Federal Reserve Bank of—	Rate	Effective
Boston	6¼	Nov. 22, 1976
New York	6¼	Do.
Philadelphia	6¼	Do.
Cleveland	6¼	Do.
Richmond	6¼	Do.
Atlanta	6¼	Do.
Chicago	6¼	Do.
St. Louis	6¼	Nov. 26, 1976
Minneapolis	6¼	Nov. 22, 1976
Kansas City	6¼	Do.
Dallas	6¼	Do.
San Francisco	6¼	Do.

3. Section 201.53 is amended to read as follows:

§ 201.53 Advances to persons other than member banks.

The rates for advances under the last paragraph of section 13 of the Federal Reserve Act to individuals, partnerships, or corporations other than member banks secured by direct obligations of, or obligations fully guaranteed as to principal and interest by, the United States or any agency thereof are:

Federal Reserve Bank of—	Rate	Effective
Boston	8¼	Nov. 22, 1976
New York	8¼	Do.
Philadelphia	8¼	Do.
Cleveland	8¼	Do.
Richmond	8¼	Do.
Atlanta	8¼	Do.
Chicago	8¼	Do.
St. Louis	8¼	Nov. 26, 1976
Minneapolis	8¼	Nov. 22, 1976
Kansas City	8¼	Do.
Dallas	8¼	Do.
San Francisco	8¼	Do.

(12 U.S.C. 248(i)). Interprets or applies 12 U.S.C. 357.)

By order of the Board of Governors, November 26, 1976.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.76-35585 Filed 12-2-76;8:45 am]

[Reg. U]

[Docket No. R-0026]

PART 221—CREDIT BY BANKS FOR THE PURPOSE OF PURCHASING OR CARRYING MARGIN STOCKS

Notice of Further Revisions to Revised Form U-1

On June 11, 1976, notice was published in the FEDERAL REGISTER (41 FR 23667) that the Board of Governors had adopted a revised Federal Reserve Form U-1, "Statement of Purpose of a Stock-Secured Extension of Credit by a Bank," to be effective September 1, 1976. In order to review certain operational questions that were raised in connection with the use of such revised Federal Reserve Form U-1, the Board postponed the effective date of the revised form until January 1, 1977 (41 FR 35477 and 41 FR 48335). The Board has reviewed the questions presented and believes that further amendments to the revised form, particularly with regard to the officer's certification on Part II of the form, are warranted. Accordingly, the Board has further revised the form, effective January 1, 1977.[1]

In addition to certain clarifying technical changes in the language of the officer's certification, the principal purposes of the amendment are (i) to clarify that the bank officer signing the form may, in good faith, rely upon other bank employees to examine and validate the securities, and (ii) to restrict the examination and validation requirements only to securities that are or will be in the physical possession of the bank.

In adopting further revisions to the Form U-1, the Board announced that any banks that have reproduced copies of the earlier version of the Form U-1 that was to have become effective September 1, 1976, may continue to use such earlier version until their supply of such forms is exhausted or until December 31, 1977, whichever shall occur sooner, and that for this interim period, the earlier version shall be deemed to meet the requirements of § 221.3(a) of Regulation U (12 CFR 221.3(a)).

By order of the Board of Governors, November 29, 1976.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.76-35575 Filed 12-2-76;8:45 am]

[Reg. Z]

PART 226—TRUTH IN LENDING

Official Staff Interpretations

In accordance with 12 CFR 226.1(d), the Board is publishing the following official staff interpretations of Regulation Z, issued by a duly authorized official of the Division of Consumer Affairs.

Identifying details have been deleted to the extent required to prevent a clearly unwarranted invasion of personal privacy. The Board maintains and makes available for public inspection and copying a current index providing identifying information for the public subject to certain limitations stated in 12 CFR 261.6.

Official staff interpretations may be reconsidered by the Board upon request of interested parties and in accordance with 12 CFR 226.1(d)(2). Every request for reconsideration should clearly identify the number of the official staff interpretation in question, and should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

These interpretations shall be effective as of November 30, 1976.

§ 226.2(p) A prejudgment workout arrangement, which is in writing and involves either a finance charge or more than four installments constitutes an extension of consumer credit subject to the disclosure requirements of § 226.8 (b) and (d) regardless of whether the original transaction was classified as "open end credit" or "credit other than open end".

[1] A copy of the original Federal Reserve Form U-1 is filed as a part of the original document. Copies are available on request from the Board of Governors of the Federal Reserve System or any Federal Reserve Bank.

§ 226.7(f) Creditor need not disclose a change in credit terms of an open end credit account under § 226.7(f) to those creditors' cardholders who are not affected by the change in terms.

NOVEMBER 3, 1976.

This is in response to your letter of * * *, requesting an official staff interpretation with regard to the effect of Regulation Z on an open end credit plan collection program which your bank may implement.

You indicate in your letter that the collection program proposed would involve an existing open end credit plan in which the customers had lost their privileges as credit cardholders at a predetermined time due to non-payment, with no further advances being made until the account has been paid to the bank's satisfaction. The bank wishes to offer delinquent customers the opportunity to repay their debts in terms differing from the original open end credit plan. For example, the bank may allow repayment of the indebtedness with the monthly principal payments reduced (e.g., 5 percent of the principal each month as opposed to 10 percent of principal) and with the finance charges either reduced (e.g., 6 percent annual percentage rate as compared to the normal 18 percent open end credit annual percentage rate) or eliminated.

You question whether the collection program described would:

(1) Render the credit plan other than open end, thereby requiring disclosures under § 226.8 of Regulation Z;

(2) Require the making of new open end disclosures under § 226.7(a) when the debtor has paid the account to the bank's satisfaction in order for the customer to receive new advances or revolving credit privileges and

(3) Constitute a change in "credit terms" which would require an initial disclosure to all credit cardholders if the collection program is adopted on a general non-objective basis.

Staff is of the opinion that the issue of whether a prejudgment workout arrangement is subject to the other than open end credit disclosures of § 226.8 is dependent upon whether such a workout arrangement is informal (e.g., by telephone) or written. A prejudgment workout arrangement, which is in writing and involves either a finance charge or more than four instalments, constitutes an extension of consumer credit subject to the disclosure requirements of § 226.8(b) and (d) regardless of whether the original transaction was classified as "open end credit" or "credit other than open end."

Therefore, if your collection program involves a formal written prejudgment workout arrangement, then the bank would be required to make other than open end credit disclosures in accordance with § 226.8. Furthermore, should the bank decide to extend open end credit to the debtor after satisfaction of the delinquent account, the debtor should be provided once again with the initial open end disclosures to prevent confusion.

If the bank adopts such a collection program, staff believes that such a program would not require the bank to disclose a change in "credit terms" under § 226.7(f) to all of the bank's credit cardholders. Staff views the requirements of § 226.7(f) as requiring a creditor to disclose a change in terms in an open end credit plan only to those customers who would be affected by such change, since disclosure to unaffected customers could cause confusion as to the status of their accounts.

This letter is an official staff interpretation of Regulation Z, issued in accordance with

§ 226.1(d)(3) of the regulation. I trust it is responsive to your inquiry.

Sincerely,

JERAULD C. KLUCKMAN,
Assistant Director.

§ 226.7(j) Substitute credit card and automated teller card accessing customer's overdraft checking account are not supplemental credit devices requiring § 226.7(j) disclosures.

NOVEMBER 18, 1976.

This is in response to your letter of * * *, requesting an official staff interpretation of Regulation Z on the applicability of § 226.7(j) to your client's program.

The bank which you represent plans to install an electronic funds transfer system which will permit customers to gain direct access to their savings and checking accounts through remote computer terminals. Under the plan, two types of cards will be issued to customers for use in conjunction with the computer terminals. One type of card replaces the customer's current bank credit card and can be used for traditional credit card functions as well as for direct access to his accounts under the new electronic system. The second type of card cannot be used to perform the functions of a typical bank credit card. However, this second type of card, when used by customers who have overdraft checking privileges with the bank, may be used to obtain credit through access to the customer's checking account.

You wish to know whether either of these cards would constitute a "supplemental credit device" within the meaning of § 226.7(j), requiring the bank to make the disclosures set forth in that section.

In staff's opinion, § 226.7(j) does not apply to the plan which you describe. That section applies to "a blank check, payee designated check, blank draft or order or other similar credit device other than a credit card." In the bank's plan, the first type of card, which replaces a current bank credit card, clearly constitutes a credit card and is specifically excluded from the scope of § 226.7(j). The second type of card, which may be used to obtain credit by those customers who have an overdraft checking agreement with the bank, would also come within the definition of a credit card and is similarly excluded from that section. Thus, the bank is not required to comply with the provisions of § 226.7(j) with respect to the issuance of these types of cards.

This is an official staff interpretation of Regulation Z issued pursuant to § 226.1(d)(3) of the Regulation. It relates only to the specific issues and facts presented and does not constitute staff approval of the plan as a whole.

Sincerely,

JERAULD C. KLUCKMAN,
Assistant Director.

§ 226.7(k) Each transaction must be identified by appropriate designation even though all transactions on the accounts can be considered non sale credit. This can be done by symbols. Date of transaction or date on document evidencing transaction which the customer signs must be disclosed. After October 28, 1977, the regulation contemplates that creditors will have procedures in place to capture primary requirements.

NOVEMBER 19, 1976.

This is in response to your letter of * * *, in which you raised questions regarding the Regulation Z provisions setting forth standards for identifying transactions on open end accounts. You state that your program provides for non-sale credit only, and you request clarification as to whether the requirements of § 226.7(k) contemplate that each such non-sale transaction must be identified as to its specific type or whether no such designations need to be provided since all the transactions are basically of the same character.

According to your letter, the types of credit which may be obtained under your program include cash advance check credit, overdraft checking credit, and credit extended pursuant to the request from the customer to make payments to the American Express Company on special prepared forms.

Section 226.7(k)(3) of Regulation Z, as ultimately adopted by the Board, requires that each transaction be identified appropriately. Although specific language is not provided in the regulation as to what the appropriate designation should be, it is contemplated that each extension of credit shall be identified as a cash advance, overdraft, or by some other appropriate designation. The fact that only non-sale type credit can be extended on the account does not change this interpretation. In staff's view, this identification can be made by use of clear and conspicuous symbols on or with each periodic statement.

I should also point out that during the transition period which runs from October 28, 1976, until October 28, 1977, § 226.7(k)(7)(i)(B) provides that, as an alternative to the general disclosure requirements, the creditor may identify each transaction by disclosing such information as is reasonably available and treating the absence of the information as a billing error. If the customer submits a proper written notification of the billing error relating to the absence of such information and the information was, in fact, not provided, the absence of such information must be treated as an erroneous billing and documentary evidence of the charge must be provided without cost or request. After October 28, 1977, the regulation contemplates that the creditor will have procedures in place to provide the primarily required information for each transaction.

I also note in your letter that you state that the date of transaction for all types of credit obtainable under your program is the day the account is debited by the bank. I would point out that the regulation specifies that the date of debiting is the date of the transaction for purposes of this section only when the credit being extended is on an overdraft checking program. In all other cases, such as your cash advance checking program, the creditor is required as a primary matter to provide the date of the transaction or the date which is on the document evidencing the transaction, if such document is signed by the customer. Once again, however, I should point out that § 226.7(k)(7)(i) permits the creditor to use the date of debiting instead of the date of the transaction or other date required if due to operational limitations the primarily required date is not available for purposes of billing during the transition period.

This is an official staff interpretation of Regulation Z issued under § 226.1(d)(3) and limited in its application to the facts outlined above. I trust it is responsive to your inquiry.

Sincerely,

JERAULD C. KLUCKMAN,
Assistant Director.

§ 226.8(b) "Security interest under the Uniform Commercial Code" adequately describes type of security interest taken.

NOVEMBER 22, 1976.

This is in response to your letter of * * *, requesting an official interpretation on the disclosure of the type of a security interest under § 226.8(b)(5) of Regulation Z.

Section 226.8(b)(5) of Regulation Z requires the creditor to disclose, among other things, the "type of any security interest held or to be retained or acquired by the creditor." You submit three phrases which are intended to describe the type of a security interest taken by the creditor and request staff's opinion as to whether each of these phrases constitutes a sufficient description of the security interest under § 226.8(b)(5).

First, you ask whether the disclosure of a "security interest under the Uniform Commercial Code" is a sufficient description when the creditor obtains a security interest subject to the UCC. In staff's opinion, this language would be sufficient to comply with that requirement of § 226.8(b)(5) in the situation you describe. Staff believes that this provision of the regulation does not require creditors to provide a detailed statement of the type of interest acquired or a citation to any specific statutory provision pursuant to which the security interest is obtained. In staff's view, a security interest under the Uniform Commercial Code is a "type" of security interest and may be adequately described using the language you suggest.

Additionally, you ask whether a consensual or contractual security interest may be disclosed in language such as the following: "a security interest established by our contract" or "a security interest through our agreement." In staff's opinion, this language does not adequately describe the type of security interest taken, pursuant to § 226.8(b)(5). The words "contract" and "our agreement" may not convey any particular meaning to the customer or assist him in identifying the legal document from which the security interest arises. However, if the language you propose could be modified to more specifically identify the contract or agreement referred to, staff believes that such a disclosure would adequately describe the type of security interest involved. For example, the statement might refer to the specific title of the document which evidences the security interest.

This is an official staff interpretation of Regulation Z issued pursuant to § 226.1(d)(3) of the regulation. Staff's conclusions relate solely to the facts and issues presented.

Sincerely,

JERAULD C. KLUCKMAN,
Assistant Director.

§ 226.7(b) Open end billing statement need not disclose posting dates of transactions (other than payments and credits) in order to comply with required disclosure of balance on which the finance charge was computed and how that balance was determined.

NOVEMBER 22, 1976.

This is in response your letter of * * *, in which you request an official interpretation of § 226.7(b)(1)(viii) of Regulation Z which requires disclosure of "the balance on which the finance charge was computed and a statement of how that balance was determined."

Your clients are open end credit card issuers that are considering adopting an optional method of computing finance charges on the basis of an average daily balance which includes purchases posted to the cardholder's account on the current statement from the date of such posting in instances where the cardholder does not timely pay in full the new balance shown on the previous periodic statement.

Your clients electing this option have decided to make the disclosure concerning this method of computation of the finance charge on the reverse of the periodic statement (as permitted by § 226.7(c)(2)). The disclosure statement reads in part:

"The amount of any finance charge incurred by you during this billing cycle, as disclosed on the face of this Statement, was computed by multiplying the (monthly) Periodic Rate(s) times the Average Daily Balance(s), both of which are also disclosed on the face of this Statement. The "Average Daily Balance" is the sum of the outstanding balances for each day of the current billing cycle (excluding any previously billed but unpaid finance charge) divided by the number of days in the current billing cycle, computed separately for Cash Advances and for Purchases."

