

§ 390.315

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§ 390.315 United States Treasury Time Deposit Open Account.

The term *United States Treasury Time Deposit Open Account* means a non-interest-bearing account maintained in the name of the United States Treasury which may not be withdrawn prior to the expiration of 30 days' written notice from the United States Treasury, or such other period of notice as the Treasury may require. Such accounts are not savings accounts or savings deposits.

§ 390.316 With recourse.

(a) The term *with recourse* means, in connection with the sale of a loan or a participation interest in a loan, an agreement or arrangement under which the purchaser is to be entitled to receive from the seller a sum of money or thing of value, whether tangible or intangible (including any substitution), upon default in payment of any loan involved or any part thereof or to withhold or to have withheld from the seller a sum of money or anything of value by way of security against default. The recourse liability resulting from a sale with recourse shall be the total book value of any loan sold with recourse less:

(1) The amount of any insurance or guarantee against loss in the event of default provided by a third party,

(2) The amount of any loss to be borne by the purchaser in the event of default, and

(3) The amount of any loss resulting from a recourse obligation entered on the books and records of the State savings association.

(b) The term *with recourse* does not include loans or interests therein where the agreement of sale provides for the State savings association directly or indirectly

(1) To hold or retain a subordinate interest in a specified percentage of the loans or interests; or

(2) To guarantee against loss up to a specified percentage of the loans or interests, which specified percentage shall not exceed ten percent of the outstanding balance of the loans or interests at the time of sale: *Provided*, that the State savings association designates adequate reserves for the subordinate interest or guarantee.

(c) This definition does not apply for purposes of determining the capital adequacy requirements under part 324 of this chapter.

[76 FR 47655, Aug. 5, 2011, as amended at 83 FR 17743, Apr. 24, 2018]

Subparts R–V [Reserved]

Subpart W—Securities Offerings

§ 390.410 Definitions.

(a) For purposes of this subpart, the following definitions apply:

(1) *Accredited investor* means the same as in Commission Rule 501(a) (17 CFR 230.501(a)) under the Securities Act, and includes any State savings association.

(2) *Commission* means the Securities and Exchange Commission.

(3) *Dividend or interest reinvestment plan* means a plan which is offered solely to existing security holders of the State savings association which allows such persons to reinvest dividends or interest paid to them on securities issued by the State savings association, and which also may allow additional cash amounts to be contributed by the participants in the plan, provided that the securities to be issued are newly issued, or are purchased for the account of plan participants, at prices not in excess of current market prices at the time of purchase, or at prices not in excess of an amount determined in accordance with a pricing formula specified in the plan and based upon average or current market prices at the time of purchase.

(4) *Employee benefit plan* means any purchase, savings, option, rights, bonus, ownership, appreciation, profit sharing, thrift, incentive, pension or similar plan solely for officers, directors or employees.

(5) *Exchange Act* means the Securities Exchange Act of 1934 (15 U.S.C. 78a–78jj).

(6) *Filing date* means the date on which a document is actually received during business hours, 9 a.m. to 5 p.m. Eastern Standard Time, by the FDIC, 550 17th Street, NW., Washington, DC 20429. However if the last date on which a document can be accepted falls on a Saturday, Sunday, or holiday, such

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document may be filed on the next business day.

(7) *Issuer* means a State savings association which issues or proposes to issue any security.

(8) *Offer; Sale or sell*. For purposes of this subpart, the term *offer*, *offer to sell*, or *offer for sale* shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. However, these terms shall not include preliminary negotiations or agreements between an issuer and any underwriter or among underwriters who are or are to be in privity of contract with the issuer. *Sale* and *sell* includes every contract to sell or otherwise dispose of a security or interest in a security for value. Every offer or sale of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, includes an offer and sale of the other security only at the time of the offer or sale of the warrant or right or convertible security; but neither the exercise of the right to purchase or subscribe or to convert nor the issuance of securities pursuant thereto is an offer or sale.

(9) *Person* means the same as in 12 CFR 192.25, and includes a State savings association.

(10) *Purchase* and *buy* mean the same as in 12 CFR 192.25.

