

§ 335.701 Filing requirements, public reference, and confidentiality.

(a) *Filing requirements.* Unless otherwise indicated in this part, one original and four conformed copies of all papers required to be filed with the FDIC under the Exchange Act or regulations thereunder shall be filed at its office in Washington, DC. Official filings made at the FDIC's office in Washington, DC should be addressed as follows: Attention: Registration, Disclosure, and Securities Operations Unit, Division of Supervision and Consumer Protection (DSC), Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Material may be filed by delivery to the FDIC through the mails or otherwise. The date on which papers are actually received by the designated FDIC office shall be the date of filing thereof if all of the requirements with respect to the filing have been complied with.

(b) *Inspection.* Except as provided in paragraph (c) of this section, all information filed regarding a security registered with the FDIC will be available for inspection at the Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC.

(c) *Nondisclosure of certain information filed.* Any person filing any statement, report, or document under the Act may make a written objection to the public disclosure of any information contained therein in accordance with the procedure set forth in this paragraph (c).

(1) The person shall omit from the statement, report, or document, when it is filed, the portion thereof that it desires to keep undisclosed (hereinafter called the confidential portion). In lieu thereof, it shall indicate at the appropriate place in the statement, report, or document that the confidential portion has been so omitted and filed separately with the FDIC.

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

(i) As many copies of the confidential portion, each clearly marked "Confidential Treatment," as there are copies of the statement, report, or document filed with the FDIC and with each exchange, if any. Each copy shall contain the complete text of the item

and, notwithstanding that the confidential portion does not constitute the whole of the answer, the entire answer thereto; except that in the case where the confidential portion is part of a financial statement or schedule, only the particular financial statement or schedule need be included. All copies of the confidential portion shall be in the same form as the remainder of the statement, report, or document;

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

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

(B) A statement of the grounds of objection;

(C) Consent that the FDIC may determine the question of public disclosure upon the basis of the application, subject to proper judicial reviews;

(D) The name of each exchange, if any, with which the statement, report, or document is filed;

(iii) The copies of the confidential portion and the application filed in accordance with this paragraph shall be enclosed in a separate envelope marked "Confidential Treatment" and addressed to Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429.

(3) Pending the determination by the FDIC as to the objection filed in accordance with paragraph (c)(2)(ii) of this section, the confidential portion will not be disclosed by FDIC.

(4) If the FDIC determines that the objection shall be sustained, a notation to that effect will be made at the appropriate place in the statement, report, or document.

(5) If the FDIC shall have determined that disclosure of the confidential portion is in the public interest, a finding and determination to that effect will be entered and notice of the finding and determination will be sent by registered or certified mail to the person.

(6) The confidential portion shall be made available to the public:

(i) Upon the lapse of 15 days after the dispatch of notice by registered or certified mail of the finding and determination of the FDIC described in

paragraph (c)(5) of this section, if prior to the lapse of such 15 days the person shall not have filed a written statement that he intends in good faith to seek judicial review of the finding and determination;

(ii) Upon the lapse of 60 days after the dispatch of notice by registered or certified mail of the finding and determination of the FDIC, if the statement described in paragraph (c)(6)(i) of this section shall have been filed and if a petition for judicial review shall not have been filed within such 60 days; or

(iii) If such petition for judicial review shall have been filed within such 60 days upon final disposition, adverse to the person, of the judicial proceedings.

(7) If the confidential portion is made available to the public, a copy thereof shall be attached to each copy of the statement, report, or document filed with the FDIC and with each exchange concerned.

§ 335.801 Inapplicable SEC regulations; FDIC substituted regulations; additional information.

(a) *Filing fees.* Filing fees will not be charged relative to any filings or submissions of materials made with the FDIC pursuant to the cross reference to regulations of the SEC issued under sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act, and this part.

(b) *Electronic filings.* The FDIC does not participate in the SEC's EDGAR (Electronic Data Gathering Analysis and Retrieval) electronic filing program (17 CFR part 232), and does not permit electronically transmitted filings or submissions of materials in electronic format to the FDIC.

(c) *Legal proceedings.* Whenever this part or cross referenced provisions of the SEC regulations require disclosure of legal proceedings, administrative or judicial proceedings arising under section 8 of the Federal Deposit Insurance Act shall be deemed material and shall be described.

(d) *Indebtedness of management.* Whenever this part or cross referenced provisions of the SEC regulations require disclosure of indebtedness of management, extensions of credit to specified persons in excess of ten (10) percent of

the equity capital accounts of the bank or \$5 million, whichever is less, shall be deemed material and shall be disclosed in addition to any other required disclosure. The disclosure of this material indebtedness shall include the largest aggregate amount of indebtedness (in dollar amounts, and as a percentage of total equity capital accounts at the time), including extensions of credit or overdrafts, endorsements and guarantees outstanding at any time since the beginning of the bank's last fiscal year, and as of the latest practicable date.

(1) If aggregate extensions of credit to all specified persons as a group exceeded 20 percent of the equity capital accounts of the bank at any time since the beginning of the last fiscal year, the aggregate amount of such extensions of credit shall also be disclosed.

(2) Other loans are deemed material and shall be disclosed where:

(i) The extension(s) of credit was not made on substantially the same terms, including interest rates, collateral and repayment terms as those prevailing at the time for comparable transactions with other than the specified persons;

(ii) The extension(s) of credit was not made in the ordinary course of business; or

(iii) The extension(s) of credit has involved or presently involves more than a normal risk of collectibility or other unfavorable features including the restructuring of an extension of credit, or a delinquency as to payment of interest or principal.

(e) *Proxy material required to be filed.*

(1) Three preliminary copies of each information statement, proxy statement, form of proxy, and other item of soliciting material to be furnished to security holders concurrently therewith, shall be filed with the FDIC by the bank or any other person making a solicitation subject to 12 CFR 335.401 at least ten calendar days (or 15 calendar days in the case of other than routine meetings, as defined in paragraph (e)(2) of this section) prior to the date such item is first sent or given to any security holders, or such shorter date as may be authorized.

(2) For the purposes of this paragraph (e), a routine meeting means:

(i) A meeting with respect to which no one is soliciting proxies subject to