The average daily balance and transaction dates will appear on the face of the statement. You inquire whether § 226.7(b)(1)(viii) requires the disclosure of posting dates on the face of the statement in addition to transaction dates in order to permit the cardholder to compute the average daily balance. It is staff's opinion that the posting date of the transaction need not be disclosed to comply with the § 226.7(b)(1)(viii) requirement that the method of determining the balance on which the finance charge was computed be disclosed.

The requirement that the method of determination of the average daily balance be disclosed does not require that the customer be able to compute the balance on which the finance charge is based from the face of the statement. Compliance with the regulation may be achieved by providing the customer with the method of the computation. The requirement of posting dates would unnecessarily complicate the disclosure and necessitate the printing of two separate dates (i.e., the transaction date and the posting date) which could result in confusion on the part of the customer. It should be noted, however, that § 226.7(b)(1)(iii) requires the use of posting dates for disclosure of payments and credits on periodic statements.

This is an official interpretation of Regulation Z, issued in accordance with § 226.1(d)(3) of the regulation. It is limited in its scope to the questions presented herein. I trust this is responsive to your inquiry.

Sincerely,

JERAULD C. KLUCKMAN,
Assistant Director.

Board of Governors of the Federal Reserve System, November 24, 1976.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.76-35586 Filed 12-2-76;8:45 am]

CHAPTER V—FEDERAL HOME LOAN BANK BOARD

SUBCHAPTER D—RULES AND REGULATIONS FOR INSURANCE OF ACCOUNTS

[No. 76-869]

PART 563c—ACCOUNTING REQUIREMENTS

Amendments Relating to the Form and Content of Financial Statements

NOVEMBER 23, 1976.

The following outline of the amendments adopted by this Resolution is included for the reader's convenience and is subject to the full description in the preamble as well as the specific provisions in the regulations.

I. PRESENT SITUATION

Present § 563c.1 is a comprehensive accounting regulation adopted by Board Resolution No. 73-1768 on November 28, 1973. In large measure, it repeats the accounting regulations set forth in Regulation S-X (17 CFR Part 210) promulgated by the Securities and Exchange Commission, which in turn is based upon generally accepted accounting principles (GAAP). In addition to the requirements from Regulation S-X, § 563c.1 prescribes additional disclosures which focus on the specialized accounting of savings and loan associations.

II. AMENDED REGULATION

Amend § 563c.1 to incorporate by reference Articles 1, 2, 3, 4, and 5 and Rule 9-02 of Article 9 of Regulation S-X and supplement those provisions with additional requirements appropriate to savings and loan industry accounting.

III. REASON FOR AMENDMENT

Since the adoption of present § 563c.1, there have been many changes in both Regulation S-X and GAAP rendering sections of § 563c.1 obsolete. On the other hand, the sections of § 563c.1 which pertain to savings and loan accounting have remained fairly current.

In order to eliminate the need for continual amendments to § 563c.1 whenever Regulation S-X or GAAP are revised, and to strengthen the disclosure requirements to help assure full and fair disclosure, the Board amends present § 563c.1 to incorporate Regulation S-X by reference and establish additional accounting requirements which would be needed for the fair presentation of savings and loan financial data.

The Federal Home Loan Bank Board, by Resolution No. 76-476, dated June 30, 1976, proposed an amendment to Part 563c of the Rules and Regulations for Insurance of Accounts (12 CFR Part 563c) for the purpose of updating and revising the requirements for the form and content of financial statements filed with applications for conversion from a mutual institution to a stock institution and for certain subordinated debt applications. Notice of such proposed rulemaking was duly published in the FEDERAL REGISTER on July 12, 1976 (40 FR 28545-28549) with an invitation for interested persons to submit written comments by August 10, 1976.

Analysis of conversion applications containing financial statements prepared in accordance with present § 563c.1, discussions with professional accounting associations, and enactment of Public Law 93-495 (H.R. 11221), which provides, in part, that a converting Federal associations may retain its Federal charter, have indicated a need to amend § 563c.1 by replacing it with several new provisions incorporating Articles 1, 2, 3, 4, and 5 and Rule 9-02 of Article 9 of Regulation S-X, promulgated by the Securities and Exchange Commission (17 CFR Part 210), and supplementing those provisions with additional requirements appropriate to savings and loan industry accounting.

The final amendment differs from the proposal in three ways. First, "Securities of Affiliates," which was aggregated with "Other Securities and Investments," becomes a separate caption for a balance sheet. Second, the requirement for disclosure of interest which is sixty days or more delinquent was revised to read more than sixty days delinquent. Third, minor clarifying and referencing changes were made. However, there were no substantive changes from the proposal.

On the basis of its consideration of all relevant material presented by interested persons and otherwise available concerning this proposal, the Board hereby amends Part 563c by revising § 563c.1, redesignating §§ 563c.2 through .5 as §§ 563c.10 through .13, and adding new §§ 563c.2 through .9, to read as set forth below, effective December 3, 1976.

1. Redesignate present §§ 563c.2, 563c.3, 563c.4, and 563c.5 as 563c.10, 563c.11, 563c.12, and 563c.13, respectively, preceded by caption "Subpart B—Other Accounting Requirements."

2. Amend § 563c.1 and add new §§ 563c.2, 563c.3, 563c.4, 563c.5, 563c.6, 563c.7, 563c.8, and 563c.9, preceded by caption "Subpart A—Form and Content of Financial Statements in Offering Circulars" for new Subpart A to read as follows:

Subpart A—Form and Content of Financial Statements in Offering Circulars

Sec.

AUTHORITY.—Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730), Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943-48 Comp., p. 1071.

Subpart A—Form and Content of Financial Statements in Offering Circulars

§ 563c.1 Application of this subpart.

(a) This subpart states the requirements as to form and content of financial statements to be furnished by an insured institution with the following:

(1) Any proxy statement or offering circular required to be used in connection with a conversion under Part 563b of this subchapter; and

(2) Any offering circular or private placement memorandum required to be used in connection with issuance of subordinated debt securities under § 563.8-1 of this subchapter.

(b) The term "financial statements" includes all notes to the statements and related schedules.

(c) Consistent with the provisions of this subpart, financial statements furnished by an insured institution shall

comply with the following provisions of Regulation S-X of the Securities and Exchange Commission (17 CFR Part 210): §§ 210.1-01 through 210.5-04 and § 210.9-02 (17 CFR 210.1-01 through 210.5-04 and § 210.9-02).

§ 563c.2 Definitions.

(See also 17 CFR 210.1-02.)

(a) *Registrant.* The term "registrant" means an applicant, an insured institution, or any other person required to prepare financial statements in accordance with this subpart.

(b) *Significant Subsidiary.* The term "significant subsidiary" means (1) a subsidiary or (2) a subsidiary and its subsidiaries, meeting any of the conditions described below based on (i) the most recent annual financial statements, including consolidated statements, of such subsidiary which would be required to be filed if such subsidiary were a registrant and (ii) the most recent annual consolidated financial statements of the registrant being filed:

(1) The parent's and the parent's other subsidiaries' proportionate share of the total assets (after intercompany eliminations) of the subsidiary, or their investments in and advances to the subsidiary exceed one percent of the consolidated total assets.

(2) The parent's and the parent's other subsidiaries' proportionate share of the gross revenues (after intercompany eliminations) of the subsidiary exceed five percent of the consolidated gross revenues.

§ 563c.3 Qualification of Public Accountant.

(See also 17 CFR § 210.2-01.)

(a) The term "qualified public accountant" means a certified public accountant or licensed public accountant certified or licensed by a regulatory authority of a State or other political subdivision of the United States who is in good standing as such under the laws of the jurisdiction where the home office of the registrant to be audited is located. Any person or firm who is suspended from practice before the Securities and Exchange Commission or other governmental agency is not a "qualified public accountant" for purposes of this section.

(b) *Independence of Public Accountant.* (See also § 571.2(c)(3) of this subchapter.)

§ 563c.4 General notes to financial statements.

(See also 17 CFR § 210.3-16.)

(a) *Restrictions which limit the availability of reserves and undivided profits for dividend purposes.* Describe any such restrictions, indicating briefly the source, their pertinent provisions, and, where appropriate and determinable, the amount of reserves and undivided profits (1) so restricted or (2) free of such restrictions. These restrictions include absolute restrictions, such as those imposed by the Federal Home Loan Bank Board, state laws, as a result of conversion, or credit agreements, as well as restrictions which may result in additional income taxes before payment of dividends.

(b) *Income tax expense.* Describe in a footnote the method used in computing the tax bad debt deduction; include the principal present assumptions on which the registrant has relied in making or not making provisions for such taxes. Disclose whether or not consolidated returns are filed.

(c) *Provision for losses.* Describe the policies used by the registrant in providing for losses on loans and real estate. Indicate if specific provisions or a "basket" provision is used. Also state the policy with respect to capitalizing or expensing holding costs of real estate owned.

(d) *Conversion.* If the registrant is an applicant for conversion from a mutual to a capital stock company or has so converted within the last three years describe generally the terms of such conversion and any restrictions on the operations of the registrant imposed by such conversion.

(e) *Loans receivable.* Describe the accounting policies regarding recognition of income on loans receivable. Include the policies with respect to discontinuance of interest accrual; the treatment of discounts and premiums on loans originated, purchased, or sold; and the treatment of loan fees for originations, servicing, commitments, and other fees.

§ 563c.5 Consolidation of financial statements of a registrant and its subsidiaries engaged in diverse financial activities. (See also 17 CFR § 210.4-02).

(a) If the registrant and its subsidiaries are engaged in one or more types of financial activities, e.g., banking, insurance, finance, and savings and loan activities, consolidated financial statements may be filed unless deemed inappropriate; *Provided*, That, when more than one type of financial activity is involved, separate audited financial statements for each significant financial subsidiary or each significant group of financial subsidiaries shall be presented. Savings and loan holding companies engaged in savings and loan related finance activities, as defined in § 584.2 of this chapter, are considered to be one type of financial activity for the purpose of this section.

(b) If the registrant's subsidiaries are engaged in manufacturing, merchandising or other nonfinancial activities, the financial statements of the subsidiaries shall not be consolidated with the operations of the registrant. However, the subsidiaries may be included in the consolidated financial statements if their activities are principally for the benefit of the operations of the registrant. In interpreting the significance of the subsidiaries, the registrant should consider factors in addition to those in the definition of significant subsidiary, including the primary business activities of the registrant, trends, and other pertinent matters.

§ 563c.6 Balance Sheets.

(See also 17 CFR § 210.5-02.)

REQUIRED ASSET CAPTIONS AND DISCLOSURES

(a) *Investment Securities.*—(1) *United States Government and Federal Agency Obligations.* State, parenthetically or otherwise, the basis of determining the amount shown in the balance sheet and state the alternate of the aggregate cost or the aggregate amount on the basis of market quotations at the balance sheet date. When the original cost of securities purchased on a yield basis has been properly adjusted to reflect amortization of premium or accretion of discount since acquisition, the basis of determining their amount may be described as "at amortized cost" with appropriate footnote disclosures.

(2) *Other securities and investments.* State, parenthetically or otherwise, the basis of determining the amount shown in the balance sheet and state the alternate of the aggregate cost or the aggregate amount on the basis of market quotations at the balance sheet date. When the original cost of securities purchased on a yield basis has been properly adjusted to reflect amortization of premium or acceretion of discount since acquisition, the basis of determining their amount may be described as "at amortized cost" with appropriate footnote disclosures. Marketable equity securities, other than those securities which by their terms either must be redeemed by the issuing enterprise or are redeemable at the option of the investor, are to be carried at the lower of their aggregate costs or market values, determined at the balance sheet date.

(3) "Federal Funds" sold.

(4) Securities purchased under agreements to resell.

(b) *Mortgage loans.* (1) State separately here, or in a note referred to herein, each major class, such as FHA and VA loans, conventional loans, loans to facilitate sales of real estate foreclosed, unimproved land, contracts to facilitate the sale of real estate, and loans and participations guaranteed by an agency of the Federal government. Indicate the approximate amounts pledged to secure debt.

(2) Loans to facilitate sales of association-owned real estate shall be disclosed by appropriate footnote and the substance explained clearly and precisely.

(3) State separately, or by a footnote, loans on which the registrant or its subsidiaries have other than a primary lien. By a footnote disclose briefly the substance of such loan transactions including the amounts of prior liens.

(4) State separately, or by a footnote, the amounts of Governmental National Mortgage Association, Federal Home Loan Mortgage Corporation and other participation notes included in mortgage loans. Indicate the range of rates and maturities of such notes.

(5) In a footnote, state separately any valuation allowances, unearned interest

on consumer loans, and any other deductions used to arrive at net loans receivable. Undisbursed loan funds shall not be deducted (see § 563c.6(1)).

(c) *Other Loans.* (Show separately any significant subcategory).

(1) Home improvement loans, both insured and uninsured.

(2) Education loans.

(3) Mobile home loans.

(4) Loans secured by savings accounts.

(5) Mortgage loans purchased under agreements to resell.

(6) Other.

(d) *Accrued interest receivable on loans.* Show separately, with the amount of interest delinquent for more than 60 days included parenthetically on the balance sheet or disclosed in a footnote.

(e) *Valuation allowances.* Deduct from the related assets. In a separate note set forth an analysis indicating losses incurred, recoveries made, and transfers to this account during the fiscal year. (See also § 563c.7(f)).

(f) *Real estate owned.* State, parenthetically or otherwise:

(1) The basis of determining the amount shown on the balance sheet, and

(2) A description of each class of real estate owned which

(i) Was acquired by foreclosure or by deed in lieu of foreclosure,

(ii) Is in judgment and subject to redemption, or

(iii) Was acquired for development or resale.

Show separately any accumulated depreciation or valuation allowances. Disclose the policies regarding and amounts of capitalized costs, including interest.

(g) *Investments in real estate ventures.* In a note, present summarized financial statements, which may be unaudited, for each investment which is twenty (20) percent or more owned by the registrant or any of its subsidiaries or for which liabilities (including contingent liabilities) to the parent exceed ten (10) percent of the parent's net worth.

(h) *Securities of affiliates.* Indicate the basis for determining the amount shown in the balance sheet.

(i) *Investment in stock of the Federal Home Loan Bank.* Indicate basis for determining the amount shown in the balance sheet.

(j) Prepayment to FSLIC secondary reserve.

REQUIRED LIABILITIES, RESERVES, AND STOCKHOLDERS' EQUITY CAPTIONS AND DISCLOSURES

(k) *Savings accounts.* Include accrued interest or dividends, if appropriate. In a note, set forth in tabular form the amounts of savings accounts by categories of interest rate as of the dates of each balance sheet filed. As of the date of the latest balance sheet, set forth in tabular form the amounts of certificates maturing during each of the three years following such date and the total maturing thereafter. Also disclose the weighted average interest rate on outstanding savings at each date for which a balance sheet is presented.

