

for office rent (\$24,500), \$22,150 for payroll taxes (\$22,150), \$20,000 for employees' health insurance (\$29,500), \$19,150 for depreciation on the office furniture and automobiles (\$19,000), \$14,000 for communications (\$12,000), \$12,000 for Committee member travel (\$12,000), \$9,000 for supplies and printing (\$8,500), \$8,000 for insurance and bonds (\$8,000), and \$7,000 for postage (\$7,000).

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Florida tomatoes. Tomato shipments for the year are estimated at 40,000,000 25-pound containers which should provide \$1,200,000 in assessment income, which will be adequate to cover projected expenses.

An interim final rule regarding this action was published in the November 29, 1996, issue of the Federal Register (61 FR 60510). That rule provided for a 30-day comment period. No comments were received.

This action will reduce the assessment obligation imposed on handlers. While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. The Committee's 1996-97 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996-97 fiscal period began on August 1, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable tomatoes handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) an interim final rule was published on this action and provided for a 30-day comment period; no comments were received.

#### List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 966 is amended as follows:

Note: This action will appear in the Code of Federal Regulations.

### **PART 966—TOMATOES GROWN IN FLORIDA**

Accordingly, the interim final rule amending 7 CFR part 966 which was published at 61 FR 60510 on November 29, 1996, is adopted as a final rule without change.

Dated: February 10, 1997.

Robert C. Keeney

Director, Fruit and Vegetable Division.

[FR Doc. 97-3793 Filed 2-13-97; 8:45 am]

BILLING CODE 3410-02-P

### **FEDERAL DEPOSIT INSURANCE CORPORATION**

#### **12 CFR Part 335**

**RIN 3064-AB79**

#### **Securities of Nonmember Insured Banks**

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Final rule.

**SUMMARY:** The Federal Deposit Insurance Corporation (FDIC) is revising its regulations which prescribe registration and reporting requirements for non-member insured banks with securities required to be registered under section 12 of the Securities Exchange Act of 1934 (Exchange Act). The final rule incorporates through cross reference the corresponding regulations of the Securities and Exchange Commission (SEC) into the provisions of the FDIC's securities regulations. Incorporation through cross reference will assure that the FDIC's regulations remain substantially similar to the SEC's regulations, as required by law.

**DATES: Effective date.** These revisions are effective January 1, 1998, with the exception of § 335.901, which is effective July 1, 1997.

**Early compliance.** These revisions may be immediately followed by the affected party, except that the SEC's regulation regarding proposals of security holders (17 CFR 240.14a-8), which is cross referenced in § 335.401 may not be followed prior to January 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** M. Eric Dohm, Staff Accountant, Division of Supervision (202-898-8921), Lawrence H. Pierce, Securities Activities Officer, Division of Supervision (202-898-8902), or Jamey G. Basham, Counsel, Legal Division (202-898-7265), Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

Section 12(i) of the Securities Exchange Act of 1934 as amended, 15 U.S.C. 78l(i), grants authority to the FDIC to issue regulations applicable to the securities of insured banks (including foreign banks having an insured branch) which are neither members of the Federal Reserve System nor District banks (collectively referred to as nonmember banks), which are substantially similar to the SEC's regulations under sections 12 (securities registration), 13 (periodic reporting), 14(a) (proxies and proxy solicitation), 14(c) (information statements), 14(d) (tender offers), 14(f) (election of directors contests), and 16 (beneficial ownership and reporting) of the Exchange Act. Section 12(i) does not, however, require the FDIC to issue substantially similar regulations in the event that the FDIC finds that implementation of such regulation is not necessarily in the public interest or appropriate for protection of investors

and the FDIC publishes such findings with detailed reasons therefor in the Federal Register.

12 CFR part 335 generally applies only to nonmember banks having one or more classes of securities required to be registered under section 12 of the Exchange Act. To date, in 12 CFR part 335, the FDIC has generally maintained its own version of regulations pursuant to sections 12, 13, 14(a), 14(c), 14(d), and 14(f) of the Exchange Act. In 1989, the FDIC incorporated by cross reference the SEC regulations governing going private transactions and issuer tender offers (54 FR 53592, 12 CFR 335.409 and 335.521). In 1992, SEC regulations under section 16 of the Exchange Act were incorporated by cross reference (57 FR 4699, 12 CFR 335.410). In 1994, part 335 was amended to conform with more recent changes in the comparable SEC regulations. In connection with its 1994 proposed rule, the FDIC requested comment on the desirability of incorporating the SEC rules by cross reference into its own rules (59 FR 22555 (May 2, 1994)).

The FDIC received six comment letters in response to its 1994 proposed rule. Commentators were asked to comment upon whether the FDIC should consider proposing a revision to part 335, to incorporate by cross reference the comparable rules of the SEC, rather than continue to maintain the separate but substantially similar body of rules contained in part 335 as was done historically.

All of the six commenters supported cross referencing to some extent. Two thought that the FDIC should be careful to adopt or preserve regulations different from those of the SEC, where FDIC drafted regulations would be more appropriate for banks. None provided an estimate of cost savings from the cross referencing procedure. One commenter indicated that if this cross referencing procedure is adopted, the FDIC should provide notice to banks filing under part 335 that the SEC has amended rules applicable to banks by cross reference.

In the interest of quickly bringing its rules into similarity with those of the SEC, the FDIC adopted the rule amendments in 1994 as they had been previously proposed. Since the comprehensive cross referencing proposal was only described generally at the time of publication of the 1994 proposed rule, it was necessary to publish an express cross referencing proposal for public comment upon the actual method and language to be used.

Accordingly, on June 28, 1996 (61 FR 33696) the FDIC published a proposed revision of 12 CFR part 335 which

would incorporate by cross reference the comparable rules of the SEC, rather than continue to maintain the separate but substantially similar body of rules contained in part 335.

