

**DEPARTMENT OF JUSTICE****Executive Office for Immigration Review****8 CFR Parts 1003 and 1208**

[Docket No. EOIR 140I]

RIN 1125-AA44

**Background and Security Investigation in Proceedings Before Immigration Judges and the Board of Immigration Appeals****AGENCY:** Executive Office for Immigration Review, Justice.**ACTION:** Interim rule; extension of comment period.

**SUMMARY:** On January 31, 2005, the United States Department of Justice, Executive Office for Immigration Review, published an interim rule to implement regulations covering Background and Security Investigations in Proceedings Before Immigration Judges and the Board of Immigration Appeals. The EOIR is extending the comment period for an additional 30-day period.

**DATES:** Comments must be received on or before May 2, 2005.

**ADDRESSES:** Please submit written comment to MaryBeth Keller, General Counsel, Executive Office for Immigration Review (EOIR), 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041. To ensure proper handling, please reference RIN No. 1125-AA44 or EOIR Docket No. 140I on your correspondence. You may view an electronic version of this rule at <http://www.regulations.gov>. You may also comment via the Internet to EOIR at [eoir.regs@usdoj.gov](mailto:eoir.regs@usdoj.gov) or by using the <http://www.regulations.gov> comment form for this regulations. When submitting comments electronically, you must include the RIN No. 1125-AA44 or EOIR Docket No. 140I in the subject box. Comments are available for public inspection at the above address by calling (703) 305-0470 to arrange for an appointment.

**FOR FURTHER INFORMATION CONTACT:** MaryBeth Keller, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041, telephone (703) 305-1041.

**SUPPLEMENTARY INFORMATION:** On January 31, 2005, the Department of Justice (Department), Executive Office for Immigration Review (EOIR), published an interim rule that amends regulations governing removal and other proceedings before immigration judges

and the Board of Immigration Appeals when a respondent has applied for particular forms of immigration relief allowing the alien to remain in the United States (including, but not limited to asylum, adjustment of status to that of a lawful permanent resident, cancellation of removal, and withholding of removal), in order to ensure that the necessary identity, law enforcement, and security investigations are promptly initiated and have been completed by the Department of Homeland Security prior to the granting of such relief. See 70 FR 4743.

It has come to the attention of the Department and EOIR that the Internet options for submitting e-mail comments to the interim rule during the original 60-day comment period originally provided with publication of the interim rule did not consistently function. Commenters seeking to submit e-mail comments via <http://www.regulations.gov> received an automatic message instructing the commenter to print out and submit written comments. Further, in several cases, comments e-mailed directly to EOIR at [eoir.regs@usdoj.gov](mailto:eoir.regs@usdoj.gov) resulted in "undeliverable" return receipts being sent to the comment sender. EOIR has now resolved this technical problem with its regulations comment e-mail box.

Despite these difficulties with the electronic comment filing options, the ability to submit written comments to EOIR throughout this period of time via the United States mail was unaffected.

However, to ensure that the public has been provided an adequate opportunity to comment on the interim rule, EOIR is extending the public comment period by 30 days. The extension of the public comment period does not affect the effective date of the interim rule, which remains April 1, 2005. Commenters who submitted comments electronically prior to April 1, 2005, are encouraged to resubmit comments electronically or by mail.

■ Accordingly, EOIR is extending the comment period and will accept public comments until May 2, 2005.

Dated: March 28, 2005.

**Kevin D. Rooney,**

*Director, Executive Office for Immigration Review.*

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**BILLING CODE 4410-30-M**

**FEDERAL DEPOSIT INSURANCE CORPORATION****12 CFR Part 335**

RIN 3064-AC88

**Securities of Nonmember Insured Banks****AGENCY:** Federal Deposit Insurance Corporation (FDIC).**ACTION:** Interim final rule; request for comment.

**SUMMARY:** The FDIC is revising its securities disclosure regulations applicable to state nonmember banks with securities required to be registered under section 12 of the Securities Exchange Act of 1934 (Exchange Act). The interim final rule reflects amendments to the Securities Exchange Act of 1934 made by the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley Act), and accommodates certain operational changes within the FDIC. The rule also incorporates through cross reference changes in regulations adopted by the Securities Exchange Commission (SEC) into the provisions of the FDIC's securities regulations. Incorporation by reference will assure that the FDIC's regulations remain substantially similar to the SEC's regulations, as required by law.

**DATES:** These amendments are effective on May 31, 2005. Comments must be submitted on or before May 31, 2005.

**ADDRESSES:** Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Agency Web Site: <http://www.fdic.gov/regulations/laws/federal/propose.html>. Follow the instructions for submitting comments on the FDIC Web site.
- E-mail: [comments@FDIC.gov](mailto:comments@FDIC.gov). Include "Part 335—Securities of Nonmember Insured Banks" in the subject line of the message.
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- Hand Delivery/Courier: Comments may be hand-delivered to the guard station located at the rear of the FDIC's 550 17th Street building (accessible from F Street) on business days between 7 a.m. and 5 p.m.