(l) *Loans in process.* Include the amount of all undisbursed loan proceeds. Do not include interest, discounts, appraisal and inspection fees or any other amounts not intended as funds to be disbursed for the purpose for which the loan was granted.

(m) Advance payments by borrowers for taxes and insurance.

(n) *Advances from Federal Home Loan Bank.* State separately here, or in a note referred to herein, information indicating:

(1) The aggregate amount due each year and the range of interest rates, and

(2) Assets pledged.

(o) *Other Borrowed Funds.* State separately each major class of other borrowed funds (for reverse repurchase agreements, see § 563c.6(p)). Bonds, notes, debentures, and similar debt (including subordinated indebtedness) shall be reported as liabilities. Debt instruments may not be grouped with stockholders' equity under the caption "Capital." (See also captions 25 and 29 of 17 CFR 210.5-02.)

(p) *Sale and repurchase agreements.* Simultaneous sale and repurchase agreements (reverse repurchase agreements or "reverse repos") should be separately disclosed here, or by footnote. The substance of such transactions should be briefly but clearly explained and the effects of any imputation of interest explained. This includes instances where the seller is acting as a conduit (agent) and where it is appropriate for the interest to be imputed on the basis of net cash flow.

(q) *Commitment and contingent liabilities.* In addition to the disclosures required by 17 CFR 210.5-02 (caption 34) and 210.3-16(i), the registrant shall disclose the amount of outstanding loan commitments as of the dates of the latest audited balance sheet and the balance sheet presented for an unaudited stub period.

(r) Total liabilities.

(s) *Statement of stockholders' equity.* (See also § 563c.6(o)). A summary shall be given for each class of stockholders' equity set forth in the balance sheet.

REQUIRED CAPTIONS AND DISCLOSURES

(1) *Balance at beginning of period.* State separately the adjustments to the balance sheet at the beginning of the first period of the report for items which were retroactively applied to period(s) prior to that period. (See § 563c.7(t)).

(2) *Net income or loss from statement of operations.* See § 563c.7(v).

(3) *Other additions.* State separately, indicating clearly the nature of the transactions out of which the items arose.

(4) *Dividends.* For each class of shares, state the amount per share and in the aggregate. Show separately cash, other (specified) dividends, and the market value of stock dividends.

(5) *Other deductions.* State amounts separately, indicating clearly the nature of the transactions out of which the items arose.

(6) *Balance at end of period.* The balance at the end of the most recent period shall agree with the related statement of financial condition caption.

§ 563c.7 Income statements.

(See also 17 CFR 210.5-03.)

The following format for income statements shall be used by registrants filing under this regulation:

INCOME ITEMS

(a) *Interest on mortgage loans.* State the amount of interest received and/or accrued on mortgage loans. If a premium has been paid in connection with any purchased loans and such premium is being amortized periodically, such charges should be reflected here. Amortization of loan fees which may be deemed to be an adjustment of the contract rate shall be reported under this caption.

(b) *Interest on other loans.* State the amount of interest received or accrued on loans secured by savings accounts or other obligations of the institution, unsecured property improvement loans, mobile home loans, unsecured education loans, and any other loans which are not secured by real estate.

(c) *Interest and dividends on investments and deposits.* State the amount of interest received or accrued on U.S. Government and other investment securities and deposits in banks, including interest and/or dividends on deposits in savings and loan associations and stock in Federal Home Loan Banks. Include also:

(1) Periodic credits and/or debits to investment income arising from the amortization of bond premium and/or accretion of discount; and

(2) Periodic credits and/or debits arising from the amortization of gains or losses on the sale of securities, prior to December 31, 1971, in accordance with § 563.23-2(a) and (c)(1) of this subchapter. Exclude from this caption income on investments in subsidiaries and affiliates.

(d) *Loan fee and service charges.* State the amount of acquisition credits and discounts taken into income in accordance with § 563.23-1 of this subchapter, plus all fees and charges that were not subject to deferral under the regulation. Show separately any significant items.

(e) *Income from unconsolidated subsidiaries and affiliates.* State the dividend or interest income received from the institution's investment in the capital stock, obligations (other than conforming loans), or other securities of a subsidiary or affiliate.

(f) *Income from real estate operations.* Include in this caption all revenues and expenses which arose from the ownership and operation of real estate owned. In a note, set forth the basis for the amount reported showing separately the costs of sales; gains on sales of property acquired for development; gains on sales of foreclosed properties; increases or decreases in allowances for losses; taxes, insurance, maintenance, interest and other holding costs; and rental and other income. If the amount to be reported is a net loss, it shall be included among the expenses.

(g) *Other income.* State the amount of any other income which is not reported under any of the preceding income classifications. Material unusual or nonrecurring income and profits are to be reported separately. State separately any material amounts indicating clearly the nature of the transaction out of which the items arose. Other income may be stated net of applicable expenses.

INCOME DEDUCTIONS

(h) *Interest on savings accounts.* Include all interest or dividends accrued on savings accounts.

(i) *Interest on borrowings.* Include all interest paid or accrued on borrowings, indicating any amounts capitalized. (See also 17 CFR § 210.3–16(r))

(j) *Compensation.* State the compensation of officers, directors and employees (fees, salaries, wages, bonuses, and other compensation), both current and deferred.

(k) *Net occupancy expense.* Include all expense of occupancy, e.g. rent, utilities, repairs and maintenance, depreciation on buildings, amortization of leasehold improvements, property taxes, maintenance and other expenses.

(l) *Advertising.* State the cost of all types of advertising activities, including the cost of giveaways and premiums.

(m) *Provision for loan losses.* In a note, set forth the basis for making such provisions (see § 563c.6(e)).

(n) *Losses from real estate operations.* (See § 563c.7(f)).

(o) *Other expenses.* State separately all items in excess of 1 percent of consolidated gross income.

(p) Income or loss before income tax expense and applicable items under § 563c.7 (g) through (u).

(q) *Income tax expense.* (See § 563c.-12) and 17 CFR § 210.3–16(o)).

(r) Minority interest in income of consolidated subsidiaries.

(s) *Equity in earnings of unconsolidated subsidiaries and 50 percent or less owned persons.* The amount reported under this caption shall be stated net of any applicable tax provisions. State, parenthetically or in a note referred to herein, the amount of dividends received from such persons. If justified by circumstances, these items may be presented in a different position and a different manner.

(t) *Extraordinary items, less applicable tax.* State separately and disclose, parenthetically or otherwise, the tax applicable to each.

(u) *Cumulative effects of changes in accounting principles.* State separately and disclose, parenthetically or otherwise, the tax applicable to each.

(v) *Net income or loss.* The amount included under this caption shall be carried to the related subdivision of retained earnings. (See § 563c.12 (definition of "net income") and § 563c.6(s)(2).)

(w) *Earnings per share data.* Show separately:

(1) Earnings before any extraordinary items,

(2) Earnings applicable to extraordinary items and accounting changes, net of related tax effects, and

(3) Net earnings per share.

§ 563c.8 Statement of changes in financial position.

The statement of changes in financial position shall show the sources from which funds have been obtained and their application. At a minimum, the following shall be reported:

(a) *Increase of funds.* (1) Funds provided from operations (showing separately net income or loss and the addition and deduction of specific items which did not require the expenditure or receipt of funds; e.g., depreciation and amortization, deferred income taxes, interest credited to savings accounts, and undistributed earnings or losses of unconsolidated persons).

(2) Loans receivable reduction:

(i) Proceeds from sale of loans;

(ii) Total payments on loans.

(3) Net increase in advance payments by borrowers for taxes and insurance.

(4) Sale of assets (identifying separately items such as real estate owned, property and equipment, investment securities, etc.).

(5) Issuance of long-term debt.

(6) Increase in savings accounts.

(7) Federal Home Loan Bank advances.

(8) Borrowed money.

(9) Loan fees and discounts deferred (if collected in cash).

(10) Decrease of cash.

(11) Total funds provided.

(b) *Decrease of funds.* (1) Loan originations and purchases (showing the following items separately, if material):

(i) Construction;

(ii) Purchase of property;

(iii) Refinance;

(iv) Government insured loans;

(v) Loans on sales of real estate owned;

(vi) Consumer loans;

(vii) Other loans;

(viii) Purchases of whole loans;

(ix) Purchases of participations;

(x) Less decreases in undisbursed loan proceeds.

(2) Purchase of other assets (identifying separately items such as investment securities, property and equipment, FHL Bank Stock, etc.).

(3) Additions to real estate owned:

(i) Foreclosures;

(ii) Investments.

(4) Repayment of long-term debt.

(5) Repayment of Federal Home Loan Bank advances.

(6) Repayment of borrowed money.

(7) Decrease in savings accounts.

(8) Payment of cash dividends on capital stock.

(9) Increase in cash.

(10) Total applications.

§ 563c.9 What schedules are to be filed.

(a) Except as otherwise expressly provided in the applicable form—

(1) Schedules I, V, VI, VIII, IX, and X shall be filed as of the dates of the most recent audited balance sheet and any subsequent unaudited balance sheet filed for each person or group, provided that any such schedule, other than Schedules I and VIII, may be omitted if:

(i) The financial statements contained therein are being filed as part of an annual or other periodic report; and

(ii) The information that would be shown in the respective columns of such schedule would reflect no changes in any issue of securities of the registrant or any significant subsidiary in excess of five percent of the outstanding securities of such issue as shown in the most recently filed annual report containing the schedule.

(2) Schedule VIII, Capital Shares, may be omitted if the above two conditions exist and any information required by column G of the schedule is shown in the related balance sheet or in a note thereto.

(3) Schedules II, III, and VII shall be filed for each period for which an income statement is required to be filed for each person or group.

(4) Schedule IV shall be filed with each balance sheet filed.

(b) When information is required in schedules for both the registrant and the registrant and its subsidiaries consolidated, it may be presented in the form of a single schedule, provided that items pertaining to the registrant are separately shown and that such single schedule affords a properly summarized presentation of the facts. If the information required by any schedule (including the notes thereto) may be shown in the related financial statement or in a note thereto without making such statement unclear or confusing, that procedure may be followed and the schedule omitted.

(c) Reference to the schedules shall be made in the appropriate captions of the financial statements. Where, pursuant to the applicable instructions, the supporting schedules do not accompany the financial statements, references to such schedules shall not be made.

(d) The schedules shall be examined by an independent accountant if the related financial statements are so examined.

(e) *Filing of certain schedules.*—(1) *Schedule I.* U.S. Treasury Securities, Securities, of Other U.S. Government Agencies and Corporations, and Obligations of States and Political Subdivisions.—The schedule prescribed by § 563c.9(f) shall be filed—

(i) In support of information supplied pursuant to § 563c.6(a) on a balance sheet, if the greater of the aggregate cost or the aggregate market value of investment securities based on market quotations as of the balance sheet date constitutes 5 percent or more of total assets.

(ii) In support of information supplied pursuant to § 563c.6(a)(2) on a balance sheet, if the amount at which other security investments is shown in such balance sheet constitutes 5 percent or more of total assets.

(2) *Schedule II.* See 17 CFR 210.5–04 (d) (Schedule II). For purposes of this schedule, exclude in the determination of the amount of indebtedness any amounts due the registrant for mortgage loans secured by a person's residence.

(3) *Schedule III.* Investments in, Equity in Earnings of, and Dividends Received from Affiliates and Other Persons. This schedule may be omitted if the related sums on the balance sheet do not exceed one (1) percent of total assets. See 17 CFR 210.5–04(d) (Schedule III).

(4) *Schedule IV.* Slow Loans—File with each balance sheet filed. The schedule is prescribed by § 563c.9(f).

(5) *Schedule V.* Bonds, Mortgages and Similar Debt. See 17 CFR 210.5–04(d) (Schedule IX).

(6) *Schedule VI.* Guarantees of Securities of Other Issuers. See 17 CFR 210.5–04(d) (Schedule XI).

(7) *Schedule VII.* Valuation and Qualifying Accounts and Reserves. See 17 CFR 210.5–04(d) (Schedule XII).

(8) *Schedule VIII.* Capital Shares. See 17 CFR 210.5–04(d) (Schedule XIII).

(9) *Schedule IX.* Warrants or Rights. See 17 CFR 210.5–04(d) (Schedule XIV).

(10) *Schedule X.* Other Securities.—If there are any classes of securities not included in Schedules I, V, VI, VIII, or IX, set forth in this schedule information concerning such securities corresponding to that required for the securities included in such schedules. Information need not be set forth, however, as to notes, drafts, bills of exchange, or bankers' acceptances, having a maturity at the time of issuance not in excess of one year. This schedule may be omitted if the total of these other securities does not exceed one (1) percent of total assets. The schedule is prescribed by § 563c.9(f).

(11) *Schedule XI.* Intangilble Assets, Pre-operating Expenses and Similar Deferrals. See 17 CFR 210.5–04(d) (Schedule VII).

(12) *Schedule XII.* Accumulated Depreciation and Amortization of Intangible Assets. See 17 CFR 210.5–04(d) (Schedule VIII).

(f) *Schedules.*

SCHEDULE I.—*U.S. Treasury securities, securities of other U.S. Government agencies and corporations, and obligations of States and political subdivisions*

Type and maturity grouping	Col. A Principal amount	Col. B Book value [1]	Col. C Market value
U.S. Treasury securities:			
Within 1 yr.			
After 1 but within 5 yr.			
After 5 but within 10 yr.			
After 10 yr.			
Total, U.S. Treasury securities			
Securities of other U.S. Government agencies and corporations:			
Within 1 yr.			
After 1 but within 5 yr.			
After 5 but within 10 yr.			
After 10 yr.			
Total, securities of other U.S. Government agencies and corporations			
Obligations of States and political subdivisions: [2] [3]			
Within 1 yr.			
After 1 but within 5 yr.			
After 5 but within 10 yr.			
After 10 yr.			
Total, obligations of States and political subdivisions			

[1] State briefly in a footnote the basis for determining the amounts in this column.
[2] Include obligations of the States of the United States and their political subdivisions, agencies, and instrumentalities; also obligations of territorial and insular possessions of the United States. Do not include obligations of foreign states.
[3] State in a footnote the aggregate (a) principal amount, (b) book value, and (c) market value of securities that are less than "investment grade." If market value is determined on any basis other than market quotations at balance sheet date, explain.