(11) *State savings association* means the same as in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)), and includes a state-chartered savings association in organization which is granted conditional approval of insurance of accounts by the Federal Deposit Insurance Corporation. In addition, for purposes of § 390.411, *State savings association* includes any underwriter participating in the distribution of securities of a State savings association.

(12) *Securities Act* means the Securities Act of 1933 (15 U.S.C. 77a-77aa).

(13) *Security* means any non-withdrawable account, note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of in-

terest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization or subscription, transferable share, investment contract, voting trust certificate or, in general, any interest or instrument commonly known as a *security*, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing, except that a *security* shall not include an account insured, in whole or in part, by the Federal Deposit Insurance Corporation.

(14) *Underwriter* means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission and such term shall also not include any person who has continually held the securities being transferred for a period of two (2) consecutive years provided that the securities sold in any one (1) transaction shall be less than ten percent (10%) of the issued and outstanding securities of the same class. The following shall apply for the purpose of determining the period securities have been held:

(i) *Stock dividends, splits and recapitalizations*. Securities acquired from the issuer as a dividend or pursuant to a stock split, reverse split or recapitalization shall be deemed to have been acquired at the same time as the securities on which the dividend or, if more than one, the initial dividend was paid, the securities involved in the split or reverse split, or the securities surrendered in connection with the recapitalization.

(ii) *Conversions*. If the securities sold were acquired from the issuer for consideration consisting solely of other securities of the same issuer surrendered for conversion, the securities so acquired shall be deemed to have been acquired at the same time as the securities surrendered for conversion.

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(iii) *Contingent issuance of securities.* Securities acquired as a contingent payment of the purchase price of an equity interest in a business, or the assets of a business, sold to the issuer or an affiliate of the issuer shall be deemed to have been acquired at the time of such sale if the issuer was then committed to issue the securities subject only to conditions other than the payment of further consideration for such securities. An agreement entered into in connection with any such purchase to remain in the employment of, or not to compete with, the issuer or affiliate or the rendering of services pursuant to such agreement shall not be deemed to be the payment of further consideration for such securities.

(iv) *Pledged securities.* Securities which are *bona fide* pledged by any person other than the issuer when sold by the pledgee, or by a purchaser, after a default in the obligation secured by the pledge, shall be deemed to have been acquired when they were acquired by the pledgor, except that if the securities were pledged without recourse they shall be deemed to have been acquired by the pledgee at the time of the pledge or by the purchaser at the time of purchase.

(v) *Gifts of securities.* Securities acquired from any person, other than the issuer, by gift shall be deemed to have been acquired by the donee when they were acquired by the donor.

(vi) *Trusts.* Securities acquired from the settler of a trust by the trust or acquired from the trust by the beneficiaries thereof shall be deemed to have been acquired when they were acquired by the settler.

(vii) *Estates.* Securities held by the estate of a deceased person or acquired from such an estate by the beneficiaries thereof shall be deemed to have been acquired when they were acquired by the deceased person, except that no holding period is required if the estate is not an affiliate of the issuer or if the securities are sold by a beneficiary of the estate who is not such an affiliate.

(viii) *Exchange transactions.* A person receiving securities in a transaction involving an exchange of the securities of one issuer for securities of another issuer shall be deemed to have acquired

the securities received when such person acquired the securities exchanged.

(b) A term not defined in this subpart but defined elsewhere in this part, when used in subpart, shall have the meanings given elsewhere in this part, unless the context otherwise requires.

(c) When used in the rules, regulations, or forms of the Commission referred to in this subpart, the term *Commission* shall be deemed to refer to the FDIC, the term *registrant* shall be deemed to refer to an issuer defined in this subpart, and the term *registration statement* or *prospectus* shall be deemed to refer to an offering circular filed under this subpart, unless the context otherwise requires.

§ 390.411 Offering circular requirement.

(a) *General.* No State savings association shall offer or sell, directly or indirectly, any security issued by it unless:

(1) The offer or sale is accompanied or preceded by an offering circular which includes the information required by this subpart and which has been filed and declared effective pursuant to this subpart; or

(2) An exemption is available under this subpart.

