and available for public inspection and copying, upon request, in accordance with the specified time sequence described below. In addition, public announcement of the disposition of the notice and the consummation date of the transaction, if applicable, will be made in the *Weekly Bulletin* published by the Office on the Friday following the operative date.

(4) The instructions to Part E of the notice indicate that when the person filing the notice affirmatively indicates no objection to public release of the information contained in the Summary Fact Sheet, public release normally will be made as soon as practicable after acceptance of the notice for filing.

(5) When the Office has not disapproved an acquisition of control within the statutory period (and any extensions thereof), the Office normally will release the information contained in the Summary Fact sheet upon completion of such acquisition of control.

(6) When the Office has issued a written notice disapproving the proposed acquisition of control, the Office normally will release the information set forth in the Summary Fact Sheet upon expiration of the date within which any appeal must be taken or upon the filing of an appeal with the U.S. Court of Appeals for the appropriate circuit.

(7) When a notice under the Act is filed but withdrawn prior to agency action or expiration of the statutory waiting period, the Office normally will not release the Summary Fact Sheet. The filing of the notice, the identity of the person on whose behalf the notice was filed and the time frames within which the notice was to be considered by the agency, would have been previously announced.

(8) If the information contained in the Summary Fact Sheet becomes known to members of the public, the Office may release the Summary Fact Sheet in its discretion.

(9) Notices under the Act that are filed in contemplation of a public tender offer subject to the requirements of the Williams Act Amendments to the Securities Exchange Act of 1934 may be given confidential treatment for up to thirty days after the notice is filed if: (i) The filing party requests such confidential treatment and represents that a public announcement of the tender offer and the filing of appropriate forms with either the Securities and Exchange Commission or the appropriate Federal banking agency, as applicable, will occur within thirty days from the filing of the notice; and (ii) the Office determines, in its discretion, that it is in the public interest to grant such confidential treatment. In other cases of requests for confidential treatment, the Office will be guided by the very strong presumption that the filing of such notices should be public when filed but will, in its discretion, grant such requests of confidential treatment if justified as being demonstratively inconsistent with the purposes of the Act.

(10) The information contained in the notice that is not included in the Summary Fact Sheet will continue to be held confidential by the Office subject to the requirements of the Freedom of Information Act.

(11) Nothing contained herein shall create a private right of action on behalf of any person nor shall any person, including the affected institution, have standing to intervene or otherwise contest or appear before the Comptroller in the deliberations regarding notices filed under the Act.

* * * * *

Dated: March 28, 1985.

C.T. Conover

Comptroller of the Currency.

[FR Doc. 85-10943 Filed 5-6-85; 8:45 am]

BILLING CODE 4810-33-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 564

[No. 85-286a]

Settlement of Insurance

Date: April 17, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation" or "FSLIC"), is proposing to revise its regulations pertaining to insurance of accounts. The proposal would reorganize those regulations in order to clarify their operation, simplify and expedite the insurance settlement procedure, and limit potential abuses and evasions of the insurance coverage limitations.

DATE: Comments must be received by June 28, 1985.

ADDRESS: Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

FOR FURTHER INFORMATION CONTACT: Christopher P. Bolle, Attorney, or Sandra L. Richardson, Attorney, (202) 377-6432, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTAL INFORMATION: In 1967, the Board adopted final regulations governing settlement of insurance in the event of liquidation of institutions whose accounts are insured by the FSLIC ("insured institutions"). The purpose of the regulations was to clarify insurance coverage for depositors in insured institutions, to simplify the rules, and to protect the FSLIC insurance fund from abuses and attempts at evading the insurance limit. *See* 32 FR 10415 (July 14, 1967). With minor modifications, those regulations have remained in effect. The Board has become concerned, however, that changes in deposit practices in the last 17 years have resulted in an investment environment very different from that which the current rules were intended to address.

Since 1967, the insurance coverage limit has been increased from $15,000 to $100,000. Due to this change, individual insurance determinations now involve much larger sums of money than previously had been the case. The higher insurance limits, coupled with the deregulation of interest rates on accounts, have made insured accounts a much more attractive investment for sophisticated investors than they were in 1967. The increased number of sophisticated investors in the market for insured accounts and the heightened competition engendered by account deregulation in turn has led to an increased use of novel and complex methods of account ownership, such as multiple-level agency relationships, which the current rules do not fully address. The Board has attempted to resolve these issues by interpretation and by rules addressing specific situations, but it believes that a far more desirable approach would be to substantially revise and reorganize the rules to reflect the environment in which they now must operate. The Board is therefore proposing to amend its regulations accordingly. The proposal will also take into account and discuss elements of a proposal issued for public comment by the Board on February 15, 1984 (*See* 49 FR 6736 (February 23, 1984)), which is hereby withdrawn in favor of a more comprehensive review of Part 564. It should be noted, however, that the proposed rules would not cover those issues addressed in the Board's rule on deposits placed by or through deposit brokers. *See* 49 FR 13003 (April 2, 1984).

I. General Structure of the Proposed Rules

The organizational structure of the proposed rules has a dual purpose: to group the rules according to the extent of insurance coverage afforded, and to clarify the interrelationship among the rules. Grouping the rules by the extent of insurance coverage would, in the Board's view, simplify their operation for the public and the insured institutions, this reducing the possibility of persons being less than fully insured through errors in interpretation. In addition, clarifying the interrelationship among the rules would better address the myriad and complex array of potential account relationships.

II. The Specific Rules

Definitions

The proposal would create a specific definitional section for settlement of insurance purposes in Part 564. At present, most of these definitions appear only in the general definitions set forth in Part 561. The Board is of the view that providing definitions in Part 564 instead of requiring reference to Part 561 would significantly increase the clarity of the proposed rules and ease of reference. The Board has also taken this opportunity to propose substantial revisions to existing definitions and to add a number of new definitions, as discussed further below.