*Instructions:* All submissions received must include the agency name and use the title "Part 335—Securities of

Nonmember Insured Banks.” The FDIC may post comments on its Internet site at: <http://www.fdic.gov/regulations/laws/federal/propose.html>. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

**FOR FURTHER INFORMATION CONTACT:**

Dennis Chapman, Senior Staff Accountant, Division of Supervision and Consumer Protection, (202) 898-8922; Mary Frank, Senior Financial Analyst, Division of Supervision and Consumer Protection, (202) 898-8903; or Mark G. Flanigan, Counsel, Legal Division, (202) 898-7426, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Section 12(i) of the Exchange Act, as amended (15 U.S.C. 781(i)), authorizes the FDIC to issue regulations applicable to the securities of state nonmember banks that are substantially similar to those of the SEC with respect to its powers, functions, and duties to administer and enforce sections 10A(m) (standards relating to audit committees), 12 (securities registration), 13 (periodic reporting), 14(a) (proxies and proxy solicitation), 14(c) (information statements), 14(d) (tender offers), 14(f) (arrangements for changes in directors), and 16 (beneficial ownership and reporting) of the Exchange Act, and sections 302 (corporate responsibility for financial reports), 303 (improper influence on conduct of audits), 304 (forfeiture of certain bonuses and profits), 306 (insider trades during blackout periods), 401(b) (disclosure of pro forma financial information), 404 (management assessment of internal controls), 406 (code of ethics for senior financial officers), and 407 (disclosure of audit committee financial expert) of the Sarbanes-Oxley Act (codified at 15 U.S.C. 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265), in regard to the depository institutions for which it is the primary federal regulator. These regulations must be substantially similar to the regulations of the SEC under the listed sections of the Exchange Act and the Sarbanes-Oxley Act, unless the FDIC publishes its reasons for deviating from the SEC’s rules. The amendments to this part incorporate amendments to the Exchange Act, and changes to the SEC regulations, including the adoption of Regulation FD (Fair Disclosure).

In addition, certain changes to delegations of authority in part 335 result from FDIC’s internal merger of the

former Division of Supervision and the former Division of Compliance and Consumer Affairs into the Division of Supervision and Consumer Protection. The reorganization also created area offices in Memphis, Tennessee, and Boston, Massachusetts, in place of regional offices in those cities, and title changes for officials in the FDIC headquarters and other offices.

**II. Section-by-Section Analysis**

Part 335 will be amended throughout to reflect the addition of section 10A(m) to the Exchange Act and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act in addition to those sections that the FDIC is currently required to administer and enforce under section 12(i) of the Exchange Act.

Section 335.101(b) will be amended to clarify that part 335 generally incorporates through cross reference the regulations of the SEC as these regulations are routinely issued, revised, or updated from time to time by the SEC under sections 10A(m), 12, 13, 14, and 16 of the Exchange Act and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act, except as provided at section 335.801 of this part.

New section 335.121 (Listing standards relating to audit committees) will specifically incorporate by reference the SEC rule 10A-3 (17 CFR 240.10A-3), adopted pursuant to section 10(A)(m) of the Exchange Act and Section 301 of the Sarbanes-Oxley Act, which prohibits any national securities exchange and national securities association from listing the securities of an issuer that fails to comply with specific audit committee requirements including member independence, oversight, complaint procedures, engagement of counsel and other advisors, and funding.

Section 335.201 (Securities exempted from registration) and section 335.261 (Exemptions; terminations and definitions) will add SEC Rule 12h-5 (Exemption for subsidiary issuers of guaranteed securities and subsidiary guarantors) (17 CFR 240.12h-5).

Section 335.211 (Registration and reporting) will add SEC Rule 17 CFR 240.12b-37 (Satisfaction of filing requirements).

Section 335.221 (Forms for registration of securities and similar matters) adds new subparagraph (d) to adopt the requirements of SEC Regulation FD (Fair Disclosure) (17 CFR 243.100 through 243.103), which is designed to address problems of selective disclosure of material information by reporting entities.

Section 335.331 (Acquisition statements, acquisition of securities by

issuers, and other matters) is amended to add SEC Rule 13k-1 (Foreign bank exemption from the insider lending prohibition under Section 13(k) of the Exchange Act) (17 CFR 240.13k-1) and to change the title.

Section 335.801 (Inapplicable SEC regulations; FDIC substituted regulations; additional information) is amended to add section 10A(m) of the Exchange Act and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act.

Section 335.901 (Delegation of authority to act on matters with respect to disclosure laws and regulations) is amended to reflect certain changes in the organizational structure of the FDIC and to shorten the title.