## II. Public Comment

The Board requested public comments on all aspects of the proposed rule which was published on June 28, 1996 (61 FR 33696). Written comments were invited to be submitted during a 90-day comment period, and comments were specifically requested regarding:

(1) The benefits and disadvantages of cross referencing as a method for assuring substantial similarity between FDIC and SEC regulations;

(2) The potential cost savings or cost burden of cross referencing; Please include estimates of specific dollar amounts of any anticipated benefits, as well as amounts of transitional and continuing costs such as purchase of reference aides, staff training, and any necessary additional professional assistance;

(3) Whether the FDIC should provide any specific exemptions from, or separate additions to the SEC's regulations;

(4) Whether the FDIC should continue to require disclosure of insider extensions of credit as it currently does under its rules in 12 CFR 335.212 Item 7(b);

(5) Whether the FDIC should continue to make Exchange Act filings available for inspection at the Federal Reserve Banks;

(6) The appropriate time frame for implementation of the final rule, including the amount of time which should pass after publication of the final rule before compliance with the final rule is required; and

(7) Any other issues regarding the proposal which commenters believe would assist in this rulemaking.

The FDIC received two comment letters in response to its 1996 request for comments, one from a registered nonmember bank and the other from a public accounting firm. Both commenters generally supported the cross referencing proposal and indicated that there should be overall benefits to incorporation by cross reference. Both commenters also supported continuation of the FDIC's review of preliminary proxy statements. One commenter agreed and the other disagreed with the proposal to adopt or preserve regulations different from those of the SEC with respect to insider loan disclosures. Regarding costs, one commenter suggested that any additional costs would be far outweighed by the benefits of cross

referencing, while the other stated that there should be no significant cost in adopting the proposed rule. Neither commenter provided an estimate of specific cost increase nor savings resulting from the cross referencing procedure. One commenter also indicated that the FDIC should discontinue making Exchange Act filings available at the Federal Reserve Banks, that the FDIC should host training seminars to assist nonmember banks' transition to and compliance with the final rule, and that the final rule should be effective for Exchange Act filings made after December 31, 1997.

After careful consideration of all public comments received regarding incorporation by cross reference, the FDIC has determined to adopt this final rule in substantially the same form as previously proposed (61 FR 33696 (June 28, 1996)). In order to allow ample time for transition to the cross referenced SEC regulations, the final rule will be effective January 1, 1998. Early compliance with the SEC regulations will be permitted, except that the SEC's regulation regarding proposals of security holders (17 CFR 240.14a-8), which is incorporated by cross reference in section 335.401, may not be followed prior to January 1, 1998, the effective date. Permitting early compliance with 17 CFR 240.14a-8 prior to the effective date of this final rule is not considered practicable.

## III. Revisions to Part 335

The FDIC is revising 12 CFR part 335 by incorporating through cross reference, the regulations of the SEC issued under sections 12, 13, 14(a), 14(c), 14(d), and 14(f) of the Exchange Act. The SEC's regulations under section 16 of the Exchange Act were previously incorporated by cross reference (57 FR 4699, February 7, 1992). As a result, with the exception of forms filed pursuant to section 16, the FDIC's separate Exchange Act forms are eliminated and the SEC's Exchange Act forms will be utilized in filings with the FDIC. The cover pages of all forms filed with the FDIC however, will be required to contain the name of the FDIC in lieu of that of the SEC in order to avoid confusion as to where filings should be made. The FDIC believes that incorporation through cross reference will cause its regulations to remain substantially similar to those of the SEC, as well as those of other federal financial institution regulatory agencies.

This final rule will make appropriate SEC regulations applicable to persons subject to part 335, except where part 335 contains a differing or additional

requirement or exception. Incorporation through cross reference generally makes all SEC regulations, and amendments thereto, applicable to registered nonmember banks, unless the FDIC acts to vary the SEC's specific requirements. The FDIC believes that this is an effective way to assure that FDIC regulations issued under the Exchange Act remain substantially similar to the SEC's regulations. However, the FDIC will retain the ability to exempt nonmember banks, through a separate FDIC rulemaking, from any particular SEC rule it determines should not apply to such banks. The FDIC also retains its rulemaking authority to subject nonmember banks to additional or different regulations where warranted.

The FDIC believes that issuance of the final rule will simplify administration and enforcement of the disclosure provisions of the Exchange Act. This is the approach adopted by the Board of Governors of the Federal Reserve System (12 CFR 208.16), the Office of the Comptroller of the Currency (12 CFR 11.2), and the Office of Thrift Supervision (12 CFR 563d.1). Further, as registrants, investors, and their counsel acquire or expand their familiarity with SEC regulations, incorporation by cross reference should help promote uniformity and consistency of Exchange Act disclosure, without affecting the quality of the administration and enforcement of the provisions of the Exchange Act for which the FDIC is the appropriate regulatory agency.

The FDIC's principal concern with respect to the elimination of FDIC forms and subsequent use of SEC forms is that filers may incorrectly forward the forms to the SEC. This can create embarrassment and legal liability on the part of the filers for unintentional failure to file the forms. Errors of this kind can interfere with the smooth and efficient administration of public filings under the Exchange Act. For this reason, the final rule requires that on all forms to be filed with the FDIC, the cover pages must prominently display the name of the FDIC in lieu of that of the SEC in order to avoid confusion as to the appropriate filing agency.

The FDIC has also made one technical revision to part 335 which is included in this final rule, but was not included in the proposed rule. This results in the final rule including new § 335.901, which contains the provisions of presently existing § 303.8(b) of the FDIC regulations (12 CFR 303.8(b)) which are applicable to part 335. New § 335.901 contains the regulations which delegate authority to act on certain Exchange Act disclosure matters from the FDIC Board

of Directors to the Director of the Division of Supervision. This addition to part 335 is made as part of an agency-wide effort to streamline and modify FDIC regulations and policies as required by section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4803). The FDIC considers the placement of the related delegation of authority provisions into part 335 as more convenient to users, less obscure and easier to locate, and generally a more appropriate location than their current location in 12 CFR 303.8(b). A technical revision has been made to the language of the delegation. The 303.8(b) language covers disclosure matters under and pursuant to part 335, which necessarily includes disclosure matters under and pursuant to section 16 of the Securities Exchange Act of 1934; however, where the 303.8(b) language also refers to sections 12, 13, and 14 of the Securities Exchange Act of 1934, it omits reference to section 16. In the interests of consistency, a reference to section 16 has been added.

#### IV. Differences From Current Part 335 Regulations

Following is a discussion of the significant differences between the FDIC's existing regulations and the SEC's regulations and procedures which are incorporated by cross reference under this final rule. While there are other differences in the regulations, the FDIC believes them to be technical or minor in nature. Upon the FDIC's adoption of this final rule, each of these differences is eliminated.

