gear as specified in Rolls Royce Service Bulletin No. T-200, dated November 26, 1971, or an FAA-approved equivalent.

This amendment becomes effective December 4, 1972.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1423; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on November 20, 1972.

C. R. MELUGIN, Jr.,
Acting Director,
Flight Standards Service.

[FR Doc.72-20341 Filed 11-27-72;8:47 am]

[Docket No. 11682, Amdt. 103-13]

PART 103—TRANSPORTATION OF DANGEROUS ARTICLES AND MAGNETIZED MATERIALS

Authority To Deviate

The purpose of this amendment to Part 103 of the Federal Aviation Regulations is to extend the authority in § 103.5 to grant deviations from the provisions of Part 103, under certain conditions, to cover the carriage of dangerous articles on flights of civil aircraft that depart from the United States for a place outside of the United States.

This amendment is based on a notice of proposed rule making, Notice No. 72-3, published in the FEDERAL REGISTER on February 3, 1972 (37 F.R. 2588). Except as specifically discussed hereinafter, this amendment and the reasons therefor are the same as those contained in Notice No. 72-3.

Three of the four public comments received in response to the notice favored the proposal; however, two of the comments recommended revisions to it. The first of these requested that the scope of the amendment be expanded to include flights of civil aircraft of United States registry anywhere in air commerce. Since Notice No. 72-3 was confined to extending the authority of § 103.5 to flights of civil aircraft that depart from the United States for a place outside thereof, the recommendation is considered beyond the scope of Notice No. 72-3; however, it may be considered in connection with a future rule-making action. The second revision was recommended by the U.S. Atomic Energy Commission (AEC) and advocated that radioactive materials be excluded from those articles for which deviation authority may be granted in view of the complexity of the many regulations that apply to these materials when shipped into foreign countries, including regulations of the FAA, the AEC, the Office of Hazardous Materials of the Department of Transportation, and the International Atomic Energy Authority. Based on further consideration of the proposal in the light of this comment, the FAA has concluded that deviations from the requirements of Part 103 for the transportation of radioactive materials on a flight departing the United States for a place outside thereof should be granted only in accordance with the more formal exemption procedures set forth in § 11.25 of the Federal Aviation Regulations. Accordingly, as adopted herein, subparagraph (11) does not permit deviation authority to be granted for radioactive substances on civil aircraft that depart from the United States for a place outside thereof. For such flights authority to deviate may be granted only for articles other than radioactive materials.

The FAA wishes to emphasize the fact that an authorization for deviation does not grant authority for flight over or into a foreign country with dangerous articles aboard, nor does it relieve the holder of an authorization from obtaining proper clearance from custom officials or other government agencies for the transportation of dangerous articles outside the United States. Accordingly, an authorization for deviation from the provisions of this part for one or more flights of an operation that have as their destination a place outside the United States does not grant authority for overflying a foreign country nor for landing in a foreign country; therefore, the holder of the authorization should secure permission from the foreign country or countries involved prior to flight over or into those countries with dangerous articles aboard. Furthermore, an authorization does not grant relief from compliance with applicable customs regulations or the applicable regulations of any other government agencies governing the transportation of dangerous articles outside the United States.

In consideration of the foregoing and for the reasons given in Notice 72-3, § 103.5(a) of Part 103 of the Federal Aviation Regulations is amended, effective January 29, 1973, by amending subparagraph (11) to read as follows:

§ 103.5 Authority to deviate.

(a) * * *

(11) The authorization is limited:

(i) To flights of civil aircraft between places in the United States and flights of civil aircraft that depart from the United States for a place outside thereof; and

(ii) For flights of civil aircraft that depart from the United States for a place outside thereof, to substances other than radioactive materials on board the aircraft.

* * * * *

(Sec. 313(a), 601(c), Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c)).

Issued in Washington, D.C., on November 20, 1972.

J. H. SHAFFER,
Administrator.

[FR Doc.72-20342 Filed 11-27-72;8:47 am]

Chapter II—Civil Aeronautics Board

SUBCHAPTER A—ECONOMIC REGULATIONS

[Reg. ER-780, Amdt. 4]

PART 245—REPORTS OF OWNERSHIP OF STOCK AND OTHER INTERESTS

Enlargement and Realignment of Shareholder Reporting Requirement

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 25th day of October 1972.

In notice of proposed rule making EDR-216,[1] the Board proposed to amend Part 245 of the Economic Regulations (14 CFR Part 245) so as to define more precisely which persons are required to submit reports of their interests in stock of air carriers and to expand the contents of such reports. More specifically, it was proposed to enlarge and realign the shareholder reporting requirements in Subpart B so that, inter alia, (1) "trustee" would be broadly defined to include any person, other than a beneficial owner, who holds record ownership of securities, or who possesses or exercises one or more of various rights with respect to such securities; (2) reports would be required to include identification of persons who possess or exercise the right to vote, sell, prevent sale, or otherwise dispose of the reported stock, or who receive dividends therefrom, along with a description of the business activities of each person named in the report; (3) a reporting corporation would be required to identify each of the shareholders holding more than 10 percent of its outstanding securities; (4) banks and brokers, insofar as they are "trustees," would be excepted from the requirement to file an annual report and report of acquisition, but they would be required to file a quarterly report with respect to any of their individual accounts which include one-half of 1 percent (0.5%) or more of a reported security as of the end of each quarter; and (5) transactions granting security interests in stocks would also be reported.

Pursuant to the subject notice, eight comments were filed, consisting of two by scheduled air carriers,[2] four by financial institutions[3] and one each by the Aviation Consumer Action Project (ACAP), and the Flight Engineers International Association (FEIA).

ACAP and FEIA support the proposed rules. Allegheny and Delta take no position on the merits of the proposed rules, but suggest several modifications to the provisions therein. Merrill Lynch opposes, in toto, the special reporting requirements for banks and brokers. ABA,

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[1] Nov. 6, 1971, 36 F.R. 21361, Docket 23962.

[2] Allegheny Airlines, Inc. (Allegheny), Delta Air Lines, Inc. (Delta).

[3] The American Bankers Association (ABA), the First National Bank of Chicago (First National), the New York Clearing House (NYCH), and Merrill Lynch, Pierce, Fenner and Smith, Inc. (Merrill Lynch).

First National and NYCH support, in part, the substance of the rules proposed and suggest modifications of the provisions to which they object.

Upon full consideration of the relevant matters contained in the comments we have decided, for the reasons set forth hereinafter and in EDR-216, to adopt the amendments to Part 245 substantially as proposed. Except as modified herein, the tentative findings set forth in the explanatory statement to EDR-216 are incorporated by reference and made final. The most significant modifications to the proposed rules are: (1) The narrowing of the definition of "trustee" in § 245.11; (2) the reduction of the reporting requirement for banks and brokers in their capacities as "trustees," so that their reports need cover only individual accounts which include at least 1 percent of a reported security, instead of as little as one-half of 1 percent (0.5%), as proposed; and (3) the modification of the proposed reports, insofar as they require identification of persons who have various "rights of ownership" with respect to reported securities, so as to encompass only those rights which the Board has associated with control of, or the power to control, airline securities.

In addition to the foregoing modifications of the proposed rules, the within rules will also apply the Part 245 reporting requirements to 5-percent shareholders (and to officers and directors) of companies owning at least 95 percent of the voting stock of air carriers, as if they were shareholders (or officers and directors) of the subsidiary air carrier itself.