More specifically, the proposal would add a definition of the term "employee benefit estate," which would be directly analogous to the term "trust estate" used in the National Housing Act and the current regulations. It would include any interest of an employee beneficiary in an "employee benefit plan", defined as a deferred compensation plan established by a public unit or a plan qualified under section 401 (but not 401(d)) or 457 of the Internal Revenue Code. The definition would exclude any interest retained by or attributable to the settlor or sponsor of the plan, because such interests clearly would not be interests of the employees.

The Board believes that this definition, together with proposed § 564.7 governing insurance coverage of such plans, would simplify and resolve many of the insurance issues currently arising in connection with investments by employee benefit plans, such as "vesting" questions and methods of calculation of interests. The definition of employee benefit plan would be one that virtually all employee benefit plans would meet for purposes other than that of insurance coverage. Plans qualified under the above-cited sections of the Internal Revenue Code, even if not technically in the form of irrevocable express trusts, must provide trust-like safeguards for the interests of their beneficiaries. While the Board is aware that there are a few employee benefit plans in existence which would not qualify for coverage as employee benefit plans under this definition, it believes that some of those plans may still be able to obtain additional insurance coverage under the rules governing the insurance of trusts.

Current § 561.5b defines an "independent activity," in connection with insurance eligibility of corporations, partnerships and unincorporated associations, to mean, "any activity other than one directed solely at increasing insurance coverage." The proposed rule would include an amended definition which would further limit the activities to those with a primary purpose other than the evasion or violation of federal or state law. This additional safeguard would further the purpose of the current regulation in preventing the use of such entities merely to increase insurance coverage, and would ensure that only *bona fide* entities would qualify for separate coverage. The Board notes that this provision would not deny separate insurance status to a corporation violating other types of law, *e.g.*, the Clean Air Act, if that corporation were otherwise engaged in one or more legitimate independent activities. Adoption of the proposed language would affect insurance coverage only with regard to those entities engaged in an independent activity designed primarily to avoid applicable law, *e.g.*, tax evaders.

The proposed definition of "insured account" would codify the Board's current view that the term does not include funds deposited by an insured institution in its own accounts in its corporate capacity. This would clarify the principle that the FSLIC only insures amounts that insured institutions owe to third parties. It would not affect insurance coverage of accounts which an insured institution holds for others as trustee or in other fiduciary capacities.

Proposed § 561.4(f) retains the current definition of "insured institution" set forth in section 561.1, and, in the interests of clarity and convenience, additionally incorporates without change the provisions of current section 564.11, concerning the status of FDIC-insured federal savings institutions.

The Board has become aware of the practice of a number of public units of appointing a large number of persons to be "official custodians" of public funds. This is done to increase insurance coverage under current § 564.8, which provides for separate insurance coverage of funds invested by *each* official custodian of funds of public units. The Board believes that the practical result of this interpretation of the current rules is to provide *de facto* 100-percent insurance coverage to any public unit willing to appoint enough custodians. The Board notes that Congress has specifically rejected the notion of full deposit insurance. *See* H.R. 11221; H. Rep. No. 93–751, January 21, 1974. In order to eliminate this problem, the proposal includes a definition of the term "official custodian." The proposed definition would define the term to include only those officials of public units who, pursuant to statute or ordinance, exercise control over the investment of public unit funds. Officials who do not have some discretionary investment authority conferred upon them by statute or ordinance would not be included in the term. The Board believes that this provision would continue to protect and insure the deposits of persons actually making investment decisions for public units, but would preclude the use of multiple custodians to increase coverage.

The term "public unit" as included in the proposal would incorporate and expand the provisions of current § 561.5 to expressly include nonappropriated-funds instrumentalities of the United States ("NAFIs"). This would codify the current staff interpretation that such an entity is a separate public unit qualifying for separate insurance coverage if it has a separate manager, profit-and-loss statement, and balance sheet.

The proposal also adds a definition of the term "settlor". Existing regulations do not define this term, thus leaving to state law the question of who is the settlor of a trust. The proposed definition would define the term to include any persons who have, directly or indirectly, contributed assets to the corpus of a trust or employee benefit plan, whether or not such persons are settlors under state law. The Board believes that this definition would better serve to prevent persons from obtaining additional insurance coverage by establishing trusts for their own benefit. The Board is now aware of a number of attempts to circumvent insurance limits in this regard through the use of a third party acting as settlor of the trust for the benefit of investors, who supply such third parties with the funds to be invested in the trust. The proposed definition would prevent such evasive devices by deeming any person who either is a settlor under state law, or who directly or indirectly contributes

assets to a trust, to be the settlor of such trust. The definition would exclude employee beneficiaries contributing to an employee benefit plan because the Board believes that the purpose and regulation of employee benefit plans makes it extremely unlikely that one would be used merely to increase insurance coverage.

Finally, the proposal would include the current definition of the term "trust estate" at § 561.4 to the extent that those portions of the definition pertain to irrevocable express trusts. For purposes of clarity, the proposal would add a new clause to the definition to cover the treatment of bondholders' interests in accounts held by the public unit issuing the bonds. This definition would be the same in substance as the provision addressing such interests currently set forth at 12 CFR 564.8(b). Since the current provision is actually in the form of a definition, the Board believes that it would be more appropriate to treat it as such as a matter of regulatory organization. Current references to pension plans and deferred compensation plans in § 561.4 would be covered in the new definition pertaining to employee benefit estates.

Administrative and Recordkeeping Provisions

The proposal would substantially reorganize administrative and recordkeeping provisions of the settlement-of-insurance regulations. The primary aim of the proposed reorganization is to simplify the rules, to reduce duplicative provisions, and to group the rules by the type and extent of insurance coverage for ease of reference. In most cases the proposed reorganization would not affect the extent of coverage.

1. Section 564.1

The proposal essentially would preserve the substance of current § 564.1, but would reorganize it into seven provisions, pertaining to (1) insurance settlement procedures, governing initial insurance determinations and settlement; (2) calculation of the amount of an insured account; (3) procedures to be followed where one person holds a number of accounts or has interests in a number of accounts held by others; (4) reconsideration of initial insurance determinations; (5) payment of insurance proceeds by the FSLIC; (6) choice of law; and (7) representations regarding insurance coverage by insured institutions, employees of the Board or the FSLIC. Paragraph (d), concerning procedures for reconsideration of initial insurance determinations, would not be amended by this proposal. Proposed amendments to the reconsideration provision are addressed in companion Board Resolution No. 85-286b (April 17, 1985).

