

PART 989—FINANCIAL STATEMENTS OF THE BANKS

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§ 989.1 Definitions.

For purposes of this part:

"Audit" means an examination of the financial statements by an independent accountant in accordance with Generally Accepted Accounting Principles for the purpose of expressing an opinion thereon.

"Audit report" means a document in which an independent accountant indicates the scope of the audit made and sets forth an opinion regarding the financial statement taken as a whole, or an assertion to the effect that an overall opinion cannot be expressed. When an overall opinion cannot be expressed, the reasons therefor shall be stated.

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§ 989.2 Audit requirements.

(a) Each Bank, the OF and the Financing Corporation shall obtain annually an independent, external audit of and an audit report on its individual financial statement.

(b) The OF board of directors shall obtain an audit and an audit report on the combined annual financial statements for the Bank System.

(c) All audits must be conducted in accordance with generally accepted auditing standards and in accordance with the most current government auditing standards issued by the Office of the Comptroller General of the United States.

(d) An independent, external auditor must meet at least twice each year with the audit committee of each Bank, the OF board of directors, and the Financing Corporation Directorate.

(e) Finance Board examiners shall have unrestricted access to all auditors' work papers and to the auditors to address substantive accounting issues that may arise during the course of any audit.

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§ 989.3 Requirement to provide financial and other information to the Finance Board and the Office of Finance.

In order to facilitate the preparation by the Office of Finance of combined Bank System annual and quarterly reports, each Bank shall provide to the Office of Finance in such form and within such timeframes as the Finance Board or the Office of Finance shall specify, all financial and other information and assistance the Office of Finance shall request for that purpose. Nothing in this section shall contravene or be deemed to circumscribe in any manner the authority of the Finance Board to obtain any information from any Bank related to the preparation or review of any financial report.

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§ 989.4 Requirement for voluntary bank disclosure.

Any financial statements contained in an annual or quarterly financial report issued by an individual Bank must be consistent in both form and content with the financial statements presented in the combined Bank System annual or quarterly financial reports prepared and issued by the Office of Finance.

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Subchapter K—Office of Finance

PART 985—THE OFFICE OF FINANCE

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§ 985.1 Definitions.

For purposes of this part:

"Bank System" means the Banks and the Office of Finance.

"Chair" means the Chairperson of the board of directors of the Office of Finance.

"Managing Director" means the managing director of the Office of Finance.

"OF" means the Office of Finance, a joint office of the Banks pursuant to section 2B of the Act (12 U.S.C. 1422b(b)(2)).

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§ 985.2 Authority of the OF.

(a) **General.** The OF shall enjoy such incidental powers under section 12(a) of the Act (12 U.S.C. 1432(a)), as are necessary, convenient and proper to accomplish the efficient execution of its duties and functions pursuant to this part, including the authority to contract with a Bank or Banks for the use of Bank facilities or personnel in order to perform its functions or duties.

(b) **Agent.** The OF in the performance of its duties, shall have the power to act on behalf of:

(1) The Banks in issuing consolidated obligations pursuant to section 11(a) of the Act (12 U.S.C. 1431(a));

(2) By delegation of the Finance Board under §966.2 of this chapter in issuing consolidated obligations pursuant to section 11(c) of the Act (12 U.S.C. 1431(c)); and

(3) The Banks in paying principal and interest due on the consolidated obligations, or other obligations of the Banks.

(c) **Assessments.** The OF shall have authority to assess the Banks for the funding of its operations in accordance with §985.5.

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§ 985.3 Functions of the OF.

(a) **Joint debt issuance.** Subject to parts 965 and 966 of this chapter, and this part, the OF as agent shall offer, issue and service (including making timely payments on principal and interest due) consolidated obligations on which the Banks are jointly and severally liable on behalf of the Finance Board pursuant to section 11(c) of the Act (12 U.S.C. 1431(c)), or the Banks pursuant to section 11(a) of the Act (12 U.S.C. 1431(a)).

(b) **Preparation of combined financial reports.** The OF shall prepare and issue the combined annual and quarterly financial reports for the Bank System in accordance with the requirements of §985.6(b) and Appendix A of this part.

(c) **Fiscal agent.** The OF shall function as the Fiscal Agent of the Banks.

(d) **Financing Corporation and Resolution Funding Corporation.** The OF shall perform such

duties and responsibilities for the Financing Corporation (FICO) as may be required under part 995 of this chapter, or for the Resolution Funding Corporation (REFCorp) as may be required under part 996 of this chapter or authorized by the Finance Board pursuant to section 21B(c)(6)(B) of the Act (12 U.S.C. 1441b(c)(6)(B)).