##### A. Minimum Asset Test for Registration

The regulations of the SEC and the existing regulations of the FDIC differ in establishing the minimum total asset size of an issuing company. The company's asset size is used as one of the triggering criteria (in addition to the number of shareholders) for requiring registration of securities under section 12 of the Exchange Act. Section 12(g) of the Exchange Act (15 U.S.C. 78l(g)) requires any issuing company with at least 500 shareholders and minimum total assets of \$1 million to register the class of securities, subject to limits, exemptions, and conditions prescribed by the SEC or other appropriate regulatory agency. The SEC's Rule 12g-1 (17 CFR 240.12g-1) prescribes the minimum asset test to be \$10 million in total assets, while current FDIC regulations do not alter the statutory standard. This final rule incorporates by cross reference the SEC's minimum asset test threshold of \$10 million.

##### B. Shareholder Proposal Rules

The regulations of the SEC and the FDIC differ primarily with respect to the proponent's ownership requirements in stock of an issuing company, and the number of proposals which a proponent may present. The FDIC's rules presently require only that the proponent be a shareholder of the registrant, and that a proponent may submit a maximum of two proposals for inclusion in a registrant's annual meeting proxy statement. The SEC's Rule 14a-8 (17 CFR 240.14a-8) requires a proponent to have beneficially ownership of at least 1% or \$1,000 in market value of securities entitled to be voted on the proposal, requires a proponent to have held such securities for at least one year, and permits a proponent to submit only one proposal for inclusion in a registrant's annual meeting proxy statement. This final rule incorporates the SEC's requirements by cross reference, which include the differences described above.

##### C. Certification, Suspension of Trading, and Removal From Listing by Exchanges; Unlisted Trading; and Related Filing Requirements

The SEC's rules currently require a national securities exchange to formally certify that a registrant's security has been approved for listing. The SEC's rules contain provisions applicable to suspension of trading on a national securities exchange, withdrawal, and striking of a security from listing and registration. Also, SEC rules prescribe requirements relative to applications, changes, termination, suspension, or exemption of securities admitted to unlisted trading on a national securities exchange. The FDIC's rules currently also require certification by a national securities exchange, but do not contain the additional provisions summarized above. This final rule incorporates by cross reference, the SEC's rules on Certification By Exchanges (17 CFR 240.12d1-1 through 12d1-6), Suspension Of Trading, Withdrawal, And Striking From Listing And Registration (17 CFR 240.12d2-1 through 12d2-6), and Unlisted Trading (17 CFR 240.12f-1 through 12f-6).

##### D. Availability of Exchange Act Filings at Federal Reserve Banks

FDIC regulations currently require that copies of all registration statements and periodic reports required by 12 CFR 335.301 through 335.365 (exclusive of exhibits), the proxy and information statements required by 12 CFR 335.201, and annual reports to security holders required by 12 CFR 335.203 will be

available for inspection at the Federal Reserve Bank (FRB) of the District in which the bank making the submission is located. The FDIC staff believes that there has been extremely little public interest in inspecting these Exchange Act filings at the Federal Reserve Banks. It is also believed that it is difficult for the public to access these filings. This final rule eliminates the availability of these Exchange Act filings at the Federal Reserve Banks. All Exchange Act filings will remain available for inspection at and copies may be obtained from the FDIC in Washington, D.C.

#### V. Differences Between FDIC and SEC Regulations (Superseded SEC Regulations and FDIC Substituted Regulations)

Following is a discussion of the significant differences between the applicable requirements of this final rule, and the SEC's regulations and procedures which will generally be applicable as a result of incorporation by cross reference. Unless any particular provisions of the SEC's Exchange Act regulations are specifically superseded by the FDIC, incorporation by cross reference would make such provisions applicable to nonmember banks, related parties and investors. The FDIC rules under 12 CFR part 335 currently contain these provisions or requirements and retention thereof is considered warranted. Through the adoption of this final rule, each of the following differences between the rules of the FDIC and the rules of the SEC will remain in effect.

##### A. Review of Proxy and Information Statements

The SEC and the FDIC regulations differ significantly in the type of proxy and information statements subject to regulatory review prior to distribution to shareholders. The SEC requires preliminary filings of proxy and information statements, but only concerning those shareholder meetings which are other than "routine" annual meetings. In such cases, the SEC requires preliminary filings to be filed ten days prior to distribution to shareholders (17 CFR 240.14a-6 and 17 CFR 240.14c-5). The FDIC however, currently requires preliminary filings for all shareholder meetings, and requires that the preliminary filings be made at least ten days before "routine" meetings and 15 days before "non-routine" meetings (12 CFR 335.204).

The SEC regulations exempt proxy statements for "routine" annual meetings from the requirement of preliminary filing and advance review. While the FDIC receives a moderate

number of "routine" meeting filings, the staff has found that it is this category of filings where the most fundamental errors are made. Proxy statements for "routine" annual meetings often contain more basic errors and omissions than in the case of "non-routine" meetings. In the absence of an advance filing, the FDIC must choose between requiring a new meeting after the problem is belatedly discovered or overlooking the resulting noncompliance until the following year. A similar problem may occur in enforcing the regulations with banks that misread or are negligent in interpreting the term "routine."

Accordingly, this final rule continues to require the filing of both "routine" and "non-routine" preliminary proxy materials for FDIC staff review and comment prior to their distribution to shareholders. The FDIC staff believes that the overall benefits resulting from the current requirement under 12 CFR part 335 to file "routine" preliminary proxy statements, exceed the costs attributed to making those filings.

##### B. Disclosure of Extensions of Credit to Insiders

The SEC and the FDIC regulations both contain requirements for financial institution disclosure of loans to insiders. SEC regulations generally require the disclosure of certain insider indebtedness in excess of \$60,000, which have preferential terms, were not made in the ordinary course of business, or which involve more than the normal risk of collectibility or involve other unfavorable features. In contrast, since 1965, the FDIC has required: (a) disclosure of insiders' indebtedness on a basis substantially similar to that of the SEC, but without the \$60,000 threshold; and (b) basic disclosure of relatively large extensions of credit to insiders and to insiders as a group, based strictly upon the amount of indebtedness.

