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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 11

[Docket No. 05–14]

RIN 1557–AC75

Electronic Filing and Disclosure of Beneficial Ownership Reports

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is issuing this final rule to adopt in final form, without substantive change, an interim rule to amend the OCC's rules, policies, and procedures to require the electronic filing of beneficial ownership reports by officers, directors, and major shareholders of national banks that have equity securities registered under the Securities Exchange Act of 1934.

As required by the interim rule, this final rule requires that all reports filed with the OCC under section 16(a) of the Securities Exchange Act of 1934 must be filed electronically and posted on a registered national bank's Web site, if it has one, as soon as practicable. This final rule clarifies procedures for officers, directors, and principal shareholders of registered national banks to comply with these mandated electronic filing requirements.

DATES: This final rule is effective on September 9, 2005.

FURTHER INFORMATION CONTACT: Asa Chamberlayne, Counsel, Securities and Corporate Practices Division, 202–874–5210, or Martha Vestal Clarke, Counsel, Legislative and Regulatory Activities Division, 202–874–5090.

SUPPLEMENTARY INFORMATION:

Background

The Securities Exchange Act of 1934 (Exchange Act) seeks to protect investors by requiring accurate, reliable, and timely corporate securities disclosures. Generally, companies with equity securities that are subject to the registration requirements under section 12 of the Exchange Act (15 U.S.C. 78l) must register these securities with the Securities and Exchange Commission (SEC). Section 16(a) of the Exchange Act (15 U.S.C. 78p(a)) requires directors, executive officers, and direct or indirect beneficial owners of more than 10 percent of a class of securities that are registered under the Exchange Act (insiders) to file beneficial ownership reports regarding their ownership and transactions in the company's securities.¹ Section 12(i) of the Exchange Act (15 U.S.C. 78l(i)) vests the OCC, rather than the SEC, with the power to issue regulations implementing certain Exchange Act requirements with respect to national banks that have equity securities registered under the Exchange Act (registered national banks), including section 16, and with the authority to administer and enforce these requirements.²

As amended by the Sarbanes-Oxley Act of 2002, Pub. L. 107–204, section 16(a) requires that insiders of a registered company, including a registered national bank, must file beneficial ownership reports: (1) At the time the company registers its securities pursuant to section 12 of the Exchange Act; (2) within 10 days after becoming an insider of a registered national bank; and (3) within two business days after an insider consummates a transaction resulting in a change in ownership, or resulting in the purchase or sale of a security-based swap agreement,³ in the registered securities. These provisions became effective on August 29, 2002.

Section 16(a)(4) (15 U.S.C. 78p(a)(4)) also requires that, beginning July 30,

¹ Section 16(a) also requires an entity that has registered its securities under the Exchange Act to file initial and transactional reports with any national securities exchange on which it has listed its securities. See 15 U.S.C. 78p(a).

² Under section 12(i), the other Federal banking agencies have the same authority with respect to the registered depository institutions that they supervise. See 15 U.S.C. 78l(i).

³ The term "security-based swap agreement" is defined in section 206(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note).

2003, insiders must file their change-in-ownership reports electronically. Moreover, the SEC, and the OCC in the case of registered national banks, must make these filings available to the public on the Internet not later than the end of the business day following the filing. Also, a registered company, including a registered national bank, must post its insiders' change-in-ownership reports on its Web site, if it has a Web site, not later than the end of the business day following the filing.

The SEC's final rules implementing these requirements for other public companies mandate that all beneficial ownership reports filed under section 16(a), not only the change-in-ownership reports, must be filed electronically and posted on a public company's Web site, if the company has a Web site, not later than the end of the business day following the filing. In addition, the SEC provides Internet access to all such filings that are filed with the SEC. The SEC's rules were effective for all section 16(a) filings that are made on or after June 30, 2003.⁴

The SEC's final rules also amended 17 CFR 240.16a–3, which applies to registered national banks through the OCC's regulations at 12 CFR 11.2(b)(2). As amended by the SEC, 17 CFR 240.16a–3 provides that any issuer with a corporate Web site must post any section 16(a) report on that Web site by the end of the business day after the filing, and the filing must remain accessible on the Web site for at least 12 months. These same requirements apply to registered national banks.

On September 22, 2003, the OCC published and requested comment on an interim rule amending 12 CFR part 11 (see 68 FR 54981). In the interim rule, we imposed requirements similar to those adopted by the SEC and required that all section 16(a) reports must be filed electronically by the required due dates. To provide for the electronic filing of insiders' reports under section 16(a) of the Exchange Act, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the OCC created an electronic filing system utilizing the FDICconnect secure Web platform. This filing system became operational on July 30, 2003.

In order to assure that this new system was operating effectively, we did

⁴ See 68 FR 25788 (May 13, 2003).

not require compliance with the electronic filing and Web site posting requirements until January 1, 2004. We advised that, before January 1, 2004, to the extent practicable, registered national banks should post the section 16(a) filings on their Web sites and their insiders should file their section 16(a) reports electronically.