SCHEDULE IV.—*Slow loans (as defined in sec. 561.16 of the rules and Regulations for insurance of accounts)*

Type	Col. A Principal outstanding	Col. B Past due payments (including accrued interest)
1st mortgage loans and contracts:		
Insured or guaranteed mortgage loans		
Mortgage loans, participations, and mortgage backed certificates insured or guaranteed by an agency or instrumentality of the United States		
Conventional mortgage loans:		
Single family dwelling		
Homes 2 to 4 dwelling units		
Multifamily—More than 4 dwelling units		
Other improved real estate—Commercial and industrial		
Acquisition and development of land		
Undeveloped land		
Participations		
Other mortgage loans and contracts to facilitate sale of real estate owned		
2d mortgage loans		
Total, mortgage loans		
Other loans:		
Property improvement, alteration, or repair		
Educational loans:		
Insured or guaranteed		
Other than insured or guaranteed		
Mobile home chattel paper:		
Insured or guaranteed		
Other than insured or guaranteed		
Equipping and secured consumer loans		
Unsecured consumer loans		
Other loans		
Total, other loans		
Total, slow loans		

SCHEDULE X.—*Other securities*

Type	Col. A Amount	Col. B Book value [1]	Col. C Market value
Bonds, notes and debentures [2] [3]			
Stock of the Federal home loan bank (at cost)			
Other stocks [3] [4]			
Total			

[1] State briefly in a footnote the basis for determining the amounts shown in this column.
[2] State in a footnote the aggregate amount and book value of foreign securities included.
[3] State in a footnote the aggregate (a) principal amount, (b) book value, and (c) market value of bonds, notes, and debentures that are less than "investment grade." If market value is determined on any basis other than market quotations at balance sheet date, explain.
[4] State in a footnote the aggregate market value.

(Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended; (12 U.S.C. 1725, 1726, 1730), Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.)

By the Federal Home Loan Bank Board.

J. J. FINN,
Secretary.

[FR Doc.76-35453 Filed 12-2-76;8:45 am]

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER D—SPECIAL REGULATIONS

[Reg. SPR-115, Amdt. 2]

PART 371—ADVANCE BOOKING CHARTERS

Technical Amendment

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. October 5, 1976. (Incorporate attached regulation.)

By SPR-110, 41 FR 37763, September 8, 1976, the Board adopted a new Part 371 of its Special Regulations (14 CFR Part 371) authorizing and governing the operation of a new type of charter designated and Advance Booking Charter (ABC.)

Those engaged in operating ABC's are required to file certain information with the Board, and to comply with certain bonding requirements. The ABC proposal, set forth in Notice of Proposed Rulemaking EDR-294/SPDR-42/ODR-12, 41 FR 7417 (February 18, 1976), included provisions that would have prescribed forms for the following documents: the passenger list required under § 371.25, the surety bond required under § 371.31, and the charter prospectus and market data summaries required under § 371.50. Those proposed forms were set forth in Appendices A, B, and C, respectively, of the proposed rule, and no comment opposed the various formats set forth therein.

In accordance with its proposal the Board has decided to prescribe the forms for the passenger list, the surety bond, and the charter prospectus and market data summaries required under the ABC rule. Certain editorial changes have been made in the proposed passenger list form, to take account of standby lists which, under the ABC as finally adopted, may be filed in conjunction with European ABC's. The other proposed forms have been adopted as proposed without modification.

Since these amendments are designed only to facilitate compliance with the substantive requirements of Part 371, and have already been the subject of notice and public procedure, the Board finds for good cause that additional notice and public procedure thereon are unnecessary, and that the amendments may become effective on less than 30 days' notice.

Accordingly, the Civil Aeronautics Board hereby amends Part 371 of its Special Regulations (14 CFR Part 371), effective December 3, 1976, as follows:

1. Paragraph 371.25(b)(2) is revised to read as follows:

§ 371.25 **Operating authorization of charter operators.**

* * * * *

(b) * * *

(2) File with the Board (Investigation and Audit Division, Bureau of Enforcement) an original passenger list and a standby list, with respect to persons who have authorized the operator to include them in such list as prospective substitutes for main list passengers, or a statement that there are no standby list members. The passenger list and the standby list shall be filed on CAB Form 371-1, which appears as Appendix A to this Part, and shall set forth the name of each passenger and standby in alphabetical order, his or her address and telephone number, and the name, address, and telephone number of the travel agent (if any) who sold the charter to the passenger: *Provided*, That where the outbound leg of an ABC is scheduled to depart on or after October 1, 1978, the information required by this paragraph (b) shall be filed not later than 30 days prior to the scheduled date of departure for European ABC's, and not later than 15 days prior to the schedule date of departure for all others. The information required to be filed with the Board, under this section, shall be deemed filed on the U.S. Postal Service postmark date imprinted on the envelope.

2. Paragraph 371.31(c) is revised to read as follows:

§ 371.31 **Surety bond and depository agreement.**

* * * * *

(c) The bond required under paragraphs (a) and (b) of this section shall insure the financial responsiblity of the charter operator or foreign charter operator and the supplying of the transportation and all other accommodations, services, and facilities in accordance with the contract between the charter operator or foreign charter operator and the charter participants, and shall be in the form set forth as Appendix B to this Part. Such bond shall be issued by a bonding or surety company (1) whose surety bonds are accepted by the Interstate Commerce Commission under 49 CFR 1084.6; or (2) which is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholders' rating of "A" or better. The bonding or surety company shall be one legally authorized to issue bonds of that type in the State in which the charter originates. For purposes of this section, the term "State" includes any territory or possession of the United States, or the District of Columbia. The bond shall be specifically identified by the issuing surety with a company bond numbering system so that the Board may identify the bond with the specific charter or charters to which it relates: *Provided, however*, That these data may be set forth in an addendum attached to the bond, which addendum must be signed by the charter operator or foreign charter operator and the surety company. It shall be effective on or before the date the charter Prospectus is filed with the Board. If the bond does not comply with the requirements of this section, or for any reason fails to provide satisfactory or adequate protection for the public, the Board will notify the direct air carrier and the charter operator or foreign charter operator, by registered or certified mail, stating the deficiencies of the bond. Unless such deficiencies are corrected within the time set forth in such notification, the subject charters shall in no event be operated.

* * * * *

3. Paragraph 371.50(b) is revised to read as follows:

§ 371.50 **Charter trip reporting.**

* * * * *

(b) Within 30 days after termination of a charter or series of charters, or in the case of series of charters extending over a period longer than 30 days, every 30 days, the direct air carrier and charter operator or foreign charter operator shall jointly file with the Board (Supplementary Services Division, Bureau of Operating Rights), a report on CAB Form 371-2, which appears as Appendix C to this Part. The report shall indicate whether or not the charters authorized hereunder were, in fact, performed. For each charter operated, the report shall indicate the origin, destination(s), and number of passengers carried. To the extent that the operations differed from those described in the Prospectus filed under § 371.28, such differences shall be fully detailed, including the reasons therefor. However, the making of such an explanation shall not of itself operate as authority for or excuse any such deviations.

4. Appendices A, B, and C are added to Part 371 as set forth below.

(Secs. 101, 204, 401, 402, 407, 416, and 1001 of the Federal Aviation Act of 1958, as amended, 72 Stat. 737 (as amended), 743, 754 (as amended), 757, 766, 771 and 788; 49 U.S.C. 1301, 1324, 1371, 1372, 1377, 1386, and 1481.)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

Approved by GAO B-180226 (R0422)
Expires 10-31-79

Appendix A
Page 1 of 3 pages

CAB ADVANCE BOOKING CHARTER PASSENGER NAME LISTS (See Instructions On The Reverse Side)	(1) PAGE ___ OF ___	(2) ABC NUMBER
(6) NAME OF CHARTER OPERATOR		(3) DATE MAIN/STDBY LIST FILED
(7) NAME DEPARTURE TRIP DIRECT AIR CARRIER		(4) DATE DEPART. LIST FILED
(8) NAME RETURNING TRIP DIRECT AIR CARRIER		(5) DATE RETURN LIST FILED
(9) DEPARTURE JOURNEY ORIGIN	DESTINATION	DATE OF DEPARTURE Y Y M M D D
(10) RETURN JOURNEY ORIGIN	DESTINATION	DATE OF RETURN Y Y M M D D

(11) PSNGR SEQ.NOS.	(12) PSNGR STATUS Main	Stdby	Sub.	Dep.	Ret.	PASSENGER IDENTIFICATION (13) NAME	(14) ADDRESS & TELEPHONE NO.	(15) ENPLANEMENT IDENTIFICATION
						M ☐ F ☐		Passport No. ____ Tvl Doc. No. ____ Other No.
						M ☐ F ☐		Passport No. ____ Tvl Doc. No. ____ Other No.
						M ☐ F ☐		Passport No. ____ Tvl Doc. No. ____ Other No.
						M ☐ F ☐		Passport No. ____ Tvl Doc. No. ____ Other No.
						M ☐ F ☐		Passport No. ____ Tvl Doc. No. ____ Other No.
						M ☐ F ☐		Passport No. ____ Tvl Doc. No. ____ Other No.
						M ☐ F ☐		Passport No. ____ Tvl Doc. No. ____ Other No.
						M ☐ F ☐		Passport No. ____ Tvl Doc. No. ____ Other No.
						M ☐ F ☐		Passport No. ____ Tvl Doc. No. ____ Other No.
						M ☐ F ☐		Passport No. ____ Tvl Doc. No. ____ Other No.
						M ☐ F ☐		Passport No. ____ Tvl Doc. No. ____ Other No.
						M ☐ F ☐		Passport No. ____ Tvl Doc. No. ____ Other No.
						M ☐ F ☐		Passport No. ____ Tvl Doc. No. ____ Other No.
						M ☐ F ☐		Passport No. ____ Tvl Doc. No. ____ Other No.
						M ☐ F ☐		Passport No. ____ Tvl Doc. No. ____ Other No.
						M F		Passport No. ____ Tvl Doc. No. ____ Other No.
						M ☐ F ☐		Passport No. ____ Tvl Doc. No. ____ Other No.
						M ☐ F ☐		Passport No. ____ Tvl Doc. No. ____ Other No.
						M ☐ F ☐		Passport No. ____ Tvl Doc. No. ____ Other No.
						M ☐ F ☐		Passport No. ____ Tvl Doc. No. ____ Other No.

(16)						(17)	(18)
A-MAIN						Total Substitute Psngrs. Enplaned on the Departure Journey / Total No. Psngr. Seats Contracted For = %	PREPARED BY: Main ____ Departure ____ Return ____
B-STDBY							
C-SUB.							
D-DEP.							
E-RET.							

CAB FORM 371-1 (9-76)

(10) NAME, ADDRESS, AND TELEPHONE NUMBER OF RETAIL AGENT	PASSENGER SEQUENTIAL NUMBERS (From Item 11)
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	

CAB Form 371-1

INSTRUCTIONS

Introduction

Form 371-1[1/] is to be used in filing the advance booking charter passenger and standby name list (ABCPNL) required by Part 371 to be filed by the charter operator (CO) no later than 45 days before the scheduled date of departure in the case of European ABC's, and no later than 30 days before the scheduled date of departure for all others, pursuant to §371.25 (the filing); and two photostatic or similarly reproduced copies of this form, must be used as the enplanement list required to be prepared by the direct air carrier (DAC), and retained after a flight is performed, pursuant to §371.44. The information required by all items on Form 371-1 shall be typewritten except item 12 (Passenger Status) item 15 (Enplanement Identification) and item 18 (Prepared By).

Procedures for Filing

The CO will prepare Form 371-1 according to the instructions set forth below and shall file an original copy with the Board's Investigation and Audit Division, Bureau of Enforcement. The CO will simultaneously file two photostatic or similarly reproduced copies (no carbons) with the DAC, one copy of which shall be used for the ABC departure flight, the other for the ABC return flight.

Preparation of Form

Each page provides for twenty (20) names. Items 1, 2, and 6 through 15 will be completed on each page, and items 16 through 18 will be prepared only on the first page, by the CO or DAC, as the case may be. NOTE: The CO shall submit to the DAC, at the time of each enplanement, a separate list of substitutes, completed in accordance with these instructions.

Item 1, Page of --The left blank is to contain a sequential number beginning with "1" representing the page number in the set of pages submitted for the ABCPNL. The right blank is to contain the total number of pages in the set for the ABCPNL.

Item 2, ABC Number--Enter the number assigned by the Bureau of Operating Rights (BOR), for the ABC program, e.g., 76-37; the CO should further identify the passenger lists filed within the program by assigning another number for each passenger list filed, such numbers to be in sequence and begin with "1". Thus, the first passenger list filed in the program 76-37 would be 76-37-1, and the fifth list filed would be 76-37-5.

Item 3, Date Main/Standby List Filed--Leave blank.

Item 4, Date Departure List Filed--Leave blank.

Item 5, Date Return List Filed--Leave blank.

Item 6, Name of Charter Operator--Enter the name of the charter operator exactly as shown on the ABC Prospectus filed with the Board.

Item 7, Name Departure Trip Direct Air Carrier--Enter the name of the DAC who will perform the departure journey for the ABC exactly as shown on the ABC Prospectus filed with the Board.

Item 8, Name Returning Trip Direct Air Carrier-- Enter the name of the DAC who will perform the return journey for the ABC, exactly as shown on the ABC Prospectus filed with the Board. (Although this will generally be the same as shown in item 7, ditto marks are not acceptable. The item must be completed).

Item 9, Departure Journey--Enter details about the departure journey on this line. Show the origin and destination as city, state (or otherwise), and country. Airport names are acceptable only as an addition to the city, state, and country information. The date should appear in the form YYMMDD where YY represents the last two digits of the current calendar year, MM represents the month in a scale where 01 is January and 12 is December, and DD is the day of the month from 01 to 31. For example, December 12, 1976, would be shown as 761212. The ADP coding boxes to the left of item 9 are intended for the three-letter codes of the origin and destination, i.e., Washington, D.C., USA (National Airport) to Baltimore, MD, USA should be shown as DCABAL. Enter these if known, otherwise, leave blank.

Item 10, Return Journey--Follow the same directions as for item 9 above in describing the return journey.

Item 11, Passenger Sequential Number--Two or more pages will be required to list the prospective passenger names. Each prospective passenger name is to receive a sequential number beginning with "1". Note that the last sequential number shown on the last page of the ABCPNL should equal the aggregate number of both main list passengers and standby list passengers.

Item 12, Passenger Status--These five (5) columns are to be marked with an x as appropriate to show that the passenger named on this line is a main list participant (MAIN), standby list participant (STDBY), departing enplaned passenger (DEP.), or returning enplaned passenger (RET.). The ABCPNL at the time it is filed by the CO will contain x's only in the MAIN and STDBY columns. The DAC performing the departure journey will mark an x in the departure and substitute (SUB.) columns and the DAC performing the return journey will mark an x in the return column. Each DAC will complete items 12 through 15 for each substitute.

