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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 531

Pay Under the General Schedule Merit Pay System

Correction

The Correction of August 28, 1981, on page 43371 correcting FR Doc. 81-23662 (46 FR 41019, 8-14-81) was partly wrong. Item 1 of the correction should have read as follows:

1. On page 41019, third column, § 531.406(a), first line, "Civil law employment" should read "Civilian employment".

Item 2 of the correction appeared correctly.

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 11

[Docket No. 81-17]

Securities Exchange Act Disclosure Rules; Correction

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule; correction.

SUMMARY: The Office of the Comptroller of the Currency ("Office") is making certain technical corrections to amendments to its Securities Exchange Act Disclosure Rules ("Part 11 Regulations") which were published in the Federal Register of January 22, 1981 (46 FR 6865).

FOR FURTHER INFORMATION CONTACT: Ginger S. Barnum, Attorney, Securities & Corporate Practices Division, Office of the Comptroller of the Currency, 490

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SUPPLEMENTARY INFORMATION: This correction document makes four principal corrections to recent amendments to 12 CFR 11.5, the section of the Part 11 Regulations relating primarily to proxy solicitations and tender offers. First, 12 CFR 11.5(d), regarding the form of the proxy, is corrected to indicate the retention of certain previously codified provisions which were inadvertently omitted from the final regulations as published in the Federal Register of January 22, 1981. Former paragraphs (d) (4)-(6) are retained as paragraphs (d) (3)-(5), further necessitating a reference correction in paragraph (d)(1). For the convenience of users, 12 CFR 11.5(d), as corrected, has been reprinted in its entirety. Second, 12 CFR 11.5(e)(5) is corrected to refer to the Office's existing rule at 12 CFR 11.5(k)(1)(iii)(A), rather than the corresponding provisions of Rule 14a-8(a)(3)(i) under the Securities Exchange Act of 1934, concerning calculation of the date for submission of shareholder proposals intended to be included in annual meeting proxy materials. Third, 12 CFR 11.5(l)(14)(vi) is corrected so that it is consistent with the provisions concerning "stop-look-and-listen" communications in 12 CFR 11.5(n)(10). Fourth, existing material that, prior to the publication of the final regulations, had been designated paragraphs (n) and (o) of 12 CFR 11.5, was apparently omitted from the final regulations, which contained new provisions so designated. To resolve any resulting uncertainty, 12 CFR 11.5 is corrected to indicate the retention of former paragraphs (n) and (o) as paragraphs (p) and (q). Also, a number of technical corrections to various paragraphs of 12 CFR 11.5 are made.

Accordingly, the Office is correcting 12 CFR 11.5 as follows:

1. Paragraphs (d), (e)(5), (l)(14)(vi), (p) and (q) of 12 CFR 11.5 are corrected to read as follows:

§ 11.5 Proxies, proxy statements and statements where management does not solicit proxies.

(d) *Requirements as to proxy.* (1) The form of proxy (i) shall indicate in bold-face type whether or not the proxy is solicited on behalf of the bank's board of directors or, if provided other than by

a majority of the board of directors, shall indicate in bold-face type the identity of the persons on whose behalf the solicitation is made, (ii) shall provide a specifically designated blank space for dating the proxy, and (iii) shall identify clearly and impartially each matter or group of related matters intended to be acted upon whether proposed by the bank or by security holders. No reference need be made, however, to matters as to which discretionary authority is conferred under paragraph (d)(3) of this section.

(2)(i) Means shall be provided in the form of proxy whereby the person solicited is afforded an opportunity to specify by boxes a choice between approval or disapproval of, or abstention with respect to, each matter or group of related matters referred to therein as intended to be acted upon, other than elections to office. A proxy may confer discretionary authority with respect to matters as to which a choice is not so specified by the security holder if the form of proxy states in bold-face type how the shares represented by the proxy are intended to be voted in each such case.

(ii) A form of proxy which provides for the election of directors shall set forth the names of persons nominated for election as directors. Such form of proxy shall clearly provide any of the following means for security holders to withhold authority to vote for each nominee:

(A) A box opposite the name of each nominee which may be marked to indicate that authority to vote for such nominee is withheld; or

(B) An instruction in bold-face type which indicates that the security holder may withhold authority to vote for any nominee by lining through or otherwise striking out the name of any nominee; or

(C) Designated blank spaces in which the shareholders may enter the names of nominees with respect to whom the shareholder chooses to withhold authority to vote; or

(D) Any other similar means, provided that clear instructions are furnished indicating how the shareholder may withhold authority to vote for any nominee.

