C. 78l(f)).

(5) *Transfer agent registration; acceleration; withdrawal or cancellation*. (i) To accelerate, under section 17A(c)(2) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78q-1), the effective date of a registration statement for transfer agent activities filed by a

§ 265.8

12 CFR Ch. II (1–1–15 Edition)

member bank or a subsidiary thereof, a bank holding company or a subsidiary thereof that is a bank as defined in section 3(a)(6) of the Act other than a bank specified in clause (i) or (iii) of section 3(a)(34)(B) of the Act (15 U.S.C. 78c).

(ii) To withdraw or cancel, under section 17A(c)(3)(C) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78q-1(c)(3)(C)), the transfer agent registration of a member bank or a subsidiary thereof, a bank holding company, or a subsidiary thereof that is a bank as defined in section 3(a)(6) of that Act other than a bank specified in clause (i) or (iii) of section 3(a)(34)(B) of the Act (15 U.S.C. 78c), that has filed a written notice of withdrawal with the Board or upon a finding that such transfer agent is no longer in existence or has ceased to do business as a transfer agent.

(6) *Proxy solicitation; financial statements.* (i) To permit the mailing of proxy and other soliciting materials by a state member bank before the expiration of the time prescribed therein under § 208.36 of Regulation H (12 CFR part 208).

(ii) To permit the omission of financial statements from reports by a state member bank, or to require other financial statements in addition to, or in substitution for, the statements required therein under § 208.36 of Regulation H (12 CFR part 208).

(7) *Municipal securities dealers.* Under section 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78w).

(i) To grant or deny requests for waiver of examination and waiting period requirements for municipal securities principals and representatives under Municipal Securities Rulemaking Board Rule G-3;

(ii) To grant or deny requests for a determination that a natural person or municipal securities dealer subject to a statutory disqualification is qualified to act as a municipal securities representative or dealer under Municipal Securities Rulemaking Board Rule G-4;

(iii) To approve or disapprove clearing arrangements under Municipal Securities Rulemaking Board Rule G-8, in connection with the administration of these rules for municipal securities dealers for which the Board is the ap-

propriate regulatory agency under section 3(a)(34) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(34)).

(8) *Making reports available to SEC.* To make available, upon request, to the Securities and Exchange Commission reports of examination of transfer agents, clearing agencies, and municipal securities dealers for which the Board is the appropriate regulatory agency for use by the Commission in exercising its supervisory responsibilities under the Act under section 17(c)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(c)(3)).

(9) *Issuing examination manuals, forms, and other materials.* To issue examination or inspection manuals, registration, report, agreement, and examination forms, guidelines, instructions, and other similar materials for use in administering sections 7, 8, 15B, and 17A(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78g, 78h, 78o-4, and 78q-1).

(10) *Lists of OTC and foreign margin stocks.* To approve issuance of the lists of OTC margin stocks and foreign margin stocks and add, omit, or remove any stock in circumstances indicating that such change is necessary or appropriate in the public interest under § 207.6(d) of Regulation G (12 CFR part 207), § 220.17(f) of Regulation T (12 CFR part 220), or § 221.7(d) of Regulation U (12 CFR part 221).

[56 FR 25619, June 5, 1991, as amended at 56 FR 67153, 67154, Dec. 30, 1991; 57 FR 13002, Apr. 15, 1992; 58 FR 6363, Jan. 28, 1993; 58 FR 26509, May 4, 1993; 62 FR 64996, Dec. 9, 1997; 63 FR 58621, Nov. 2, 1998; 66 FR 54397, Oct. 26, 2001]

§ 265.8 Functions delegated to the Staff Director of the Division of International Finance.

The Board's Staff Director of the Division of International Finance (or the Director's delegee) is authorized:

(a) *Establishment of foreign accounts.* To approve the establishment of foreign accounts and the terms of any account-related agreements with the Federal Reserve Bank of New York under section 14(e) of the Federal Reserve Act (12 U.S.C. 358).

(b) [Reserved]

Federal Reserve System

§ 265.9

§ 265.9 Functions delegated to the Director of Division of Consumer and Community Affairs.