Item 13, Name-- Enter the prospective passenger's last name first, followed by a comma, the first name or initials and the middle initial, if any (for example, Doe, John A.). Check block whether Male or Female. Enter the name on one line only, if necessary, by dropping any element other than the fully spelled out last name. Enter all prospective passengers' names in alphabetical order, according to the last name and in the case of like last names, according to initials of first names.

Item 14, Address and Telephone No.--Enter the address in enough detail to allow contact by mail, and telephone number (including area code, if any).

Item 15, Enplanement Identification--The DAC performing the departure or return journey will verify each enplaning passenger's identity using as the documentary source of such verification the passenger's passport, or, if he has no passport, using his travel identity document. Only if no passport or travel identity document is available should any other document be used, e.g., a Social Security card. When a passport or Social Security card is used for identification, enter only the number in the appropriate space. Where a travel identity document or document other than a passport or Social Security card is used, then in addition to entering the number in the appropriate space, a brief description of such document should also be noted.

Item 16, Column Totals--Boxes shown are to be used for recording the total x's shown on all the pages of this ABCPNL in the particular column. These entries must appear only on page 1 of the ABCPNL. The box under the column headed MAIN (titled A-MAIN) should contain the total number of original participants and the box under the column headed STDBY (titled B-STDBY) should contain the total number of standbys. The box under the column headed SUB (titled C-SUB) should contain the total number of substitutes. The box under the column headed DEP (titled D-DEP) should contain the total number of departure flight passengers and the box under the column headed RET (titled E-RET) should contain the total number of return flight passengers. The A-MAIN and B-STDBY figures will be shown on the ABCPNL submitted in the Filing. The C-SUB, D-DEP, and E-RET figures will be shown on the ABCPNL used by the departing DAC and returning DAC, respectively.

Item 17--This computation will be completed by the departure DAC. The calculation requires a division of the number of substitutes (i.e., not including any passengers occupying "unused space") enplaned on the departure journey by the total number of passenger seats contracted for. Express the result to the nearest tenth of a percent.

Item 18, Prepared By--Enter the signature of the person preparing the form for the CO, the departing DAC and the returning DAC, as the case may be.

Item 19, Name, Address, and Telephone Number of Retail Agent--Enter the name, address, and telephone number of each retail agent who has sold a charter to a passenger listed under item 13. For each agent, give the sequential numbers (item 11) of all passengers to whom charter was sold.

1/ Copies are obtainable from the Board's Publications Services Section.

CAB Form 371-1

ADVANCE BOOKING CHARTER OPERATOR'S SURETY BOND UNDER
PART 371 OF THE SPECIAL REGULATIONS OF THE
CIVIL AERONAUTICS BOARD (14 CFR PART 371)

KNOW ALL MEN BY THESE PRESENTS, THAT we _____
(Name of charter operator)
of _____, _____ as PRINCIPAL (hereinafter called Princi-
(City) (State)
pal), and _____ a corporation created and existing under the Laws of the
(Name of Surety)
State of _____ as SURETY (hereinafter called Surety) are held and
(State)
firmly bound unto the United States of America in the sum of _____
(See §371.31 of Part 371)
for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal intends to become an Advance Booking Charter (ABC) operator pursuant to the provisions of Part 371 of the Board's Special Regulations and other rules and regulations of the Board relating to insurance or other security for the protection of ABC participants, and has elected to file with the Civil Aeronautics Board such a bond as will insure financial responsibility with respect to all monies received from charter participants for services in connection with an ABC to be operated subject to Part 371 of the Board's Special Regulations in accordance with contracts, agreements, or arrangements therefor, and

WHEREAS, this bond is written to assure compliance by the Principal as an authorized charter operator with Part 371 of the Board's Special Regulations, and other rules and regulations of the Board relating to insurance or other security for the protection of charter participants, and shall inure to the benefit of any and all charter participants to whom the Principal may be held legally liable for any of the damages herein described.

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall pay or cause to be paid to charter participants any sum or sums for which the Principal may be held legally liable by reason of the Principal's failure faithfully to perform, fulfill, and carry out all contracts, agreements, and arrangements made by the Principal while this bond is in effect with respect to the receipt of monies from charter participants and proper disbursement thereof pursuant to and in accordance with the provisions of Part 371 of the Board's Special Regulations, then this obligation shall be void, otherwise to remain in full force and effect.

The liability of the Surety with respect to any charter participant shall not exceed the charter price paid by or on behalf of such participant.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penalty of the bond, but in no event shall the Surety's obligation hereunder exceed the amount of said penalty. The Surety agrees to furnish written notice to the Civil Aeronautics Board forthwith of all suits filed, judgments rendered, and payments made by said Surety under this bond.

The bond shall cover the following charters: 1/

Surety company's bond No.	Date of flight departure	Place of flight departure

This bond is effective the _____ day of _____, 19___, 12:01 a.m., standard time at the address of the Principal as stated herein and shall continue in force until terminated as hereinafter provided. The Principal or the Surety may at any time terminate this bond by written notice to the Civil Aeronautics Board at its office in Washington, D.C., such termination to become effective thirty (30) days after actual receipt of said notice by the Board. The Surety shall not be liable hereunder for the payment of the damages hereinbefore described which arise as the result of any contracts, agreements, undertakings, or arrangements for the supplying of transportation and other services made by the Principal after the termination of this bond as herein provided, but such termination shall not affect the liability of the Surety hereunder for the payment of any such damages arising as the result of contracts, agreements, or arrangements for the supplying of transportation and other services made by the Principal prior to the date such termination becomes effective. Liability of the Surety under this bond shall in all events be limited only to a charter participant or charter participants who shall within

1/ These data may be supplied in an addendum attached to the bond. See §371.31.

sixty (60) days after the termination of the particular charter described herein give written notice of claim to the charter operator or, if he is unavailable to the Surety, and all liability on this bond shall automatically terminate sixty (60) days after the termination date of the particular charter covered by this bond except for claims filed within the time provided herein.

IN WITNESS WHEREOF, the said Principal and Surety have executed this instrument on the _____ day of _____, 19 ____.

PRINCIPAL	SURETY
Name _____	Name _____ (SEAL)
By _____ (Signature and Title)	By _____ (Signature and Title)
Witness _____	Witness _____

Only corporations may qualify to act as Surety and they must meet the requirements set forth in §371.31(d) of Part 371

ADVANCE BOOKING CHARTER REPORT

General Instructions

1. For the Charter Prospectus Summary and the Market Data Summary, an original and one (1) copy of each shall be jointly filed with the Board (Bureau of Operating Rights, Supplementary Services Division) by the direct air carrier and the charter operator conducting ABC's pursuant to Part 371 of the Board's Special Regulations within thirty (30) days of the close of each calendar month.

2. The information provided for items 1 and 2 of the Charter Prospectus Summary, and all information provided for the Market Data Summary, shall be for the month in which ABC's were operated, and shall not include any information for ABC's previously operated or expected to be operated in the future under any one prospectus -- e.g., reports filed in December shall contain information for ABC's operated during November.

A. Charter Prospectus Summary

ABC Number _____

Month Ended _____, 19___

1. Number of charters operated this month _____.

2. Number of charters listed in ABC prospectus for this month that were not operated _____.

3. Specifically identify charter(s) in item 2 that were not operated and give reason, and indicate if prospective charter participants received full refunds _____

_____

_____.

4. Indicate if the ABC's performed this month were operated substantially different from the description in the charter prospectus, and, if so, state the reason(s).

Name of Direct Air Carrier	Signature of Direct Air Carrier	Date
Name of Charter Operator or Foreign Charter Operator	Signature of Charter Operator or Foreign Charter Operator	Date

CAB Form 371-2

ADVANCE BOOKING CHARTER REPORT

B. Market Data Summary

Reporting Instructions for Market Data Summary

Field 1 - Air Carrier. This is the official two-letter alpha code of the carrier supplying the charter service.

Field 2 - Month. This is the spelling of the month the services were performed by the carrier.

Field 3 - ABC File Number. This is the official number given to the ABC prospectus.

Field 4 - This is the flight number assigned by the carrier to this group.

Field 5 - This is the three-letter OAG code assigned to the departure airport.

Field 6 - This is the three-letter OAG code assigned to the arrival airport.

Field 7 - This is the number of passengers that enplaned at the departure airport (Field 5) and deplaned at the arrival airport (Field 6).

NOTE Round trips are reported as two one-way trips showing traffic in each direction.

Example A round-trip ABC from JFK to Denver to Los Angeles with 400 people departing JFK and half going to Denver and half to Los Angeles would be reported as follows:

ABC FILE NUMBER	FLIGHT NUMBER	POINT OF ENPLANEMENT	POINT OF DEPLANEMENT	NUMBER OF PASSENGERS ENPLANED
75-12	0005	JFK	DEN	200
75-12	0005	JFK	LAX	200
75-12	0006	LAX	JFK	200
75-12	0006	DEN	JFK	200

AIR CARRIER _____ (1), MONTH OF _____ (2), 19__

ABC FILE NUMBER (3)	FLIGHT NUMBER (4)	POINT OF ENPLANEMENT OAG AIRPORT CODE (5)	POINT OF DEPLANEMENT OAG AIRPORT CODE (6)	NUMBER OF PASSENGERS ENPLANED (7)

[FR Doc.76-35456 Filed 12-2-76;8:45 am]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 34–12999, 35–19771, IC–9539]

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

Adoption of Amendments Relating to Proposals by Security Holders

The Securities and Exchange Commission today announced that it has adopted certain amendments to Rule 14a–8 (17 CFR 240.14a–8) under Section 14(a) of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78a et seq., as amended by Pub. L. No. 94–29 (June 4, 1975)). Rule 14a–8 is the provision in the Commission's proxy rules which sets forth the requirements applicable to proposals submitted by security holders for inclusion in the proxy soliciting materials of issuers. The proxy rules are promulgated under the Exchange Act but also are applicable to the solicitation of proxies under the Public Utility Holding Company Act of 1934 (15 U.S.C. 79a et seq., as amended by Pub. L. No. 94–29 (June 4, 1975)) and the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq., as amended by Pub. L. No. 94–29 (June 4, 1975)).

Notice of the proposed amendments to Rule 14a–8 was published on July 7, 1976 in Securities Exchange Act Release No. 34–12598 (41 FR 29982).[1] A number of helpful comments were received from the public and were given careful consideration in connection with the preparation of the final revisions. In addition to the public commentary, the amendments adopted today also reflect the past experience of the Commission and its staff in administering Rule 14a–8.

The Commission wishes to emphasize that the amendments which it has adopted are not intended as a final resolution of the questions and issues relating to shareholder participation in corporate governance and, more generally, shareholder democracy. The Commission intends to study these issues on a broader basis and the staff is presently formulating proposals for such a study. In the interim the staff will monitor the operation of these shareholder proposal provisions to assess their impact on the proxy soliciting process.

The Commission believes the amendments discussed herein will benefit both issuers and their security holders. Among other things, the amendments clarify the procedural requirements applicable to proponents and managements in connection with stockholder proposals and codify certain prior interpretative positions taken by the Commission's staff. The amendments are discussed below in the order in which they appear in the rule.

Procedural Requirements for Proponents—Rule 14a–8(a) (17 CFR 240.14a–8(a))

Paragraph (a), as amended, contains four subparagraphs, each dealing with a specific procedural requirement that must be complied with by proponents.

(1) *Eligibility.* Subparagraph (a)(1) sets forth the requirements that a proponent must satisfy in order to be eligible to submit proposals. The subparagraph, which is unchanged from the form in which it was proposed for comment, retains the traditional requirement that a proponent must be a security holder entitled to vote at the meeting at which he intends to present his proposal for action. In addition, the provision codifies certain interpretative positions expressed by the Commission's staff in the past with respect to beneficial ownership, voting rights, and continuous ownership of the issuer's securities.

As revised, the subparagraph states that a proposal may be submitted not only by a record owner of a security of the issuer, but also by a beneficial owner as well. However, if a proponent claims to have a beneficial ownership interest, he must be prepared to document that interest within 10 business days after receiving a request for appropriate documentation from the management. The term "business days," as used in subparagraph (a)(1) and in other provisions of the revised rule, is intended to mean all calendar days except Saturdays, Sundays and national holidays.

The subparagraph further provides that the security owned by the proponent must be one which would enable him to vote on his proposal at the meeting of security holders. Thus, under this provision a proponent could not submit a proposal that goes beyond the scope of his voting rights. For example, a proponent who owned a security that could be voted on the election of some of the issuer's directors but on no other matters could not submit a proposal relating to the issuer's business activities, since he would not be able to vote on it personally.

Finally, the subparagraph states that the proponent must own a voting security at the time he submits his proposal and he must continue to own that security through the date on which the meeting is held. In this regard, the amended rule provides that in the event the management included a proponent's proposal in its proxy materials for a particular meeting and the proponent failed to comply with the requirement that he continuously own his security through the meeting date, the management could then exclude from its proxy materials for any meeting held in the following two calendar years any proposals submitted by that proponent. The purpose of this latter provision is to assure that the proponent will maintain an investment interest in the issuer through the meeting date.

It also should be noted that several commentators urged the Commission to adopt additional eligibility requirements. Among such recommendations were that the proponent be required to have been a security holder of the issuer for a minimum period of time (e.g., six months or one year) prior to the submission of his proposal, or that the proponent be required to own at the time of submission a minimum investment interest in the issuer, either in terms of a minimum number of shares or a minimum dollar amount according to the market value of the securities. The Commission has carefully considered these comments and determined that there is not sufficient justification for implementing them. In arriving at this position, the Commission has noted, among other things, that the current eligibility requirements have been in operation for many years and generally have not been abused.

(2) *Notice.* Subparagraph (a)(2) of the amended rule retains the requirement of the former rule that the proponent must provide written notice to the management of his intention to appear personally at the meeting to present his proposal for action. Some commentators criticized the requirement of personal attendance at the meeting on the ground that, in reality, the proposal is "presented" to most security holders for their action when it is included in the proxy statement. While the Commission does not disagree with the significance these commentators have assigned to the proxy statement, it nevertheless believes that the notice requirement serves a useful purpose. That is, it provides some degree of assurance that the proposal not only will be presented for action at the meeting (the management has no responsibility to do so), but also that someone will be present to knowledgeably discuss the matter proposed for action and answer any questions which may arise from the shareholders attending the meeting.

The subparagraph also contains a provision which has been adopted in recognition of the fact that many proponents are unaware of the notice requirement at the time they submit their proposals and therefore unintentionally fail to comply with it. Specifically, the subparagraph permits a proponent who is unaware of the notice requirement at the time of submission to furnish the requisite notice within 10 business days after being made aware of the requirement by the management. The specific time deadline of 10 business days was substituted in the subparagraph at the suggestion of several commentators, who expressed the view that the "reasonable time" deadline proposed in Release No. 34–12598 for the furnishing of the requisite notice was unnecessarily vague.