(iii) Such form of proxy also may provide a means for the security holder to grant authority to vote for the nominees set forth, as a group, provided that there is a similar means for the

security holder to withhold authority to vote for such group of nominees. Any such form of proxy which is executed by the security holder in such manner as not to withhold authority to vote for the election of any nominee shall be deemed to grant such authority, provided that the form of proxy so states in bold-face type.

(iv) Instructions. (A) Paragraph (d)(2)(ii) does not apply in the case of a merger, consolidation or other plan if the election of directors is an integral of the plan.

(B) If applicable law gives legal effect to votes cast against a nominee, then in lieu of, or in addition to, providing a means for security holders to withhold authority to vote, the bank should provide a similar means for security holders to vote against each nominee.

(3) A proxy may confer discretionary authority to vote with respect to any of the following matters:

(i) Matters that the persons making the solicitation do not know, within a reasonable time before the solicitation, are to be presented at the meeting, if a specific statement to that effect is made in the proxy statement or form of proxy;

(ii) Approval of the minutes of the prior meeting if such approval does not amount to ratification of the action taken at that meeting;

(iii) The election of any person to any office for which a bona fide nominee is named in the proxy statement and such nominee is unable to serve or for good cause refuses to serve;

(iv) Any proposal omitted from the proxy statement and form of proxy pursuant to paragraph (k) of this section;

(v) Matters incident to the conduct of the meeting.

(4) No proxy shall confer authority (i) to vote for the election of any person to any office for which a bona fide nominee is not named in the proxy statement, or (ii) to vote at any annual meeting other than the next annual meeting (or any adjournment thereof) to be held after the date on which the proxy statement and form of proxy are first sent or given to security holders. A person shall not be deemed to be a bona fide nominee and he shall not be named as such unless he has consented to being named in the proxy statement and to serve if elected.

(5) The proxy statement or form of proxy shall provide, subject to reasonable specified conditions, that the shares represented by the proxy will be voted and that where the person solicited has specified by means of a ballot provided pursuant to paragraph (d)(2) of this section, a choice with respect to any matters to be acted upon,

the shares will be voted in accordance with the specifications so made.

(e) *Presentation of information in statement.* * * *

(5) All proxy statements shall disclose, under an appropriate caption, the date by which proposals of security holders intended to be presented at the next annual meeting must be received by the bank for inclusion in the bank's proxy statement and form of proxy relating to that meeting, such date to be calculated in accordance with the provisions of 12 CFR 11.5(k)(1)(iii)(A). If the date of the next annual meeting is subsequently advanced by more than 30 days or delayed by more than 90 days from the date of the annual meeting to which the proxy statement relates, the bank shall, in a timely manner, inform security holders of such change, and the date by which proposals of security holders must be received, by any means reasonably calculated to so inform them.

(1) *Tender Offers.* * * *

(14) * * *

(vi) A communication from a subject bank to its security holders which communicates no more than the information permitted by paragraph (n)(10) of this section.

(p) *Change in majority of directors.* If, pursuant to any arrangement or understanding with the person or persons acquiring securities in a transaction subject to section 13(d) or 14(d) of the Act, any persons are to be elected or designated as directors of the bank, otherwise than at a meeting of security holders, and the persons so elected or designated will constitute a majority of the directors of the bank, then, not less than 10 days prior to the date any such person takes office as a director, or such shorter period prior to that date as the Comptroller of the Currency may authorize upon a showing of good cause therefor, the bank shall file with the Comptroller of the Currency and transmit to all holders of record of securities of the bank who would be entitled to vote at a meeting for election of directors, information substantially equivalent to the information which would be required by items 5 (a), (d), (e) and (f), 6 and 7 of Form F-5 to be transmitted if such person or persons were nominees for election as directors at a meeting of such security holders.