The Director of the Board's Division of Consumer and Community Affairs (or the Director's delegee) is authorized:

(a) *Issuing examination manuals, forms, and other materials.* To issue examination or inspection manuals; report, agreement, and examination forms; examination procedures, guidelines, instructions, and other similar materials pursuant to: section 11(a) of the Federal Reserve Act (12 U.S.C. 248(a)); sections 108(b), 621(c), 704(b), 814(c), and 917(b) of the Consumer Credit Protection Act (15 U.S.C. 1607(b), 1681s(b), 1691c(b), 1692l(c) and 1693o(b)); section 305(c) of the Home Mortgage Disclosure Act (12 U.S.C. 2804(c)); section 18(f)(3) of the Federal Trade Commission Act (15 U.S.C. 57a(f)(3)); section 808(c) of the Civil Rights Act of 1968 (42 U.S.C. 3608(c)); section 270(b) of the Truth in Savings Act (12 U.S.C. 4309); and section 5 of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)). The foregoing manuals, forms, and other materials are for use within the Federal Reserve System in the administration of enforcement responsibilities in connection with:

(1) Sections 1–200 and 501–921 of the Consumer Credit Protection Act (15 U.S.C. 1601–1693r), in regard to the Truth in Lending Act, the Consumer Leasing Act, the Equal Credit Opportunity Act, the Electronic Fund Transfer Act, the Fair Credit Reporting Act and the Fair Debt Collection Practices Act;

(2) Sections 301–312 of the Home Mortgage Disclosure Act (12 U.S.C. 2801–2811);

(3) Section 18(f)(1)–(3) of the Federal Trade Commission Act (15 U.S.C. 57a(f)(1)–(3));

(4) Section 805 of the Civil Rights Act of 1968 (42 U.S.C. 3605) and rules and regulations issued thereunder;

(5) Section 1364 of the National Flood Insurance Act of 1968 (42 U.S.C. 4101(a)), and sections 105(b) and 202(b) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(b), 4106(b));

(6) Section 19(j) of the Federal Reserve Act (12 U.S.C. 371b); and

(7) Sections 801–806 of the Community Reinvestment Act (12 U.S.C. 2901–2905).

(8) Sections 261–274 of the Truth in Savings Act (12 U.S.C. 4301–4313).

(b) *Consumer Advisory Council.* Pursuant to section 703(b) of the Consumer Credit Protection Act (15 U.S.C. 1691b(b)), to call meetings of and consult with the Consumer Advisory Council established under that section, approve the agenda for such meetings, and accept any resignations from Consumer Advisory Council members.

(c) *Determining inconsistencies between state and federal laws.* To determine whether a state law is inconsistent with the following federal acts and regulations:

(1) Sections 111, 171(a) and 186(a) of the Truth in Lending Act (15 U.S.C. 1610(a), 1666j(a), 1667e(a)) and § 226.28 of Regulation Z (12 CFR part 226) and § 213.7 of Regulation M (12 CFR part 213);

(2) Section 919 of the Electronic Fund Transfer Act (15 U.S.C. 1693q), § 205.12 of Regulation E (12 CFR part 205);

(3) Section 705(f) of the Equal Credit Opportunity Act (15 U.S.C. 1691d(f) and § 202.11 of Regulation B (12 CFR part 202);

(4) Section 306(a) of the Home Mortgage Disclosure Act (12 U.S.C. 2805(a)) and § 203.3 of Regulation C (12 CFR part 203); and

(5) Section 273 of the Truth in Savings Act (12 U.S.C. 4312) and § 230.1 of Regulation DD (12 CFR part 230).

(d) *Interpreting the Fair Credit Reporting Act.* To issue interpretations pursuant to section 621(e) of the Fair Credit Reporting Act (15 U.S.C. 1681s(e));

(e) *Annual adjustments.* To adjust as required by law:

(1) The amount specified in section 103(aa)(1)(B)(ii) of the Truth in Lending Act and § 226.32(a)(1)(ii) of Regulation Z (12 CFR part 226), relating to mortgages bearing fees above a certain amount in accord with section 103(aa)(3) of that act (15 U.S.C. 1602(aa)); and

(2) The amount specified in section 309(b)(1) of the Home Mortgage Disclosure Act (12 U.S.C. 2808(b)(1)) and § 203.3(a)(1)(ii) of Regulation C (12 CFR part 203) relating to the asset threshold above which a depository institution must collect and report data.

§ 265.10

(f) *Community Reinvestment Act determinations.* To make determinations, pursuant to section 804 of the Community Reinvestment Act (12 U.S.C. 2903), approving or disapproving:

(1) Strategic plans and any amendments thereto pursuant to § 228.27(g) and (h) of Regulation BB (12 CFR part 228); and

(2) Requests for designation as a wholesale or limited purpose bank or the revocation of such designation, pursuant to § 228.25(b) of Regulation BB (12 CFR part 228).

(g) *Public hearings.* To conduct hearings or other proceedings required by law, concerning consumer law or other matters within the responsibilities of the Division of Consumer and Community Affairs, in consultation with other interested divisions of the Board where appropriate.