We first discuss the proposals dealing with the definition of "trustee" and with the reporting of individual accounts held as "trustees" by banks and brokers.[4]

Definition of "trustee." Certain of the parties variously take the position that the statute confines "trustee" to its traditional meaning, namely, a person who holds legal title in a res for the benefit of another. Other parties urge an even narrower interpretation which would encompass only record owners who also had the power to exercise "investment discretion" with respect to the res. The proposed definition of "trustee" covered persons having various "rights of ownership" with respect to securities even though they were neither record owners nor full beneficial owner in the economic sense. For example, the definition would have included custodians of shares, pledgees, holder of proxies and options to purchase, and even a lender who had imposed a negative covenant on the disposition of the assets of the borrower. It is argued that there is nothing in the language or legislative history of section 407(b) of the Act which would justify such broad coverage.

These comments further contend that, given the present capabilities of the centralized recordkeeping procedures of most banks, it is not feasible—particularly where the bank has branches—for banks to report the aggregate number of shares of an air carrier which they hold in various capacities, such as trustee, custodian, pledgee, or escrow agent, and that to require banks to set up the machinery necessary to obtain figures in each such capacity, would place an oppressive reporting burden on banks without fully indicating who controls the reported securities.

It is therefore urged that the proposed definition of "trustee" either (1) be withdrawn and replaced by a definition along traditional lines, so that the term can retain its "usual and accepted meaning," or (2) be narrowed to exclude at least such persons as pledgees, holders of proxies, options to purchase or first refusal rights, and those who merely receive dividends as a mailing address for a customer.

Upon reconsideration of the tentative views expressed in EDR-216 in light of the comments received, we have determined to confine the proposed definition to persons not beneficial owners who hold record ownership of securities, and we are further providing that if the record owner is a mere nominee for a bank or broker, then the bank or broker, rather than the nominee, shall be deemed the "trustee" of such security. In so doing we will exclude those nonrecord holders who merely have various limited rights with respect to air carrier securities. We think that our revised definition should enable us to achieve the objectives of section 407(b) of the act, by imposing a direct reporting requirement on those who have potential control of an air carrier through legal or equitable ownership of more than 5 percent of its stock.

In our judgment, the foregoing definition of "trustee" is within our statutory authority. By confining the definition to record owners, we have substantially mooted the legal argument of those parties who urged a redefinition of "trustee" along traditional lines. However, we are unable to accede to the argument, advanced by other parties, that Congress intended to constrict the scope of the term "trustee" to include only record owners who also have the power to exercise "investment discretion" with respect to air carrier securities. Such a standard is so vague as to be virtually unenforceable, involving—as it inevitably would—ad hoc subjective determinations with respect to whether a person, in fact, is vested with a measure of discretion over shares which he holds as the record owner. For example, as between the carrier and its shareholders the person whose name appears on the carrier's stock transfer books is generally regarded as having the right to vote the securities there registered. In instances where a trust relationship is established, and record and equitable ownership are separated, the record owner may sometimes act only as a conduit through which the beneficial owner invests the shares and exercises his voting rights thereto. On the other hand, the record owner may possess one or more of several different powers with respect to the shares held in trust each of which involves some degree of discretion, including, for example, the power to vote the shares in the absence of contrary instructions from the beneficial owner or the power to sell the shares and reinvest the proceeds. Whether in any given case, the record holder has the requisite "discretion" with respect to shares would thus entail not only an analysis of the enumerated powers in the trust document itself, but also an examination of the conduct of the parties to the trust agreement to determine if it may indicate the existence of implied discretionary powers in the record holder. Our reading of the legislative history of section 407(b) leads us to conclude that Congress could not have intended such a result, and the banking parties have not cited any legislative history or advanced convincing arguments, to the contrary. Rather, we believe Congress intended that the Board be empowered to treat as "trustees" 5-percent record owners of air carrier securities who are not themselves beneficial owners.

Quarterly report by banks and brokers. ABA, First National, NYCH, and Merrill Lynch urge elimination of the requirement that banks and brokers, filing reports as trustees of more than 5 percent of an air carrier's stock, must report with respect to any individual account which includes one-half of one percent (0.5%), or more, of such stock as of the end of each calendar quarter. Instead, ABA suggests that such bank or broker be required to file a quarterly report setting forth: (1) The aggregate number and class of shares so held and the number of such shares over which it has investment discretion or voting power; (2) the name and address of the settler of any trust account, or group of trust accounts, which includes 5 percent or more of the reported security at the end of each calendar quarter; and (3) the name and address of the person, if other than the reporting bank or broker, who has the power to vote or make investment decisions with respect to the shares covered by the report.[5]

In support of this request, the banking parties contend that the Board is without statutory authority to require banks and brokers covered by the regulation to list separately each account for which they hold shares amounting to only one-half of one percent (0.5%) or more of the outstanding shares of the reported security. Specifically, they argue that section 407(b) of the act refers to persons or trustees holding more than 5

[4] The financial institutions submitting comments generally oppose the substance of these proposals on both legal and policy grounds. Since their legal and policy arguments are closely interrelated, we have for analytical purposes grouped them together under each issue to which they are directed.

[5] Similarly, NYCH requests modification of the proposed rule so as to require the bank or broker to report only those accounts holding more than 5 percent of the stock of an air carrier and whether the bank has sole discretion with respect to investments or voting of the stock.

percent of any class of the capital stock of an air carrier, and neither the legislative history nor any other section of the act indicates that Congress intended the Board to require disclosures of holdings below the stated percentage.

They further argue that the proposed requirement would: (1) Arbitrarily invade the confidential relationship that exists between a bank or broker and its customers, and could thus lead customers to whom confidentiality is important to establish trust relationships with persons other than banks or brokers; and (2) serve no useful purpose, since a person could easily evade the requirement by setting up a series of bank and brokerage accounts, each holding less than one-half of one percent (0.5%), or by selecting only a bank or broker which he could know would hold as trustee less than 5 percent of a particular carrier's stock. Merrill Lynch adds that the proposed requirement will place upon brokerage firms the needlessly onerous burden of examining their securities records for every class of securities of every publicly owned air carrier four times per year and make the required computations, whether or not a reportable event is determined to exist.

As we have already stated above, we have decided to modify our proposal so as to require banks and brokers to report only with respect to any individual account which includes one percent (1%) or more of an air carrier's stock. This in itself will substantially lighten the reporting burden which our proposal would have imposed on banks and brokers. However, for the reasons hereinafter stated, we reject the arguments and counterproposals in the comments, insofar as they would be equally applicable to our modified rule.

In the rulemaking notice, we tentatively concluded that section 407(b), in conjunction with the Board's general powers under section 204(a) of the Act,[6] gives the Board broad authority to require trustee shareholders to disclose all beneficial interests in a reported security, however small in number. Our tentative conclusion was grounded on the fact that while, by its literal terms, section 407(b) appears only to require disclosures of 5-percent shareholding interests, the disclosure of beneficial owners of smaller amounts of a reported security is necessary to prevent circumvention of the statute where such beneficial holdings are, in fact, split up among several trustees, or held in different accounts by one trustee. For example, an individual could hold a large amount of a carrier's stock without being reported, so long as he spread his stockholdings among several different brokers or banks and each account consisted of less than 5 percent of a particular class of a carrier's stock. Clearly then, the reading of the statute urged by the banking parties would frustrate the intent of Congress to achieve full disclosure of substantial interests in airline securities. Statutory construction having such an effect should be avoided, and, in the absence of legislative history to the contrary, we believe that we are justified in exercising our rulemaking power to as to require banks and brokers covered by Part 245 to file reports with respect to accounts which include less than 5 percent of a reported stock.