(q) *Solicitation prior to furnishing required proxy statement.* (1) Notwithstanding the provisions of paragraph (a) of this section, a solicitation (other than one subject to paragraph (i) of this section) may be made prior to furnishing security holders

a written proxy statement containing the information specified in Form F-5 with respect to such solicitation if:

(i) The solicitation is made in opposition to a prior solicitation or an invitation for tenders or other publicized activity which, if successful, could reasonably have the effect of defeating the action proposed to be taken at the meeting;

(ii) No form of proxy is furnished to security holders prior to the time the written proxy statement required by paragraph (a) of this section is furnished to security holders: *Provided, however,* That this paragraph (q)(1)(ii) shall not apply where a proxy statement then meeting the requirements of Form F-5 has been furnished to security holders by or on behalf of the person making the solicitation;

(iii) The identity of the person or persons by or on whose behalf the solicitation is made and a description of their interests, direct or indirect, by security holdings or otherwise, are set forth in each communication sent or given to security holders in connection with the solicitation; and

(iv) A written proxy statement meeting the requirements of this section is sent or given to security holders at the earliest practicable date.

(2) Three copies of any soliciting material proposed to be sent or given to security holders prior to the furnishing of the written proxy statement required by paragraph (a) of this section shall be filed with the Comptroller of the Currency in preliminary form at least 5 business days prior to the date definitive copies of such material are first sent or given to security holders, or such shorter period as may be authorized.

2. 12 CFR 11.5 is further corrected as follows:

a. In 12 CFR 11.5(l)(1), "any class of equity security which is registered pursuant to Section 12 of the Act, or a national bank * * * is corrected to read "any class of equity security, which is registered pursuant to Section 12 of the Act, of a national bank * * *."

b. In 12 CFR 11.5(l)(1), the reference to "§ 11.4(g)(4)(i)" is corrected to "12 CFR 11.4(g)(4)."

c. In 12 CFR 11.5(l)(2)(iv), references to "12 CFR 11.4(g)(4)(i)" are corrected to "12 CFR 11.4(g)(4)."

d. In 12 CFR 11.5(l)(4)(ii)(B), the reference to subparagraph "(5)(ii)(A)" is corrected to subparagraph "(4)(ii)(A)."

e. In 12 CFR 11.5(l)(4)(iii), the reference to subparagraph "(5)" is corrected to subparagraph "(4)."

f. In 12 CFR 11.5(l)(5), the reference to subparagraphs "(6)(i) through (6)(iii)" is

corrected to subparagraphs "(5)(i) through (5)(iii)."

g. In 12 CFR 11.5(m)(2)(ii), the reference to subparagraph "(2)(iii)" is corrected to subparagraph "(1)(ii)."

h. In 12 CFR 11.5(m)(6)(iii)(D), the reference to subparagraph "(6)(ii)(c)" is corrected to subparagraph "(6)(iii)(C)."

i. In 12 CFR 11.5(n)(3), the reference to paragraphs "(1)(3)-(6)" is corrected to paragraphs "(1)(7)-(9)."

j. In 12 CFR 11.5(n)(6)(i), the reference to "Form F-14 (12 CFR 11.55)" is corrected to "Form F-12 (12 CFR 11.53)."

k. In 12 CFR 11.5(n)(6)(ii)(A), the reference to "Form F-14" is corrected to "Form F-12."

l. In 12 CFR 11.5(n)(6)(ii)(B), the reference to "Form F-14" is corrected to "Form F-12."

(m) In 12 CFR 11.5(n)(7), the reference to "Form F-14 (12 CFR 11.55)" is corrected to "Form F-12 (12 CFR 11.53)" and the reference to "Form F-14" is corrected to "Form F-12."

n. In 12 CFR 11.5(n)(7)(i), the reference to "Form F-14" is corrected to "Form F-12."

o. In 12 CFR 11.5(n)(8), the reference to "Form F-14" is corrected to "Form F-12."

p. In 12 CFR 11.5(n)(9)(i)(C), the reference to "this paragraph" is corrected to "paragraphs (n)(6)-(11)."

q. In 12 CFR 11.5(o)(6), the reference to "paragraph (a) of this section" is corrected to "subparagraph (5) of this paragraph."

Dated: September 9, 1981.

Charles E. Lord,

Acting Comptroller of the Currency.

[FR Doc. 81-28765 Filed 9-14-81; 8:45 am]

BILLING CODE 4810-33-M

FEDERAL TRADE COMMISSION

16 CFR Parts 3 and 4

Organization, Procedures, and Rules of Practice; Disqualification of Commissioners

AGENCY: Federal Trade Commission.

