

the fourth highest rating category by any NRSRO; or

(2) If there is no credit quality rating by an NRSRO, a determination by a Bank that the issuer, asset or instrument is the credit equivalent of investment grade using credit rating standards available from an NRSRO or other similar standards.

*Market risk* means the risk that the market value, or estimated fair value if market value is not available, of a Bank's portfolio will decline as a result of changes in interest rates, foreign exchange rates, equity and commodity prices.

*Marketable* means, with respect to an asset, that the asset can be sold with reasonable promptness at a price that corresponds reasonably to its fair value.

*Market value at risk* is the loss in the market value of a Bank's portfolio measured from a base line case, where the loss is estimated in accordance with §932.5 of this chapter.

*Minimum investment* means the minimum amount of Class A and/or Class B stock that a member is required to own in order to be a member of a Bank and in order to obtain advances and to engage in other business activities with the Bank in accordance with §931.3 of this chapter.

*Operations risk* means the risk of an unexpected loss to a Bank resulting from human error, fraud, unenforceability of legal contracts, or deficiencies in internal controls or information systems.

*Permanent capital* means the retained earnings of a Bank, determined in accordance with GAAP, plus the amount paid-in for the Bank's Class B stock.

*Redeem or Redemption* means the acquisition by a Bank of its outstanding Class A or Class B stock at par value following the expiration of the six-month or five-year statutory redemption period, respectively, for the stock.

*Regulatory risk-based capital requirement* means the amount of permanent capital that a Bank is required to maintain in accordance with §932.3 of this chapter.

*Regulatory total capital requirement* means the amount of total capital that a Bank is required to maintain in accordance with §932.2 of this chapter.

*Repurchase* means the acquisition by a Bank of excess stock prior to the expiration of the six-month or five-year statutory redemption period for the stock.

*Repurchase agreement* means an agreement between a seller and a buyer whereby the seller agrees to repurchase a security or similar securities at an agreed upon price, with or without a stated time for repurchase.

*Sales of federal funds subject to a continuing contract* means an overnight federal funds loan that is automatically renewed each day unless terminated by either the lender or the borrower.

*Total assets* means the total assets of a Bank, as determined in accordance with GAAP.

*Total capital* of a Bank means the sum of permanent capital, the amounts paid-in for Class A stock, the amount of any general allowance for losses, and the amount of other instruments identified in a Bank's capital plan that the Finance Board has determined to be available to absorb losses incurred by such Bank.

*Walkaway clause* means a provision in a bilateral netting contract that permits a nondefaulting counterparty to make a lower payment than it would make otherwise under the bilateral netting contract, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the bilateral netting contract.

[66 FR 8310, Jan. 30, 2001, as amended at 66 FR 54107, Oct. 26, 2001; 66 FR 66728, Dec. 27, 2001; 67 FR 12849, Mar. 20, 2002]

## PART 931—FEDERAL HOME LOAN BANK CAPITAL STOCK

Sec.

- 931.1 Classes of capital stock.
- 931.2 Issuance of capital stock.
- 931.3 Minimum investment in capital stock.
- 931.4 Dividends.
- 931.5 Liquidation, merger, or consolidation.
- 931.6 Transfer of capital stock.
- 931.7 Redemption and repurchase of capital stock.
- 931.8 Other restrictions on the repurchase or redemption of Bank stock.
- 931.9 Transition provision.

AUTHORITY: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1440, 1443, 1446.

## Federal Housing Finance Board

## § 931.3

SOURCE: 66 FR 8310, Jan. 30, 2001, unless otherwise noted.

### § 931.1 Classes of capital stock.

The authorized capital stock of a Bank shall consist of the following instruments:

(a) Class A stock, which shall:

(1) Have a par value as determined by the board of directors of the Bank and stated in the Bank's capital plan;

(2) Be issued, redeemed, and repurchased only at its stated par value; and

(3) Be redeemable in cash only on six-months written notice to the Bank.