Nor do we regard as compelling the banking parties' argument that implementation of the proposed rule will invade the privacy of those persons who are not in fact 5-percent holders of an airline's stock and thereby induce such persons to refrain from using the trust services of banks.[7] We concede that some of the reports received from bank and brokers will disclose information with respect to persons who are not subject to the shareholder reporting provisions of the statute. When viewed from a regulatory perspective, however, it is a bank's relationship with its customers, coupled with the sophisticated trust services which a bank can provide, which renders the institution a logical conduit for intentional or unintentional circumvention of the Part 245 disclosure requirements. In short, it is the very confidentiality which we are asked to perpetuate which may presently enable beneficial owners to use accounts maintained with banks and brokers to obscure their holdings from the Board's view.

In light of the foregoing, and on careful balance of the competing interests involved, we find that the public interest in assuring full disclosure of substantial interests in air carrier securities requires that banks, brokers and other trustees identify in their filed reports persons owning less than 5 percent of a carrier's stock.

We also take note of the banking parties' argument that our rule might encourage investors to establish trust relationships with financial intermediaries other than banks and brokers. However, such intermediaries, to the extent that they hold more than 5 percent of a carrier's stock, are also subject to our rules and would be required to file a trustee's annual or acquisition report, as the case may be, identifying all—not just 1 percent—beneficial owners of a reported security. Moreover, we are not persuaded that bank and brokers are so marginally competitive with other providers of investment services that imposition of the rule will result in a sizeable migration of accounts from banks and brokers to other financial institutions. In any event, to the extent that reports submitted by banks and brokers contain information concerning persons who are not 5-percent holders of a reported security, we will entertain applications to withhold said information from public disclosure, pursuant to section 1104 of the Act,[8] on the grounds that disclosure of such information would be prejudicial to the interests of such persons and is not required in the interest of the public.

We are not impressed by Merrill Lynch's stated apprehension that the proposed rule will impose upon banks and brokers a needlessly onerous reporting obligation. As to whether the obligation is onerous, it should be noted, as we explained in the rule making notice, that banks and brokers covered by the regulation will be excepted from the requirement, imposed upon other trustees, to file annual reports and reports of acquisition. They will be thus relieved of the substantial burdens involved in disclosing beneficial holdings of all customers, regardless of the size of individual holdings, and in determining the maximum number and class of shares held, as well as the percentage of such shares to total outstanding capital of the carrier, during the year covered by the annual report. It should also be noted that, as we further stated in the rule making notice, practically speaking the requirement to file quarterly reports with respect to accounts including a one-half (0.5%) percent interest in the stock of most airlines would not actually be very burdensome, in light of the considerable number of shares which comprise a 0.5 percent stock interest in most trunkline carriers. By modifying our proposal, so as to limit the reporting responsibility of a trustee bank or broker only to persons owning a minimum of 1 percent, instead of one-half percent, of a reported security, the burden is greatly reduced. In our view, this modification will thus facilitate preparation of the quarterly report without detracting from the essential value of the stock disclosure rules.

In the latter connection, the Board intends to publish from time to time a list of air carriers subject to Part 245 showing, as of the date of publication, the total number of shares of capital stock outstanding of each carrier on the list. As ABA points out, this information

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[6] 49 U.S.C. 1324(a), which provides that: "The Board is empowered to perform such acts, to conduct such investigations, to issue and amend such orders, and to make and amend such general or special rules, regulations, and procedure, pursuant to and consistent with the provisions of this Act, as it shall deem necessary to carry out the provisions of, and to exercise and perform its powers and duties under this Act."

[7] Nor are we persuaded that the proposed requirement should be abandoned because of the ease by which the banking parties conclusorily allege it may be circumvented. The proposed rule is obviously not intended to be a panacea for all of the possible subterfuges that could be used to conceal beneficial ownership of airline stocks, but to make evasion of the statute more difficult where beneficial holdings are maintained in accounts with banks and brokers. We think our rule accomplishes the latter purpose, since, to avoid detection, a beneficial owner and his financial intermediary will have to undertake the considerable cost and administrative burdens entailed in structuring their stock transactions to remain outside the scope of the reporting obligations for banks and brokers, involving a constant monitoring of account balances and aggregate holdings, to insure that they do not reach the percentage levels at which a bank or broker is required to file a report covering such beneficial interests.

[8] 49 U.S.C. 1504.

will be very useful to banks and brokers in determining whether they must prepare and file a quarterly report with respect to air carrier shares which they hold as trustees, and, as such, should serve to further reduce the reporting burden on these institutions.[9]

Content of reports. Merrill Lynch, ABA, First National and NYCH, object to the proposal to require that every person reporting must identify every other person who (1) is a beneficial owner of the reported security, or (2) possesses or exercises the right to vote, sell, prevent sale or otherwise dispose of a reported security, or receives dividends therefrom. Merrill Lynch contends that since customers of brokers are free to sell, assign or otherwise deal with voting rights, dividends, or other incidents of their stock ownership without advising their brokers, compliance with this requirement on the part of brokers is not possible. ABA avers that where the report covers pension, retirement or large family trusts, identification of all the beneficiaries would impose an almost impossible burden on the trustee reporting; it suggests that where such large trust accounts are involved, those identified in the trustee's report should be only the person or persons who established the account.

We have decided to modify the content of the proposed reports in the following respects:

1. Where a report by a "trustee" under Subpart B covers shares held in pension or retirement trusts,[10] the person filing the report as to such shares shall be required to list only the name and address of the person or persons who created each trust, the number and class of shares held in each trust, the names of the trustees, and a description of the class of persons who are beneficiaries. We think this modification of our proposed reporting requirement is necessary in order to avoid saddling trustees with an oppressive reporting obligation where a large number of beneficiaries is typically involved and the identity of the individual members of the class of beneficiaries is not likely to be relevant in ascertaining questions concerning "control" of the shares held in trust.

2. We have narrowed the content of the proposed reports insofar as it requires identification of persons who have various "rights of ownership" with respect to reported securities, the report as revised to encompass only those rights which the Board associates with control, or the power to control, of airline securities—the right to vote or to control the voting of reported shares and powers to exercise control over the alienation of such shares. Specifically, we are withdrawing that portion of the proposed reports which would have required disclosure, by the reporting person, of persons who receive dividends from the reported securities. Upon reconsideration, identification of dividend recipients does not appear germane to the objectives of the Part 245 reporting system in that the bare possession of dividend rights to shares does not carry with it also the power to exercise control of carrier management. On the other hand, we have determined to adopt the requirement that reports identify persons who possess or exercise the right to sell, or to prevent sale or other disposition of a reported security, since such power can be utilized to influence carrier operations. In addition, we have modified that portion of the proposed report which covers disclosure of voting rights, so as to require identification of (1) persons who had either the power to issue instructions as to how any such voting shares should be voted or the power to vote such shares in the event that no instructions were issued; and (2) persons whom the reporting person was instructed to designate as his proxy in voting such shares. Voting instructions are materials which banks, brokers and other financial intermediaries handle in the normal course of their business operations, so that the burden entailed in furnishing such information to the Board would appear to be de minimis.