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§ 985.4 Finance Board oversight.

(a) Oversight and enforcement actions.

The Finance Board shall have the same regulatory oversight authority and enforcement powers over the OF, the OF board of directors, the directors, officers, employees, agents, attorneys, accountants or other OF staff, as it has over a Bank and its respective directors, officers, employees, attorneys, accountants, agents or other staff.

(b) **Examinations.** Pursuant to section 20 of the Act (12 U.S.C. 1440), the Finance Board shall examine the OF, all funds and accounts that may be established pursuant to this part 985, and the operations and activities of the OF, as provided for in the Act or any regulations promulgated pursuant thereto.

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§ 985.5 Funding of the OF.

(a) **Generally.** The Banks are responsible for jointly funding all of the expenses of the Office of Finance, including the costs of indemnifying the members of the OF board of directors, the Managing Director and other officers and employees of the OF, as provided for in this part.

(b) Funding policies.

(1) At the direction of, and pursuant to policies and procedures adopted by, the OF board of directors, the Banks shall periodically reimburse the OF in order to maintain sufficient operating funds under the budget approved by the OF board of directors. The OF operating funds shall be:

(i) Available for expenses of the Office of Finance and the OF board of directors, according to their approved budgets; and

(ii) Subject to withdrawal by check, wire transfer or draft signed by the Managing Director or other person designated by the OF board of directors.

(2) Each Bank's respective *pro rata* share of the reimbursement described in paragraph (b)(1) of this section shall be based on the ratio of the total paid-in value of its capital stock relative to the total paid-in value of all capital stock in the Bank System.

(c) Alternative formula for assessment.

With the prior approval of the Finance Board, the OF board of directors may implement an alternative formula for determining each Bank's respective share of the OF expenses or, by contract with a Bank or Banks, may choose to be reimbursed through a fee structure in lieu of or in addition to assessment, for services provided to the Bank or Banks.

(d) **Prompt reimbursement.** Each Bank from time to time shall promptly forward funds to the OF in an amount representing its share of the reimbursement described in paragraph (b) of this section when directed to do so by the Managing Director pursuant to procedures of the OF board of directors.

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(e) **Indemnification expenses.** All expenses incident to indemnification of the members of the OF board of directors, the Managing Director, and other officers and employees of the OF shall be treated as an expense of the OF to be reimbursed by the Banks under the provisions of this part.

(f) **Operating funds shall be segregated.**

(1) Any funds received by the OF from the Banks pursuant to this section for OF operating expenses promptly shall be deposited into one or more accounts and shall not be commingled with any proceeds from the sale of consolidated obligations in any manner.

(2) Neither the proceeds from the sale of consolidated obligations under part 966, nor any operating expense reimbursements received by the OF from assessments on the Banks under this section shall be construed to be Government Funds or appropriated monies or subject to apportionment for the purposes of chapter 15 of title 31 of the United States Code, or any other authority, in accordance with section 2B(b)(1) of the Act (12 U.S.C. 1422b(b)(1)).

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§ 985.6 Debt management duties of the OF.

(a) **Issuance and servicing of COs.** The OF shall issue and service (including making timely payments on principal and interest due, subject to §§966.8 and 966.9 of this chapter) consolidated obligations pursuant to and in accordance with the policies and procedures established by the OF board of directors under this part.

(b) **Combined financial reports requirements.** The OF shall prepare and distribute the combined annual and quarterly financial reports for the Bank System in accordance with the following requirements:

(1) The scope, form and content of the disclosure generally shall be consistent with the requirements of the Securities and Exchange Commission's Regulations S-K and S-X (17 CFR parts 229 and 210).

(2) Information about each Bank shall be presented as a segment of the Bank System as if Statement of Financial Accounting Standards No. 131, titled "Disclosures about Segments of an Enterprise and Related Information" (FASB 131) applied to the combined annual and quarterly financial reports of the Bank System.

(3) The standards set forth in paragraphs (b)(1) and (2) of this section are subject to the exceptions set forth in the Appendix to this part.

(4) The combined Bank System annual report shall be filed with the Finance Board and distributed to each Bank and Bank member within 90 days after the end of the fiscal year. The combined Bank System quarterly reports shall be filed with the Finance Board and distributed to each Bank and Bank member within 45 days after the end of the first three fiscal quarters of each year.

(5) The Finance Board in its sole discretion shall determine whether or not a combined Bank System annual or quarterly financial report complies with the standards of this part.