[56 FR 25619, June 5, 1991, as amended at 56 FR 67154, Dec. 30, 1991; 58 FR 65540, Dec. 15, 1993; 63 FR 65044, Nov. 25, 1998]

§ 265.10 Functions delegated to Secretary of Federal Open Market Committee.

The Secretary of the Federal Open Market Committee (or the Deputy Secretary in the Secretary's absence) is authorized:

(a) Records of policy actions. To approve for inclusion in the Board's Annual Report to Congress, records of policy actions of the Federal Open Market Committee.

(b) [Reserved]

§ 265.11 Functions delegated to Federal Reserve Banks.

Each Federal Reserve Bank is authorized as to a member bank or other indicated organization for which the Reserve Bank is responsible for receiving applications or registration statements or to take other actions as indicated:

(a) *Procedure*—(1) *Member bank affiliate's reports.* To extend the time for good cause shown, within which an affiliate of a state member bank must file reports under section 9(17) of the Federal Reserve Act (12 U.S.C. 334).

(2) *Edge corporation's divestiture of stock.* To extend the time in which an Edge Act corporation must divest itself of stock acquired in satisfaction of a

12 CFR Ch. II (1–1–15 Edition)

debt previously contracted under section 25A(9) of the Federal Reserve Act (12 U.S.C. 615).

(3) *Edge corporation's corporate existence.* To extend the period of corporate existence of an Edge corporation under section 25A(22) of the Federal Reserve Act (12 U.S.C. 628).

(4) *Bank holding company registration statement.* To extend the time within which a bank holding company must file a registration statement under section 5(a) of the Bank Holding Company Act (12 U.S.C. 1844(a)).

(5) *Bank holding company divestiture of nonbanking interests.* To extend the time within which a bank holding company must divest itself of interests in nonbanking organizations under section 4(a) of the Bank Holding Company Act (12 U.S.C. 1843(a)).

(6) *Bank holding company divestiture of dpc interests.* To extend the time within which a bank holding company or any of its subsidiaries must divest itself of interests acquired in satisfaction of a debt previously contracted:

(i) Under section 4(c)(2) of the Bank Holding Company Act (12 U.S.C. 1843(c)(2)) or § 225.22(c)(1) of Regulation Y (12 CFR part 225); or

(ii) Under sections 2(a)(5)(D) and 3(a) of the Bank Holding Company Act (12 U.S.C. 1841(a)(5)(D) and 1842(a)).

(7) *Member bank's surrender of Reserve Bank stock upon withdrawal from membership.* To extend the time within which a member bank that has given notice of intention to withdraw from membership must surrender its Federal Reserve Bank stock and its certificate of membership under Regulation H (12 CFR 209.3(e)).

(8) *Members bank's reports of condition.* To extend the time for publication of reports of condition under Regulation H (12 CFR part 208) for good cause shown.

(9) *Bank holding company's annual reports.* To grant to a bank holding company a 90-day extension of time in which to file an annual report, and for good cause shown grant an additional extension of time not to exceed 90 days under section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)).

(10) *Regulation K—Divestiture of foreign portfolio investment, joint venture, or*

Federal Reserve System

§ 265.11

subsidiary acquired through debt previously contracted. To extend the time within which an investor must divest itself of interests in a foreign portfolio investment, joint venture, or subsidiary acquired in satisfaction of a debt previously contracted under Regulation K (12 CFR 211.5(e)).

(11) *Bank holding company's acquisition of shares, opening new bank, consummating merger.* To extend the time within which a bank holding company may acquire shares, open a new bank to be acquired, or consummate a merger in connection with an application approved by the Board, if no material change relevant to the proposal has occurred since its approval.

(12) *Member bank's establishing domestic or foreign branch; Edge or agreement corporation's establishing branch or agency.* To extend the times within which:

(i) A member bank may establish a domestic branch;

(ii) A member bank may establish a foreign branch; or

(iii) An Edge or agreement corporation may establish a branch or agency, if no material change has occurred in the bank's (or corporation's) general condition since the application was approved.

(13) *Purchase of stock by Edge or Agreement Corporation, member bank, or bank holding company.* To extend the time within which an Edge or Agreement corporation, member bank, or a bank holding company may accomplish a purchase of stock if no material change has occurred in the general condition of the corporation, the member bank, or bank holding company since such authorization under sections 25 or 25A of the Federal Reserve Act or section 4(c)(13) of the Bank Holding Company Act (12 U.S.C. 615, 628, 1843).

(14) *Federal Reserve Membership.* To extend the time within which Federal Reserve membership must be accomplished, if no material change has occurred in the bank's general condition since the application was approved.