Proposed paragraph (a), concerning basic settlement procedure, would be unchanged from the current provision.

To clarify the insurance coverage of accounts issued at a discount, and to avoid possible attempts to abuse the insurance rules, the proposal would amend current paragraph (b), which defines the amount of an insured account. In addition to the current provisions, it would provide that, with respect to any account whose face value was more than 10 percent greater than the amount of funds deposited in the account, the amount of the difference between the two will be deemed to be simple interest accruing over the life of the account, compounded yearly. In effect, the amount of the discount would be prorated over the life of the account. Thus, a $1,000 face-value account for 10 years issued in exchange for $500 would not be insured to its face value if the institution was placed in receivership the day after the account was issued. Instead, the amount of insurance payable on such an account would be approximately $500.14. Accounts issued at a discount of 10 percent or less would be insured to full face value plus accrued interest.

Proposed paragraph (c), concerning multiple accounts, would expand the current provision regarding proration of insurance payments to cover multiple accounts held by others in which one person has an interest in the same capacity, as well as multiple accounts held by one person in the same capacity. The proposal would clarify that proration among the different accounts would occur in both cases. It would also provide that, in cases where the insured member owns the entire beneficial interest in the account, insurance could be distributed on multiple accounts on a basis other than proration if the FSLIC and the insured member agree upon such other method of distribution. This last provision would apply only to individual accounts in which the holder of the accounts had the entire beneficial interest, and would not apply, for instance, to accounts held by an agent for others. The Board has preliminarily determined that to further extend the provision could prejudice some beneficial owners of accounts.

The proposed rule would also add a provision setting forth special rules for accounts held by loan servicers. Under both the current and proposed rules, accounts held by a loan servicer are insured as accounts held by an agent for the borrowers. Although the rule provides a significant benefit to loan servicing arrangements by simplifying the insurance coverage applicable to such accounts, the Board has become aware of a number of cases in which, for example, an individual has $100,000 of his own funds in an institution which also, unknown to him, holds funds deposited by a loan servicer for purposes of servicing his mortgage loan. In such a case, applying the general rules of proration would result in a net loss of insurance coverage for the borrower due to the loan servicer's actions in depositing his funds in the same institution, which clearly is beyond his control or knowledge. As an equitable matter, the Board believes that the risk of loss in such case should be born by the lender or holder of the note, and not the borrower. Therefore, the proposal would provide that uninsured amounts resulting from the aggregation of loan servicing accounts with individual accounts of the borrower would be attributed to the loan servicing account. Amounts not insured due to aggregation of the borrower's own accounts would not, of course, be applied to the loan servicing account.

Paragraph (e) would remain fundamentally unchanged from the current rules governing payment of insurance proceeds by the FSLIC to accountholders. It would clarify that the FSLIC would make payment to any accountholder acting in a fiduciary capacity in that capacity. The current provision for payment to be made to a person other than the accountholder would be deleted in order to streamline the payment procedure. It is the Board's preliminary view that other provisions in the proposal recognizing liens against insurance payments eliminate the need for such a provision. The proposal would also provide that, in cases where a creditor has asserted a valid security interest or judicial lien against an account, the FSLIC would make payment of insurance arising from that account subject to that interest or lien. However, with respect to accounts subject to the right of setoff, the proposed rule provides that insurance payment for amounts subject to such right may be made to the receiver of the institution where it requests such payment. Paragraph (e) also provides that, with respect to accounts issued in negotiable instrument form, the insured member would be deemed to be the holder of such account as of the date of default, and that payment of insurance would be made to such holder, provided that affirmative proof is presented that

such person was in fact the holder of the instrument as of the date of default.

Paragraph (f) would substantially incorporate the current provision concerning applicable law in § 564.2(a). The proposal would expressly provide that the rules contained in Part 564 preempt other inconsistent state or local laws or rules in making insurance determinations, although not for other purposes, and that the rules governing payment of insurance would exclusively govern such payment. This would restate the Board's view that the FSLIC rules supersede any conflicting state rules, such as state rules designating persons other than the accountholder as payee. The proposal would also clarify the current provision by providing that, to the extent that reference to state or local law is required in order to reach an insurance determination, it is the substantive law of the state in which the institution's principal office is located that governs.

Proposed paragraph (g) would codify the position taken by the Board in a 1967 resolution that statements and other representations made by insured institutions or others as to the amount or nature of insurance coverage have no binding effect upon the Board or the FSLIC. The Board notes that insured institutions are not in any way its agents, and that even its employees do not have the authority to alter the extent of insurance coverage by representation, opinion, or otherwise. The Board wishes to make as clear as possible that only the provisions of Title IV of the NHA, the Board's rules and regulations, and the Appendix to Part 564 govern the extent of FSLIC insurance.

2. Section 564.2: Recordkeeping Requirements

Proposed § 564.2 would be narrower in scope than the current section. Current § 564.2 contains a number of provisions addressing nonrecordkeeping issues which, in the Board's view, would be more appropriately contained in the substantive sections to which they apply. Therefore, the proposal would relocate current provisions concerning calculation and ascertainability of trust estates to proposed §§ 564.6 and 564.7 concerning insurance coverage of irrevocable trusts and employee benefit plans, respectively.