(6) The OF board of directors shall comply promptly with any directive of the Finance Board regarding the preparation, filing, amendment or distribu-

tion of the combined Bank System annual or quarterly financial reports.

(7) Nothing in this section shall create or be deemed to create any rights in any third party.

(c) **Capital markets data.** The OF board of directors shall provide capital markets information concerning debt to the Banks.

(d) **NRSROs.** The OF board of directors shall manage relationships with Nationally Recognized Statistical Rating Organizations in connection with their rating of consolidated obligations.

(e) **Research.** The OF shall conduct research reasonably related to the issuance or servicing of consolidated obligations.

(f) **Monitor Banks' credit exposure.** The OF shall timely monitor each Bank's and the Bank System's unsecured credit exposure to individual counterparties.

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§ 985.7 Structure of the OF board of directors.

(a) **Membership.** The OF board of directors shall consist of three part-time members appointed by the Finance Board as follows:

(1) Two Bank Presidents; and

(2) A citizen of the United States with a demonstrated expertise in financial markets. Such appointee may not be an officer, director or employee of a Bank or Bank System member, hold shares, or any other financial interest in, any member of a Bank, or be affiliated with any consolidated obligation selling or dealer group member under contract with the OF.

(b) **Terms.**

(1) Except as provided in paragraph (b)(2) of this section, the members of the OF board of directors shall serve for three-year terms (which shall be staggered), and shall be subject to removal or suspension for cause by the Finance Board.

(2) The Finance Board shall fill any vacancy occurring on the OF board of directors. An appointment to fill a vacancy shall be only for the remainder of the term during which the vacancy occurred.

(3) Any member of the OF board of directors is authorized to continue to serve on the OF board of directors after the expiration of the member's term until a successor has been appointed by the Finance Board.

(c) **Chair.**

(1) The private citizen member of the OF board of directors shall serve as the Chair, and the Vice Chair shall be selected by a majority vote of the members of the OF board of directors.

(2) The Chair shall preside over the meetings of the OF board of directors. In the absence of the Chair, the Vice Chair shall preside.

(3) The Chair shall be responsible for ensuring that the directives and resolutions of the OF board of directors are drafted and maintained and for keeping the minutes of all meetings.

(d) **Compensation.**

(1) The Bank President members shall not receive any additional compensation or reimbursement as a result of their service on the OF board of directors.

(2) Each Bank shall be entitled to be reimbursed by from the Office of Finance for its expenditure of

travel and per diem expenses associated with its Bank President's attendance at an OF board of directors meeting as a director member thereof.

(3) The Office of Finance shall pay compensation and expenses to the private citizen member of the OF board of directors in accordance with the requirements for payment of compensation and expenses to Bank chairs as set forth in part 918 of this chapter.

(e) Indemnification.

(1) The OF board of directors shall indemnify its members, the Managing Director, and other officers and employees of the OF under such terms and conditions as shall be determined by the OF board of directors, *provided that* such terms and conditions are consistent with the terms and conditions of indemnification of directors, officers and employees of the Bank System generally.

(2) The OF board of directors shall adopt indemnification procedures, which shall be supplemented by a contract of insurance.

(f) **Delegation.** The OF board of directors may delegate any of its authority or duties to any employee of the OF in order to enable the OF to carry out its functions.

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§ 985.8 General duties of the OF board of directors.

(a) General.

(1) **CONDUCT OF BUSINESS.** Each director shall have the duties prescribed in §917.2(b) of this chapter, as appropriate.

(2) **BYLAWS.** The OF board of directors shall adopt bylaws in accordance with the provisions of §917.10 of this chapter.

(b) **Meetings and quorum.** The OF board of directors shall conduct its business by majority vote of its members at meetings convened in accordance with its bylaws, and shall hold no fewer than nine meetings annually. Due notice shall be given to the Finance Board by the Chair prior to each meeting. A quorum, for purposes of meetings of the OF board of directors, shall be not less than two members.

(c) **Duties regarding COs.** The OF board of directors shall establish policies regarding COs that shall:

(1) Govern the frequency and timing of issuance, issue size, minimum denomination, CO concessions, underwriter qualifications, currency of issuance, interest-rate change or conversion features, call features, principal indexing features, selection and retention of outside counsel, selection of clearing organizations, and the selection and compensation of underwriters for consolidated obligations, which shall be in accordance with the requirements and limitations set forth in paragraph (c)(4) of this section;

(2) Prohibit the issuance of COs intended to be privately placed with or sold without the participation of an underwriter to retail investors, or issued with a oncession structure designed to facilitate the placement of the COs in retail accounts, unless the OF has given notice to the board of directors of each Bank scribing a policy permitting such issuances, soliciting comments from each Bank's board of directors, and

considering the comments received before adopting policy permitting such issuance activities;