(b) *Communications not deemed an offer.* The following communications shall not be deemed an offer under this subpart:

(1) Prior to filing an offering circular, any notice of a proposed offering which satisfies the requirements of Commission Rule 135 (17 CFR 230.135) under the Securities Act;

(2) Subsequent to filing an offering circular, any notice circular, advertisement, letter, or other communication published or transmitted to any person which satisfies the requirements of Commission Rule 134 (17 CFR 230.134) under the Securities Act; and

(3) Oral offers of securities covered by an offering circular made after filing the offering circular with the FDIC.

(c) *Preliminary offering circular.* Notwithstanding paragraph (a) of this section, a preliminary offering circular may be used for an offer of any security prior to the effective date of the offering circular if:

(1) The preliminary offering circular has been filed pursuant to this subpart;

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(2) The preliminary offering circular includes the information required by this subpart, except for the omission of information relating to offering price, discounts or commissions, amount of proceeds, conversion rates, call prices, or other matters dependent on the offering price; and

(3) The offering circular declared effective by the FDIC is furnished to the purchaser prior to, or simultaneously with, the sale of any such security.

### § 390.412 Exemptions.

The offering circular requirement of § 390.411 shall not apply to an issuer's offer or sale of securities:

(a) [Reserved]

(b) Exempt from registration under either section 3(a) or section 4 of the Securities Act, but only by reason of an exemption other than section 3(a)(5) (for regulated State savings associations), and section 3(a)(11) (for intrastate offerings) of the Securities Act;

(c) In a conversion from the mutual to the stock form of organization pursuant to 12 CFR part 192, except for a supervisory conversion undertaken pursuant to subpart C of 12 CFR part 192;

(d) In a non-public offering which satisfies the requirements of § 390.413;

(e) That are debt securities issued in denominations of \$100,000 or more, which are fully collateralized by cash, any security issued, or guaranteed as to principal and interest, by the United States, the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Government National Mortgage Association or by interests in mortgage notes secured by real property;

(f) Distributed exclusively abroad to foreign nationals: *Provided, That—*

(1) The offering is made subject to safeguards reasonably designed to preclude distribution or redistribution of the securities within, or to nationals of, the United States; and

(2) Such safeguards include, without limitation, measures that would be sufficient to ensure that registration of the securities would not be required if the securities were not exempt under the Securities Act; or

(g) To its officers, directors or employees pursuant to an employee ben-

efit plan or a dividend or interest reinvestment plan, and provided that any such plan has been approved by the majority of shareholders present in person or by proxy at an annual or special meeting of the shareholders of the State savings association.

### § 390.413 Non-public offering.

Offers and sales of securities by an issuer that satisfy the conditions of paragraph (a) or (b) of this section and the requirements of paragraphs (c) and (d) of this section shall be deemed to be transactions not involving any public offering within the meaning of section 4(2) of the Securities Act and §§ 390.412(b) and 390.412(d). However, an issuer shall not be deemed to be not in compliance with the provisions of this subpart solely by reason of making an untimely filing of the notice required to be filed by paragraph (c) of this section so long as the notice is actually filed and all other conditions and requirements of this subpart are satisfied.

(a) *Regulation D.* The offer and sale of all securities in the transaction satisfies the Commission's Regulation D (17 CFR 230.501-230.506), except for the notice requirements of Commission Rule 503 (17 CFR 230.503) and the limitations on resale in Commission Rule 502(d) (17 CFR 230.502(d)).

(b) *Sales to 35 persons.* The offer and sale of all securities in the transaction satisfies each of the following conditions:

(1) Sales of the security are not made to more than 35 persons during the offering period, as determined under the integration provisions of Commission Rule 502(a) (17 CFR 230.502(a)). The number of purchasers referred to above is exclusive of any accredited investor, officer, director or affiliate of the issuer. For purposes of paragraph (b) of this section, a husband and wife (together with any custodian or trustee acting for the account of their minor children) are counted as one person and a partnership, corporation or other organization which was not specifically formed for the purpose of purchasing the security offered in reliance upon this exemption, is counted as one person.

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(2) All purchasers either have a pre-existing personal or business relationship with the issuer or any of its officers, directors or controlling persons, or by reason of their business or financial experience or the business or financial experience of their professional advisors who are unaffiliated with and who are not compensated by the issuer or any affiliate or selling agent of the issuer, directly or indirectly, could reasonably be assumed to have the capacity to protect their own interests in connection with the transaction.