(b) Class B stock, which shall:

(1) Have a par value as determined by the board of directors of the Bank and stated in the Bank's capital plan;

(2) Be issued, redeemed, and repurchased only at its stated par value;

(3) Be redeemable in cash only on five-years written notice to the Bank; and

(4) Confer an ownership interest in the retained earnings, surplus, undivided profits, and equity reserves of the Bank; and

(c) Any one or more subclasses of Class A or Class B stock, each of which may have different rights, terms, conditions, or preferences as may be authorized in the Bank's capital plan, provided, however, that each subclass of stock shall have all of the characteristics of its respective class, as specified in paragraph (a) or (b) of this section.

### § 931.2 Issuance of capital stock.

(a) *In general.* A Bank may issue either one or both classes of its capital stock (including subclasses), as authorized by § 931.1, and shall not issue any other class of capital stock. A Bank shall issue its stock only to its members and only in book-entry form, and the Bank shall act as its own transfer agent. All capital stock shall be issued in accordance with the Bank's capital plan.

(b) *Initial issuance.* In connection with the initial issuance of its Class A and/or Class B stock (or any subclass of either), a Bank may issue such stock in exchange for its existing stock, through a conversion of its existing stock, or through any other fair and equitable transaction or method of dis-

tribution. As part of its initial stock issuance transaction, a Bank may distribute any portion of its then-existing unrestricted retained earnings as shares of Class B stock.

### § 931.3 Minimum investment in capital stock.

(a) A Bank shall require each member to maintain a minimum investment in the capital stock of the Bank, both as a condition to becoming and remaining a member of the Bank and as a condition to transacting business with the Bank or obtaining advances and other services from the Bank. The amount of the required minimum investment shall be determined in accordance with the Bank's capital plan and shall be sufficient to ensure that the Bank remains in compliance with its minimum capital requirements. A Bank shall require each member to maintain its minimum investment for as long as the institution remains a member of the Bank and for as long as the member engages in any activity with the Bank against which the Bank is required to maintain capital.

(b) A Bank may establish the minimum investment required of each member as a percentage of the total assets of the member, as a percentage of the advances outstanding to the member, as a percentage of any other business activity conducted with the member, on any other basis that is approved by the Finance Board, or any combination thereof.

(c) A Bank may require each member to satisfy the minimum investment requirement through the purchase of either Class A or Class B stock, or through the purchase of one or more combinations of Class A and Class B stock that have been authorized by the board of directors of the Bank in its capital plan. A Bank, in its discretion, may establish a lower minimum investment for members that invest in Class B stock than is required for members that invest in Class A stock, provided that such reduced investment provides sufficient capital for the Bank to remain in compliance with its minimum capital requirements.

(d) Each member of a Bank shall at all times maintain an investment in the capital stock of the Bank in an

## § 931.4

amount that is sufficient to satisfy the minimum investment required for that member in accordance with the Bank's capital plan.

[66 FR 8310, Jan. 30, 2001, as amended at 70 FR 9510, Feb. 28, 2005]

### § 931.4 Dividends.

(a) *In general.* A Bank may pay dividends on Class A or Class B stock, including any subclasses of such stock, only out of previously retained earnings or current net earnings, and shall declare and pay dividends only as provided by its capital plan. The capital plan may establish different dividend rates or preferences for each class or subclass of stock, which may include a dividend that tracks the economic performance of certain Bank assets, such as Acquired Member Assets. A member, including a member that has provided the Bank with a notice of intent to withdraw from membership or one whose membership is otherwise terminated, shall be entitled to receive any dividends that a Bank declares on its capital stock while the member owns the stock.

(b) *Limitation on payment of dividends.* In no event shall a Bank declare or pay any dividend on its capital stock if after doing so the Bank would fail to meet any of its minimum capital requirements, nor shall a Bank that is not in compliance with any of its minimum capital requirements declare or pay any dividend on its capital stock.

[66 FR 8310, Jan. 30, 2001, as amended at 66 FR 54108, Oct. 26, 2001]

### § 931.5 Liquidation, merger, or consolidation.

The respective rights of the Class A and Class B stockholders, in the event that the Bank is liquidated, or is merged or otherwise consolidated with another Bank, shall be determined in accordance with the capital plan of the Bank.