Description of Comments and Final Rule

The comment period on the interim rule ended November 21, 2003, and no comments were received. Moreover, while a very few banks may have had some minor problems connecting to or filing reports on FDICconnect in the past, no further problems have been reported. Thus, the OCC is adopting the interim rule as a final rule with no substantive modifications.

Accordingly, the final rule revises 12 CFR 11.3(a), which relates to filing requirements and the inspection of documents filed with the OCC pursuant to the Exchange Act. The rule contains a new § 11.3(a)(2), which provides that statements that are required to be filed electronically pursuant to section 16(a) of the Exchange Act shall be filed electronically. New § 11.3(a)(4) clarifies that the electronic filing and Web site posting requirements are mandatory for section 16(a) statements that are required to be filed on or after January 1, 2004.

The final rule also adds a new § 11.3(a)(3)(ii) which provides that an electronic filing pursuant to section 16(a) of the Exchange Act submitted by direct transmission on or before 10 p.m. Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect, shall be deemed filed on the same business day. This aspect of the final rule is consistent with the SEC's rules applicable to electronic filings that apply to other registered companies. See 17 CFR 232.13(a)(4).

The OCC's current rule at § 11.2(b)(2) references the requirements in the SEC's rules that a public company that has a Web site must post any filings on Forms 3, 4, or 5—the forms for filing beneficial ownership reports under section 16(a) of the Exchange Act—by the end of the business day after the filing and continue to make that form accessible on its Web site for at least 12 months. See 17 CFR 240.16a–3. Under the OCC's current rules, a registered national bank is required to post these filings on its Web site, if it has one, in accordance with 17 CFR 240.16a–3.

The OCC has adopted the interim rule with one technical modification concerning the authority citation. The interim rule contained a change to the

authority citation for part 11 that is no longer necessary. The OCC made this change already in a final rule amending 12 CFR parts 11 and 16, "Reporting and Disclosure Requirements for National Banks With Securities Registered Under the Securities Exchange Act of 1934; Securities Offering Disclosure Rules." See 68 FR 68489 (Dec. 9, 2003).

Regulatory Analysis

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The collections of information requirements in 12 CFR part 11, including the requirements in this final rule, have been submitted to and approved by OMB under OMB Control Number 1557–0106.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the *Federal Register* along with its rule. As of December 31, 2002, there were approximately 25 registered national banks subject to the amendments to part 11. As of the same date, only 15 of these institutions have assets of less than \$100 million and are considered small entities for purposes of the RFA. See 5 U.S.C. 601; 13 CFR 121.201.

Based on the relatively small number of national banks affected by the final rule and the fact that the requirements will not materially change the operating environment for those banks, the OCC hereby certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not needed.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–04 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more

in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that the final rule will not result in expenditures by State, local, or tribal governments or by the private sector of \$100 million or more. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Executive Order 12866

The OCC has determined that this final rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

List of Subjects in 12 CFR Part 11

Confidential business information, National banks, Reporting and recordkeeping requirements, Securities.

PART 11—SECURITIES EXCHANGE ACT DISCLOSURE RULES

■ 1. The authority citation for part 11 continues to read as follows:

Authority: 12 U.S.C. 93a; 15 U.S.C. 78l, 78m, 78n, 78p, 78w, 7241, 7242, 7243, 7244, 7261, 7262, 7264 and 7265.

■ 2. In § 11.3, paragraph (a) is revised to read as follows:

§ 11.3 Filing requirements and inspection of documents.

(a) *Filing requirements.* (1) *General.* Except as otherwise provided in this section, all papers required to be filed with the OCC pursuant to the 1934 Act or regulations thereunder shall be submitted in quadruplicate to the Securities and Corporate Practices Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. Material may be filed by delivery to the OCC through the mail, by fax (202–874–5279), or otherwise.

(2) *Statements filed pursuant to section 16(a) of the 1934 Act.* Statements required under section 16(a) of the 1934 Act shall be filed electronically, as directed by the OCC.

(3) *Date of filing.* (i) *General.* The date on which papers are actually received by the OCC shall be the date of filing, if the person or bank filing the papers has complied with all applicable requirements.

(ii) *Electronic filings.* An electronic filing of a statement required under section 16(a) of the 1934 Act that is submitted by direct transmission on or before 10 p.m. Eastern Standard Time or Eastern Daylight Savings Time,

whichever is currently in effect, shall be deemed filed on the same business day.

(4) *Mandatory compliance date.*

Compliance with paragraph (a)(2) of this section and any applicable requirements that such statements must be posted on a registered national bank's Web site are mandatory for statements required to be filed on or after January 1, 2004.

* * * * *

Dated: August 3, 2005.

Julie L. Williams,

Acting Comptroller of the Currency.

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