(3) Each purchaser represents that the purchaser is purchasing for the purchaser's own account (or a trust account if the purchaser is a trustee) and not with a view to or for sale in connection with any distribution of the security.

(4) The offer and sale of the security is not accomplished by the publication of any advertisement.

(c) *Filing of notice of sales.* Within 30 days after the first sale of the securities, every six months after the first sale of the securities and not later than 30 days after the last sale of securities in an offering pursuant to this subpart, the issuer, shall file with the FDIC a report describing the results of the sale of securities as required by §390.421(b).

(d) *Limitation on resale.* The issuer shall exercise reasonable care to assure that the purchasers of the securities are not underwriters within the meaning of §390.410(a)(14), which reasonable care shall include, but not be limited to, the following:

(1) Reasonable inquiry to determine if the purchaser is acquiring the securities for the purchaser or for other persons;

(2) Written disclosure to each purchaser prior to the sale that the securities are not offered by an offering circular filed with, and declared effective by, the FDIC pursuant to §390.411, but instead are being sold in reliance upon the exemption from the offering circular requirement provided for by this subpart; and

(3) Placement of a legend on the certificate, or other document evidencing the securities, indicating that the securities have not been offered by an offering circular filed with, and declared effective by, the FDIC and that due care

should be taken to ensure that the seller of the securities is not an underwriter within the meaning of §390.410(a)(14).

**§ 390.414 Filing and signature requirements.**

(a) *Procedures.* An offering circular, amendment, notice, report, or other document required by this subpart shall, unless otherwise indicated, be filed in accordance with the requirements of 12 CFR 192.115(a), 192.150(a)(6), 192.155, 192.180(b), and Form AC, General Instruction B, of this subpart.

(b) *Number of copies.* (1) Unless otherwise required, any filing under this subpart shall include nine copies of the document to be filed with the FDIC, as follows:

(i) Seven copies, which shall include one manually signed copy with exhibits, three conformed copies with exhibits, and three conformed copies without exhibits, to the FDIC, ATTN: Accounting and Securities Disclosure Section, 550 17th Street NW, Washington, DC 20429; and

(ii) Two copies, which shall include one manually signed copy with exhibits and one conformed copy, without exhibits, to the appropriate regional director.

(2) Within five days after the effective date of an offering circular or the commencement of a public offering after the effective date, whichever occurs later, nine copies of the offering circular used shall be filed with the FDIC as follows: Seven copies to the FDIC, 550 17th Street NW., ATTN: Accounting and Securities Disclosure Section, Washington, DC, and two copies to the appropriate Regional Director.

(3) After the effective date of an offering circular, an offering circular which varies from the form previously filed shall not be used, unless it includes only non-material supplemental or additional information and until 10 copies have been filed with the FDIC in the manner required.

(c) *Signature.* (1) Any offering circular, amendment, or consent filed with the FDIC pursuant to this subpart shall include an attached manually signed signature page which authorizes the filing and has been signed by:

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(i) The issuer, by its duly authorized representative;

(ii) The issuer's principal executive officer;

(iii) The issuer's principal financial officer;

(iv) The issuer's principal accounting officer; and

(v) At least a majority of the issuer's directors.

(2) Any other document filed pursuant to this subpart shall be signed by a person authorized to do so.

(3) At least *one copy* of every document filed pursuant to this subpart shall be manually signed, and every copy of a document filed shall:

(i) Have the name of each person who signs typed or printed beneath the signature;

(ii) State the capacity or capacities in which the signature is provided;

(iii) Provide the name of each director of the issuer, if a majority of directors is required to sign the document; and

(iv) With regard to any copies not manually signed, bear typed or printed signatures.

### § 390.415 Effective date.

(a) Except as provided for in paragraph (d) of this section, an offering circular filed by a State savings association shall be deemed to be automatically declared effective by the FDIC on the twentieth day after filing or on such earlier date as the FDIC may determine for good cause shown.

(b) If any amendment is filed prior to the effective date, the offering circular shall be deemed to have been filed when such amendment was filed.

(c) The period until automatic effectiveness under this subpart shall be stated at the bottom of the facing page of the Form OC or any amendment.