Even though loans to insiders are often subject to amount limitations in banking law and regulation, significant amounts of insider loans yet occur. This final rule incorporates by reference the SEC's indebtedness of management disclosure requirements and also adds a requirement to disclose large extensions of credit to insiders and to insiders as a group, based solely upon the amount of indebtedness. The FDIC staff believes that the overall benefit resulting from continuation of the FDIC's current disclosure requirements under 12 CFR part 335 is in the public interest and is appropriate to the banking industry.

##### C. Filing Fees

The regulations of SEC include specific requirements for the payment of filing fees which are applicable to and must be paid by any person or entity filing reports with the SEC under the Exchange Act. This final rule does not require filing fees to be paid by any person, registrant, or entity making Exchange Act filings with the FDIC.

##### D. Electronic Data Gathering Analysis and Retrieval (EDGAR)

The SEC's Regulation S-T (17 CFR part 232) requires all registrants to submit filings in electronic format pursuant to its EDGAR system. Although the FDIC is studying the feasibility of the acceptance and administration of electronic filings under the Exchange Act, this final rule does not permit and the FDIC does not accept electronic filings at this time.

##### E. Legal Proceedings

The SEC and the FDIC regulations currently both require disclosure of legal proceedings in certain filings under the Exchange Act. The FDIC generally requires disclosure of all legal proceedings required to be disclosed by the SEC, and in addition, the FDIC's regulations deem as material and require disclosure of administrative or judicial proceedings arising under section 8 of the Federal Deposit Insurance Act. This final rule incorporates the SEC's legal proceedings disclosure requirements by cross reference, and in addition, continues to deem as material and requires disclosure of administrative or judicial proceedings arising under section 8 of the Federal Deposit Insurance Act. The FDIC staff believes that the overall benefit resulting from the explicit requirement to disclose proceedings arising under section 8 of the Federal Deposit Insurance Act is in the public interest and is appropriate to the banking industry.

##### VI. Regulatory Flexibility Act

Under section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), the final regulatory flexibility analysis otherwise required under section 604 of the RFA (5 U.S.C. 604) is not required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and the agency publishes such certification in the Federal Register along with its general notice of proposed rulemaking or at the time of publication of the final rule. Pursuant to section 605(b) of the RFA, the FDIC certifies that this final rule would apply

only to those banks whose securities are publicly held. Other covered persons include: insiders of banks, large shareholders of banks, and bidders for bank stock.

There were no significant issues raised by public commenters in response to the Regulatory Flexibility Act certification contained in the notice of proposed rulemaking. Accordingly, no related changes have been made to the regulations as proposed.

The regulations contained in this final rule will incorporate SEC regulations by cross reference. By statute, any differences must be specifically justified through the rulemaking process. The SEC and FDIC regulations are functionally almost identical, they are issued under the same statutory authority, and they share a common legislative purpose. The FDIC considers the applicable SEC rule, defining "small entities," a necessary standard in order to maintain fair and comparable regulation. The FDIC is comparing FDIC regulated banks and SEC regulated nonbank entities, including bank holding companies. The applicable SEC definition of "small entities" sets the upper limit at \$5 million. The SEC has delayed raising this limit until it completes its current and future initiatives in this area. Any SEC revisions in this area should pass through to entities subject to part 335. Currently, there are no banks below this limit filing under part 335. Further, this rulemaking does not substantially change existing filing requirements for any individual. Based upon this factual background, the FDIC certifies that the revisions to part 335 contained in this final rule will have no economic impact on any identifiable small entities as defined for the class by SEC which is the general regulator in the area.

#### VII. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104-121) provides generally for agencies to report rules to Congress and for Congress to review the rules. The reporting requirement is triggered when agencies issue a final rule as defined by the Administrative Procedure Act (APA) at 5 U.S.C. 551. Because the FDIC is issuing a final rule as defined by the APA, the FDIC will file the reports required by SBREFA.

The Office of Management and Budget has determined that this final revision to part 335 does not constitute a "major rule" as defined by SBREFA.

#### VIII. Paperwork Reduction Act

The collection of information in this final rule has been reviewed and approved by the Office of Management and Budget (OMB) under control number 3064-0030 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Comments on the accuracy of the burden estimate and suggestions for reducing the burden should be directed to the Office of Management and Budget, Paperwork Reduction Project (3064-0030), Washington, D.C. 20503, with copies of such comments to be sent to Steven F. Hanft, Office of the Executive Secretary, room F-400, 550 17th Street, N.W., Washington, D.C. 20429.

This information is needed to assure compliance with the Exchange Act and to provide information to investors and the public about the condition of registered nonmember banks. The likely respondents are for-profit financial institutions—registered nonmember banks, as well as their directors, executive officers and principal shareholders. The total reporting burden as most recently approved by OMB for all collections of information in this regulation is as follows:

*Number of Respondents:* 4,368.

*Number of Responses Per*

*Respondent:* 1.42.

*Total Annual Responses:* 6,214.

*Hours Per Response:* 8.90.

*Total Annual Burden Hours:* 55,276.

The estimated annual burden per respondent varies from 30 minutes to 200 hours, depending on the particular form and individual circumstances, with an estimated average of 8.90 hours.

#### IX. Cost Benefit Analysis

This final rule is generally not expected to result in material increases in costs and burden to respondents. Some filers, however, may realize an increase in costs due to an increased need for professional guidance in order to facilitate the making of filings under the Exchange Act. Any overall increase in costs resulting from this final rule should be moderate, however, due to the existing general familiarity with the SEC's regulations on the part of registrants, investors, and their counsel. Any such increase in overall costs should be offset by elimination of the need for potential filers to become familiar with two separate sets of regulations implementing the filing requirements of the Exchange Act.

#### X. Statutory Basis

The revisions to the FDIC's regulation under sections 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the Exchange Act, are

being adopted by the FDIC pursuant to Exchange Act section 12(i).

#### List of Subjects in 12 CFR Part 335

Accounting, Banks, banking, Confidential business information, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, the FDIC revises part 335 to read as follows:

#### **PART 335—SECURITIES OF NONMEMBER INSURED BANKS**

Sec.