Merrill Lynch's concern that the proposed rule will require information from brokers to which they are not privy, is unfounded. The proposed rule was intended to require identification of those persons holding various rights of ownership to air carrier securities only insofar as such information is known to the person submitting the report.[11] However, since the proposed rule was not entirely explicit on this point, we have modified §§ 245.12 and 245.14 to indicate that if the person reporting is a trustee, he shall be required to identify in his report only those persons who are known by him to possess any of the various powers and rights enumerated therein with respect to a reported security. No parallel modification is being made with respect to to reports required of beneficial owners since they are expected to know if anyone else has the power to vote their shares or to exercise other rights with respect to their shares.

Reports by Officers and Directors. Allegheny requests the Board to except officers and directors of air carriers from the requirement to file a report of acquisition under proposed § 245.13. It contends that since, under Subpart A, all officers and directors owning any amount of air carrier stock must report their ownership annually, and since all new holdings acquired by an officer or director during any 1-year period will show up in their succeeding annual report, inclusion of such persons within the scope of § 245.13 is unnecessary. We will not grant this request. Although Allegheny is correct in its assertion that an officer's or director's annual reports will disclose his acquisition of shares during the period covered by the report, our experience is that, with several notable exceptions, it is so rare for an officer or director to own a significant block of air carrier stock, that we think it desirable that the Board be apprised of any such acquisition without awaiting filing of annual reports.

Acquisition reports. Delta questions whether proposed § 245.13(c)(2) adequately fulfills Part 245 objectives, insofar as the owner of more than 5 percent of the capital stock of a carrier, who has filed an annual report or acquisition report, is excepted from filing a report with respect to any additional acquisition of that carrier's shares. It is pointed out for example, that, during the interval between the date a person acquires 5 percent of a carrier's stock and the date on which he files an annual report, it would be possible for him to acquire a considerable number of shares in addition to those already disclosed to the Board, and thereby be in a position to exercise a greater degree of control over the carrier. We are therefore requested by Delta to modify the proposed rule so as to require the owner of more than 5 percent of the stock of a carrier to file a report within 10 days after the close of any calendar month in which there has been a change in such ownership; this would be similar to SEC practice, which is to require 10 percent security owners to file such special reports.

While this proposal has some merit, we are reluctant to encumber 5-percent shareholders of air carriers with the stringent reporting obligations urged by Delta, and, therefore, we adhere to our proposed requirement. The Board's staff has heretofore encountered no difficulty in monitoring the further stock acquisition activities of known 5-percent carrier shareholders, and we need not at this time deal with the problem.

[9] ABA, First National and NYCH also request that banks and brokers be permitted to file the quarterly report within 30 days after the end of each calendar quarter, instead of within 10 days as proposed. In their view, while 10 days may be adequate for the beneficial owner to file the annual report or report of acquisition, it is not practicable to require banks and brokers to prepare a quarterly report, covering a potentially large number of accounts, within 10 days after the end of each quarter. We agree and, accordingly, are making an appropriate modification to § 245.14.

[10] No such exception will be made for large family trusts, as urged by ABA. In addition to the obvious problem involved in defining what is meant by a "large family" trust we do not believe that the identification of the beneficial owners of the airline securities held in such trusts will impose an unreasonable administrative burden on the reporting entity. However, in cases where the requirement would cause hardship to the reporting entity, the Board would consider granting a waiver upon application and a proper showing.

[11] For example, where reported securities are held in an account maintained with a bank if the customer directs the bank to issue its proxy to another person, the bank would be required to disclose, in its quarterly report, the name and address of such other person.

Miscellaneous proposals. Several other matters require comment.[12]

1. ABA urges elimination of the phrase "or capital of an air carrier" where it is used in Part 245, and suggests substitution of the phrase "or equity interests of an air carrier." It is argued that an examination of the legislative history of the Act indicates that neither Congress nor the Board has intended to cause banks holding debt obligations of an air carrier to report such holdings, and that indeed it is clear from the rule making notice that the Board here intends to cover only "equity interests." However, the term "capital" was not intended to include debt obligations as such. That term is used in section 407(b), and was intended to cover ownership interests in air carriers which are not organized as corporations and which do not have stock, voting or otherwise—e.g., air carriers, such as air freight forwarders, which may actually operate as single proprietorships or partnerships. Accordingly, ABA's request is rejected.

2. We have adopted ACAP's suggestion to require a reporting corporation to identify each of its shareholders who holds more than 5 percent of its outstanding securities, instead of 10 percent as originally proposed. Accordingly, we are modifying § 245.12 to incorporate ACAP's proposal. As modified, the rule is in alinement with a parallel requirement for corporate affiliates of air carriers in Part 246, and should better enable the Board to determine whether a reporting corporation is controlled by or in a common control relationship with persons obliged to protect competing interests.[13]

3. Part 245 and section 407(b) of the Act embody the definition of "air carrier" in section 101(3) of the Act.[14] ACAP suggests that, for the purpose of Part 245, we should interpret this definition to include any person owning or controlling 100 percent of the voting securities of an air carrier, on the grounds that unless 5-percent shareholders of an air carrier's parent company are required to report under Part 245, there exists a significant hiatus in the protection afforded by the present shareholder reporting system. Under ACAP's proposal, those persons owning beneficially or as trustees 5 percent or more of the outstanding capital stock or capital of a company holding 100-percent control of an air carrier should be required to file reports as if they were stockholders of the wholly owned subsidiary air carrier.

ACAP's suggestion will strengthen our stock disclosure rules considerably, and we will adopt it. Although the parent of a wholly-owned subsidiary air carrier might not itself be an "air carrier" as defined in section 101(3) of the Act, section 407(e) of the Act provides, in relevant part: "The provisions of this section shall apply to the extent found by the Board to be reasonably necessary for the administration of the Act, to persons having control over any air carrier, or affiliated with any air carrier within the meaning of section 5(8) of the Interstate Commerce Act, as amended." The regulatory problem which prompted Congress to enact the shareholder reporting amendments to section 407(b)—i.e., that persons representing other interests could covertly acquire 10 percent of an air carrier's stock, which constitutes presumptive control under section 408(f) of the Act—is obviously present where control is acquired of a holding company owning substantially all of the voting stock of an air carrier.

Accordingly, we find that it is necessary, to enable the Board to administer the stock disclosure system prescribed by Congress in section 407 of the Act, to treat a company owning an air carrier as if it were itself the air carrier for the purpose of applying the reporting requirements which section 407(b) imposes on air carriers and their 5-percent shareholders. We do not at this time find it necessary to apply these reporting requirements to every parent company which has control of an air carrier through ownership of a simple majority interest, and we shall therefore limit our finding under section 407(e) only to companies which own at least 95 percent of an air carrier's voting stock. Such companies may reasonably be considered as virtual alter egos of the air carrier. Subpart B of Part 245 of the Board's regulations will thus apply also to persons owning, beneficially or as trustee, 5 percent or more of the capital stock or capital of a company owning 95 percent of the voting stock of an air carrier.

By the same token, we also find it necessary under section 407(e) to apply the reporting requirements of section 407(c) of the Act (reports of officers and directors) to officers and directors of a holding company owning 95 percent or more of the voting stock of an air carrier. Accordingly, we are now amending the definition of "air carrier" in Subpart A of Part 245, implementing section 407(c) of the Act, in the same manner as we are amending the definition of "air carrier" in Subpart B, in order to reflect the aforementioned modifications.

Our determination to apply the foregoing reporting requirements to 95-percent holding companies of air carriers does not rest solely on our findings pursuant to section 407(e) of the Act. Thus, the Board has held, in connection with applying other sections of the Act to holding companies, that in appropriate situation it will disregard the separate corporate entities where failure to do so might defeat the legislative purpose behind the statute.[15] We think this longstanding precedent also provides ample authority for the Board to require reports of stock ownership from shareholders and officers and directors of entities which have gained control of all or substantially all of the voting stock of an air carrier.