The Commission also has amended the subparagraph to make it clear that a proponent who furnishes the requisite notice in good faith but subsequently determines that he will be unable to appear at the meeting may arrange to have another security holder of the issuer pre-

[1] A companion release also was issued on July 7, 1976 discussing the informal procedures for the rendering of advice by the Commission's staff with respect to stockholder proposals. See Release No. 34–12599 (41 FR 29989).

sent his proposal on his behalf at the meeting. The revision is in accord with existing practice and is intended, again, to provide some assurance that a proponent's proposal will indeed be presented for action at the meeting.

Finally, subparagraph (a)(2) contains a sentence at the end thereof which will have essentially the same effect as subparagraph (c)(3) of the former rule. That is, the sentence provides that in the event the proponent or his proxy fails without cause to present the proponent's proposal at the meeting the management need not include any proposals submitted by the proponent in its proxy materials for any meeting held in the following two calendar years. This provision is in keeping with the overall purpose of the notice requirement, which is to avoid putting the issuer and its security holders to considerable expense for no valid purpose.

(3) *Timeliness.* Prior to the current amendments, Rule 14a–8 provided that a proposal to be presented at an annual meeting had to be received by the management no later than 70 days in advance of the anniversary of the mailing date for the previous year's proxy materials, except that if the date of the annual meeting were changed as a result of a change in the fiscal year the proposal had to be received by the management a reasonable time before the solicitation was made. Proposals submitted for other meetings were required to be submitted sufficiently far in advance of the meeting to be received by the mangement a reasonable time before the solicitation was made.

Under the revised rule, the timeliness deadline for annual meetings will be extended from 70 to 90 days. In addition, the provision relating to a change in the annual meeting date due to a change in the fiscal year has been deleted and replaced by a provision that will be applicable to all changes in annual meeting dates of 30 days or more. The timeliness requirement for meetings other than annual meetings, however, has not been changed.

The 20-day advance in the deadline for annual meetings is being adopted by the Commission in conjunction with a similar 20-day advance in the deadline date under paragraph (d) of the rule for the filing by mangements of the reasons why they believe specific proposals may properly be excluded from their proxy materials. Formerly, paragraph (d) required that the mangement file such reasons, as well as any related materials, at least 30 days prior to the filing of its preliminary proxy materials, unless the Commission permitted them to be filed within a shorter period.

The Commission believes that the changes outlined above will benefit both managements and proponents. With respect to managements, the Commission's past experience indicates that advancing the filing requirement under paragraph (d) from 30 to 50 days will eliminate the disruptions in the printing schedules for their proxy materials that occasionally resulted under the 30-day filing requirement. Such disruptions generally occurred when the staff of the Commission was unable, due to its workload, to express within the 30-day period its informal enforcement views on the management's reasons for omitting a proposal. Although there is no requirement that managements adhere to the staff's comments, the Commission is aware that most managements are interested in those comments and will delay their printing schedules, if necessary, in order to consider them. Based on past experience, the Commission believes the 50-day filing requirement will eliminate almost all such delays.

Insofar as proponents are concerned, the Commission is aware that advancing the deadline for submitting proposals from 70 to 90 days may be inconvenient to some. However, on the basis of its past experience and the public comments, it believes that the inconvenience will be minimal and is outweighed by the fact that the new timeliness deadlines will provide an additional 20 days for proponents to explore all possible alternatives in connection with a mangement's intention to omit their proposals. One of these alternatives is to institute an action in a U.S. District Court to compel the management to include the proposals in the issuer's proxy materials, and the changes in the timeliness deadlines will provide an additional 20 days to prepare for and institute such a suit.

As previously indicated, the Commission has made one further change in the timeliness requirements applicable to proponents. Until now, the rule has provided that the 70-day filing deadline applied to all annual meetings, except those in which the date of the meeting had been changed as a result of a change in the fiscal year. In the latter instance, the proposal was required to be received by the management a "reasonable time" before the solicitation was made. One of the public commentators pointed out that changes in the meeting date due to a change in the fiscal year are relatively rare but that changes for other reasons, such as unavoidable postponement, are much more frequent. The commentator indicated that some provision for these other situations should perhaps be made in the rule.

The Commission has determined to implement the above suggestion, since it does not seem meaningful, where the current year's meeting date is to be substantially different from the preceding year's date, to measure timeliness from a date connected with the prior year's meeting. Accordingly, the rule has been amended to provide that where there has been a change of more than 30 calendar days from the previous year's annual meeting the proposal must be received by the management a reasonable time in advance of the current year's solicitation. It is important to note that this revision will apply only to those special situations in which the change in the meeting date is substantial and will not affect the vast majority of issuers which hold an annual meeting each year at approximately the same time as the previous year.

In adopting the new timeliness deadlines discussed above, the Commission realizes that many proponents and managements may be adversely affected by them unless there is a reasonably lengthy transition period prior to their effectiveness that will allow all interested persons adequate time to familiarize themselves with the requirements and comply with them. Accordingly, while all of the other amendments to Rule 14a–8 adopted today shall be applicable to proposals submitted to issuers who will be filing their preliminary proxy materials with the Commission on or after February 1, 1977, the effectiveness of the new timeliness deadlines set forth in subparagraph (a)(3) and paragraph (d) of the revised rule shall be deferred an additional three months. Thus, the new timeliness requirements shall apply only to those proposals submitted to issuers who will be filing their preliminary proxy materials with the Commission on or after May 1, 1977.

As a final note to the discussion of the timeliness requirements, the Commission wishes to reiterate a view that its staff has expressed informally on many occasions in the past. That is, changes to a timely submitted proposal or supporting statement may be made by the proponent after the timeliness deadline has passed, provided the changes are minor in nature and do not alter the substance of the proposal. Examples of such changes would be a change in the form of the proposal to bring it into accord with the requirements of the applicable state law, or a change in the proposal or supporting statement to revise or delete misleading statements contained therein.

The above position has been taken by the Commission and its staff in recognition of the fact that most proponents are not sophisticated in matters of securities law such as Rule 14a–8. Because of their lack of sophistication, such persons frequently are apt to submit proposals that generally comply with the substantive requirements of Rule 14a–8 but nevertheless contain some relatively minor defects that are easily correctable. In such circumstances, the Commission believes the concept of corporate democracy underlying section 14(a) of the Exchange Act is best served by affording such persons the opportunity to correct the defects that have been pointed out to them. Thus, under this view, a proponent may make non-substantive changes to his original submission after the timeliness deadline has passed without being considered to have submitted an entirely new proposal that would be excludable under the timeliness provisions of subparagraph (a)(3).

(4) *Number and length of proposals.* Prior to the current amendments, Rule 14a–8 did not contain any limitation on either the number of proposals which a proponent could submit to an issuer or the length of such proposals. The Commission, however, has noted that in re-

cent years several proponents have exceeded the bounds of reasonableness either by submitting excessive numbers of proposals to issuers or by submitting proposals that are extreme in their length. Such practices are inappropriate under Rule 14a–8 not only because they constitute an unreasonable exercise of the right to submit proposals at the expense of other shareholders but also because they tend to obscure other material matters in the proxy statements of issuers, thereby reducing the effectiveness of such documents. Accordingly, the Commission has added a new subparagraph (a)(4) to the rule limiting a proponent to a maximum of two proposals of not more than 300 words each to an issuer. These limitations will apply collectively to all persons having an interest in the same securities (e.g., the record owner and the beneficial owner, and joint tenants).

In connection with the above, the Commission is aware of the possibility that some proponents may attempt to evade the new limitations through various maneuvers, such as having other persons whose securities they control submit two proposals each in their own names. The Commission wishes to make it clear that such tactics may result in measures such as the granting of requests by the affected managements for a "no-action" letter[2] concerning the omission from their proxy materials of the proposals at issue.

Subparagraph (a)(4) also provides that in those instances in which a proponent fails to comply with either of the new limitations or with the 200-word limit on statements in support of a proposal the management shall so notify the proponent and provide him with 10 business days within which to reduce the items submitted by him to the limits set forth in the rule. This provision has been inserted in the interest of fairness because the Commission recognizes that many proponents, due to lack of awareness of the limitations, may inadvertently exceed them at the time they submit their proposals.

Supporting Statements for Proposals—Rule 14a–8(b)

Paragraph (b) of the revised rule deals with statements that may be submitted by proponents in support of their proposals. This provision, which differs in only two minor respects from paragraph (b) of the former rule, has been adopted in the same form in which it was proposed for comment.

The first change made by the Commission in the former paragraph is the deletion of the following sentence therefrom:

> Any statements in the text of a proposal, such as a preamble or "whereas" clauses, which are in effect arguments in support of the proposal, shall be deemed part of the supporting statement and subject to the 200-word limitation thereon.

The above sentence was intended to curtail the tendency of proponents to evade the 200-word limitation on supporting statements by submitting lengthy proposals which contained supporting argumentation within the text of the proposals themselves. However, since the Commission has now placed a limit on the length of proposals that would encompass any introductory preambles or "whereas" clauses, it does not believe a need exists to police the length of supporting statements in the manner envisioned by the above sentence.

The second change relates to the last two sentences of the former paragraph. Those sentences, which provided, respectively, that the proponent shall furnish his supporting statement to the management at the time the proposal is furnished, and that neither the management nor the issuer shall be responsible for such statement, often have been overlooked by the proponents. Accordingly, in order to highlight them, they have been combined into a single sentence and repositioned in the paragraph.

Substantive Bases for Omission of Proposals—Rule 14a–8(c)

Paragraph (c) of the revised rule sets forth various substantive grounds for excluding a proposal from an issuer's proxy materials. As amended, paragraph (c) contains 13 separate grounds for omitting a proposal. Each of these grounds is discussed below in the order in which it appears in the revised paragraph.

(1) *State law.* Subparagraph (c)(1) of the former rule allowed the management to omit a proposal "If the proposal as submitted is, under the laws of the issuer's domicile, not a proper subject for action by security holders." This provision has been based on the theory that no purpose is served by including in an issuer's proxy materials proposals which the issuer's security holders cannot properly act upon. With one exception, the provision has been carried forward intact in the amended rule.

The one exception is that the words "as submitted" have been omitted from the revised subparagraph. The deletion of these two words is intended to make clear the Commission's belief, previously alluded to in the discussion concerning subparagraph (a)(3), that a proponent is not always bound by the original text of his proposal under this provision but may revise the proposal in those instances in which a non-substantive change (such as a change in form) will bring it into compliance with the applicable state law.

The Commission also has added a Note to subparagraph (c)(1) of the rule alerting proponents to the fact that the propriety of their proposals under the applicable state law may depend upon the form in which the proposal appears. Thus, the Note states that "A proposal that may be improper under the applicable state law when framed as a mandate or directive may be proper when framed as a recommendation or request."

The text of the above Note is in accord with the long-standing interpretative view of the Commission and its staff under subparagraph (c)(1). In this regard, it is the Commission's understanding that the laws of most states do not, for the most part, explicitly indicate those matters which are proper for security holders to act upon but instead provide only that "the business and affairs of every corporation organized under this law shall be managed by its board of directors," or words to that effect. Under such a statute, the board may be considered to have exclusive discretion in corporate matters, absent a specific provision to the contrary in the statute itself, or the corporation's charter or by-laws. Accordingly, proposals by security holders that mandate or direct the board to take certain action may constitute an unlawful intrusion on the board's discretionary authority under the typical statute. On the other hand, however, proposals that merely recommend or request that the board take certain action would not appear to be contrary to the typical state statute, since such proposals are merely advisory in nature and would not be binding on the board even if adopted by a majority of the security holders. The Note will serve the purpose of alerting proponents to these distinctions and to the importance of framing their proposals in a form that is acceptable under the applicable state law.

(2) *Other Applicable Federal and State Laws.* As originally proposed in Release No. 34–12598, subparagraph (c)(2) would have provided that a proposal could be omitted by the management "if the proposal is contrary to a federal law of the United States." In this connection, it was stated in the textual portion of the release that the proposed subparagraph was intended to formalize a view that the Commission's staff had expressed on numerous occasions. That is, a proposal by a security holder that would, if implemented, be violative of a federal law of the United States may properly be excluded from an issuer's proxy materials.

Several comments were received indicating that the language contained in the text of the release provided more clarity than the proposed subparagraph itself, and that the provision should be revised to make clear that it deals with the implementation of the proposal. The commentators further suggested that the Commission expand the subparagraph to allow the omission of any proposal whose implementation would violate not only federal law, but also any other applicable law (including foreign law) or governmental regulation to which the issuer is subject.

The Commission believes that the above comments have merit, since it does not appear appropriate to allow the inclusion in proxy materials of any proposal which, if implemented, would violate an applicable law. Accordingly, subparagraph (c)(2), as adopted, will allow

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[2] A "no-action" letter is one in which the staff of the Commission indicates that, on the basis of the facts presented to it, it will not recommend that the Commission institute any enforcement action with respect to the matter discussed in the incoming correspondence.

an issuer to omit any proposal which "would, if implemented, require the issuer to violate any state law or federal law of the United States, or any law of any foreign jurisdiction, to which the issuer is subject."

The subparagraph was further amended to include a proviso to make it clear that, while this exclusion will apply to both foreign and domestic law, state law or the federal law of the United States will supersede the law of foreign jurisdictions. Accordingly, where a proposal would call for an action by the issuer to bring it into compliance with state or federal law, the fact that such action might be violative of a particular foreign law to which the issuer is also subject would not cause the proposal to be excluded under subparagraph (c)(2).

It should be noted that under this provision, or any other provision of Rule 14a–8 for that matter, the management has the burden of demonstrating the validity of its view that a proposal may properly be omitted in reliance upon it. Further, issuers should be aware that paragraph (d) of Rule 14a–8 requires that they furnish an opinion of counsel both to the proponent and to the Commission whenever they assert that a proposal can be omitted for reasons based on matters of law. Thus, should a management take the position that this subparagraph is applicable to a particular proposal, it would be incumbent upon it to furnish an opinion of counsel on the legal aspects of its view.

(3) *Proxy Rules and Regulations.* The Commission is aware that on many occasions in the past proponents have submitted proposals and/or supporting statements that contravene one or more of its proxy rules and regulations. Most often, this situation has occurred when proponents have submitted items that contain false or misleading statements. Statements of that nature are prohibited from inclusion in proxy soliciting materials by Rule 14a–9 of the proxy rules.

In light of the foregoing, the Commission has adopted a new subparagraph (c)(3) to Rule 14a–8 expressly providing that a proposal or supporting statement may not be contrary to any of the Commission's proxy rules and regulations, including Rule 14a–9. This provision simply formalizes a ground for omission that the Commission believes has been inherent in the proxy rules.