- 335.101 Scope of part, authority and OMB control number.
- 335.111 Forms and schedules.
- 335.201 Securities exempted from registration.
- 335.211 Registration and reporting.
- 335.221 Forms for registration of securities and similar matters.
- 335.231 Certification, suspension of trading, and removal from listing by exchanges.
- 335.241 Unlisted trading.
- 335.251 Forms for notification of action taken by national securities exchanges.
- 335.261 Exemptions; terminations; and definitions.
- 335.301 Reports of issuers of securities registered pursuant to section 12.
- 335.311 Forms for annual, quarterly, current, and other reports of issuers.
- 335.321 Maintenance of records and issuer's representations in connection with required reports.
- 335.331 Acquisition statements and acquisitions of securities by issuers.
- 335.401 Solicitations of proxies.
- 335.501 Tender offers.
- 335.601 Requirements of section 16 of the Securities Exchange Act of 1934.
- 335.611 Initial statements of beneficial ownership of securities (Form F-7).
- 335.612 Statement of changes in beneficial ownership of securities (Form F-8).
- 335.613 Annual statement of beneficial ownership of securities (Form F-8A).
- 335.701 Filing requirements, public reference, and confidentiality.
- 335.801 Inapplicable SEC regulations; FDIC substituted regulations; additional information.
- 335.901 Delegation of authority to the Director (DOS) and to the associate directors, regional directors and deputy regional directors to act on matters with respect to disclosure laws and regulations.

Authority: 15 U.S.C. 781(i).

#### **§ 335.101 Scope of part, authority and OMB control number.**

(a) This part is issued by the Federal Deposit Insurance Corporation (the FDIC) under section 12(i) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78) (the Exchange Act) and applies to all securities of FDIC insured banks (including foreign banks having an insured branch) which are

neither a member of the Federal Reserve System nor a District bank (collectively referred to as nonmember banks) that are subject to the registration requirements of section 12(b) or section 12(g) of the Exchange Act (registered nonmember banks). The FDIC is vested with the powers, functions, and duties vested in the Securities and Exchange Commission (the Commission or SEC) to administer and enforce the provisions of sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Securities Exchange Act of 1934, as amended (the Exchange Act) (15 U.S.C. 78l, 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78(p)), regarding nonmember banks with one or more classes of securities subject to the registration provisions of sections 12(b) and 12(g).

(b) This part 335 generally incorporates through cross reference the regulations of the SEC issued under sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act. References to the Commission are deemed to refer to the FDIC unless the context otherwise requires.

(c) The Office of Management and Budget has reviewed and approved the recordkeeping and reporting required by this part (OMB control number 3064-0030).

#### **§ 335.111 Forms and schedules.**

The Exchange Act regulations of the SEC, which are incorporated by cross reference under this part, require the filing of forms and schedules as applicable. Reference is made to SEC Exchange Act regulation 17 CFR 249.0-1 regarding the availability of all applicable SEC Exchange Act forms. Required schedules are codified and are found within the context of the SEC's regulations. The filings of all applicable SEC forms and schedules shall be made with the FDIC at the address in this section. They shall be titled with the name of the FDIC in substitution for the name of the SEC. Forms F-7 (§ 335.611), F-8 (§ 335.612), F-8A (§ 335.613), are FDIC forms which are issued under section 16 of the Exchange Act and can be obtained from the Registration and Disclosure Section, Division of Supervision, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429. Reference is also made to § 335.701 for general filing requirements, public reference, and confidentiality provisions.

#### **§ 335.201 Securities exempted from registration.**

Persons generally subject to registration requirements under Exchange Act section 12 and subject to this part shall follow the applicable and

currently effective SEC regulations relative to exemptions from registration issued under sections 3 and 12 of the Exchange Act as codified at 17 CFR 240.3a12-1 through 240.3a12-11, 240.12a-4 through 240.12a-7, 240.12g-1 through 240.12h-4.

#### **§ 335.211 Registration and reporting.**

Persons with securities subject to registration under Exchange Act sections 12(b) and 12(g), required to report under Exchange Act section 13, and subject to this part shall follow the applicable and currently effective SEC regulations issued under section 12(b) of the Exchange Act as codified at 17 CFR 240.12b-1 through 240.12b-36.

#### **§ 335.221 Forms for registration of securities and similar matters.**

(a) The applicable forms for registration of securities and similar matters are codified in subpart C of 17 CFR part 249. All forms shall be filed with the FDIC as appropriate and shall be titled with the name of the FDIC instead of the SEC.

(b) The requirements for Financial Statements can generally be found in Regulation S-X (17 CFR part 210). Banks may also refer to the instructions for FFIEC Reports of Income and Reports of Condition when preparing unaudited interim statements. The requirements for Management's Discussion and Analysis of Financial Condition and Results of Operations can be found in at 17 CFR 229.300. Industry Guide 3, Statistical Disclosure by Bank Holding Companies, is codified at 17 CFR 229.802.

(c) A "small business issuer," as defined under 17 CFR 240.12b-2, has the option of filing Small Business (SB) Forms (as codified in 17 CFR part 249) in lieu of the Exchange Act forms otherwise required to be filed, which provide for financial and other item disclosures in conformance with Regulation S-B of the Securities and Exchange Commission (17 CFR part 228). The definition of "small business issuer," generally includes banks with annual revenues of less than \$25 million, whose voting stock does not have a public float of \$25 million or more.

#### **§ 335.231 Certification, suspension of trading, and removal from listing by exchanges.**

The provisions of the applicable and currently effective SEC regulations under section 12(d) of the Exchange Act shall be followed as codified at 17 CFR 240.12d1-1 through 240.12d2-2.

#### **§ 335.241 Unlisted trading.**

The provisions of the applicable and currently effective SEC regulations under section 12(f) of the Exchange Act shall be followed as codified at 17 CFR 240.12f-1 through 240.12f-6.

#### **§ 335.251 Forms for notification of action taken by national securities exchanges.**

The applicable forms for notification of action taken by national securities exchanges are codified in subpart A of 17 CFR part 249. All forms shall be filed with the FDIC as appropriate and shall be titled with the name of the FDIC instead of the SEC.

#### **§ 335.261 Exemptions; terminations; and definitions.**

The provisions of the applicable and currently effective SEC regulations under sections 12(g) and 12(h) of the Exchange Act shall be followed as codified at 17 CFR 240.12g-1 through 240.12h-4.