ACTION: Final rules.

SUMMARY: The Commission has amended its Rules of Practice and Procedure to specify procedures to be followed when a participant in a Commission proceeding believes a Commissioner ought to be disqualified from further participation in that proceeding. Conforming changes have been made to other sections of the Rules of Practice.

EFFECTIVE DATE: September 15, 1981.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: On December 17, 1980, at 45 FR 82956, the Commission published for comment a proposed amendment to its Rules of Practice and Procedure to specify procedures to be followed when a participant in a Commission proceeding believes that a Commissioner ought to be disqualified from that proceeding. The proposed rule was to apply to both adjudicative and rulemaking proceedings.

The proposed rule, which would add a new § 4.16 to the rules of practice, responded to Recommendation 80-4, Decisional Officials' Participation in Rulemaking Proceedings, adopted by the Administrative Conference of the United States at its last plenary session. The proposed rule did not attempt to prescribe the substantive standards governing disqualification and, instead, codified existing procedures. In proposing the rule, the Commission observed that because such standards have evolved in the context of particular cases, and such evolution can be expected to continue, it believed it advisable not to attempt to fix such standards in its rules, but rather to incorporate by general reference the legal standards applicable to the given proceeding.

Two comments were filed. One, submitted by the Office of the Chairman of the Administrative Conference of the United States, urged the Commission to adopt the guidelines set forth in Recommendation 80-4 with respect to conflicts of interest, decorum, and expression of views. Nevertheless, existing practice already provides guidance with respect to decorum and important safeguards against the potential for financial or nonfinancial conflicts of interest touched upon in the recommendation.

Moreover, the question of prejudgment of fact in rulemaking has been addressed with respect to this agency in a recent case, see *Association of Nat'l Advertisers, Inc. v. FTC*, 627 F.2d 1151 (D.C. Cir. 1979), cert. denied, 447 U.S. 921 (1980). Because the significance of the difference between the formulation for prejudgment of fact embodied in Recommendation 80-4 and the Court of Appeals' test is not entirely clear and the D.C. Circuit decision is so recent, the Commission continues to believe it advisable to incorporate in its rule only a general reference to applicable legal standards. The

Commission, however, regards Recommendation 80-4, and the accompanying report by Professor Strauss, see *Disqualifications of Decisional Officials in Rulemaking*, 80 *Colum. L. Rev.* 990 (1980), as useful steps toward clarification of standards for decisionmakers in rulemaking and will take them into account if further issues arise with respect to disqualification of Commissioners in rulemaking.

The other comment (Sullivan & Cromwell) similarly urges that the rule include substantive standards for disqualification in rulemaking and also contends that substantive standards should be included for adjudication. The comment suggests that the rule incorporate 28 U.S.C. 455, one of the provisions in the Judicial Code governing disqualification of federal judges. As noted, the Commission continues to believe that the rule should not embody substantive standards governing disqualification. Even if substantive standards were to be prescribed, standards applicable to federal judges would not take account of the special characteristics of rulemaking which call for standards different from those applied in adjudications conducted by courts and administrative agencies. See *ANA*, 627 F.2d at 1168-75; Strauss, 80 *Colum. L. Rev.* at 993-97, 1027 *et seq.*

Nor do we see any need to codify standards for disqualification in adjudicatory proceedings. The Ethics in Government Act and the Commission's Standards of Conduct already include provisions, similar to those included in 28 U.S.C. 455, to prevent conflicts of interest. We are not persuaded at this time that certain of the other standards are appropriate to administrative adjudication.

Finally, the comment urges deletion of the proposed requirement that motions to disqualify "be filed at the earliest practicable time." The comment observes that "[t]he requirement that a motion to disqualify be filed in a timely manner is considered important at the federal court trial level because of its potential for substantial delay if filed after the start of trial, since the judge's recusal is automatic upon the filing of such a motion (see 28 U.S.C. 144). The rationale for this timeliness requirement is not present in FTC proceedings." However, a timeliness requirement has been applied to motions filed under 28 U.S.C. 455, which, unlike 28 U.S.C. 144, does not provide for automatic disqualification. See *United States v. Daley*, 564 F.2d 645, 651 (2d Cir. 1977), cert. denied, 435 U.S. 933 (1978). Moreover, it is well established that this