

regulation 15D, as if the securities covered by the registration statement were securities registered pursuant to section 12 of the Exchange Act.

The final rule revises § 16.20 to continue to reference section 13 of the Exchange Act¹⁷ and to add a cross-reference to the requirements of the revised § 11.2(a)(1)(ii). The effect of the final rule is to require banks filing registration statements pursuant to part 16 to continue to comply with section 13 of the Exchange Act and those sections of the Sarbanes-Oxley Act that are directly applicable to section 15(d) filers and that are administered and enforced by the OCC with respect to registered national banks. The final rule is thus consistent with the objectives of part 16, which we adopted in order to promote generally comparable treatment between national bank issuers of securities and other issuers that are directly subject to section 15(d).¹⁸

Sections 11.2 and 16.20 currently cross-reference both the statutory provisions that the OCC has the authority to administer and enforce and the SEC's regulations implementing those provisions. The final rule removes cross-references to the specific sections of the SEC's regulations in favor of a more general reference to the rules, regulations, and forms adopted by the SEC pursuant to the listed statutory provisions. The existing statutory cross-references in parts 11 and 16 are adequate, in our judgment, to alert registered national banks and national banks required by part 16 to make filings pursuant to section 15(d) of the Exchange Act of the requirements that apply to them and to prompt them to consult the appropriate SEC regulations.

National banks may also monitor the **Federal Register**, the SEC's Web site,¹⁹ and other appropriate publications to ensure that they are aware of developments that affect them. If the rules or forms issued by the SEC under these sections require issuers to file documents with the SEC, national banks must make such filings with the OCC in accordance with the provisions of part 11 or part 16, as appropriate.

CDRI Act Delayed Effective Date

This final rule takes effect 30 days after the date of its publication in the **Federal Register**, consistent with the

delayed effective date requirement of the Administrative Procedure Act. *See* 5 U.S.C. 553(d). Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act), 12 U.S.C. 4802(b), provides that regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions may not take effect before the first day of the quarter following publication unless the agency finds that there is good cause to make the rule effective at an earlier date.²⁰ The requirements of the Sarbanes-Oxley Act that are applied to national banks by the final rule are already in effect for those entities that are directly subject to the Act. Comparable regulation for national banks and similarly situated non-bank entities is best achieved by minimizing additional delay in applying those requirements to national banks. Accordingly, the OCC has determined that there is good cause to dispense with the requirements of the CDRI Act.

Regulatory Analysis

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule. As of December 31, 2002, there were approximately 25 national banks that had a class of securities registered under sections 12(b) or 12(g) of the Exchange Act and therefore subject to the amendments to part 11. As of the same date, only 15 of these institutions have assets of less than \$100 million and are considered small entities for purposes of the RFA. *See* 5 U.S.C. 601; 13 CFR 121.201. As of December 31, 2002, there were approximately 20 national banks subject to part 16 reporting requirements.

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

Paperwork Reduction Act of 1995

In accordance with the requirements of the Paperwork Reduction Act of 1995, the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The information collection requirements contained in the notice of proposed rulemaking (68 FR 27753, May 21, 2003) were submitted to OMB for review and approved by OMB under OMB Control Numbers 1557-0106 ((MA)-Securities Exchange Act Disclosure Rules "12 CFR 11) and 1557-0120 ((MA)-Securities Offering Disclosure Rules "12 CFR 16).

The OCC solicited comments on the information collection requirements contained notice of proposed rulemaking. The OCC received no comments.

The collections contained in the final rule are unchanged from the proposed rule.

The OCC is amending 12 CFR part 11 to reflect amendments to section 12(i) of the Securities Exchange Act of 1934 (Exchange Act) made by the Sarbanes-Oxley Act of 2002. These amendments to section 12(i) give the OCC the authority to administer and enforce a number of the Sarbanes-Oxley Act's new reporting, disclosure, and corporate governance requirements with respect to national banks that have a class of securities registered under the Exchange Act.

The OCC is also making conforming amendments to 12 CFR part 16, which prescribes securities offering disclosure rules for national banks that issue securities that are not subject to the registration requirements of the Securities Act of 1933.

12 CFR part 11 references the applicable SEC regulations. The OCC does not maintain its own forms for collecting information and instead requires reporting banks to file SEC forms. Part 11 ensures that publicly owned national banks provide adequate information about their operation to current and potential shareholders, depositors, and to the public. The OCC reviews the information to ensure that it complies with Federal law and makes public all information required to be filed under these rules. Investors, depositors, and the public use the information to make informed investment decisions.

Title: (MA)-Securities Exchange Act Disclosure Rules (12 CFR 11).

OMB Number: 1557-0106.

¹⁷ The proposal also referenced section 10A(m) of the Exchange Act. That reference is removed from the final rule because the SEC has not applied the requirements of section 10A(m) to section 15(d) filers in its final rules. *See* 68 FR at 18790.

¹⁸ *See* 59 FR 54789, 54790 (Nov. 2, 1994) (preamble to most recent substantive revisions to part 16).

¹⁹ *See* <http://www.sec.gov>.

²⁰ Pub. L. 103-325, 12 U.S.C. 4802.