However, since application of the Part 245 reporting requirements to shareholders, officers, and directors of air carrier parent companies obviously imposes a burden on such persons, and since this change was not proposed in EDR-216, we shall allow petitions for reconsideration of the aforedescribed amendments to §§ 245.1 and 245.11. Twelve copies of such petitions shall be filed with the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428, on or before December 29, 1972. Copies of any petition filed will be available for examination by interested persons in the Docket Section.

In consideration of the foregoing, the Civil Aeronautics Board hereby amends Part 245 of the Economic Regulations (14 CFR Part 245) effective December 29, 1972, as follows:

1. Amend the table of contents to Subpart B to read as follows:

Subpart B—Reports of Owners of More Than 5 Per Centum of Any Class of Capital Stock or Capital of an Air Carrier

Sec.

AUTHORITY: The provisions of this Subpart B issued under sections 204(a), and 407, 72 Stat. 743, 766; 49 U.S.C. 1324, 1377. Interpret or apply section 101(3) of the Federal Aviation Act of 1958, as amended, 72 Stat.; 49 U.S.C. 1301.

2. Amend § 245.1 to read as follows:

§ 245.1 Reports required.

At the times and in the manner provided in this subpart, each officer and each director of each air carrier shall transmit to the Board (Attention Director, Bureau of Operating Rights) a report describing the shares of stock or other interests held by him in any air carrier, any person engaged in any phase of aeronautics, or any common carrier, and in any person whose principal business, in purpose or in fact, is the holding of stock in, or control of, air carriers,

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[12] It is suggested by NYCH that, to avoid duplicate reporting, the Board adopt a provision stating that if one person files a report under Subpart B concerning a particular block of carrier stock, no other person need file a report with respect to such stock. This suggestion will not be adopted and indeed could not be adopted since section 407(b) of the Act mandates the establishment of a dual reporting system under which reports are required to be filed by both trustees and beneficial owners of air carrier securities.

[13] ACAP also proposes amendments to Part 246 which would (1) broaden the definition of "control" to include 5-percent owners of any class of the capital stock or capital of an air carrier, and (2) apply the exemption for brokerage firms in § 246.1 only when the broker has complied with Part 245 by reporting beneficial ownership of the shares in question. These proposals are clearly beyond the scope of this proceeding.

[14] "'Air carrier' means any citizens of the United States who undertakes, whether directly or indirectly or by lease or any other arrangement, to engage in air transportation * * *."

[15] See, *e.g.*, Studebaker Corp., et al., Order E-19014, Nov. 15, 1962, and Vernon Stouffer and United Air Lines, Inc., Order 70-10-33, Oct. 6, 1970.

other persons engaged in any phase of aeronautics, or common carriers. For the purpose of this subpart, "air carrier" means air carrier as defined in section 101(3) of the Act, and includes any person who owns 95 percent or more of the outstanding voting securities of any such air carrier, but does not include air carriers relieved or exempted from section 407(b) of the Act. "Persons" means any individual, firm, partnership, corporation, company, association, or any two or more persons acting in concert or under common control or direction.

3. Amend the footnote to § 245.1 to read as follows:

[6] See, *e.g.*, § 29811(f) of Part 298, § 373.3 of Part 373 and § 378.3 of Part 378 of this chapter exempting air taxi operators, study group charterers, and inclusive tour operators, respectively.

4. Amend Subpart B to read as follows:

Subpart B—Reports of Owners of More Than 5 Per Centum of Any Class of Capital Stock or Capital of an Air Carrier

§ 245.11 Definitions.

As used in this subpart, unless the context otherwise requires;

"Air carrier" means air carrier as defined in section 101(3) of the Act, and includes any person who own 95 percent or more of the outstanding voting securities of any such air carrier, but does not include air carriers relieved or exempted from section 407(b) of the Act.[16]

"Bank" means any person primarily engaged in business as a commercial bank or trust company, or both, and subject to regulation or examination under the laws of the United States or of any State.

"Broker" means any person engaged in the business of effecting transactions in securities for the account of others, but not a bank.

"Person" means an individual, firm, partnership, corporation, company, association, or any two or more persons acting in concert or under common control or direction.

"Shares" and "Shareholdings," or "stock" and "stockholdings" shall include any interest in the capital or capital stock of an air carrier.

"Trustee" means any person, other than a beneficial owner, who holds record ownership of shares: *Provided, however*, That, where a nominee of a bank or broker holds record ownership of shares, then the bank or broker, rather than its nominee, shall be deemed to be the trustee hereunder.

§ 245.12 Annual report.

(a) *Time for reporting*. On or before April 1 of each year, every person owning, either beneficially or as trustee, more than 5 per centum of any class of the capital stock or capital, as the case may be, of an air carrier shall file with the Board (Attention, Director, Bureau of Operating Rights) a report covering such shares or other interest owned as of December 31 of the preceding year: *Provided, however*, That this section shall not apply to a bank or broker insofar as it is a trustee, nor to an officer or director of an air carrier who has complied with the reporting requirement of Subpart A of this part.

(b) *Contents of annual report*. The reports required by this section shall include the following:

(1) Name of air carrier in which stockholdings are being reported.

(2) Name and address of person reporting.

(3) Number and class of shares covered and percentage of such shares to total outstanding capital, or a description of any other interest held, as of December 31 of the preceding year.

(4) Maximum number of each class of shares covered and percentage of such shares of each class to total outstanding capital during the preceding year.

(5) (i) If the person reporting is the beneficial owner, state the name and address of each person who was a trustee of any such shares and the number and class of shares of which he was trustee, during the preceding year. The reporting beneficial owner shall also state the name and address of each person (e.g., the reporting beneficial owner himself, the trustee and/or any third person or persons), who had or exercised (*a*) the power to issue instructions as to how any such voting shares should be voted; (*b*) the power to vote any such shares in the event that no instructions were issued; or (*c*) the right to sell, prevent sale or otherwise dispose of any such shares, during the preceding year. The number and class of shares so reported shall be stated.

(ii) If the person reporting is a trustee, state the name and address of each individual beneficial owner of any such shares, and the number and class of shares of which he was beneficial owner, during the preceding year: *Provided, however*, That if the trustee is reporting with respect to shares held in a retirement, pension or profit sharing trust or fund, then he need state only the name and address of the person(s) who established the trust or fund, and the name of the trustees thereof, and describe the class of persons who were the beneficiaries (e.g., "Employees of XYZ Corporation" or "Members of XYZ Union"). The reporting trustee shall also state the name and address of each person (e.g., the reporting trustee himself, the beneficial owner, and/or third person or persons) who was known by him to have had or exercised (*a*) the power to issue instructions as to how any of such voting shares should be voted; (*b*) the power to vote any such shares in the event that no instructions were issued; (*c*) the power to vote any such shares pursuant to issued instructions; (*d*) the power to sell, prevent sale or otherwise dispose of any such shares, during the preceding year. The number and class of any shares so reported shall be stated.

(6) (i) If the person reporting is itself a corporation, set forth the name and address of each person holding more than 5 percent of the beneficial or record ownership of any class of the capital stock of the reporting corporation, and a description of the percentage of its shares of any class held by each such shareholder, indicating whether such class is voting, nonvoting, common or preferred.

(ii) If the person reporting is a partnership, association or a joint venture, set forth the names and addresses of all partners, associates or joint venturers and a description of their respective interests in the person reporting.