(15) *Enforcement actions; written agreements; cease and desist orders.* With the prior approval of both the Board's Director of the Division of Banking Supervision and Regulation and the Board's General Counsel;

(i) To enter into a written agreement with a bank holding company or any nonbanking subsidiary thereof, with a state member bank, or with any other person or entity subject to the Board's supervisory jurisdiction under 12 U.S.C. 1818(b) concerning the prevention or correction of an unsafe or unsound practice in conducting the business of the bank holding company, nonbanking subsidiary, or state member bank or other entity, or concerning the correction or prevention of any violation of law, rule, or regulation, or any condition imposed in writing by the Board in connection with the granting of any application or other request by the bank or company or any other appropriate matter;

(ii) To stay, modify, terminate, or suspend an agreement entered into pursuant to this paragraph;

(iii) To stay, modify, terminate, or suspend an outstanding cease and desist order that has become final pursuant to 12 U.S.C. 1818 (b) and (k). Any agreement authorized under this paragraph may, by its terms, be enforceable to the same extent and in the same manner as an effective and outstanding cease and desist order that has become final pursuant to 12 U.S.C. 1818 (b) and (k).

(16) *Appointment of assistant Federal Reserve agents.* To approve the appointment of assistant Federal Reserve agents (including representatives or alternate representatives of such agents) under section 4, paragraph 21 of the Federal Reserve Act (12 U.S.C. 306).

(b) *Availability of Information—(1) Availability of Information; Board records.* To make available information of the Board of the nature and in the circumstances described in the Board's Rules Regarding Availability of Information (12 CFR 261.11).

(2) [Reserved]

(c) *Bank holding companies; Change in bank control; Mergers—(1) Require reports under oath.* To require reports under oath to determine whether a company is complying with section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)).

(2) *Acquisition of going concern—authorization of consummation; early consummation.* (i) To notify a bank holding

§ 265.11

12 CFR Ch. II (1–1–15 Edition)

company that, because the circumstances surrounding the application to acquire a going concern indicate that additional information is required or that the acquisition should be considered by the Board, the acquisition should not be consummated until specifically authorized by the Reserve Bank or by the Board.

(ii) To permit a bank holding company to make a proposed acquisition of a going concern before the expiration of the 30-day period referred to in Regulation Y (12 CFR 225.23(a)(2)) because exigent circumstances justify consummation of the acquisition at an earlier time.

(3) *Petition for review of decision that adverse comments are not substantive; permit proposed de novo activities; authorization of consummation; early consummation.* Under § 225.4(b)(1) of Regulation Y (12 CFR part 225) and subject to § 265.3 of this part, if a person submitting adverse comments that the Reserve Bank had decided are not substantive files a petition for review by the Board of that decision:

(i) To permit a bank holding company to engage *de novo* in activities specified in § 225.25 of Regulation Y (12 CFR part 225), or retain shares in a company established *de novo* and engaging in such activities, if the Reserve Bank's evaluation of the considerations specified in section 4(c)(8) of the Bank Holding Company Act leads it to conclude that the proposal can reasonably be expected to produce benefits to the public.

(ii) To notify a bank holding company that the proposal should not be consummated until specifically authorized by the Reserve Bank or by the Board or that the proposal should be processed in accordance with the procedures in § 225.23(a)(2) of Regulation Y (12 CFR part 225).

(iii) To permit a bank holding company to consummate the proposal before the expiration of the 45-day period referred to in § 225.23(a)(1) of Regulation Y because exigent circumstances justify consummation at an earlier time under § 225.4(b)(1) of Regulation Y (12 CFR part 225).

(4) *Permit or stay of modification or location of activities.* To permit or stay a proposed *de novo* modification or relo-

cation of activities engaged in by a bank holding company on the same basis as *de novo* proposals under § 265.11(d)(3) of this part.

(5) *Notices under change in Bank Control Act.* With respect to the bank holding company or a state member bank:

(i) To determine the informational sufficiency of notices and reports filed under the Change in Bank Control Act;

(ii) To extend periods for consideration of notices;

(iii) To determine whether a person who is or will be subject to a presumption described in § 225.41(b) of Regulation Y (12 CFR part 225) should file a notice regarding a proposed transaction; and

(iv) To issue a notice of intention not to disapprove a proposed change in control if all the following conditions are met:

(A) No member of the Board has indicated an objection prior to the Reserve Bank's action;

(B) No senior officer or director of an involved party is also a director of a Federal Reserve Bank or branch;

(C) All relevant departments of the Reserve Bank concur;

(D) If the proposal involves shares of a state member bank or a bank holding company controlling a state member bank, the appropriate bank supervisory authorities have indicated that they have no objection to the proposal, or no objection has been received from them within the time allowed by the act; and

(E) No significant policy issue under the change in Bank Control Act, 12 U.S.C. 1817(j) or § 225.41 of Regulation Y (12 CFR part 225) is raised by the proposal as to which the Board has not expressed its view.