The Board originally adoped § 564.2 to address a number of issues which arose during a series of FSLIC and FDIC insurance settlements in the early 1960s. The section was designed to create a series of presumptions primarily to address small-scale potential abuses by individuals of low levels of FSLIC insurance coverage. First, it conclusively presumes that an account in the name of an individual is beneficially owned by that person, unless the account records of the institution disclose that the account is held pursuant to a relationship with another person who beneficially owns the funds in the account. Thus, pursuant to the present rules, the FSLIC will not recognize a trust relationship, and instead will insure the trustee who holds the account solely as an individual, unless the existence of the trust relationship is disclosed on the institution's account records. This first presumption was designed to prevent post-default invention of relationships which would fraudulently increase insurance coverage, and to expeditiously provide the FSLIC with information necessary to conduct the settlement process in fulfillment of its statutory mandate to settle insurance as quickly as possible. Second, if such a relationship is disclosed, the rule presumes that no additional insurance coverage is warranted unless this disclosure is supplemented by the disclosure, either in the records of the institution or in records of the accountholder maintained in good faith and in the ordinary course of business, of the details of the claimed relationship and the interests of other persons in the account. The rule established this second presumption to further the aims of the first, and to require a showing by the accountholder that the claimed relationship and the claimed interests of others are in fact *bona fide*. Third, with respect to any trust, the rule conclusively presumes that the trust does not exist absent the existence of a signature card with respect to that trust in the records of the institution. This extra test for trusts reflected the Board's experience that the separate insurance coverage afforded trusts was more likely to be abused than the insurance afforded other account relationships. Finally, the current rules exempt accounts issued in negotiable form from these recordkeeping requirements in the interest of facilitating the transfer of such instruments.

As noted above, the current rules were designed in the 1960s to address potential fraud and evasion of the insurance limits, and to speed the insurance settlement process, in light of the problems encountered in insurance settlements in the early and middle years of that decade. Because of the relative stability of the thrift industry at that time, in contrast to its subsequent growth, such insurance settlements tended to be much smaller, both in terms of the size of the individual institutions and of the volume of cases in any one year, than is now the case. The current rules have achieved the original goal of limiting small-scale fraud and evasion by individuals.

The Board believes, however, that developments since 1967, principally the significant increase in insurance coverage from $15,000 to $100,000 and the deregulation of rates of return on deposits, suggest that a number of changes to these recordkeeping requirements are in order. More specifically, the increase in the insurance limit from $15,000 to $100,000 has not only increased the costs to the FSLIC arising from potential errors, but has also encouraged the development of many complex account ownership devices which now are almost commonplace. In addition, the deregulation of interest-rate limitations, now virtually complete, has resulted in new settlement problems facing the FSLIC which are much more complex than those anticipated in the 1967 insurance provisions. These post-1967 developments have greatly increased not only the possibility, but also the potential cost, of fraud and error. Furthermore, the increased prevalence of complex account devices, and the number, individual size, and aggregate dollar volume of insurance settlements, is beginning to slow the insurance settlement process to the point that the FSLIC is finding it difficult to fulfill its statutory mandate to settle insurance claims speedily while protecting itself from fraud and abuse. Finally, the low level of disclosure required under the current rules does not provide the FSLIC with sufficient information, given the complexity of many account structures, to accurately determine the potential cost of various alternatives in considering courses of action to take with a failing institution, such as whether to liquidate the institution or to merge it with another. This absence of information may in some cases actually reduce the number of alternatives available to the FSLIC, resulting in delays which are potentially costly to the FSLIC and detrimental to public confidence in the FSLIC and the thrift industry.

As a result of these recent developments, in the course of the insurance settlement process the FSLIC now often faces the immensely complicated and time-consuming task of investigating many large-denomination accounts in depth. The time spent on the settlement of such accounts significantly slows the whole insurance settlement process, to the detriment of all accountholders seeking speedy payment of insurance. The complexity of the

arrangements used, together with the large amounts in question, also dramatically increase the possibility of post-default invention of relationships and other fraudulent devices.

The Board therefore believes that the existing recordkeeping requirements may no longer provide the FSLIC with sufficient information for it to fulfull its statutory mandate to pay insurance quickly (and thereby maintain public confidence) while continuing to prevent fraud and circumvention of the insurance limits. The proposal therefore would substantively amend the recordkeeping requirements in a number of respects.

Specifically, although the provision governing disclosure of the existence of claimed relationships would remain substantially unchanged, the proposal would amend its language to clarify that the account records must disclose the existence of an applicable relationship in order for such relationship to be recognized for insurance purposes. The revised language would further emphasize that nondisclosure of a relationship will result in the failure of a claim based on that relationship and that disclosure of a relationship which might provide the basis for additional insurance coverage will result in such coverage only where the disclosed relationship is in fact present.

In the case of accounts established by irrevocable trusts, employee benefit plans, loan servicers, court registries, and public units, the proposed amendments would require disclosure of the details of the relationship (including the identities and interests of persons or entities having an interest in the account) in either the account records of the insured institution or the records of the accountholder maintained in good faith and in the ordinary course of business. This would be identical to current provisions. The Board believes that these types of relationships are not as easily fabricated as, for example, agency and nominee relationships, and that various features of such relationships provide safeguards regarding their genuineness that are lacking in other relationships. Further, the separate insurance coverage afforded to trusts and employee benefit plans diminishes the need to know in advance of potential aggregation problems.

For relationships other than irrevocable express trusts, employee benefit plans, loan servicing accounts, and accounts held by court registries or by public units, the proposed rule would require disclosure of the identities and interests of persons having beneficial ownership interests in the account records of the institution. The proposal provides that the complete details of any relationship (other than those described above) would be required to be disclosed on the records of the insured institution. This provision would, in the Board's view, provide the FSLIC with sufficient information to: (1) Prevent post-default invention of relationships designed to fraudulently increase insurance coverage, (2) determine the insurance on such accounts quickly and efficiently, thus lessening the delay in payment on those and other accounts in an insurance settlement, and (3) make well-informed decisions as to potential costs of various alternatives in considering what course of action to take with respect to an insolvent institution.