(7) A description of the principal occupation or business activity of each person named in the report, including the person reporting. Such description shall include, with respect to any named person performing common carrier service, the geographical area authorized to be served, and the nature of any license held by such person to perform such service.

§ 245.13 Report of acquisition.

(a) *Time for reporting*. Every person acquiring ownership, either beneficially or as trustee, of more than 5 percent, in the aggregate, of any class of the capital stock or capital of an air carrier, shall within 10 days after acquiring such ownership, file with the Board (Attention, Director, Bureau of Operating Rights) a report covering the share or the interest so acquired.

(b) *Contents of report of acquisition*. A report filed under this section shall contain the information specified in § 245.12(b), except that the information required by paragraph (b)(3) thereof shall be computed as of the date of acquisition.

(c) *Exceptions*. (1) A bank or broker, to the extent that it acquires stock as a trustee, need not file a report of acquisition.

(2) A person who owns, either beneficially or as trustee, more than 5 percent of any class of the capital stock or capital of an air carrier and has filed a report of acquisition under this section, or an annual report under § 245.12, need not file an additional report under this section with respect to an acquisition of additional shares of such carrier.

§ 245.14 Quarterly report by banks and brokers.

(a) *Time for reporting*. A bank or broker which holds as trustee more than 5 percent of any class of the capital stock or capital of an air carrier shall file with the Board (Attention, Director, Bureau of Operating Rights), within 30 days after the last day of each calendar quarter (i.e., March 31, June 30, September 30, and December 31), a report covering the shares so held on the last day of such quarter.

(b) *Contents of quarterly report*. The report required by this section shall include the following:

(1) Name of air carrier in which stockholdings are being reported.

[16] See footnote 6.

(2) Name and address of bank or broker reporting.

(3) Number and class of shares held as trustee.

(4) Number of accounts for which it holds such shares.

(5) Name and address of each person, if any, holding such shares as nominee for the bank or broker reporting and the number and class of shares so held by such nominee.

(6) As to any account for which it holds shares amounting to 1 percent or more of any class of the capital stock of the air carrier covered by the report, there shall also be stated:

(i) The name and address of each person for which such account is held: *Provided, however*, That if the shares covered by the report required in this subparagraph (6) are held in a retirement, pension or profit-sharing trust or fund, then the reporting trustee need state only the name and address of the person(s) who established the trust or fund and the names of the trustees thereof, and describe the class of persons who were beneficiaries (e.g., "Employees of XYZ Corporation" or "Members of XYZ Union").

(ii) The number and class of shares held for each such account and the percentage of such shares to the total outstanding capital stock of the air carrier as of the last day of the quarter covered by the report.

(iii) Each person (e.g., the reporting trustee, the beneficial owner and/or any third person or persons) who was known by said trustee to have had or exercised (*a*) the power to issue instructions as to how any of such voting shares should be voted; (*b*) the power to vote any such shares in the event that no instructions were issued; (*c*) the power to vote any such shares pursuant to issued instructions; (*d*) the power to sell, prevent sale or otherwise dispose of any such shares during the preceding quarter. The number and class of any shares so reported shall also be stated.

§ 245.15 Report of security transactions.

Any person subject to this subpart who has granted, pledged, assigned, hypothecated or otherwise transferred a security interest in more than 5 percent of any class of the capital stock or capital of an air carrier to another person shall, within 30 days after such transaction, file with the Board (Attention, Director, Bureau of Operating Rights) a report containing the following information:

(a) The name and address of the person to whom the security interest was granted.

(b) The term of the security agreement.

(c) A brief description of the rights accruing to the holder of the security interest, including the remedies available to him in the event of a default by the person reporting.

§ 245.16 Responsibility of carriers.

It shall be the responsibility of every air carrier, as defined in § 245.11:

(a) To notify each shareholder of record owning more than 1 percent of any class of its capital stock, or capital, of the requirements of this part by mailing to such persons a copy of this subpart on or before March 1 of each year; and

(b) To include in its annual report to shareholders a notice that: (1) Any person who either owns, as of December 31, of the year preceding issuance of such annual report, or subsequently acquires, beneficially or as trustee, more than 5 percent, in the aggregate, of any class of the capital stock or capital of the air carrier, shall file with the Board a report containing the information required by § 245.12, on or before April 1, as to the capital stock or capital owned as of December 31, of the preceding year, and, in the case of stock subsequently acquired, a report under § 245.13, within 10 days after such acquisition, unless such person has otherwise filed with the Board a report covering such acquisition or ownership; (2) any bank or broker covered by (i), to the extent that it holds shares as trustee on the last day of any quarter of a calendar year, shall file with the Board, within 30 days after the end of the quarter, a report in accordance with the provisions of § 245.14; and (3) any person required to report under this subpart who grants a security interest in more than 5 percent of any class of the capital stock or capital of the air carrier shall within 30 days after granting such security interest file with the Board a report containing the information required in § 245.15. The notice shall also state that any shareholder who believes that he may be required to file such a report may obtain further information by writing to the Director, Bureau of Operating Rights, Civil Aeronautics Board, Washington, D.C. 20428.

NOTE: The reporting requirements herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

By the Civil Aeronautics Board.

[SEAL] PHYLLIS T. KAYLOR,
Acting Secretary.

[FR Doc.72-20395 Filed 11-27-72;8:50 am]

Title 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

[Release Nos. 33-5331, 34-9862, 35-17765, 39-327, IC-7501, IA-350.]

PART 200—ORGANIZATION; CONDUCT AND ETHICS: AND INFORMATION AND REQUESTS

PART 203—RULES RELATING TO INVESTIGATIONS

Right of Witness To Obtain Copy of Transcript of His Testimony Taken in a Nonpublic Investigation

The Commission has amended Rule 6 of its rules relating to investigations 17 CFR 203.6 relating to the right of a witness to obtain a copy of the transcript of his testimony taken in a nonpublic investigation. Under the amended rule the witness shall continue to have an absolute right to inspect his testimony, but the Commission may for good cause deny his request for a copy of his testimony.

The change has been effected by amending the second sentence in Rule 6 of the Commission's rules relating to investigations.

In making this change the Commission is returning to the practice followed in its private investigations prior to November 27, 1970. That practice was specifically authorized by the Administrative Procedure Act (5 U.S.C. section 555(c)) and upheld in Commercial Capital Corp., et al. v. Securities and Exchange Commission, 360 F. 2d 856 (C.A. 7, 1966). The exception to a witness's right to procure a copy of his transcript had been added to an earlier draft of the Administrative Procedure Act after this Commission has advised the congressional committees that "the furnishing of transcripts of testimony taken * * * [in private hearings] is a matter which should depend upon the likelihood of the transcript being used to defeat the discovery of facts essential to administration of the congressional policy laid down in the statutes authorizing the investigation." [1] The Commission pointed out, "Where transcripts are made available to witnesses, there is no way of guarding against their being made available to the persons whose activities are the principal subject of investigation." (*Ibid.*) In this connection it noted:

> In cases where the investigation involves examination of employees of the suspected law violator, the employees may be under considerable pressure from the employer, who may demand that they request, ostensibly on their own account, and turn over to it transcripts of their testimony. If a witness subject to such intimidation is entitled to a transcript of his testimony as a matter of law, he may be unwilling to testify fully and truthfully.

Id. at p. 17.