(6) *Failure to comply with publication requirement under change in Bank Control Act.* To waive, dispense with, modify, or excuse the failure to comply with the requirement for publication and solicitation of public comment regarding a notice filed under the Change in Bank Control Act, with the concurrence of the Board's Director of the Division of Banking Supervision and Regulation and the Board's General Counsel, provided that a written finding is

Federal Reserve System

§ 265.11

made that such disclosure or solicitation would seriously threaten the safety or soundness of a bank holding company or bank under the Change in Bank Control Act (12 U.S.C. 1817(j)(2)).

(7) *Grandfathered nonbanking activities.* To determine under section 4(a)(2) of the Bank Holding Company Act (12 U.S.C. 1843(a)(2)) that termination of grandfathered nonbanking activities of a particular bank holding company is not warranted, provided the Reserve Bank is satisfied all of the following conditions are met:

(i) The company or its successor is “a company covered in 1970”;

(ii) The nonbanking activities for which indefinite grandfather privileges are being sought do not present any significant unsettled policy issues; and

(iii) The bank holding company was lawfully engaged in such activities as of June 30, 1968 and has been engaged in such activities continuously thereafter.

(8) *Opening of additional nonbanking offices.* To approve applications by a bank holding company under sections 4(c)(8) and 5(b) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8), 1844(b)) and § 225.23(b) of Regulation Y (12 CFR part 225) to open additional offices to engage in nonbanking activities for which the bank holding company previously received approval pursuant to Board order, unless one of the conditions specified in § 265.11(f) (1), (2), (3), or (4), of this part is present.

(9) *Notices for addition or change of directors or officers.* Under section 914(a) of the Financial Institutions Reform, Recovery and Enforcement Act (12 U.S.C. 1831i) and subpart H of Regulation Y (12 CFR part 225), provided that no senior officer or director or proposed senior officer or director of the notificant is also a director of the Reserve Bank or a branch of the Reserve Bank:

(i) To determine the informational sufficiency of notices filed pursuant to § 225.72 of Regulation Y; and

(ii) To waive the prior notice requirements of that section.

(10) *Acquisition approvals under section 5(d)(3) of the FDI Act.* To approve, under section 5(d)(3)(E) of the Federal Deposit Insurance Act, requests by a bank holding company to engage in any

transaction described in section 5(d)(3)(A) of that Act.

(11) *Applications requiring Board approval; competitive factors reports for bank mergers.* To approve applications requiring prior approval of the Board and furnish to the Comptroller of the Currency and the Federal Deposit Insurance Corporation reports on competitive factors involved in a bank merger required to be approved by one of those agencies, unless one or more of the following conditions is present.

(i) A member of the Board has indicated an objection prior to the Reserve Bank’s action; or

(ii) The Board has indicated that such delegated authority shall not be exercised by the Reserve Bank in whole or in part; or

(iii) A written substantive objection to the application has been properly made; or

(iv) The application raises a significant policy issue or legal question on which the Board has not established its position; or

(v) With respect to bank holding company formations, bank acquisitions or mergers, the proposed transaction involves two or more banking organizations that, upon consummation of the proposal, would control over 35 percent of total deposits (including 50 percent of thrift deposits) in banking offices in the relevant geographic market, or would result in an increase of at least 200 points in the Herfindahl-Hirschman Index (HHI) in a highly concentrated market (a market with a post-merger HHI of at least 1800); or

(vi) With respect to nonbank acquisitions, the nonbanking activities involved do not clearly fall within activities that the Board has designated as permissible for bank holding companies under § 225.25(b) of Regulation Y.

(d) *International banking—(1) Application to establish Edge Corporation.* To approve the application by a U.S. banking organization to establish an Edge corporation under section 25 of the Federal Reserve Act (12 U.S.C. 611) and the Board’s Regulation K (12 CFR part 211) if all of the following criteria are met:

(i) The U.S. banking organization meets the capital adequacy guidelines

and is otherwise in satisfactory condition;

(ii) The proposed Edge corporation will be a wholly-owned subsidiary of a single banking organization; and

(iii) No other significant policy issue is raised on which the Board has not previously expressed its view.