**III. Request for Comments**

The FDIC requests comments on all aspects of the rule changes. Commenters who suggest that the FDIC modify the requirements of the SEC’s rules, regulations, and forms for state nonmember banks should support their request by demonstrating how such modification would satisfy the requirements of section 12(i) of the Exchange Act.

Comments are also welcome on the general organization of part 335.

**IV. Regulatory Analysis and Procedure**

*a. Administrative Procedure Act*

Public Comment Waiver and Effective Date. Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b) (APA), the FDIC finds good cause to issue this interim final rule without first seeking public comment. Section 553(b) of the APA does not apply to rules of agency organization, procedure, or practice, or when the agency for good cause finds that notice and public comment on the rules being promulgated are impractical or unnecessary. The Exchange Act requires that the FDIC issue regulations substantially similar to those of the SEC or publish its reasons for not doing so. Certain portions of 12 CFR 335 that are being amended are organizational; other portions result from amendments to section 12(i) of the Exchange Act or the adoption of regulations by the SEC that were published in proposed form by the SEC. For these reasons, the FDIC finds that providing notice and an opportunity for public comment on these rules is unnecessary.

Although notice and comment are not required, we are nonetheless interested in receiving any comments that may improve these rules. We therefore request comments on all aspects of this interim final rule. Following the comment period, the FDIC will consider

any comments, make any necessary changes, and finalize the amendments.

*b. Paperwork Reduction Act*

This rule contains no new collections of information as defined by the Paperwork Reduction Act.

*c. Regulatory Flexibility Act*

A regulatory flexibility analysis is required only when the agency must publish a notice of proposed rulemaking (5 U.S.C. 603, 604). Because the revisions to part 335 are published in interim final form without a notice of proposed rulemaking, no regulatory flexibility analysis is required.

*d. Small Business Regulatory Enforcement Fairness Act*

The Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*) (SBREFA) provides generally for agencies to report rules to Congress and for Congress to review these rules. The reporting requirement is triggered in instances where the FDIC issues a final rule as defined by the Administrative Procedure Act (APA). Because the FDIC is issuing a final rule as defined by the APA, the FDIC will file the reports required by SBREFA.

**List of Subjects in 12 CFR 335**

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

■ The Board of Directors of the Federal Deposit Insurance Corporation hereby amends part 335 to title 12 of the Code of Federal Regulations as follows:

**PART 335—SECURITIES OF NON MEMBER INSURED BANKS**

■ 1. The authority citation for part 335 is revised to read as follows:

**Authority:** 12 U.S.C. 1819; 15 U.S.C. 78l(i), 78m, 78n, 78p, 78w, 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265.

■ 2. Section 335.101 is amended by revising paragraph (b) to read as follows:

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

(b) Part 335 generally incorporates through cross reference the regulations of the SEC as these regulations are issued, revised, or updated from time to time under sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley Act), except as provided at § 335.801 of this part. References to the Commission in the regulations of the SEC are deemed to

refer to the FDIC unless the context otherwise requires.

■ 3. Section 335.121 is added to read as follows:

**§ 335.121 Listing standards related to audit committees.**

The provisions of the applicable SEC regulation under section 10(A)(m) of the Exchange Act shall be followed as codified at 17 CFR 240.10A-3.

■ 4. Section 335.201 is revised to read as follows:

**§ 335.201 Securities exempted from registration.**

Persons 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-9, and 240.12g-1 through 240.12h-5.

■ 5. Section 335.211 is revised to read as follows:

**§ 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-37.

■ 6. Section 335.221 is amended by adding a new paragraph (d) to read as follows:

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

\* \* \* \* \*

(d) The provisions of the applicable and currently effective SEC regulation FD shall be followed as codified at 17 CFR 243.100 through 243.103.

■ 7. Section 335.261 is revised to read as follows:

**§ 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-5.

■ 8. Section 335.331 is revised to read as follows:

**§ 335.331 Acquisition statements, acquisition of securities by issuers, and other matters.**

The provisions of the applicable and currently effective SEC regulations

under sections 13(d) and 13(e) of the Exchange Act shall be followed as codified at 17 CFR 240.13d-1 through 240.13e-102 and 240.13k-1.

■ 9. Section 335.801 is amended by revising paragraph (a) to read as follows:

**§ 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 10A(m), 12, 13, 14, and 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78), sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265), and this part.

\* \* \* \* \*

■ 10. Section 335.901 is amended by revising the section heading and paragraph (a) as follows:

**§ 335.901 Delegation of authority 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 and Consumer Protection (DSC), and where confirmed in writing by the director, to a deputy director or an associate director, or to the appropriate regional director or deputy regional director or area director, to act on disclosure matters under and pursuant to sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78), sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265), and this part.

\* \* \* \* \*

By order of the Board of Directors,  
Federal Deposit Insurance Corporation.

Dated at Washington, DC, this 18th day of March, 2005.

**Robert E. Feldman,**

*Executive Secretary.*

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