On October 16, 1962, the Administrative Conference of the United States recommended that agencies should afford all persons the opportunity to procure a copy of any transcript made of their evidence. At that time the Commission declined to implement that recommendation, but did so on November 27, 1970. In its subsequent experience the Commission has found that its previous fears were justified.

Technical amendments necessitated by the foregoing action have also been made to the rules delegating certain authority to the Director of the Division of Corporation Finance, the Director of the Division of Enforcement, the Director of the Division of Market Regulation, the Director of the Division of

[1] Comments of the Securities and Exchange Commission on S. 7 (Appendix p. 16), submitted on July 25, 1945, to the Senate and House Committees on the Judiciary, 79th Cong., first session.

Investment Company Regulation, and the Regional Administrators, as indicated below. The effect of these amendments is to delegate to such officials the authority to grant requests for copies of transcripts of testimony.

Commission Action: Pursuant to authority set forth in section 19 of the Securities Act of 1933, section 23(a) of the Securities Exchange Act of 1934, section 20 of the Public Utility Holding Company Act of 1935, section 319 of the Trust Indenture Act of 1939, section 38 of the Investment Company Act of 1940, section 211 of the Investment Advisers Act of 1940, and section 1 of Public Law 87-592, the Commission hereby amends §§ 200.30-1(i), 200.30-2(b)(2), 200.30-3(c), 200.30-4(a)(2), 200.30-5(d), 200.30-6(d), and 203.6 of Chapter II of Title 17 of the Code of Federal Regulations, as follows:

§§ 200.30-1—200.30-5 [Amended]

I. Paragraph (i) of § 200.30-1, subparagraph (2) of paragraph (b) of § 200.30-2, paragraph (c) of § 200.30-3, subparagraph (2) of paragraph (a) of § 200.30-4, and paragraph (d) of § 200.30-5 are amended by deleting certain language, and by adding new language reading "or Deputy Director" immediately after the word "Director" and by adding new language reading "subsequent to November 16, 1972 [17 CFR 203.6]" immediately after the word "effect" so that as amended each shall read as follows:

In nonpublic investigatory proceedings, within the responsibility of the Director or Deputy Director to grant requests of persons to procure copies of the transcript of their testimony given pursuant to Rule 6 of the Commission's rules relating to investigations as in effect subsequent to November 16, 1972 [17 CFR 203.6].

II. In § 200.30-6, present paragraph (d) is redesignated as paragraph (e); and a new paragraph (d) is inserted reading as follows:

§ 200.30-6 Delegation of authority to Regional Administrators.

* * * * *

(d) In nonpublic investigatory proceedings within the responsibility of the Regional Administrator, to grant requests of persons to procure copies of the transcript of their testimony given pursuant to Rule 6 of the Commission's rules relating to investigations as in effect subsequent to November 16, 1972 [17 CFR 203.6].

(e) Notwithstanding anything in the foregoing, in any case in which the Regional Administrator believes it appropriate, he may submit the matter to the Commission.

III. The second sentence in § 203.6 is amended, and as so amended § 203.6 reads as follows:

§ 203.6 Transcripts.

Transcripts, if any, of formal investigative proceedings shall be recorded solely by the official reporter, or by any other person or means designated by the officer conducting the investigation. A person who has submitted documentary evidence or testimony in a formal investigative proceeding shall be entitled, upon written request, to procure a copy of his documentary evidence or a transcript of his testimony on payment of the appropriate fees: *Provided, however,* That in a nonpublic formal investigative proceeding the Commission may for good cause deny such request. In any event, any witness, upon proper identification, shall have the right to inspect the official transcript of the witness' own testimony.

(Sec. 4(b), 48 Stat. 885, sec. 1106(a), 63 Stat. 972, 15 U.S.C. 78d(b); sec. 1, 76 Stat. 394, 15 U.S.C. 78d-1; secs. 19, 209, 48 Stat. 85, 908, 15 U.S.C. 77s; sec. 23(a), 48 Stat. 901, sec. 8, 49 Stat. 1379, 15 U.S.C. 78w(a); sec. 20, 49 Stat. 833, 15 U.S.C. 79t; sec. 319, 53 Stat. 1173, 15 U.S.C. 77sss; sec. 38, 54 Stat. 841, 15 U.S.C. 80a-37; sec. 211, 54 Stat. 855, sec. 14, 74 Stat. 888, 15 U.S.C. 80b-11)

The Commission finds that the foregoing amendments relate only to rules of agency organization, procedure and practice and, therefore, the provisions of 5 U.S.C. 553 relating to notice and procedures are not applicable. The foregoing amendments are declared to be effective with respect to all testimony given in private investigations commencing on or after the date this rule is published in the FEDERAL REGISTER, but shall not be applicable with respect to any testimony given before that date in any private investigation.

By the Commission.

[SEAL] GLADYS E. GREER,
Assistant Secretary.

NOVEMBER 16, 1972.

[FR Doc.72-20329 Filed 11-27-72;8:46 am]

[Release No. 34-9865]

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

Exemption of Certain Mortgages and Interests in Mortgages

The Securities and Exchange Commission today announced the adoption of Rule 3a-12-1 (17 CFR 240.3a-12-1) under the Securities Exchange Act of 1934. Under the new rule mortgages and interests in mortgages (as defined in section 302(d) of the Emergency Home Finance Act of 1970) sold by the Federal Home Loan Mortgage Corporation [1] (hereinafter referred to as "FHLMC") will become "exempt securities" under section 3(a)(12) of the Securities Exchange Act.

The Emergency Home Finance Act of 1970 was enacted by Congress after determining that the nation needed more capital in mortgages and that this could be best accomplished by the establishment of a liquid market in residential mortgages. FHLMC was established by this Act with the power "to make and enforce such bylaws, rules and regulations as may be necessary or appropriate to carry out the purposes or provisions of this title." [2]

FHLMC has designed and is ready to implement at this time two programs ("group programs" and "whole loan programs") to expand the secondary market in conventional (not guaranteed or insured by a Federal or State agency) mortgages on residential property. In both programs FHLMC will purchase mortgages that have been originated by a financial institution whose deposits or accounts are insured by an agency of the United States, and which meet generally the purchase standards imposed by private institutional mortgage investors.[3] These mortgages will then be sold by FHLMC according to one of the two programs. FHLMC contemplates that under both these programs a minimum purchase of $100,000 will be required so that the buyers will tend to be institutional investors, such as pension funds and insurance companies.

The "group programs" would involve the formation by FHLMC of groups of the mortgages, and then the sale by FHLMC of undivided interests in these groups. The minimum size group would contain mortgages with an initial aggregate unpaid principal balance of $5 million. The mortgages in each group would be serviced by the originators, although FHLMC would supervise the servicing and would collect from the servicers and remit to the purchaser all principal and interest payments on the mortgages (less servicing costs) in the group, and would also act as transfer agent.

Under the "whole loan programs" the mortgages would not be grouped but, rather, sold on a whole loan basis. These programs would be designed for institutional investors with particular requirements.

The Commission has decided to adopt Rule 3a-12-1, in view of the congressionally determined public need for more capital in mortgages, FHLMC's abilities and desire to regulate this field to the extent necessary and the probable lack of small investor participation. The principal impact of the new rule is that broker-dealers dealing solely in these

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[1] FHLMC was established by title III of the Emergency Home Finance Act of 1970, cited as the "Federal Home Loan Mortgage Corporation Act," Public Law 91-351, 84 Stat. 451-458, 12 U.S.C. § 1451-1459. Its capital stock consists solely of nonvoting common stock held by the 12 Federal Home Loan Banks and its Board of Directors is composed of the three members of the Federal Home Loan Bank Board. It is an integral part of the Federal Home Loan Bank System.