(4) *Personal Claim or Grievance.* Subparagraph (c)(4) of the amended rule permits a proposal to be excluded from an issuer's proxy materials if it "relates to the enforcement of a personal claim or the redress of a personal grievance against the issuer, its management, or any other person." This provision is identical to subparagraph (c)(2)(i) of the former rule and has been carried forward intact because the Commission does not believe an issuer's proxy materials are a proper forum for airing personal claims or grievances.

(5) *Insignificant Matters.* Subparagraph (c)(2)(ii) of the former rule allowed an issuer to omit a proposal if it consisted of a "recommendation, request or mandate that action be taken with respect to any matter, including a general economic, political, racial, religious, social or similar cause, that is not significantly related to the business of the issuer * * *" The Commission has retained the substance of this provision in subparagraph (c)(5) of the revised rule. However, the reference in the former rule to the form in which proposals appear and the illustrative reference to various general causes have been deleted on the ground they are superfluous and unnecessary. These deletions, however, should not be construed as an implication that a different standard from that set forth in the former subparagraph (c)(2)(ii) will be utilized under subparagraph (c)(5) of the amended rule.

A number of commentators expressed the view that the Commission should revise the subparagraph to allow the omission of a proposal whenever the matter involved therein does not bear a significant economic relation to the issuer's business. In this regard, the Commission does not believe that subparagraph (c)(5) should be hinged solely on the economic relativity of a proposal, since there are many instances in which the matter involved in a proposal is significant to an issuer's business, even though such significance is not apparent from an economic viewpoint. For example, proposals dealing with cumulative voting rights or the ratification of auditors in a sense may not be economically significant to an issuer's business but they nevertheless have a significance to security holders that would preclude their being omitted under this provision. And proposals relating to ethical issues such as political contributions also may be significant to the issuer's business, when viewed from a standpoint other than a purely economic one.

Notwithstanding the foregoing, the Commission recognizes that there are circumstances in which economic data may indicate a valid basis for omitting a proposal under this provision. The Commission wishes to emphasize, however, that the significance of a particular matter to an issuer's present or prospective business depends upon that issuer's individual circumstances, and that there is no specific quantitative standard that is applicable in all instances. Moreover, as previously indicated, the burden is on the issuer to demonstrate that this or any other provision of Rule 14a–8 may properly be relied upon to omit a proposal.

Finally, it should be noted that none of the public commentators recommended the replacement of this subparagraph by the proposed alternative provision described in Release No. 34–12598. That provision would have allowed the omission of any proposals dealing with matters that the governing body of the issuer was not required to act upon pursuant to either the applicable state law or the governing instruments of the issuer. The alternative provision is more fully discussed in the section of this release immediately following the discussion of subparagraph (c)(7) of the amended rule.

(6) *Matters Beyond Issuer's Power.* Subparagraph (c)(6) of the amended rule provides that a proposal may be omitted from an issuer's proxy materials if it deals with a matter that is "beyond the issuer's power to effectuate." This provision is derived from that part of subparagraph (c)(2)(ii) of the current rule and the Note thereto that allow a proposal to be omitted if it deals with a matter that is not within the control of the issuer. In terms of scope and effect, the provision is unchanged from the former rule and Note. However, since the Note did nothing more than define the term used in the subparagraph, it has been incorporated into the subparagraph itself.

(7) *Routine Matters.* Subparagraph (c)(5) of the former rule permitted an issuer to omit a proposal from its proxy materials if the proposal consisted of a "recommendation or request that the management take action with respect to a matter relating to the conduct of the ordinary business operations of the issuer." The Commission proposed in Release No. 34–12598 to replace this provision with one that would have allowed the omission of a proposal if it dealt with a "routine, day-to-day matter relating to the conduct of the ordinary business operations of the issuer." The proposed new provision, which would have been more restrictive than the former one, was considered at the time to be appropriate for possible adoption because the former provision occasionally had been relied upon to exclude proposals of considerable importance to the issuer and its security holders. The Commission hoped that the new provision would produce results that were more in accord with the concept of shareholder democracy underlying section 14(a) of the Exchange Act.

A large majority of the commentators who addressed themselves to the proposed new standard objected to it on the ground that it would produce many undesirable results. Among other things, they pointed out that many of the shareholder proposals under the new provision would necessarily deal with ordinary business matters of a complex nature that shareholders, as a group, would not be qualified to make an informed judgment on, due to their lack of business expertise and their lack of intimate knowledge of the issuer's business. In the view of these commentators, it would not be practicable in most instances for stockholders to decide management problems at corporate meetings. Further, they stated that the proposed new provision would be difficult to administer because of the subjective judgments that necessarily would be required in interpreting it.

After consideration of the above comments, the Commission has determined not to adopt proposed subparagraph (c)(7) in the form in which it was proposed for comment. The Commission is taking this course of action for two reasons: (1) It believes the difficulties that are likely to arise from the proposed standard

would exceed any benefits to security holders that might accrue from its adoption; and (2) the former standard appears to be a workable one if it is interpreted in a somewhat more flexible manner than in the past.

The Commission's determination not to adopt proposed subparagraph (c)(7) is based to a large extent on the fact that there does not appear to be any reasonable means for distinguishing between routine and important business matters. The Commission suggested in Release No. 34–12598 that a possible standard for making such distinctions was whether it would be necessary for the board of directors to act on the matter involved in the proposal. If no action were necessary, the matter would be considered routine. The commentators pointed out, however, that board practices relating to the delegation of authority to management personnel vary greatly, and there would, therefore, be no consistency in applying such a standard. The potential lack of consistency of the proposed standard is a fatal drawback, in the Commission's view. And, since no other reasonable standard for making the requisite distinctions is readily apparent, the Commission believes that the provision would be difficult, if not impossible, to administer on a satisfactory basis.

In lieu of the subparagraph proposed in Release No. 34–12598, the Commission has decided to adopt a provision that essentially is the same as subparagraph (c)(5) of the former rule. That is, a proposal will be excludable if it "deals with a matter relating to the conduct of the ordinary business operations of the issuer." The Commission recognizes that this standard for omission has created some difficulties in the past, and that, on occasion, it has been relied upon to omit proposals of considerable importance to security holders. Nevertheless, the Commission believes that the provision is a workable one, as evidenced by the fact that it has been in operation for over 22 years and has not, until the past year or so, generated a significant amount of controversy.

The Commission is of the view that the provision adopted today can be effective in the future if it is interpreted somewhat more flexibly than in the past. Specifically, the term "ordinary business operations" has been deemed on occasion to include certain matters which have significant policy, economic or other implications inherent in them. For instance, a proposal that a utility company not construct a proposed nuclear power plant has in the past been considered excludable under former subparagraph (c)(5). In retrospect, however, it seems apparent that the economic and safety considerations attendant to nuclear power plants are of such magnitude that a determination whether to construct one is not an "ordinary" business matter. Accordingly, proposals of that nature, as well as others that have major implications, will in the future be considered beyond the realm of an issuer's ordinary business operations, and future interpretative letters of the Commission's staff will reflect that view.

Although subparagraph (c)(7) will be subject to a more restrictive interpretation in the future than its predecessor, former subparagraph (c)(5), this should not be construed to mean that the provision will not be available for the omission of proposals that deal with truly "ordinary" business matters. Thus, where proposals involve business matters that are mundane in nature and do not involve any substantial policy or other considerations, the subparagraph may be relied upon to omit them.

PROPOSED ALTERNATE TO SUBPARAGRAPHS (c)(5) AND (c)(7)

At the time subparagraphs (c)(5) and (c)(7) were proposed for comment, the Commission also asked for the public's views on the following questions:

(1) Whether it would be more beneficial to issuers and their security holders not to adopt either or both of those subparagraphs, or

(2) Whether it would be more beneficial to replace or supplement them with a provision which would allow the omission of a proposal if it

deals with a matter that the governing body of the issuer (such as the Board of Directors) is not required to act upon pursuant to the applicable State law or the issuer's governing instruments (such as the Charter or By-Laws).

The prevailing view of those commentators who responded to the above questions was that both subparagraphs (c)(5) and (c)(7) should be retained but that the alternative provision quoted above should be discarded. With respect to the retention of subparagraphs (c)(5) and (c)(7), it was noted that both provisions contain separate and justifiable grounds for the omission of a proposal and that there often are instances in which one is applicable to a proposal while the other is not. The Commission concurs in this view and therefore has determined to retain both of them in the form already discussed herein.

In regard to the alternative provision, it was pointed out by the commentators that most state statutes and corporate governing instruments specify relatively few instances where director action is required but simply mandate that the business and affairs of the corporation be managed by or under the direction of the board of directors. Consequently, the application of the proposed "board-action" standard would turn upon the issues of delegation of authority and proper board practices. Since the resolution of these issues would involve complex and often conflicting matters of law and interpretation, the Commission does not believe that the standard would provide a useful or workable ground for omission under the rule. Therefore, it has not been adopted.

(8) *Elections to Office.* The last sentence of paragraph (a) of the former rule stated that Rule 14a–8 does not apply to elections to office or to counter proposals to matters to be submitted by the management. The two grounds for omission mentioned in that sentence have been restated in subparagraphs (c)(8) and (c)(9) of the amended rule.

In its adopted form, subparagraph (c)(8) states simply that a proposal can be omitted if it "relates to an election to office." As originally proposed in Release No. 34–12598, the subparagraph would have allowed the omission of any proposal which related to a "corporate, political or other election to office." However, the Commission has deleted the words "corporate, political or other" from the adopted provision, since it is apparent that the inclusion of those words in the proposed version led many commentators to the erroneous belief that the Commission intended to expand the scope of the existing exclusion to cover proposals dealing with matters previously held not excludable by the Commission, such as cumulative voting rights, general qualifications for directors, and political contributions by the issuer. To dispel this misunderstanding, the Commission has revised the language of the adopted provision to read substantially as its predecessor under the former rule.

(9) *Counter Proposals.* As noted above, subparagraph (c)(9) of the revised rule merely restates a ground for omission already set forth in the existing rule. That is, a proposal that is counter to a proposal to be presented by the management may be omitted from an issuer's proxy materials.

(10) *Moot Proposals.* The Commission has set forth in subparagraph (c)(10) of the amended rule a ground for omission that has not been formally stated in Rule 14a–8 in the past but which has informally been deemed to exist. The new subparagraph provides that a proposal which has been rendered moot may be omitted from the issuer's proxy materials.

As originally proposed by the Commission, this subparagraph would have allowed the omission of only those proposals rendered moot "by the actions of management." However, it was brought to the attention of the Commission by several commentators that mootness can be caused for reasons other than the actions of management, such as statutory enactments, court decisions, business changes and supervening corporate events. Therefore, since the Commission believes that a proposal which has been rendered moot for whatever reason should properly be excludable from an issuer's proxy materials, it has deleted the qualifying phrase "by the actions of the management" from the adopted form of the subparagraph.

(11) *Similar Proposals in Current Year.* As with subparagraph (c)(10) above, subparagraph (c)(11) formalizes a ground for omission that has existed solely on an informal basis in the past. Specifically, the new subparagraph provides that the management may omit a proposal that is substantially duplicative of a proposal submitted by another

proponent which the management intends to include in its proxy materials. The purpose of the provision is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other.

(12) *Similar Proposals in Prior Years.* In Release No. 34–12598, the Commission proposed to broaden the provision in the former rule (viz., subparagraph (c)(4)) which allowed the omission of any proposal that was "substantially the same" as a prior proposal that failed to receive the percentage of votes on its latest submission specified in the rule. This would have been accomplished by revising the provision to state that it would apply to any proposal that dealt with "substantially the same subject matter" as a prior proposal that had failed to attract the requisite number of votes.

Several commentators urged the Commission not to make the proposed change. These persons pointed out: (1) That abuses of the existing provision have been rare and do not justify the type of radical revision proposed; (2) that the new standard would be almost impossible to administer because of the subjective determinations that would be required under it; and (3) that it would unduly constrain shareholder suffrage because of its possible "umbrella" effect (i.e., it could be used to omit proposals that had only a vague relation to the subject matter of a prior proposal that received little shareholder support).

After consideration of the above comments, the Commission has determined not to make the changes in the subparagraph previously proposed by it. This action is being taken because the potential drawbacks of the new provision appear to outweigh the prospective benefits. As a result, the Commission has adopted subparagraph (c)(12) in a form that is identical to that of former subparagraph (c)(4).

Notwithstanding the above action, the Commission is concerned about potential abuses of this provision. It therefore has instructed the staff to monitor closely the operation of subparagraph (c)(12) and to take appropriate action, such as issuing a no-action letter to an affected management, where it is apparent that an effort is being made to present essentially the same proposal to an issuer's security holders year-after-year, even though the proposal has not attracted the support required by the rule. In connection with the foregoing, it should be noted that this provision will be considered to be available in the future for the omission of a proposal which, although not substantially the same as any one proposal submitted in a prior year, is composed essentially of the elements of two or more proposals that were submitted for a vote in prior years and failed to receive the percentage of the total vote specified in the rule.

(13) *Specific Dividend Amounts.* The Commission proposed in Release No. 34–12598 to adopt a new subparagraph (c)(13) which would permit issuers to omit from their proxy materials any proposals relating to "specific amounts of cash or stock dividends." The purpose of the provision was to prevent security holders from being burdened with a multitude of conflicting proposals on such matters. Specifically, the Commission was concerned over the possibility that several proponents might independently submit to an issuer proposals asking that differing amounts of dividends be paid.

In the past it has been the position of the Commission and its staff that dividend matters were within the realm of an issuer's ordinary business operations and precatory proposals dealing with such matters were therefore excludable under the provision of Rule 14a–8 dealing with such operations (viz., former subparagraph (c)(5)). Although the Commission has carried forward into the revised rule an exclusion for matters relating to an issuer's ordinary business operations (see the discussion of subparagraph (c)(7)), it is now of the view that because dividend matters are extremely important to most security holders, and because they involve significant economic and policy considerations, they are not "ordinary" business matters in the strictest sense. Therefore, proposals relating to dividend matters will not be excludable under subparagraph (c)(7), with the result that the reasons for which subparagraph (c)(13) was proposed are still valid. Accordingly, the Commission has adopted the subparagraph in the form in which it was proposed for comment.

In connection with the foregoing, the Commission has noted the view of some commentators that dividend matters are not appropriate for discussion by security holders. These persons have indicated that decisions on dividends traditionally have been within the exclusive province of the board of directors under most state laws and that it would not be proper for shareholders to submit proposals on such matters. The Commission, however, is not persuaded that these reasons provide a valid basis for excluding all dividend proposals. In this regard, it is noted that mandatory dividend proposals would continue to be excludable under subparagraph (c)(1) of the revised rule, to the extent that they would intrude on the board's exclusive discretionary authority under the applicable state law to make decisions on dividends. But to the extent that such proposals are advisory in nature, and therefore nonbinding on the board even if adopted, the Commission is unable to agree that proponents should be denied the opportunity to present them, within the limits of this provision, to their fellow security holders for consideration.