(d) The effectiveness will be delayed if a duly authorized amendment, telegram confirmed in writing, or letter states that the effective date is delayed until a further amendment is filed specifically stating that the offering circular will become effective in accordance with this subpart.

(e) An amendment filed after the effective date of the offering circular shall become effective on such date as the FDIC may determine.

(f) If it appears to the FDIC at any time that the offering circular includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, then the FDIC may pursue any remedy it is authorized to pursue under section 8 of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1818), including, but not limited to, institution of cease-and-desist proceedings.

### § 390.416 Form, content, and accounting.

(a) *Form and content.* Any offering circular or amendment filed pursuant to this subpart shall:

(1) Be filed under cover of Form OC, which is under 12 CFR part 192;

(2) Comply with the requirements of Items 3 and 4 of Form OC and the requirements of all items of the form for registration (17 CFR part 239) that the issuer would be eligible to use were it required to register the securities under the Securities Act;

(3) Comply with all item requirements of the Form S-1 (17 CFR part 239) for registration under the Securities Act, if the association issuing the securities is not in compliance with the FDIC's regulatory capital requirements during the time the offering is made;

(4) Where a form specifies that the information required by an item in the Commission's Regulation S-K (17 CFR part 229) should be furnished, include such information and all of the information required by Item 7 of Form PS, which is under 12 CFR part 192;

(5) Include after the facing page of the Form OC a cross-reference sheet listing each item requirement of the form for registration under the Securities Act and indicate for each item the applicable heading or subheading in the offering circular under which the required information is disclosed;

(6) Include in part II of the Form OC the applicable undertakings required by the form for registration under the Securities Act;

(7) If the issuer has not previously been required to file reports pursuant to section 13(a) of the Exchange Act or § 390.427, include in part II of Form OC the following undertaking: "The issuer

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hereby undertakes, in connection with any distribution of the offering circular, to have a preliminary or effective offering circular including the information required by this subpart distributed to all persons expected to be mailed confirmations of sale not less than 48 hours prior to the time such confirmations are expected to be mailed;”

(8) In offerings involving the issuance of options, warrants, subscription rights or conversion rights within the meaning of § 390.410(a)(8), include in part II of Form OC an undertaking to provide a copy of the issuer’s most recent audited financial statements to persons exercising such options, warrants or rights promptly upon receiving written notification of the exercise thereof;

(9) Include as supplemental information and not as part of the Form OC and only with respect to *de novo* offerings, a copy of the application for insurance of accounts as submitted to the Federal Deposit Insurance Corporation for state-chartered savings associations; and

(10) In addition to the information expressly required to be included by this subpart, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

(b) *Accounting requirements.* To be declared effective an offering circular or amendment shall satisfy the accounting requirements in subpart T.

**§ 390.417 Use of the offering circular.**

(a) An offering circular or amendment declared effective by the FDIC shall not be used more than nine months after the effective date, unless the information contained therein is as of a date not more than 16 months prior to such use.

(b) An offering circular filed under § 390.414(b)(3) shall not extend the period for which an effective offering circular or amendment may be used under paragraph (c) of this section.

(c) If any event arises, or change in fact occurs, after the effective date and such event or change in fact, individually or in the aggregate, results in the

offering circular containing any untrue statement of material fact, or omitting to state a material fact necessary in order to make statements made in the offering circular not misleading under the circumstances, then no offering circular, which has been declared effective under this subpart, shall be used until an amendment reflecting such event or change in fact has been filed with, and declared effective by, the FDIC.

**§ 390.418 Escrow requirement.**

(a) Any funds received in an offering which is offered and sold on a best efforts all-or-none condition or with a minimum-maximum amount to be sold shall be held in an escrow or similar separate account until such time as all of the securities are sold with respect to a best efforts all-or-none offering or the stated minimum amount of securities are sold in a minimum-maximum offering.

(b) If the amount of securities required to be sold under escrow conditions in paragraph (a) of this section are not sold within the time period for the offering as disclosed in the offering circular, all funds in the escrow account shall be promptly refunded unless the FDIC otherwise approves an extension of the offering period upon a showing of good cause and provided that the extension is consistent with the public interest and the protection of investors.