(2) *Issuance of permit to Edge corporation to commence business.* To issue to an Edge corporation under section 25A of the Federal Reserve Act (12 U.S.C. 612) and Regulation K, §211.4(a) (12 CFR part 211) a final permit to commence business and to approve amendments to the articles of association of any Edge corporation to reflect the following:

(i) Any increase in capital stock where all additional shares are to be acquired by existing shareholders;

(ii) Any change in the location of the home office in the city where the Edge corporation is presently located;

(iii) Any change in the number of members of the board of directors;

(iv) Any change in the name; and

(v) Deletion of the requirements that all directors and shareholders must be U.S. citizens.

(3) *Edge corporation establishing branch abroad.* To approve, under §211.3(a) Regulation K (12 CFR part 211), an Edge corporation application to establish a branch abroad, provided that no senior officer or director of the involved parties is also a director of a Reserve Bank or branch and that no significant policy issue is raised by the proposal as to which the Board has not expressed its view.

(4) *Member bank establishing foreign branch.* To approve under §211.3(a) of Regulation K (12 CFR part 211) a member bank's establishing, directly or indirectly, a foreign branch where the application is not one for a full-service branch in a foreign country, provided that no senior officer or director of the involved parties is also a director of a Reserve Bank or branch and that no significant policy issue is raised by the proposal as to which the Board has not expressed its view.

(5) *Agreement with foreign bank concerning deposits of out-of-home-state branch.* To enter into an agreement or undertaking with a foreign bank that it shall receive only such deposits at

its out-of-home-state branch as would be permissible for an Edge corporation under section 5 of the International Banking Act (12 U.S.C. 3103).

(6) *Waiver of 30-day prior notification period.* To waive the 30-day notification period with respect to a foreign bank's change of home state under §211.22(c)(1) of Regulation K (12 CFR part 211).

(7) *Granting specific consent.* To grant prior specific consent to an investor for an investment in its first subsidiary or its first joint venture, where such investment does not exceed the general consent limitations under 211.5(c) of Regulation K (12 CFR part 211).

(8) *Authority under prior-notice procedures.* (i) With regard to a prior notice to make an investment under §211.9(f) of Regulation K (12 CFR 211.9(f)):

(A) To suspend the notice period; or

(B) To require the notificant to file an application for the Board's specific consent.

(ii) With regard to a prior notice of a foreign bank to establish certain U.S. offices under §211.24(a)(2)(i) of Regulation K (12 CFR 211.24(a)(2)(i)):

(A) To suspend the notice period; or

(B) To require that the foreign bank file an application for the Board's specific consent.

(9) *Investment in export trading company.* To issue a notice of intention not to disapprove a proposed investment in an export trading company if all the following criteria are met:

(i) The proposed export trading company will be a wholly-owned subsidiary of a single investor, or ownership will be shared with an individual or individuals involved in the operation of the export trading company;

(ii) A bank holding company investor and its lead bank meet the minimum capital adequacy guidelines of the Board, the Comptroller of the Currency, or the Federal Deposit Insurance Corporation or have enacted capital enhancement plans that have been determined by the appropriate supervisory authority to be acceptable.

(iii) The proposed activities of the export trading company do not include product research or design, product modification, or activities not specifically covered by the list of services contained in 4(c)(14)(F)(ii) of the Bank

Federal Reserve System

§ 265.11

Holding Company Act (12 U.S.C. 1843(c)(14)(F)(ii));

(iv) No other significant policy issue is raised on which the Board has not previously expressed its view under section 4(c)(14) of the Bank Holding Company Act (12 U.S.C. 1843(c)(14) and Regulation K (12 CFR 211.31–211.34).

(10) *Futures commission merchant activities.* To approve, under §211.5(d)(17) of Regulation K (12 CFR part 211), applications to engage in futures commission merchant activities on an exchange that requires members to guarantee or otherwise contract to cover losses suffered by the other members, provided that the Board has previously approved the exchange and the application is on the same terms and conditions on which the Board based its approval of the exchange.

(11) *Investments in Edge and agreement Corporation subsidiaries.* To approve an application by a member bank to invest more than 10 percent of capital and surplus in Edge and agreement corporation subsidiaries, provided that:

(i) The member bank's total investment, including the retained earnings of the Edge and agreement corporation subsidiaries, does not exceed 20 percent of the bank's capital and surplus or would not exceed that level as a result of the proposal; and

(ii) The proposal raises no significant policy or supervisory issues.

(12) *Amendments to Edge corporation charters.* To approve amendments to Edge corporation charters.

(e) *Member banks—(1) Approval of membership applications.* To approve applications for membership in the Federal Reserve System under section 9 of the Federal Reserve Act (12 U.S.C. 321 *et seq.*) and Regulation H (12 CFR part 208) if the Reserve Bank is satisfied that approval is warranted after considering the factors set forth in 12 CFR 208.3(b).