(3) Require all broker-dealers or underwriters under contract to the OF to have and maintain adequate suitability sales practices and policies, which shall be acceptable to, and subject to review by, the Office of Finance;

(4) Require that COs shall be issued efficiently and at the lowest all-in funding costs over-time, consistent with:

(i) Prudent risk-management practices, prudential debt parameters, short and long-term market conditions, and the Banks' role as government-sponsored enterprises;

(ii) Maintaining reliable access to the short-term and long-term capital markets; and

(iii) Positioning the issuance of debt to take advantage of current and future capital market opportunities.

(d) **Other duties.** The OF board of directors shall:

(1) Set policies for management and operation of the OF;

(2) Approve a strategic business plan for the OF in accordance with the provisions of §917.5 of this chapter, as appropriate;

(3) Review, adopt and monitor annual operating and capital budgets of the OF in accordance with the provisions of §917.8 of this chapter, as appropriate;

(4) Constitute and perform the duties of an audit committee, which to the extent possible shall operate consistent with:

(i) The requirements of §917.6 of this chapter, and

(ii) The requirements pertaining to audit committee reports set forth in Item 306 of Regulation S-K promulgated by the Securities and Exchange Commission.

(5) Select, employ, determine the compensation for, and assign the duties and functions of a Managing Director of the OF who shall:

(i) Be the chief executive officer for the OF and shall direct the implementation of the OF board of directors' policies;

(ii) Serve as a member of the Directorate of the Financing Corporation, pursuant to section 21(b)(1)(A) of the Act (12 U.S.C. 1441(b)(1)(A)); and

(iii) Serve as a member of the Directorate of the Resolution Funding Corporation, pursuant to section 21B(c)(1)(A) of the Act (12 U.S.C. 1441b(c)(1)(A)).

(6) Review and approve all contracts of the OF;

(7) Have the exclusive authority to employ and contract for the services of an independent, external auditor for the Banks' annual and quarterly combined financial statements;

(8) Select, evaluate, determine the compensation of, and, where appropriate, replace the internal auditor, who may be removed only by vote of the OF board of directors; and

(9) Assume any other responsibilities that may from time to time be delegated to it by the Finance Board.

(e) **No rights created.** Nothing in this part shall create or be deemed to create any rights in any third party.

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Appendix A to Part 985—Exceptions to the General Disclosure Standards

A. Related-party transactions. Item 404 of Regulation S-K, 17 CFR 229.404, requires the disclosure of certain relationships and related party transactions. In light of the cooperative nature of the Bank System, related-party transactions are to be expected, and a disclosure of all related-party transactions that meet the threshold would not be meaningful. Instead, the combined annual report will disclose the percent of advances to members an officer of which serves as a Bank director, and list the top ten holders of advances in the Bank System and the top five holders of advances by Bank, with a further disclosure indicating which of these members had an officer that served as a Bank director.

B. Biographical information. The biographical information required by Items 401 and 405 of Regulation S-K, 17 CFR 229.401 and 405, will be provided only for the members of the Board of Directors of the Finance Board, Bank presidents, chairs and vice chairs, and the directors and Managing Director of the OF.

C. Compensation. The information on compensation required by Item 402 of Regulation S-K, 17 CFR 229.402, will be provided only for Bank presidents and the Managing Director of the OF. Since stock

in each Bank trades at par, the Office of Finance will not include the performance graph specified in Item 402(1) of Regulation S-K, 17 CFR 229.402(1).

D. Submission of matters to a vote of stockholders. No information will be presented on matters submitted to shareholders for a vote, as otherwise required by Item 4 of the SEC's form 10-K, 17 CFR 249.310. The only item shareholders vote upon is the annual election of directors.

E. Exhibits. The exhibits required by Item 601 of Regulation S-K, 17 CFR 229.601, are not applicable and will not be provided.

F. Per share information. The statement of financial information required by Items 301 and 302 of Rule S-K, 17 CFR 229.301 and 302, is inapplicable because the shares of the Banks are subscription capital that trades at par, and the shares expand or contract with changes in member assets or advance levels.

G. Beneficial ownership. Item 403 of Rule S-K, 17 CFR 229.403, requires the disclosure of security ownership of certain beneficial owners and management. The combined financial report will provide a listing of the ten largest holders of capital stock in the Bank System and a listing of the five largest holders of capital stock by Bank. This listing will also indicate which members had an officer that served as a director of a Bank.

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