**§ 390.419 Unsafe or unsound practices.**

(a) No person shall directly or indirectly,

(1) Employ any device, scheme or artifice to defraud,

(2) Make any untrue statement of a material fact or omit to state a material fact necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, or

(3) Engage in any act, practice, or course of business which operates as a fraud or deceit upon any person, in connection with the purchase or sale of any security of a State savings association.

(b) Violations of this subpart shall constitute an unsafe or unsound practice within the meaning of section 8 of

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the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1818.

(c) Nothing in this subpart shall be construed as a limitation on the applicability of section 10(b) of the Exchange Act (15 U.S.C. 78j(b)) or Rule 10b-5 promulgated thereunder (17 CFR 240.10b-5).

### § 390.420 Withdrawal or abandonment.

(a) Any offering circular, amendment, or exhibit may be withdrawn prior to the effective date. A withdrawal shall be signed and state the grounds upon which it is made. Any document withdrawn will not be removed from the files of the FDIC, but will be marked "Withdrawn upon the request of the issuer on (date)."

(b) When an offering circular or amendment has been on file with the FDIC for a period of nine months and has not become effective, the FDIC may, in its discretion, determine whether the filing has been abandoned, after notifying the issuer that the filing is out of date and must either be amended to comply with the applicable requirements of this subpart or be withdrawn within 30 days after the date of such notice. When a filing is abandoned, the filing will not be removed from the files of the FDIC, but will be marked "Declared abandoned by the FDIC on (date)."

### § 390.421 Securities sale report.

(a) Within 30 days after the first sale of the securities, every six months after such 30 day period and not later than 30 days after the later of the last sale of securities in an offering pursuant to § 390.411 or the application of the proceeds therefrom, the issuer shall file with the FDIC a report describing the results of the sale of the securities and the application of the proceeds, which shall include all of the information required by Form G-12 set forth at § 390.429 and shall also include the following:

- (1) The name, address, and docket number of the issuer;
- (2) The title, number, aggregate and per-unit offering price of the securities sold;
- (3) The aggregate and per-unit dollar amounts of actual itemized expenses,

discounts or commissions, and other fees;

(4) The aggregate and per-unit dollar amounts of the net proceeds raised, and the use of proceeds therefrom; and

(5) The number of purchasers of each class of securities sold and the number of owners of record of each class of the issuer's equity securities after the issuance of the securities or termination of the offer.

(b) Within 30 days after the first sale of the securities, every six months after the first sale of the securities and not later than 30 days after the last sale of securities in an offering pursuant to § 390.413, the issuer shall file with the FDIC a report describing the results of the sale of securities, which shall include all of the information required by Form G-12 set forth at § 390.429, and shall also include the following:

(1) All of the information required by paragraph (a) of this section; and

(2) A detailed statement of the factual and legal grounds for the exemption claimed.

### § 390.422 Public disclosure and confidential treatment.

(a) Any offering circular, amendment, exhibit, notice, or report filed pursuant to this subpart will be publicly available. Any other related documents will be treated in accordance with the provisions of the Freedom of Information Act (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a), and parts 309 and 310 of this chapter.

(b) Any requests for confidential treatment of information in a document required to be filed under this subpart shall be made as required under Commission Rule 24b-2 (17 CFR 240.24b-2) under the Exchange Act.

### § 390.423 Waiver.

(a) The FDIC may waive any requirement of this subpart, or any required information:

(1) Determined to be unnecessary by the FDIC;

(2) In connection with a transaction approved by the FDIC for supervisory reasons, or

(3) Where a provision of this subpart conflicts with a requirement of applicable state law.



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(b) Any condition, stipulation or provision binding any person acquiring a security issued by a State savings association which seeks to waive compliance with any provision of this subpart shall be void, unless approved by the FDIC.

**§ 390.424 Requests for interpretive advice or waiver.**

Any requests to the FDIC for interpretive advice or a waiver with respect to any provision of this subpart shall satisfy the following requirements:

(a) A copy of the request, including any attachments, shall be filed with the FDIC;

(b) The provisions of this subpart to which the request relates, the participants in the proposed transaction, and the reasons for the request, shall be specifically identified or described; and

(c) The request shall include a legal opinion as to each legal issue raised and an accounting opinion as to each accounting issue raised.