(2) *Waiver of notice of intention to withdraw from membership.* To approve or deny applications by state banks for waiver of the required six months' notice of intention to withdraw from Federal Reserve membership under section 9(10) of the Federal Reserve Act (12 U.S.C. 328).

(3) *Approval of branch applications.* To approve a state member bank's estab-

lishment of a domestic branch under section 9 of the Federal Reserve Act (12 U.S.C. 321 *et seq.*) and Regulation H (12 CFR part 208) if the Reserve Bank is satisfied that approval is warranted after considering the factors set forth in 12 CFR 208.6(b).

(4) *Declaration of dividends in excess of net profits.* To permit a state member bank under section 9(6) of the Federal Reserve Act (12 U.S.C. 324 and 60) to declare dividends in excess of the amounts allowed in 12 CFR 208.5(c) if the Reserve Bank is satisfied that approval is warranted after giving consideration to:

(i) The bank's capitalization in relation to the character and condition of its assets and to its deposit liabilities and other corporate responsibilities, including the volume of its risk assets and of its marginal and inferior quality assets, all considered in relation to the strength of its management; and

(ii) The bank's capitalization after payment of the proposed dividends.

(5) *Reduction of capital stock.* To permit a state member bank under section 9(11) of the Federal Reserve Act (12 U.S.C. 239) to reduce its capital stock below the amounts set forth in 12 CFR 208.5(d) if the state member bank's capitalization thereafter will be:

(i) In conformity with the requirements of federal law; and

(ii) Adequate in relation to the character and condition of its assets and to its deposit liabilities and other corporate responsibilities, including the volume of its risk assets and of its marginal and inferior quality assets, all considered in relation to the strength of its management.

(6) *Acceptance of drafts and bills of exchange.* To permit a member bank or a federal or state branch or agency of a foreign bank that is subject to reserve requirements under section 7 of the International Banking Act of 1978 (12 U.S.C. 3105) to accept drafts or bills of exchange under section 13(7) of the Federal Reserve Act (12 U.S.C. 372) in an aggregate amount at any one time up to 200 percent of its paid-up and unimpaired capital stock and surplus, if the Reserve Bank is satisfied that such permission is warranted after giving consideration to the institution's

capitalization in relation to the character and condition of its assets and to its deposit liabilities and other corporate responsibilities, including the volume of its risk assets and of its marginal and inferior-quality assets, all considered in relation to the strength of its management.

(7) *Investment in bank premises in excess of capital stock.* To permit a state member bank to invest in bank premises under section 24A of the Federal Reserve Act (12 U.S.C. 371a) in an amount in excess of that set forth in 12 CFR 208.21(a), if the Reserve Bank is satisfied that approval is warranted after giving consideration to the bank's capitalization in relation to the character and condition of its assets and to its deposit liabilities and other corporate responsibilities, including the volume of its risk assets and of its marginal and inferior quality assets, all considered in relation to the strength of its management.

(8) *Security devices.* To determine whether security devices and procedures of state member banks are deficient in meeting the requirements of Regulation H (12 CFR part 208) and whether such requirements should be varied in the circumstances of a particular banking office, and whether to require corrective action.

(9) *Classifying member banks for election of directors.* To classify member banks for the purposes of electing Federal Reserve Bank class A and class B directors under section 4(16) of the Federal Reserve Act (12 U.S.C. 304), giving consideration to:

(i) The statutory requirement that each of the three groups shall consist as nearly as may be of banks of similar capitalization; and

(ii) The desirability that every member bank have the opportunity to vote for a class A or a class B director at least once every three years.

(10) *Waiver of penalty for deficient reserves.* To waive the penalty for deficient reserves by a member bank if, after a review of all the circumstances relating to the deficiency, the Reserve Bank concludes that waiver is warranted, except that in no case may a penalty be waived if the deficiency in reserves arises out of the bank's gross negligence or conduct inconsistent

with the principles and purposes of reserve requirements.

(11) *Retirement of subordinated debt.* To approve the retirement prior to maturity of capital notes described in § 204.2(a)(1)(vii)(C) of Regulation D (12 CFR part 204) and issued by a state member bank, provided the Reserve Bank is satisfied that the capital position of the bank will be adequate after the proposed redemption.

(12) *Public welfare investments.* To permit a state member bank to make a public welfare investment that meets the conditions of 12 CFR 208.22(b)(1)–(3), (b)(5) and (b)(7), if the Reserve Bank is satisfied that:

(i) The state member bank received at least an overall rating of “3” as of its most recent consumer compliance examination; and

(ii) The aggregate of all such investments of the state member bank does not exceed 10 percent of its capital stock and surplus as defined under 12 CFR 208.2(d).