#### **§ 335.301 Reports of issuers of securities registered pursuant to section 12.**

The provisions of the applicable and currently effective SEC regulations under section 13(a) of the Exchange Act shall be followed as codified at 17 CFR 240.13a-1 through 240.13a-17.

#### **§ 335.311 Forms for annual, quarterly, current, and other reports of issuers.**

(a) The applicable forms for annual, quarterly, current, and other reports are codified in subpart D of 17 CFR part 249. All forms shall be filed with the FDIC as appropriate and shall be titled with the name of the FDIC instead of the SEC.

(b) The requirements for Financial Statements can generally be found in Regulation S-X (17 CFR part 210). Banks may also refer to the instructions for FFIEC Reports of Income and Reports of Condition when preparing unaudited interim reports. The requirements for Management's Discussion and Analysis of Financial Condition and Results of Operations can be found at 17 CFR 229.300. Industry Guide 3, Statistical Disclosure by Bank Holding Companies, is codified at 17 CFR 229.802.

(c) A "small business issuer," as defined under 17 CFR 240.12b-2, has the option of filing Small Business (SB) Forms (as codified in 17 CFR part 249) in lieu of the Exchange Act forms otherwise required to be filed, which provide for financial and other item disclosures in conformance with Regulation S-B of the Securities and Exchange Commission (17 CFR part 228). The definition of "small business issuer," generally includes banks with annual revenues of less than \$25

million, whose voting stock does not have a public float of \$25 million or more.

**§ 335.321 Maintenance of records and issuer's representations in connection with required reports.**

The provisions of the applicable and currently effective SEC regulations under section 13(b) of the Exchange Act shall be followed as codified at 17 CFR 240.13b2-1 through 240.13b2-2.

**§ 335.331 Acquisition statements and acquisitions of securities by issuers.**

The provisions of the applicable and currently effective SEC regulations under section 13(d) and 13(e) of the Exchange Act shall be followed as codified at 17 CFR 240.13d-1 through 240.13e-102.

**§ 335.401 Solicitations of proxies.**

The provisions of the applicable and currently effective SEC regulations under section 14(a) and 14(c) of the Exchange Act shall be followed as codified at 17 CFR 240.14a-1 through 240.14a-103 and 240.14c-1 through 240.14c-101.

**§ 335.501 Tender offers.**

The provisions of the applicable and currently effective SEC regulations under section 14(d), 14(e), and 14(f) of the Exchange Act shall be followed as codified at 17 CFR 240.14d-1 through 240.14f-1.

**335.601 Requirements of section 16 of the Securities Exchange Act of 1934.**

Persons subject to section 16 of the Act with respect to securities registered under this part shall follow the applicable and currently effective SEC regulations issued under section 16 of the Act (17 CFR 240.16a-1 through 240.16e-1(1)), except that the forms described in § 335.611 (Form F-7), § 335.612 (Form F-8), and § 335.613 (Form F-8A) shall be used in lieu of SEC Form 3 (17 CFR 249.103), Form 4 (17 CFR 249.104), or Form 5 (17 CFR 249.105), respectively. Copies of Forms F-7, F-8, F-8A and the instructions thereto can be obtained from the Registration, Disclosure, and Securities Operations Unit, Division of Supervision, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429.

**§ 335.611 Initial statement of beneficial ownership of securities (Form F-7).**

This form shall be filed in lieu of SEC Form 3 pursuant to SEC rule 16a-3 (17 CFR 240.16a-3) for initial statements of beneficial ownership of securities. The FDIC is authorized to solicit the information required by this form

pursuant to sections 16(a) and 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78p and 78w) and the rules and regulations thereunder. SEC regulations referenced in this form are codified at 17 CFR 240.16a-1 through 240.16e-1.

**§ 335.612 Statement of changes in beneficial ownership of securities (Form F-8).**

This form shall be filed pursuant to SEC rule 16a-3 (17 CFR 240.16a-3) for statements of changes in beneficial ownership of securities. The FDIC is authorized to solicit the information required by this form pursuant to sections 16(a) and 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78p and 78w) and the rules and regulations thereunder. SEC regulations referenced in this form are codified at 17 CFR 240.16a-1 through 240.16e-1.

**§ 335.613 Annual statement of beneficial ownership of securities (Form F-8A).**

This form shall be filed pursuant to SEC rule 16a-3 (17 CFR 240.16a-3) for annual statements of beneficial ownership of securities. The FDIC is authorized to solicit the information required by this form pursuant to sections 16(a) and 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78p and 78w), and the rules and regulations thereunder. SEC regulations referenced in this form are codified at 17 CFR 240.16a-1 through 240.16e-1.

**§ 335.701 Filing requirements, public reference, and confidentiality.**

(a) *Filing requirements.* Unless otherwise indicated in this part, one original and four conformed copies of all papers required to be filed with the FDIC under the Exchange Act or regulations thereunder shall be filed at its office in Washington, D.C. Official filings made at the FDIC's office in Washington, D.C. should be addressed as follows: Attention: Registration, Disclosure, and Securities Operations Unit, Division of Supervision, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429. Material may be filed by delivery to the FDIC through the mails or otherwise. The date on which papers are actually received by the designated FDIC office shall be the date of filing thereof if all of the requirements with respect to the filing have been complied with.

(b) *Inspection.* Except as provided in paragraph (c) of this section, all information filed regarding a security registered with the FDIC will be available for inspection at the Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C.

(c) *Nondisclosure of certain information filed.* Any person filing any

statement, report, or document under the Act may make a written objection to the public disclosure of any information contained therein in accordance with the procedure set forth in this paragraph (c).

(1) The person shall omit from the statement, report, or document, when it is filed, the portion thereof that it desires to keep undisclosed (hereinafter called the confidential portion). In lieu thereof, it shall indicate at the appropriate place in the statement, report, or document that the confidential portion has been so omitted and filed separately with the FDIC.