The proposal would also eliminate the current recordkeeping exemption for accounts in negotiable form. It is the Board's view, based on its experience in insurance settlements over the last several years, that the limited increase in transferability conferred by the current exemption is outweighed by the potential insurance settlement problems created by the exemption. As noted above, that provision was intended to facilitate the transferability of negotiable accounts by making it unnecessary for an agent or other fiduciary to, in effect, register his capacity with the issuing institution. However, the Board has found that one of the major uses of negotiable accounts is by persons seeking to avoid the recordkeeping requirements which would otherwise be applicable. In the arrangements in question, which usually involve certificates of deposit in multi-million dollar denominations, there is no anticipation that the account would ever be negotiated. Instead, it is issued in such a form only to reduce the recordkeeping required for insurance on the account. The Board believes that this use of the recordkeeping exemption for negotiable accounts is not appropriate. Therefore, the proposal would eliminate the exemption entirely. The Board further notes that the removal of the exemption would not in any way decrease the negotiability of negotiable accounts. It would only require that a person purchasing such an account who wishes to obtain additional insurance coverage over the $100,000 individual limit comply with the recordkeeping requirements applicable to all accounts.

The proposal would also add a provision addressing a particularly common disclosure problem: that a person who is actually an agent mistakenly discloses his capacity as that of a trustee. Under the current rules, such a person could not be insured as a trustee because he was not a trustee, nor could he be insured as an agent because the agency relationship was not disclosed. In order to avoid this result, the proposal would provide that where a relationship pursuant to which an account is held is disclosed as a trust relationship, but is actually an agency or nominee relationship, the disclosure of the "trust" will be deemed sufficient to disclose the actual agency or nominee relationship for purposes of proposed § 564.2(a) only. However, other recordkeeping requirements applicable to agency or nominee relationships, as decribed above, would apply. The Board believes that this provision will avoid loss of insurance coverage due to this one common error, but will not create a loophole in the recordkeeping requirements generally.

The proposal would also add a provision limiting the term "records of the insured institution" to exclude records with respect to any account which are held by a person (other than the insured institution) with an interest in the account. This provision is designed to preclude evasions of the recordkeeping rules through the device of appointing the accountholder as collecting and paying agent on the account he holds.

Finally, the proposal would add a provision to § 564.2 codifying current FSLIC practices, which would permit alternative proof of a claim where the account records of the institution are defective. In order to qualify under the proposed provision, a person would be required to show by clear and convincing evidence that appropriate disclosure was attempted, but that it failed due to some action, or inaction, on the part of the institution. In practice, a claim under this provision would have to show that the accountholder attempted to make adequate disclosure by transmitting the correct information to the institution, but that, for whatever reason, the institution failed to properly record the information in its records, or failed to maintain those records properly. Mere reliance on erroneous advice by the institution as to the extent or nature of the disclosure required would not be sufficient. Rather, the accountholder would have to show that the institution lost or otherwise failed to record or maintain records which would have satisified the disclosure requirements if properly maintained.

Substantive Provisions

1. Individual Accounts

The proposal would create a new classification of accounts, known as "individual accounts." Unlike the current term "individual account", the term as used in the proposal would not denote an account held by an individual natural person in an individual capacity. Instead, the term "individual account" would mean any account subject to the basic individual insurance limit of $100,000, as opposed to an account held by, for example, a trustee or agent which may be insured in excess of $100,000. This change is designed to clarify the distinction between accounts subject to the $100,000 per-legal-person insurance limit, and those which are not. The proposal contains a number of subcategories within this type of account. Accounts held by corporations, partnerships, unincorporated associations, individual natural persons, executors or administrators of estates, and decedents would be included in this overall category.

The proposal would incorporate the current provision concerning individual accounts [12 CFR 564.3(a)] in modified form in proposed § 564.3(a) governing insurance of "personal" accounts. A personnal account would encompass any account held in the name of a natural person (or husband-wife community of which such person is a member), or in the name of a business of which such person is a sole proprietor, in his individual capacity or as sole proprietor. It would be identical to the current provision except that it would add a codification of current staff interpretations that an account of a sole proprietorship is insured as an individual account of the proprietor(s).

Accounts of executors or administrators of estates or of decedents would be insured in the same manner as at present.

Current provisions governing the insurance coverage on partnerships and unincorporated associations (at 12 CFR 564.6 and 564.7) would not be changed in substance by the proposal. Provisions governing insurance of accounts of partnerships, currently contained in the same provision that governs corporate accounts, would be separately delineated in the interest of clarity.

Insurance coverage applicable to corporations under the proposal also would remain substantially the same as that which is currently in effect. The provision regarding accounts owned by corporations, however, would be expanded to include accounts held by investment companies within the basic corporate insurance limit of $100,000. This proposed change is consistent with amendments to Part 564 which were previously proposed by the Board on February 15, 1984.

2. Joint Accounts

In its February 1984 proposal, the Board included amendments to the rules governing insurance of accounts held jointly. That proposal would have eliminated the signature-card requirement for jointly held time deposits. Because of its concern over the amount of information available to the FSLIC in the event of default of institutions, however, the Board has preliminarily determined to retain the signature-card requirement for joint accounts.

The current provisions concerning the extent of insurance coverage on joint accounts would remain essentially unchanged, with two exceptions. As under the current rule, in order to qualify for separate insurance coverage, each co-owner of the account would have to personally execute a signature card with respect to the account, and every co-owner must possess the right to withdraw funds from the account. However, the proposal would add the requirement that only natural persons could be co-owners of a qualifying joint account. The Board is proposing this constraint because it believes that the use of joint accounts by corporations to obtain additional insurance coverage is inconsistent with such corporations' separate identities, and is often subject to abuse by means of corporations' use of accounts held jointly with their officers or other affiliated persons. In such cases, the use of a joint tenancy is inconsistent with the form of corporate ownership. Since the corporation must, in effect, potentially abrogate its interest in the account to the other joint tenant(s) due to the fact that it must, even under the current rules, give all joint tenants the right to withdraw all of the funds in the account, a presumption arises that one or more of the parties is not a genuine owner of the funds. Therefore, the proposal would limit qualifying joint accounts to those whose owners are natural persons. The Board does not believe that this restriction would preclude any legitimate uses of joint accounts. The proposal would also remove the exemption currently afforded to accounts in negotiable form from the above-mentioned signature-card requirements for the reasons set forth in the discussion of recordkeeping requirements, above.