Procedural Requirements for Managements—Rule 14a–8(d)

Paragraph (d) of the revised rule discusses the procedural requirements applicable to managements who intend to omit stockholder proposals from their proxy materials. The paragraph has been adopted by the Commission in precisely the same form in which it was proposed for comment.

As revised, the paragraph provides that the management must file five copies of the following documents with the Commission whenever it asserts, for any reason, that a proposal and any statement in support thereof can properly be omitted from its proxy materials: (1) The proposal; (2) The supporting statement, if any; (3) A statement of its reasons for omission; and (4) where such reasons are based on matters of law, a supporting opinion of counsel. A copy of the statement of reasons and the opinion of counsel, if any, must also be furnished to the proponent at the same time they are filed with the Commission.

The principal change in paragraph (d) from the former rule is the requirement that the management file the documents specified above with the Commission at least 50 days prior to the date on which it files its preliminary proxy materials. Formerly, such documents were required to be filed 30 days in advance of the date the preliminary proxy materials were filed. As previously noted in the discussion of subparagraph (a)(3) relating to the timeliness requirements for proponents, this change is being made in conjunction with a corresponding 20-day advance in the deadline date for the submission of proposals by proponents.

Other changes in the paragraph include the requirement that five copies of all materials required under the paragraph be filed with the Commission (rather than one, as required under the former rule) and the addition of certain words to clarify: (1) That either the Commission or its staff may waive part or all of the 50-day filing requirement (the former rule mentioned only the Commission), and (2) That the filing requirements of the paragraph must be complied with in all instances in which the management asserts that a proposal can properly be omitted (some managements have erroneously believed that they need not comply with those requirements when a proposal is clearly excludable for a procedural reason, such as timeliness).

Cost Data

In Release No. 34–12598 the Commission expressed an interest in obtaining information about the costs to issuers of including stockholder proposals in their proxy soliciting materials. The Commission continues to be interested in obtaining such information with respect to proposals that are included in proxy materials through June 30, 1977. Any issuers willing to furnish such information to the Commission are requested to indicate not only the total cost of including each proposal in their proxy materials but also the amount of each component part of the overall cost (such as printing, postage and legal expenses). This information should be submitted to William E. Morley, Special Counsel, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549.

DATE OF EFFECTIVENESS

As previously indicated, all of the amendments to Rule 14a–8 adopted today, with the exception of the changes to the timeliness provisions of subparagraph (a)(3) and paragraph (d), shall be applicable to proposals submitted to issuers who will be filing their preliminary proxy materials with the Commission on or after February 1, 1977. The effectiveness of the new timeliness requirements set forth in subparagraph (a)(3) and paragraph (d) shall be deferred an additional three months. Accordingly, they shall apply only to proposals submitted to issuers who will be filing their preliminary proxy materials with the Commission on or after May 1, 1977.

Authority. The Commission has adopted the amendments to Rule 14a–8 that are discussed herein pursuant to sections 14(a) and 23(a) of the Securities Exchange Act of 1934, sections 12(e) and 20(a) of the Public Utility Holding Company Act of 1935, and sections 20(a) and 38(a) of the Investment Company Act of 1940.

TEXT OF REVISED RULE 14a–8

Rule 14a–8 is revised to read as follows:

§ 240.14a–8 Proposals of security holders.

(a) If any security holder of an issuer notifies the management of the issuer of his intention to present a proposal for action at a forthcoming meeting of the issuer's security holders, the management shall set forth the proposal in its proxy statement and identify it in its form of proxy and provide means by which security holders can make the specification required by Rule 14a–4(b) (17 CFR 240.14a–4(b)). Notwithstanding the foregoing, the management shall not be required to include the proposal in its proxy statement or form of proxy unless the security holder (hereinafter, the "proponent") has complied with the requirements of this paragraph and paragraphs (b) and (c) of this section:

(1) *Eligibility.* At the time he submits the proposal, the proponent shall be a record or beneficial owner of a security entitled to be voted at the meeting on his proposal, and he shall continue to own such security through the date on which the meeting is held. If the management requests documentary support for a proponent's claim that he is a beneficial owner of a voting security of the issuer, the proponent shall furnish appropriate documentation within 10 business days after receiving the request. In the event the management includes the proponent's proposal in its proxy soliciting materials for the meeting and the proponent fails to comply with the requirement that he continuously be a voting security holder through the meeting date, the management shall not be required to include any proposals submitted by the proponent in its proxy soliciting materials for any meeting held in the following two calendar years.

(2) *Notice.* The proponent shall notify the management in writing of his intention to appear personally at the meeting to present his proposal for action. The proponent shall furnish the requisite notice at the time he submits the proposal, except that if he was unaware of the notice requirement at that time he shall comply with it within 10 business days after being informed of it by the management. If the proponent, after furnishing in good faith the notice required by this provision, subsequently determines that he will be unable to appear personally at the meeting, he shall arrange to have another security holder of the issuer present his proposal on his behalf at the meeting. In the event the proponent or his proxy fails, without good cause, to present the proposal for action at the meeting, the management shall not be required to include any proposals submitted by the proponent in its proxy soliciting materials for any meeting held in the following two calendar years.

(3) *Timeliness.* The proponent shall submit his proposal sufficiently far in advance of the meeting so that it is received by the management within the following time periods:

(i) *Annual Meetings.* A proposal to be presented at an annual meeting shall be received by the management at the issuer's principal executive offices not less than 90 days in advance of a date corresponding to the date set forth on the management's proxy statement released to security holders in connection with the previous year's annual meeting of security holders, except that if no annual meeting was held in the previous year or the date of the annual meeting has been changed by more than 30 calendar days from the date of the previous year's annual meeting a proposal shall be received by the management a reasonable time before the solicitation is made.

(ii) *Other Meetings.* A proposal to be presented at any meeting other than an annual meeting shall be received a reasonable time before the solicitation is made.

NOTE.—In order to curtail controversy as to the date on which a proposal was received by the management, it is suggested that proponents submit their proposals by Certified Mail-Return Receipt Requested.

(4) *Number and Length of Proposals.* The proponent may submit a maximum of two proposals of not more than 300 words each for inclusion in the management's proxy materials for a meeting of security holders. If the proponent fails to comply with either of these requirements, or if he fails to comply with the 200-word limit on supporting statements mentioned in paragraph (b) of this section, he shall be provided the opportunity by the management to reduce, within 10 business days, the items submitted by him to the limits required by this rule.

(b) If the management opposes any proposal received from a proponent, it shall also, at the request of the proponent, include in its proxy statement a statement of the proponent of not more than 200 words in support of the proposal, which statement shall not include the name and address of the proponent. The statement and request of the proponent shall be furnished to the management at the time that the proposal is furnished, and neither the management nor the issuer shall be responsible for such statement. The proxy statement shall also include either the name and address of the proponent or a statement that such information will be furnished by the issuer or by the Commission to any person, orally or in writing as requested, promptly upon the receipt of any oral or written request therefor. If the name and address of the proponent are omitted from the proxy statement, they shall be furnished to the Commission at the time of filing the management's preliminary proxy material pursuant to Rule 14a–6(a) (17 CFR 240.14a–6(a)).

(c) The management may omit a proposal and any statement in support thereof from its proxy statement and form of proxy under any of the following circumstances:

(1) the proposal is, under the laws of the issuer's domicile, not a proper subject for action by security holders;

NOTE.—A proposal that may be improper under the applicable state law when framed as a mandate or directive may be proper when framed as a recommendation or request.

(2) If the proposal would, if implemented, require the issuer to violate any state law or federal law of the United States, or any law of any foreign jurisdiction, to which the issuer is subject, except that this provision shall not apply with respect to any foreign law compliance with which would be violative of any state law or federal law of the United States;

(3) If the proposal or the supporting statement is contrary to any of the Commission's proxy rules and regulations, including Rule 14a–9 (17 CFR 240.14a–9), which prohibits false or misleading statements in proxy soliciting materials;

(4) If the proposal relates to the enforcement of a personal claim or the redress of a personal grievance against the issuer, its management, or any other person;

(5) If the proposal deals with a matter that is not significantly related to the issuer's business;

(6) If the proposal deals with a matter that is beyond the issuer's power to effectuate;

(7) If the proposal deals with a matter relating to the conduct of the ordinary business operations of the issuer;

(8) If the proposal relates to an election to office;

(9) If the proposal is counter to a proposal to be submitted by the management at the meeting;

(10) If the proposal has been rendered moot;

(11) If the proposal is substantially duplicative of a proposal previously submitted to the management by another

proponent, which proposal will be included in the management's proxy materials for the meeting;

(12) If substantially the same proposal has previously been submitted to security holders in the management's proxy statement and form of proxy relating to any annual or special meeting of security holders held within the preceding 5 calendar years, it may be omitted from the management's proxy materials relating to any meeting of security holders held within 3 calendar years after the latest such previous submission:

Provided, That—(i) If the proposal was submitted at only one meeting during such preceding period, it received less than 3 percent of the total number of votes cast in regard thereto; or

(ii) If the proposal was submitted at only two meetings during such preceding period, it received at the time of its second submission less than 6 percent of the total number of votes cast in regard thereto; or

(iii) If the proposal was submitted at three or more meetings during such preceding period, it received at the time of its latest submission less than 10 percent of the total number of votes cast in regard thereto; and

(13) If the proposal relates to specific amounts of cash or stock dividends.

(d) Whenever the management asserts, for any reason, that a proposal and any statement in support thereof received from a proponent may properly be omitted from its proxy statement and form of proxy, it shall file with the Commission, not later than 50 days prior to the date the preliminary copies of the proxy statement and form of proxy are filed pursuant to Rule 14a–6(a), or such shorter period prior to such date as the Commission or its staff may permit, five copies of the following items: (1) The proposal; (2) any statement in support thereof as received from the proponent; (3) a statement of the reasons why the management deems such omission to be proper in the particular case; and (4) where such reasons are based on matters of law, a supporting opinion of counsel. The management shall at the same time, if it has not already done so, notify the proponent of its intention to omit the proposal from its proxy statement and form of proxy and shall forward to him a copy of the statement of reasons why the management deems the omission of the proposal to be proper and a copy of such supporting opinion of counsel.

(Secs. 14(a), 23(a), 48 Stat. 895, 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; sec. 5, 78 Stat. 569, 570; sec. 18, 89 Stat. 133 (15 U.S.C. 78n(a), 78w(a)); secs. 12(e), 20(a), 49 Stat. 823, 833 (15 U.S.C. 79*l*(e), 79t(a)); secs. 20(a), 38(a), 54 Stat. 822, 841 (15 U.S.C. 80a–20(a), 80a–37(a)).)

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

NOVEMBER 22, 1976.

[FR Doc.76–35557 Filed 12–2–76;8:45 am]

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOMS SERVICE

[T.D. 76–329]

PART 111—CUSTOMHOUSE BROKERS

License Examination

On June 21, 1976, a notice of proposed rulemaking was published in the FEDERAL REGISTER (41 FR 24889), which proposed to amend paragraph (b) of § 111.13 of the Customs Regulations (19 CFR 111.13 (b)) to provide that the customhouse broker's license examination will be given at each district office on the first Monday in April and October of each year.

Section 111.13(b) presently provides that the customhouse broker's license examination will be given at each district office on the first Monday in February, June, and October of each year. A review of the statistics maintained regarding past examinations reveals that if the examinations were given only twice a year, all districts could easily accommodate the expected increased number of applicants at each examination and that a cost saving to the Government would result. Moreover, the expected increase in administration of special examinations under § 111.13(c) of the Customs Regulations (19 CFR 111.13(c)) would be slight.

Interested persons were given 30 days from the date of publication of the notice to submit data, views, or arguments with respect to the proposed amendment. No comments were received.

Accordingly, the proposed amendment is adopted as set forth below.

Effective date: This amendment shall become effective January 3, 1977.

VERNON D. ACREE,
Commissioner of Customs.

Approved: November 24, 1976.

JERRY THOMAS,
Under Secretary of the Treasury.

The first sentence of paragraph (b) of § 111.13 is amended to read as follows:

§ 111.13 Examination of applicant for individual license.

* * * * *

(b) *Date and place of examination.* Examinations will be given at each district office on the first Monday in April and October. * * *

* * * * *

(R.S. 251, as amended, secs. 624, 641, 46 Stat. 759, as amended (19 U.S.C. 66, 1624, 1641).)

[FR Doc.76–35609 Filed 12–2–76;8:45 am]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

[Docket No. 76F–0440]

PART 121—FOOD ADDITIVES

Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food, Sanitizing Solutions

The Food and Drug Administration is amending the food additive regulations to provide for the safe use of a certain aqueous solution as a sanitizing solution; effective December 3, 1976; objections by January 3, 1977.

A notice published in the FEDERAL REGISTER of April 25, 1975 (40 FR 18206) announced that a petition (FAP 5H3037) had been filed by Vestal Laboratories, 4963 Manchester Ave., St. Louis, MO 63110, proposing that § 121.2547 Sanitizing solutions (21 CFR 121.2547) be amended to provide for the safe use of an aqueous solution containing *ortho*-phenylphenol, *ortho*-benzyl-*para*-chlorophenol, *para*-tertiaryamylphenol, sodium - *alpha* - alkyl(C_{12}–C_{15}) - *omega*-hydroxypoly(oxyethylene) sulfate with the poly(oxyethylene) content averaging one mole, potassium coconut oil soap, and isopropyl alcohol or hexylene glycol as a sanitizing solution for food-processing equipment and utensils.

The Commissioner of Food and Drugs, having evaluated data in the petition and other relevant material, is amending the regulation as set forth below.

Therefore, under the Federal Food, Drug, and Cosmetic Act (Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1))) and under authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), Part 121 is amended in § 121.2547 by adding new paragraphs (b)(20) and (c)(15) to read as follows:

§ 121.2547 Sanitizing solutions.

* * * * *

(b) * * *

(20) An aqueous solution containing *ortho*-phenylphenol, *ortho*-benzyl-*para*-chlorophenol, para-tertiaryamylphenol, sodium - *alpha* - alkyl(C_{12} – C_{15}) - *omega*-hydroxypoly(oxyethylene) sulfate with the poly(oxyethylene) content averaging one mole, potassium salts of coconut oil fatty acids, and isopropyl alcohol or hexylene glycol.

(c) * * *

(15) Solutions identified in paragraph (b)(20) of this section are for single use applications only and shall provide, when ready to use, a level of 800 parts per million of total active phenols consisting of 400 parts per million *ortho*-phenylphenol, 320 parts per million *ortho*-benzyl-*para*-chlorophenol and 80 parts per million *para*-tertiaryamylphenol.

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