(2) The person shall file with the copies of the statement, report, or document filed with the FDIC:

(i) As many copies of the confidential portion, each clearly marked "Confidential Treatment," as there are copies of the statement, report, or document filed with the FDIC and with each exchange, if any. Each copy shall contain the complete text of the item and, notwithstanding that the confidential portion does not constitute the whole of the answer, the entire answer thereto; except that in the case where the confidential portion is part of a financial statement or schedule, only the particular financial statement or schedule need be included. All copies of the confidential portion shall be in the same form as the remainder of the statement, report, or document;

(ii) An application making objection to the disclosure of the confidential portion. Such application shall be on a sheet or sheets separate from the confidential portion, and shall contain:

(A) An identification of the portion of the statement, report, or document that has been omitted;

(B) A statement of the grounds of objection;

(C) Consent that the FDIC may determine the question of public disclosure upon the basis of the application, subject to proper judicial reviews;

(D) The name of each exchange, if any, with which the statement, report, or document is filed;

(iii) The copies of the confidential portion and the application filed in accordance with this paragraph shall be enclosed in a separate envelope marked "Confidential Treatment" and addressed to Executive Secretary, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

(3) Pending the determination by the FDIC as to the objection filed in accordance with paragraph (c)(2)(ii) of this section, the confidential portion will not be disclosed by FDIC.

(4) If the FDIC determines that the objection shall be sustained, a notation to that effect will be made at the appropriate place in the statement, report, or document.

(5) If the FDIC shall have determined that disclosure of the confidential portion is in the public interest, a finding and determination to that effect will be entered and notice of the finding and determination will be sent by registered or certified mail to the person.

(6) The confidential portion shall be made available to the public:

(i) Upon the lapse of 15 days after the dispatch of notice by registered or certified mail of the finding and determination of the FDIC described in paragraph (c)(5) of this section, if prior to the lapse of such 15 days the person shall not have filed a written statement that he intends in good faith to seek judicial review of the finding and determination;

(ii) Upon the lapse of 60 days after the dispatch of notice by registered or certified mail of the finding and determination of the FDIC, if the statement described in paragraph (c)(6)(i) of this section shall have been filed and if a petition for judicial review shall not have been filed within such 60 days; or

(iii) If such petition for judicial review shall have been filed within such 60 days upon final disposition, adverse to the person, of the judicial proceedings.

(7) If the confidential portion is made available to the public, a copy thereof shall be attached to each copy of the statement, report, or document filed with the FDIC and with each exchange concerned.

**§ 335.801 Inapplicable SEC regulations; FDIC substituted regulations; additional information.**

(a) *Filing fees.* Filing fees will not be charged relative to any filings or submissions of materials made with the FDIC pursuant to the cross reference to regulations of the SEC issued under sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act, and this part.

(b) *Electronic filings.* The FDIC does not participate in the SEC's EDGAR (Electronic Data Gathering Analysis and Retrieval) electronic filing program (17 CFR part 232), and does not permit electronically transmitted filings or submissions of materials in electronic format to the FDIC.

(c) *Legal proceedings.* Whenever this part or cross referenced provisions of the SEC regulations require disclosure of legal proceedings, administrative or judicial proceedings arising under

section 8 of the Federal Deposit Insurance Act shall be deemed material and shall be disclosed.

(d) *Indebtedness of management.* Whenever this part or cross referenced provisions of the SEC regulations require disclosure of indebtedness of management, extensions of credit to specified persons in excess of ten (10) percent of the equity capital accounts of the bank or \$5 million, whichever is less, shall be deemed material and shall be disclosed in addition to any other required disclosure. The disclosure of this material indebtedness shall include the largest aggregate amount of indebtedness (in dollar amounts, and as a percentage of total equity capital accounts at the time), including extensions of credit or overdrafts, endorsements and guarantees outstanding at any time since the beginning of the bank's last fiscal year, and as of the latest practicable date.

(1) If aggregate extensions of credit to all specified persons as a group exceeded 20 percent of the equity capital accounts of the bank at any time since the beginning of the last fiscal year, the aggregate amount of such extensions of credit shall also be disclosed.

(2) Other loans are deemed material and shall be disclosed where:

(i) The extension(s) of credit was not made on substantially the same terms, including interest rates, collateral and repayment terms as those prevailing at the time for comparable transactions with other than the specified persons;

(ii) The extension(s) of credit was not made in the ordinary course of business; or

(iii) The extension(s) of credit has involved or presently involves more than a normal risk of collectibility or other unfavorable features including the restructuring of an extension of credit, or a delinquency as to payment of interest or principal.

(e) *Proxy material required to be filed.*

(1) Three preliminary copies of each information statement, proxy statement, form of proxy, and other item of soliciting material to be furnished to security holders concurrently therewith, shall be filed with the FDIC by the bank or any other person making a solicitation subject to 12 CFR 335.401 at least ten calendar days (or 15 calendar days in the case of other than routine meetings, as defined in paragraph (e)(2) of this section) prior to the date such item is first sent or given to any security holders, or such shorter date as may be authorized.

(2) For the purposes of this paragraph (e), a routine meeting means:

(i) A meeting with respect to which no one is soliciting proxies subject to § 335.401 other than on behalf of the bank, and at which the bank intends to present no matters other than:

(A) The election of directors;

(B) The election, approval or ratification of accountants;

(C) A Security holder proposal included pursuant to SEC Rule 14(a)-8 (17 CFR 240.14a-8); and

(D) The approval or ratification of a plan as defined in paragraph (a)(7)(ii) of Item 402 of SEC Regulation S-K (17 CFR 229.402(a)(7)(ii)) or amendments to such a plan; and

(ii) The bank does not comment upon or refer to a solicitation in opposition (as defined in 17 CFR 240.14a-6) in connection with the meeting in its proxy material.

(3) Where preliminary copies of material are filed with the FDIC under this section, the printing of definitive copies for distribution to security holders should be deferred until the comments of the FDIC's staff have been received and considered.

(f) *Additional information; filing of other statements in certain cases.* (1) In addition to the information expressly required to be included in a statement, form, schedule or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

(2) The FDIC may, upon the written request of the bank, and where consistent with the protection of investors, permit the omission of one or more of the statements or disclosures herein required, or the filing in substitution therefor of appropriate statements or disclosures of comparable character.

(3) The FDIC may also require the filing of other statements or disclosures in addition to, or in substitution for those herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or disclosure about which is otherwise necessary for the protection of investors.