3. Testamentary Accounts

The proposal would substantially amend the current provisions concerning testamentary accounts. The current provision was designed to afford additional insurance coverage to traditional savings-account trust such as Totten trusts and similar account ownership devices, which create a very simple form of *inter vivos* trust. To that end, it provides that that an account evidencing the owner's intent that the funds should belong on his death to his spouse, child, or grandchild, is insured up to $100,000 for each such beneficiary. The rule limits beneficiaries to those family relationships mentioned because of problems of valuation of beneficiaries' interests arising from the revocable nature of the trust. The rule was not intended to apply to more complex trust relationships, which would have to qualify under the rules governing inrrevocable express trusts in order to secure insurance in excess of the basic $100,000.

Since 1967, developments in estate planning have popularized a relatively complex revocable trust, the so-called "living trust", as an estate planning device. Many persons have attempted to obtain additional insurance coverage for such trusts under the current testamentary account rules. Although such trusts are genuine and legitimate trust arrangements, they do not properly or easily qualify for insurance coverage under the current rules because they are much more complex than the simple trust arrangements contemplated by those rules. The proposal would clarify the current provisions by limiting explicitly the types of trust arrangements which can qualify for insurance as testamentary accounts.

The proposal would provide that a testamentary account would be deemed to exist only where the account records of the insured institution provide for a testamentary disposition of the account which evidences the owner's intent that the funds in the account shall belong to a qualified beneficiary on the owner's death. In the event that a trust agreement is used to demonstrate such intent, the agreement must be contained in the records of the insured institution and must contain no terms or provisions other than the allocation of specific interests to beneficiaries on the death of the owner (although provision for custodial arrangements pending the majority of one or more beneficiaries would be permitted).

A qualified beneficiary of such a testamentary trust would be a person: (1) Who is the spouse, child, or grandchild of the owner of the funds; (2) who will fully own his interest on the death of the owner; (3) whose interest is not subject to a reversionary, remainder,

or similar interest, and (4) whose use of the interest is in no way restricted or limited by the trust's terms.

The proposal would preserve the current provision that non-qualified accounts (amounts not in a qualified testamentary account or not allocable to a qualified beneficiary), would be insured as personal accounts of the owner. The Board believes that these amendments will preserve the limited nature of the additional insurance coverage afforded to testamentary accounts.

4. Irrevocable Express Trusts

The proposal would preserve in general the current provisions governing the insurance of irrevocable trust accounts set forth at 12 CFR 564.10, including the valuation provisions currently found at 12 CFR 564.2(c). The proposed rules concerning trusts are substantially similar to those currently in effect, which provide for coverage of ascertainable interests of beneficiaries of irrevocable express trusts. Three modifications are being proposed. First, interests retained by the grantor of such arrangements would be aggregated with unascertainable trust estates and insured up to $100,000 in the aggregate. Second, the proposal would clarify that the $100,000 aggregate insurance coverage for unascertainable interests applies to all trusts created by the same settlor, rather than to each individual trust. Separate insurance coverage for trust estates would continue to be limited to the ascertainable portion of such interests. Finally, insurance coverage would be limited to some extent for multiple-level trust relationships.

These proposed substantive amendments are intended to prevent the use of trusts to evade the proposed recordkeeping requirements applicable to fiduciary accounts, and to prevent the use of multiple trusts to obtain additional coverage for a single settlor. Although the proposal would provide some coverage for interests retained by settlors, it would limit that coverage to $100,000 per settlor less the amount of any unascertainable trust-estate interests in the account, and would provide that such coverage be aggregated with the individual coverage of the settlor.

Multiple-level trust relationships would have total insurance coverage to $100,000 for each trust estate the beneficiary of which is an irrevocable trust. This provision is intended to prevent the use of multiple-level trust relationships to "pyramid" insurance coverage through use of the separate insurance coverage available to trusts. The provisions would apply only to irrevocable express trusts, and the use of agents or nominees and employee-benefit plans would not be affected.

Trust estates and employee-benefit estates created by the same settlor would not be insured separately from one another, but would be aggregated. This provision is intended to avoid confusion and to prevent schemes to obtain double coverage for the same basic relationship.

5. Employee-Benefit Plans

The proposal would provide separate rules for the insurance of employee-benefit plans. This separate provision is designed to simplify the rules of calculation and ascertainment for employee-benefit plans, and to highlight the distinctions between such plans and trusts.

The proposal provides that employee-benefit estates would not be subject to the same rules of ascertainment as trust estates. The rule for irrevocable express trust estates was originally developed to ensure that no person's interest in a trust would be insured for more than $100,000. To that end, it provides that such trust estates must be reducible to a present value under the federal estate tax tables. This rule was originally adopted, and is proposed in the same form, in order to avoid any situation in which a person could be insured for more than $100,000, in contravention of the provisions of sections 1724 and 1728 of the National Housing Act. Therefore, trust estates are and would be insured only to the extent that it is certain that no person receives more than $100,000 in coverage.

Although the Board originally applied the same rule of ascertainability to pension and other employee-benefit plans, which were and would be insured as trusts, the rule has been difficult to apply to such arrangements because employee-benefit plans are normally subject to a number of contingencies. The Board believes that simplification of the rule is appropriate in view of the extensive regulation of such plans under the Employee Retirement Income Security Act ("ERISA") and section 401 of the Internal Revenue Code, which provide safeguards against abuse of such plans for insurance-of-accounts purposes. Therefore, the proposal would provide that employee-benefit estates arising from a defined benefit plan may be ascertained in accordance with the actuarial method used by the plan to value such interests in the ordinary course of its business. With respect to a defined contribution plan, the proposal would provide that the employee-benefit estate of a beneficiary would be his or her account balance. The Board believes that these provisions would significantly reduce the complexity of determining the insurability of employee-benefit plans and would facilitate the investment in insured accounts by such plans.

The proposal would provide, as in the proposed provision on trust accounts, that unascertainable employee-benefit estates and amounts not attributable to specific employee benefit estates would be added together and insured up to $100,000 in the aggregate.

6. IRA and Keogh Plans

The current provisions for insurance of IRAs and Keoghs would be separated from the current trust provisions at section 564.10 and placed in a new separate section 564.8 in the interest of clarity. The proposal would make no substantive changes in coverage in this area.