**§ 390.425 Delayed or continuous offering and sale of securities.**

Any offer or sale of securities under § 390.411 may be made on a continuous or delayed basis in the future, if:

(a) The securities would satisfy all of the eligibility requirements of the Commission's Rule 415, 17 CFR 230.415; and

(b) The association issuing the securities is in compliance with the FDIC's regulatory capital requirements during the time the offering is made.

**§ 390.426 Sales of securities at an office of a State savings association.**

Sales of securities of a State savings association or its affiliates at an office of a State savings association may only be made in accordance with the provisions of § 390.340.

**§ 390.427 Current and periodic reports.**

(a) Each State savings association which files an offering circular which becomes effective pursuant to this subpart, after such effective date, shall file with the FDIC periodic and current reports on Forms 8-K, 10-Q and 10-K as may be required by section 13 of the Exchange Act (15 U.S.C. 78m) as if the securities sold by such offering circular

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were securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78l). The duty to file periodic and current reports under this subpart shall be automatically suspended if and so long as any issue of securities of the State savings association is registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78l). The duty to file under this subpart shall also be automatically suspended as to any fiscal year, other than the fiscal year within which such offering circular became effective, if, at the beginning of such fiscal year, the securities of each class to which the offering circular relates are held of record by less than three hundred persons and upon the filing of a Form 15.

(b) For purposes of registering securities under section 12(b) or 12(g) of the Exchange Act, an issuer subject to the reporting requirements of paragraph (a) of this section may use the Commission's registration statement on Form 10 or Form 8-A or 8-B as applicable.

**§ 390.428 Approval of the security.**

Any securities of a State savings association which are not exempt under this subpart and are offered or sold pursuant to an offering circular which becomes effective under this subpart, are deemed to be approved as to form and terms for purposes of this subpart.

**§ 390.429 Form for securities sale report.**

FDIC, 550 17th Street, NW.,  
Washington, DC 20429

[Form G-12]

*Securities Sale Report Pursuant to § 390.12*

FDIC No. \_\_\_\_\_  
Issuer's Name: \_\_\_\_\_  
Address: \_\_\_\_\_

If in organization, state the date of FDIC certification of insurance of accounts: \_\_\_\_\_

State the title, number, aggregate and per-unit offering price of the securities sold: \_\_\_\_\_

State the aggregate and per-unit dollar amounts of actual itemized offering expenses, discounts, commissions, and other fees: \_\_\_\_\_

**Federal Deposit Insurance Corporation**

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State the aggregate and per-unit dollar amounts of the net proceeds raised:

Describe the use of proceeds. If unknown, provide reasonable estimates of the dollar amount allocated to each purpose for which the proceeds will be used:

State the number of purchasers of each class of securities sold and the number of owners of record of each class of the issuer's equity securities at the close or termination of the offering:

For a non-public offering, also state the factual and legal grounds for the exemption claimed (attach additional pages if necessary):

For a non-public offering, all offering materials used should be listed:

Person to Contact: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_

This issuer has duly caused this securities sale report to be signed on its behalf by the undersigned person.

Date of securities sale report \_\_\_\_\_  
Issuer: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Instruction: Print the name and title of the signing representative under his

or her signature. Ten copies of the securities sale report should be filed, including one copy manually signed, as required under 12 CFR 390.414.

Attention  
Intentional misstatements or omissions of fact constitute violations of Federal law (See 18 U.S.C. 1001 and §390.355(b)).

**§ 390.430 Filing of copies of offering circulars in certain exempt offerings.**

A copy of the offering circular, or similar document, if any, used in connection with an offering exempt from the offering circular requirement of §390.411 by reason of §390.412(e) or §390.413 shall be mailed to the FDIC within 30 days after the first sale of such securities. Such copy of the offering circular, or similar document, is solely for the information of the FDIC and shall not be deemed to be "filed" with the FDIC pursuant to §390.411. The mailing to the FDIC of such offering circular, or similar document, shall not be a pre-condition of the applicable exemption from the offering circular requirements of § 390.411.

**Subpart X-Z [Reserved]**

**PARTS 391-399 [RESERVED]**