### § 931.6 Transfer of capital stock.

A Bank in its capital plan may allow a member to transfer any excess capital stock of the Bank to another member of that Bank or to an institution that has been approved for membership in that Bank and that has satisfied all

## 12 CFR Ch. IX (1-1-06 Edition)

conditions for becoming a member, other than the purchase of the minimum amount of Bank stock that it is required to hold as a condition of membership. Any such stock transfers shall be at par value and shall be effective upon being recorded on the appropriate books and records of the Bank. The Bank may, in its capital plan, require a member to receive the approval of the Bank before a transfer of the Bank's stock, as allowed under this section, is completed.

[66 FR 8310, Jan. 30, 2001, as amended at 66 FR 54108, Oct. 26, 2001]

### § 931.7 Redemption and repurchase of capital stock.

(a) *Redemption.* A member may have its capital stock in a Bank redeemed by providing written notice to the Bank in accordance with this section. For Class A stock, a member shall provide six-months written notice, and for Class B stock a member shall provide five-years written notice. The notice shall indicate the number of shares of Bank stock that are to be redeemed, and a member shall not have more than one notice of redemption outstanding at one time for the same shares of Bank stock. A member may cancel a notice of redemption by so informing the Bank in writing, and the Bank may impose a fee (to be specified in its capital plan) on any member that cancels a pending notice of redemption. At the expiration of the applicable notice period, the Bank shall pay the stated par value of that stock to the member in cash. A request by a member (whose membership has not been terminated) to redeem specific shares of stock shall automatically be cancelled if the Bank is prevented from redeeming the member's stock by paragraph (c) of this section within five business days from the end of the expiration of the applicable redemption notice period because the member would fail to maintain its minimum investment in the stock of the Bank after such redemption. The automatic cancellation of a member's redemption request shall have the same effect as if the member had cancelled its notice to redeem stock prior to the end of the redemption notice period, and a Bank may impose a fee (to be specified in its

capital plan) for automatic cancellation of a redemption request. A Bank shall not be obligated to redeem its capital stock other than in accordance with this paragraph.

(b) *Repurchase.* A Bank, in its discretion and without regard to the applicable redemption periods, may repurchase from a member any outstanding Class A or Class B capital stock that is in excess of the amount of that class of Bank stock that the member is required to hold as a minimum investment, in accordance with the capital plan of that Bank. A Bank undertaking such a stock repurchase at its own initiative shall provide the member with reasonable notice prior to repurchasing any excess stock, with the period of such notice to be specified in the Bank's capital plan, and shall pay the stated par value of that stock to the member in cash. For purposes of this section, any Bank stock owned by a member shall be considered to be excess stock if the member is not required to hold such stock either as a condition of remaining a member of the Bank or as a condition of obtaining advances or transacting other business with the Bank. A member's submission of a notice of intent to withdraw from membership, or its termination of membership in any other manner, shall not, in and of itself, cause any Bank stock to be deemed excess stock for purposes of this section.

(c) *Limitation.* In no event may a Bank redeem or repurchase any stock if, following the redemption or repurchase, the Bank would fail to meet any minimum capital requirement, or if the member would fail to maintain its minimum investment in the stock of the Bank, as required by § 931.3.

[66 FR 8310, Jan. 30, 2001, as amended at 66 FR 54108, Oct. 26, 2001; 70 FR 9510, Feb. 28, 2005]

**§ 931.8 Other restrictions on the repurchase or redemption of Bank stock.**

(a) *Capital impairment.* A Bank may not redeem or repurchase any capital stock without the prior written approval of the Finance Board if the Finance Board or the board of directors of the Bank has determined that the Bank has incurred or is likely to incur losses that result in or are likely to re-

sult in charges against the capital of the Bank. This prohibition shall apply even if a Bank is in compliance with its minimum capital requirements, and shall remain in effect for however long the Bank continues to incur such charges or until the Finance Board determines that such charges are not expected to continue.

(b) *Bank discretion to suspend redemption.* A Bank, upon the approval of its board of directors, or of a subcommittee thereof, may suspend redemption of stock if the Bank reasonably believes that continued redemption of stock would cause the Bank to fail to meet its minimum capital requirements as set forth in §§ 932.2 or 932.3 of this chapter, would prevent the Bank from maintaining adequate capital against a potential risk that may not be adequately reflected in its minimum capital requirements, or would otherwise prevent the Bank from operating in a safe and sound manner. A Bank shall notify the Finance Board in writing within two business days of the date of the decision to suspend the redemption of stock, informing the Finance Board of the reasons for the suspension and of the Bank's strategies and time frames for addressing the conditions that led to the suspension. The Finance Board may require the Bank to re-institute the redemption of member stock. A Bank shall not repurchase any stock without the written permission of the Finance Board during any period in which the Bank has suspended redemption of stock under this paragraph.