7. Accounts Held by Agents and Nominees

The proposal would create a new category of accounts held by agents and nominees which would incorporate the current provisions concerning accounts held by agents or nominees, loan servicers, guardians, custodians under Uniform Gifts to Minors Acts ("UGMAs"), and court registries. The proposed grouping of these provisions is intended merely to increase the logical arrangement of the rules for ease of understanding and reference.

The proposal would not substantively change the current provision for insurance of accounts held by agents or nominees. However, the proposed provision would codify current staff interpretations that insurance coverage can "flow through" a number of levels of agency or nominee relationships to the ultimate principals, and that where a principal is, for instance, holding that interest in the account as trustee, trust insurance may likewise be available. The proposal would accomplish the intended result by putting the principal "in the shoes" of the accountholder for purposes of calculating the amount of insurance coverage. Thus, where an account is held by an agent whose principal is acting as agent for a trustee, the FSLIC would look first to the accountholding agent. If the disclosure requirements were met and the relationship could be recognized, the first agent, assuming he had no beneficial ownership interest in the account, would be ignored in the insurance analysis. The second agent would be treated similarly. Finally, the trustee would be insured to the same

extent as if he held the account directly. This provision is not intended to change the current status of the accountholding agent as the insured member; the agent would still be the insured member. The provision would, however, simplify and clarify the analysis regarding the extent of insurance coverage of that agent.

The proposal would generally retain without substantive change the current provisions concerning loan servicers, guardians, and custodians under UGMAs. A provision would be added to clarify the treatment of accounts held in court registries or by clerks of courts. The proposal would provide that the court or the clerk will be deemed to be acting as the agent of the owners of such funds. This provision would be added to clarify the insurance coverage of such funds. The Board believes that such coverage would be appropriate given the relationship in question, which by its nature cannot be used merely to increase insurance coverage.

6. Public-Unit Account

The proposed provision concerning accounts of public units would be unchanged from the current provisions. Current § 564.8(b), concerning amounts held by a public unit under a bond indenture, would be relocated in the definition of the term "trust estate", for purposes of clarity and consistency.

7. Mergers and Other Acquisitions

In 1982, Congress amended Title IV of the NHA to provide separate insurance coverage to protect depositors where two institutions had merged or where the liabilities of one insured institution were assumed by another. The amendment provided that the accounts in the assumed institution are insured separately from those of the surviving/acquiring institution until six months from the date of the assumption or, in the case of a time deposit, its first maturity after six months. This provision was intended to avoid a loss of coverage to depositors who had accounts in both institutions prior to the assumption until the depositor had the opportunity to withdraw funds to protect himself.

Because there has been some uncertainty as to the application of this provision in specific situations, the Board is proposing to clarify the provision by rulemaking. The proposal would provide that accounts originally in the assumed and assuming institution would be insured separately until six months from the date of the assumption or, for time deposits, the first maturity after six months from the date of assumption. The proposal would not distinguish between accounts that were assumed and those of the acquiring institution.

For example: An accountholder had one $50,000 certificate of deposit ("CD") maturing on June 1, 1986, and another $50,000 CD maturing on July 1, 1986, in institution A. He also has a $100,000 CD in institution B, which matures on September 1, 1986. Institution B is merged into institution A on December 1, 1985. The accountholder would be insured up to $200,000 ($100,000 for the accounts originally in A and $100,000 for those in B) until the first $50,000 CD matured on June 1, 1986, when coverage would drop to $150,000. The other $50,000 CD would retain its separate coverage. On July 1, 1986, the total insurance coverage would drop to $100,000 on maturity of the other $50,000 CD. Even though the assumed account still had not matured, the accountholder would not be eligible for further separate insurance coverage if he deposited further funds into the assuming institution.

The provision would, in the Board's view, effectuate the purposes of the separate insurance provision without allowing use of such insurance where an accountholder is not at risk. In the above example, the accountholder would not need separate insurance coverage after July 1, 1986, because he would have been able to withdraw the two $50,000 CDs on maturity in order to avoid loss of insurance coverage. To allow him to deposit more funds which would be separately insured from the assumed $100,000 CD would be to permit him to benefit from the merger rather than, as Congress intended, that he should only be insured to avoid potential loss of insurance.

Effective Date

In its consideration of any final rules, the Board would be particularly interested in public comment on the question of whether grandfathering should be permitted for existing time deposits, for the convenience of persons who have made long-term investments in insured accounts under the existing rules. The Board would also welcome comments on an appropriate period for delay of effective date should the Board determine to adopt rule changes in this area.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164 (Sept. 19, 1980), the Board is providing the following initial regulatory flexibility analysis:

1. *Reasons, objectives, and legal bases underlying the proposed rule.* These elements have been incorporated elsewhere in the supplementary information regarding the proposal.

2. *Small entities to which the proposed rule would apply.* The rule would apply to insured institutions.

3. *Impact of the proposed rules on small institutions.* The rule would encourage investment in insured accounts of all institutions, including small ones, by clarifying insurance coverage.

4. *Overlapping or conflicting federal rules.* There are no federal rules that duplicate, overlap, or conflict with this proposal.

5. *Alternatives to the proposed rule.* This element has been incorporated elsewhere in the supplementary information regarding the proposal.

List of Subjects in 12 CFR Part 564

Savings and loan associations.

According, the Federal Home Loan Bank Board hereby proposes to amend Part 564, Subchapter D, Chapter V of Title 12 of the *Code of Federal Regulations*, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 564—SETTLEMENT OF INSURANCE

1. The authority for 12 CFR Part 564 would continue to read:

Authority: Sec. 401, 402, 403, 405, 48 Stat. 1255, 1257, 1259, as amended; 12 U.S.C. 1724, 1725, 1726, 1728; Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071

2. Add new § 564.0 as follows:

§ 564.0 Definitions.

For the purposes of this Part,

(a) *Employee-benefit estate.* The term "employee-benefit estate" means the interest of any person, other than the employer/settlor, in an account owned by an employee benefit plan.