**§ 335.901 Delegation of authority to the Director (DOS) and to the associate directors, regional directors and deputy regional directors to act on matters with respect to disclosure laws and regulations.**

(a) Except as provided in paragraph (b) of this section, authority is delegated to the Director, Division of Supervision (DOS), and where confirmed in writing by the director, to an associate director, or to the appropriate regional director or

deputy regional director, to act on disclosure matters under and pursuant to sections 12, 13, 14 and 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78) or this part.

(b) Authority to act on disclosure matters is retained by the FDIC Board of Directors when such matters involve:

(1) Exemption from disclosure requirements pursuant to section 12(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78I(h)); or

(2) Exemption from tender offer requirements pursuant to section 14(d)(8) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(d)(8)).

By Order of the Board of Directors.

Dated at Washington, D.C. this 4th day of February, 1997.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

*Executive Secretary.*

[FR Doc. 97-3596 Filed 2-13-97; 8:45 am]

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## FEDERAL HOUSING FINANCE BOARD

### 12 CFR Part 931

[No. 97-3]

#### Technical Amendment to Definition of Deposits in Banks or Trust Companies

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** The Federal Housing Finance Board (Finance Board) is amending the definition of the term "deposits in banks or trust companies" to expressly include a deposit in, or a sale of federal funds to, a branch or agency of a foreign bank located in the United States that is subject to the supervision of the Board of Governors of the Federal Reserve System (Board of Governors), as an investment eligible to fulfill the liquidity requirement imposed on the Federal Home Loan Banks (FHLBanks) by section 11(g) of the Federal Home Loan Bank Act (Bank Act).

**DATES:** The interim final rule will become effective on February 14, 1997. The Finance Board will accept comments on the interim final rule in writing on or before March 17, 1997.

**ADDRESSES:** Mail comments to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006. Comments will be available for public inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** Janice A. Kaye, Attorney-Advisor, Office

of General Counsel, 202/408-2505, or Christine M. Freidel, Assistant Director, Financial Management Division, Office of Policy, 202/408-2976, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

#### SUPPLEMENTARY INFORMATION:

##### I. Statutory and Regulatory Background

Under section 11(e)(1) of the Bank Act, the FHLBanks have the power to accept deposits from their members, other FHLBanks, or instrumentalities of the United States. See 12 U.S.C. 1431(e)(1). To ensure that each FHLBank has sufficient liquid assets to meet deposit withdrawal demands, section 11(g) of the Bank Act imposes a liquidity requirement. See *id.* 1431(g). The liquidity requirement provides that each FHLBank must invest, upon such terms and conditions as the Finance Board may prescribe, an amount equal to the current deposits the FHLBank holds in specified types of assets. *Id.* Among the assets specified in the Bank Act are "deposits in banks or trust companies." *Id.* 1431(g)(2).

In 1978, the Finance Board's predecessor, the former Federal Home Loan Bank Board (FHLBB), defined by regulation the phrase "deposits in banks or trust companies" to include a deposit in another FHLBank, a demand account with a Federal Reserve Bank, or a deposit in a depository designated by a FHLBank's board of directors that is a member of either the Federal Reserve System (FRS) or the Federal Deposit Insurance Corporation (FDIC). See 43 FR 46835, 46836 (Oct. 11, 1978), *codified at* 12 CFR 521.5 (superseded). When Congress abolished the FHLBB in 1989, see Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. 101-73, sec. 401, 103 Stat. 183 (Aug. 9, 1989), the Finance Board transferred the definition, without any change in substantive or technical matters, to § 931.5 of its regulations. See 54 FR 36757 (Aug. 28, 1989), *codified at* 12 CFR 931.5. This definition remained unchanged until July 3, 1996, when the Finance Board adopted a final rule modifying the definition of "deposits in banks or trust companies." The final rule was published in the Federal Register on August 2, 1996, and became effective on September 3, 1996. See 61 FR 40311 (Aug. 2, 1996), *codified at* 12 CFR 931.5. The final rule made clear that the term "banks" includes savings associations, and included federal funds transactions as eligible to fulfill the liquidity requirement imposed on the FHLBanks by section 11(g) of the Bank Act. See 12 U.S.C. 1431(g).

##### II. Analysis of the Interim Final Rule

In revising the definition of "deposits in banks or trust companies," the Finance Board inadvertently omitted as an eligible investment deposits in certain U.S. branches and agencies of foreign banks. A foreign bank may establish a U.S. branch or agency only with the prior approval of the Board of Governors and an appropriate licensing authority, *i.e.*, either the Comptroller of the Currency or a state banking regulator. U.S. branches and agencies of foreign banks are subject to the supervision of the Board of Governors and must meet many of the rules and regulations applicable to domestic commercial banks.

U.S. branches of foreign banks principally accept wholesale deposits, that is, deposits greater than the \$100,000 FDIC insurance limit. U.S. agencies of foreign banks typically do not accept deposits, although under the laws of some states an agency may have authority to do so. Since December 19, 1991, federal banking laws require foreign banks located in the United States that accept retail deposits (generally, deposits of less than \$100,000), to do so only through a subsidiary bank the deposits of which are insured by the FDIC. See FDIC Improvement Act of 1991, Pub. L. 102-242, Title II, sec. 214(a), 105 Stat. 2303, *codified at* 12 U.S.C. 3104(d). Although U.S. branches of foreign banks are not subsidiary banks, the statute permits branches that had FDIC insurance prior to that date to continue to accept or maintain retail deposits. See *id.* Thus, with the exception of branches whose deposits were insured by the FDIC prior to December 19, 1991, U.S. branches and agencies of foreign banks do not accept retail deposits.

Under both the current and previous definitions of the term "deposits in banks or trust companies," FHLBank deposits in the small number of U.S. branches the deposits of which are insured by the FDIC, are eligible investments for purposes of section 11(g) of the Bank Act since the definitions include deposits in FDIC-insured depository institutions. See 12 CFR 931.5 (1995 superseded); 12 CFR 931.5 (1996). FHLBank deposits in the U.S. branches and agencies whose deposits are not insured by the FDIC are not eligible investments. See *Id.*

Since all U.S. branches and agencies of foreign banks operate in a similar manner regardless of their FDIC-insurance status, and all are subject to the same legal requirements and the supervision of the Board of Governors, the Finance Board believes that the