[66 FR 8310, Jan. 30, 2001, as amended at 66 FR 54108, Oct. 26, 2001]

**§ 931.9 Transition provision.**

(a) *In general.* Each Bank shall comply with the minimum leverage and risk-based capital requirements specified in § 932.2 and § 932.3 of this chapter, respectively, and each member shall comply with the minimum investment established in the capital plan, as of the effective date of that Bank's capital plan. The effective date of a Bank's capital plan shall be the date on which the Bank first issues any Class A or Class B stock. Prior to the effective date, the issuance and retention of

Bank stock shall be as provided in §925.20 and §925.22 of this chapter.

(b) *Transition period*—(1) *Bank transition*. A Bank that will not be in compliance with the minimum leverage and risk-based capital requirements specified in §932.2 and §932.3 of this chapter as of the effective date of its capital plan shall maintain compliance with the leverage limit requirements in §966.3(a) of this chapter and shall include in its capital plan a description of the steps that the Bank will take to achieve compliance with the minimum capital requirements specified in §932.2 and §932.3 of this chapter. The period of time for compliance with the minimum capital requirements shall be stated in the plan and shall not exceed three years from the effective date of the capital plan. When the Bank has achieved compliance with the leverage requirement of §932.2 of this chapter, the leverage limit requirements of §966.3(a) of this chapter shall cease to apply to that Bank.

(2) *Member transition*. (i) *Existing members*. A Bank's capital plan shall require any institution that was a member on November 12, 1999, and whose investment in Bank stock as of the effective date of the capital plan will be less than the minimum investment required by the plan, to comply with the minimum investment by a date specified in the Bank's capital plan. The length of the transition period shall be specified in the capital plan and shall not exceed three years. The capital plan shall describe the actions that the existing members are required to take to achieve compliance with the minimum investment, and may require such members to purchase additional Bank stock periodically over the course of the transition period.

(ii) *New members*. A Bank's capital plan shall require any institution that became a member after November 12, 1999, but prior to the effective date of the capital plan, to comply with the minimum investment specified in the Bank's capital plan as of the effective date of the plan. A Bank's capital plan shall require any institution that becomes a member after the effective date of the capital plan, to comply with the minimum investment upon becoming a member.

(3) *New business*. A Bank's capital plan shall require any member that obtains an advance or other services from the Bank, or that initiates any other business activity with the Bank against which the Bank is required to hold capital, after the effective date of the capital plan to comply with the minimum investment specified in the Bank's capital plan for such advance, services, or activity at the time the transaction occurs.

## PART 932—FEDERAL HOME LOAN BANK CAPITAL REQUIREMENTS

Sec.

- 932.1 Risk management.
- 932.2 Total capital requirement.
- 932.3 Risk-based capital requirement.
- 932.4 Credit risk capital requirement.
- 932.5 Market risk capital requirement.
- 932.6 Operations risk capital requirement.
- 932.7 Reporting requirements.
- 932.8 Minimum liquidity requirements.
- 932.9 Limits on unsecured extensions of credit to one counterparty or affiliated counterparties; reporting requirements for total extensions of credit to one counterparty or affiliated counterparties.

AUTHORITY: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1440, 1443, 1446.

SOURCE: 66 FR 8310, Jan. 30, 2001, unless otherwise noted.

### §932.1 Risk management.

Before its new capital plan may take effect, each Bank shall obtain the approval of the Finance Board for the internal market risk model or the internal cash flow model used to calculate the market risk component of its risk-based capital requirement, and for the risk assessment procedures and controls (whether established as part of its risk management policy or otherwise) to be used to manage its credit, market, and operations risks.

### §932.2 Total capital requirement.

(a) Each Bank shall maintain at all times:

(1) Total capital in an amount at least equal to 4.0 percent of the Bank's total assets; and

(2) A leverage ratio of total capital to total assets of at least 5.0 percent of the Bank's total assets. For purposes of determining the leverage ratio, total