[2] 12 U.S.C. section 1452(b)(3).

[3] Section 305(a)(1) of the Federal Home Loan Mortgage Corporation Act states that FHLMC can purchase only those mortgages that meet both requirements. FHLMC has determined that the private institutional mortgage investors standards at this time include the requirement that the originator warrant to FHLMC and to subsequent purchasers that the mortgages are valid first mortgages not in default.

mortgages and other exempt securities will not be subject to the registration and net capital requirements and other provisions of the Securities Exchange Act of 1934, which are not by their terms applicable to "exempt securities."

It should be borne in mind that transactions in the securities exempted by section 3(a)(12) or Commission rules adopted under that section are still subject to the antifraud provisions of the Act and implementing Commission rules under those provisions.

The new rule was adopted pursuant to authority conferred on the Securities and Exchange Commission by the Securities Exchange Act of 1934, particularly sections 3(a)(12) and 23(a) thereof.

Because the effect of the above described amendment would be to relax certain of the requirements of the Securities Exchange Act of 1934, the Commission finds that, for good cause the notice and procedure specified in the Administrative Procedure Act, 5 U.S.C. 553, is unnecessary, and accordingly it adopts Rule 3a-12-1 effective November 17, 1972.

Commission action. The Securities and Exchange Commission acting pursuant to the provisions of the Securities Exchange Act of 1934, and more particularly section 3(a)(12) thereof, hereby amends Part 240 of Chapter II of Title 16 of the Code of Federal Regulations by adopting § 240.3a-12-1 as set forth below.

§ 240.3a-12-1 Exemption of certain mortgages and interests in mortgages.

Mortgages, as defined in section 302(d) of the Emergency Home Finance Act of 1970, which are or have been sold by the Federal Home Loan Mortgage Corporation are hereby exempted from the operation of such provisions of the Act as by their terms do not apply to an "exempted security" or to "exempted securities".

(Sec. 3(a)(12), 48 Stat. 882, 15 U.S.C. 78(c))

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.72-20328 Filed 11-27-72;8:46 am]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation

SUBCHAPTER A—GENERAL

[CGD 72-207 R]

PART 1—GENERAL PROVISIONS

Fees and Charges for Certain Records and for Duplicate Documents, Certificates, or Licenses

The purpose of this amendment to the user fee regulations is to reflect the current costs for the replacement of medals awarded by the Coast Guard.

Section 501 of title 14, United States Code, provides the following:

In those cases where a medal, or a bar, emblem, or insignia in lieu thereof, awarded pursuant to this chapter (13) has been lost, destroyed, or rendered unfit for use without fault or neglect on the part of the person to whom it was awarded, such medal, or bar, emblem, or insignia in lieu thereof, shall be replaced without charge, or in the discretion of the Secretary, upon condition that the Government is reimbursed for the cost thereof.

To implement this statute, the Coast Guard promulgated in the August 2, 1967, issue of the FEDERAL REGISTER (32 F.R. 11211), regulations which provide for a medal, or a bar, emblem, or insignia in lieu thereof, that is lost, destroyed, or rendered unfit for use without fault or neglect on the part of the person to whom it was awarded by the Coast Guard, to be replaced without charge. For situations not meeting this criterion, costs for replacement of a medal, bar, emblem, and insignia were published.

Since first issued, these costs have not been updated and do not reflect current charges. The amendment in this document changes the costs to reflect current charges. In addition, textual material has been changed for clarification without any change in substance.

Since the amendment in this document relates to general statements of policy, it is exempted from notice of proposed rule making and may be made effective in less than 30 days.

In consideration of the foregoing, Subpart 1.26 of title 33, Code of Federal Regulations is amended as follows:

1. By revising § 1.26-5 to read as follows:

§ 1.26-5 Replacement of medals.

(a) A medal, or a bar, emblem, or insignia in lieu thereof, that is lost, destroyed, or rendered unfit for use without fault or neglect on the part of the person to whom it was awarded by the Coast Guard is replaced without charge by the Coast Guard as authorized in 14 U.S.C. 501.

(b) A medal, or a bar, emblem, or insignia in lieu thereof, that is lost, destroyed, or rendered unfit for use due to the fault or neglect of the person to whom it was awarded, is replaced after the Coast Guard is reimbursed for its cost, as contained in Table 1.26-5(b).

TABLE 1.26-5(b)

COST OF A REPLACEMENT MEDAL

Item	*Cost*
(1) Cost Guard Distinguished Service Medal	$33.00
(i) Miniature	23.50
(ii) Hinged-lid case	1.78
(2) Legion of Merit (Degree of Legionnaire) with case	12.50
(3) Distinguished Flying Cross and case	6.25
(4) Coast Guard Medal (for heroism)	17.00
(i) Miniature	12.50
(ii) Hinged-lid case	1.78
(5) Meritorious Service Medal and case	6.00
(6) Air Medal and case	5.75
(7) Coast Guard Commendation Medal	18.00
(i) Miniature	18.00
(ii) Hinged-lid case	1.78
(8) Coast Guard Achievement Medal	10.50
(i) Miniature	6.50
(ii) Hinged-lid case	1.78
(9) Gold Lifesaving Medal	178.00
(i) Miniature	73.00
(ii) Hinged-lid case with red lining	11.00
(10) Silver Lifesaving Medal	73.00
(i) Miniature	58.00
(ii) Hinged-lid case with blue lining	11.00
(11) Coast Guard Unit Commendation Ribbon	2.50
(12) Coast Guard Good Conduct Medal	3.75
(13) World War I Victory Medal	2.50
(14) American Area Campaign Medal	2.50
(15) European-African Middle Eastern Area Campaign Medal	2.50
(16) Asiatic-Pacific Area Campaign Medal	2.50
(17) American Defense Service Medal—Fleet, Sea, and Base Clasps	2.50
(18) World War II Victory Medal	2.50
(19) Navy Occupation Service Medal—Europe or Asia Clasps	3.25
(20) China Service Medal (1945-1957)	2.50
(21) National Defense Service Medal	2.50
(22) Korean Service Medal	2.50
(23) Antarctic Service Medal	3.00
(24) Armed Forces Expeditionary Medal	2.50
(25) Coast Guard Armed Forces Reserve Medal	3.00
(26) Coast Guard Expert Rifleman Medal	5.00
(27) Expert Pistol Shot Medal	5.00
(28) Coast Guard Distinguished Marksman Badge, Gold	63.00
(i) Ribbon attachment	1.00
(29) Coast Guard Excellence-In-Competition Badge:	
(i) Rifle or Pistol, Silver	21.00
(ii) Rifle or Pistol, Bronze	17.00
(iii) Ribbon Attachment, Silver or Bronze Medallion	1.00
(30) R. R. Waesche Rifle Team Trophy, Bronze Medallion	10.00
(31) F. C. Billard Pistol Team Trophy, Bronze Medallion	10.00
(32) United Nations Service Medal	2.50
(33) Vietnam Service Medal	2.50

(Sec. 1, 63 Stat. 537, 545, sec. 6(b(1), 80 Stat. 937; 14 U.S.C. 501, 633, 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b))

Effective date. This amendment shall become effective on November 30, 1972.

Dated: November 21, 1972.

C. R. BENDER,
Admiral, U.S. Coast Guard Commandant.

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[CGD 72-227R]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Humble Canal, La.

This amendment adds regulations for the State Highway 55 drawbridge across