(f) *Securities.* To approve applications by a registered lender for termination of the registration under § 221.3(b)(2) of Regulation U (12 CFR 221.3(b)(2)).

(g) *Management interlocks—(1) Change in circumstances requiring termination of management interlocks; Regulation L.* To grant time for compliance with § 121.6 of Regulation L (12 CFR part 212) of up to an aggregate of 15 months from the date on which the change in circumstances as specified in that section occurs when the additional time appears to be appropriate to avoid undue disruption to the depository organizations involved in the management interlocks.

(2) *Depository Institutions Management Interlocks Act.* After consultation with the General Counsel of the Board, to decide not to disapprove notices to establish director interlocks with diversified savings and loan holding companies. (12 U.S.C. 3204(8)).

[56 FR 25619, June 5, 1991, as amended at 56 FR 67154, Dec. 30, 1991; 57 FR 11907, Apr. 8, 1992; 57 FR 40600, Sept. 4, 1992; 58 FR 6363, Jan. 28, 1993; 59 FR 22968, May 4, 1994; 60 FR 22257, May 5, 1995; 63 FR 2839, Jan. 16, 1998; 63 FR 58622, Nov. 2, 1998; 66 FR 54398, Oct. 26, 2001; 66 FR 58656, Nov. 23, 2001]

PART 266—LIMITATIONS ON ACTIVITIES OF FORMER MEMBERS AND EMPLOYEES OF THE BOARD

Sec.

- 266.1 Basis and scope.
- 266.2 Definitions.
- 266.3 Limitations.
- 266.4 Suspension of appearance privilege.
- 266.5 Criminal penalties.

AUTHORITY: Sec. 11(i), Federal Reserve Act (12 U.S.C. 248(i)); 5 U.S.C. 552.

SOURCE: 38 FR 31672, Nov. 16, 1973, unless otherwise noted.

§ 266.1 Basis and scope.

This part, issued under authority of section 11(i) of the Federal Reserve Act (12 U.S.C. 248(i)), and pursuant to section 552 of title 5 of the United States Code, which requires that every agency shall publish in the FEDERAL REGISTER its rules of procedure, relates to limitations on former members and employees of the Board with respect to participation in matters connected with their former duties and official responsibilities while serving with the Board.¹

§ 266.2 Definitions.

(a) *Employee* means a regular officer or employee of the Board; it does not include a consultant to the Board.²

(b) *Official responsibility*, with respect to a matter, means administrative, supervisory, or decisional authority, whether intermediate or final, exercisable alone or with others, personally or through subordinates, to approve, disapprove, decide, or recommend

¹While the Board has not adopted rules with regard to the disclosure of unpublished information by former Board members and employees, it advises such persons not to disclose unpublished information of the Board obtained in the course of their work. Questions in this regard may be addressed to the General Counsel or the Secretary of the Board.

²While former consultants to the Board are not covered by these Rules, they appear to fall within the coverage of section 207 of the United States Criminal Code (18 U.S.C. 207) that provides criminal penalties for engaging in activities similar, although not identical, to those described in paragraphs (a) and (b) of § 266.3.

Board action or to express staff opinions in dealings with the public.

(c) *Appear personally* includes personal appearance or attendance before, or personal communication, either written or oral, with the Board or a Federal Reserve Bank of any member or employee thereof, or personal participation in the formulation or preparation of any material presented or communicated to, or filed with, the Board, in connection with any application or interpretation arising under the statutes or regulations administered by the Board or the Federal Reserve Banks, except that requests for general information or explanations of Board policy or interpretation shall not be construed to be a personal appearance.

§ 266.3 Limitations.

(a) *Matters on which Board member or employee worked.* No former member or employee of the Board shall appear personally before the Board or a Federal Reserve Bank on behalf of anyone other than the United States, an agency thereof, or a Federal Reserve Bank, in connection with any judicial or other proceedings, application, request for ruling or determination, or other particular matter involving a specific party or parties in which the United States, an agency thereof, or a Federal Reserve Bank is also a party or has a direct and substantial interest and in which he participated personally and substantially as a member or employee of the Board through approval, disapproval, decision, recommendation, advice, investigation or otherwise.

(b) *Matters within Board member or employee's official responsibility.* No former member or employee of the Board shall appear personally before the Board or a Federal Reserve Bank on behalf of anyone other than the United States, an agency thereof, or a Federal Reserve Bank, in connection with any judicial or other proceeding, application, request for ruling or determination, or other particular matter involving a specific party or parties in which the United States, an agency thereof, or a Federal Reserve Bank is also a party or has a direct and substantial interest, and which matter was in process during his tenure of office or period of employment and under his official Board