(b) *Employee-benefit plan.* The term "employee-benefit plan" means (1) a deferred compensation plan established by a public unit to provide retirement benefits to employees of such public unit or (2) any employee-benefit plan qualifying under sections 401 or 457 of the Internal Revenue Code of 1954, but shall not include any plan qualified under section 401(d) of such Code.

(c) *Independent activity.* The term "independent activity" means any lawful activity, other than one directed solely at increasing insurance coverage or one whose primary purpose is to evade or violate the provisions of applicable state or federal law.

(d) *Insured account.* The term "insured account" means an insured account as defined in § 561.3 of this

Subchaper, except that an account held by and at the insured institution on its own behalf in its corporate capacity shall not be an insured account for purposes of this Part.

(e) *Insured institution.* The term "insured institution" shall mean an insured institution as defined in § 561.1 of this Subchapter, except that Federal assocations the deposits of which are insured by the Federal Deposit Insurance Corporation shall not be deemed to be insured institutions for purposes of this Part.

(f) *Insured member.* The term "insured member" shall mean an insured member as defined in § 561.2 of this Subchapter.

(g) *Official custodian.* The term "official custodian" shall mean an officer or other official of a public unit to whom authority is conferred by statute or ordinance to invest funds of such public unit and where such authority includes discretion concerning the manner and nature of such investments. Such discretionary authority may be limited by specific investment criteria or standards provided by such statute or ordinance.

(h) *Political subdivision.* The term "political subdivision" includes:

(1) Any subdivision of a public unit or any principal department of such public unit (i) the creation of which was expressly authorized by statute, (ii) to which some functions of government have been delegated by statute, and (iii) to which funds have been allocated by statute or ordinance for its exclusive use and control; and

(2) Drainage, irrigation, navigation, improvement, levee, sanitary, school or power districts, and bridge or port authorities and other special districts created by state statute or compacts between states. Excluded from the term are subordinate or nonautonomous divisions, agenices, or boards within principal departments.

(i) *Public unit.* The term "public unit" means the United States, any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, any other territory of the United States, any county, municipality or any political subdivision thereof, and any nonappropriated-funds instrumentality of the United States with a separate manager, profit-and-loss statement and balance sheet.

(j) *Settlor.* The term "settlor" includes any person who has contributed assets of any kind, directly or indirectly, to the corpus of an express irrevocable trust, or employee-benefit plan, whether or not such person is deemed to be a settlor under local law. The terms shall not include any employee who makes contributions to an employee-benefit plan on his or her own behalf.

(k) *Trust estate.* The term "trust estate" means (1) the interest of a beneficiary of an irrevocable express trust, whether created by trust instrument or statute, in an account held pursuant to valid trust arrangements, but does not include any interest retained or reserved by the settlor; or (2) the interest of legal or beneficial owners of bonds issued by a public unit in funds deposited in insured accounts by or on behalf of such public unit where such funds by law or under the bond indenture are required to be paid to the holders of such bonds. The relationship established by an arrangement described in paragraph (k)(2) of this section shall be deemed to be an irrevocable express trust for purposes of this Part, provided that all applicable recordkeeping requirements set forth in § 564.2 of this Part are met.

3. Revise § 564.1 as follows:

§ 564.1 Settlement of insurance upon default.

(a) *Settlement procedure.* (1) In the event of a default by an insured institution, the Corporation shall promptly determine, from the account contracts and the books and records of such insured institution or otherwise, the identities of the insured members thereof and the amount of the insured account or accounts of each such member.

(2) The Corporation will give to each insured member shown to be such on the records of the insured institution written notice of the time and place of payment of insurance by mail at the last known address as shown on the records of the insured institution. If the insured institution has, at the date of default, any account or accounts issued in negotiable-instrument form, the Corporation shall promptly publish [in a newspaper printed in the English language and of general circulation in the city, county, or locality in which the principal office of such insured institution is located] a notice to all insured members of such insured institution of the time and place of payment of insurance.

(b) *Amount of insured account.* The amount of an insured account is the amount which the insured member would have been entitled to withdraw as of the date of default, plus interest on any savings account accrued to such date or dividends prorated to such date at the announced or anticipated rate without regard to whether such account is subject to any right of setoff, pledge, other security interest, or lien: *Provided,* that the amount of an insured account shall not include any amount the accrual or payment of which is in any way contingent or, in the case of any share account, which has not been announced as of the date of default under the terms of the account.

(1) In the case of a savings account with a fixed or minimum term or notice period that has not expired as of the date of default, dividends or interest thereon shall be computed as if the account could have been withdrawn on such date without any penalty or reduction in rate of earnings. This paragraph (b)(1) shall not be construed as conferring any right of withdrawal without penalty with respect to any transferred account.

(2) In the case of any insured account the stated principal amount of which is greater than 10 percent in excess of the amount of funds deposited in such account, the difference between the stated principal amount and the amount of funds deposited shall be deemed to be simple interest accruing from the date of issuance of such account to the maturity date of the account, compounded annually.

(c) *Multiple accounts.* (1) In the event that an insured member holds more than one account or has an interest in more than one account in the same capacity, and the aggregate amount of such accounts and/or interests exceeds the amount of insurance thereon, the insurance payment may be proprated among the member's accounts held in such capacity on the basis of their withdrawable value as of the date of default: *Provided,* that with respect to individual accounts only, the insurance payment may be applied to such accounts in such manner as the Corporation and the insured member may agree.

(2) Where a borrower has an individual account and imputed interests in accounts held by a loan servicer in the same institution, any amounts which would be uninsured due to the aggregation of such borrower's interest in such loan-servicer account with his individual accounts shall be deducted from the loan-servicer accounts, rather than from the borrower's individual accounts.

(d) [*See* Board Resolution No. 85-286b elsewhere in this issue of the **Federal Register**]

(e) *Payment of insurance.* (1) In the case of accounts held jointly, insurance proceeds will be paid to the accountholders jointly.

(2) In the case of all other accounts, insurance will be paid to the holder of the account, as indicated on the institution's records, whether or not

such holder is the beneficial owner, in the capacity in which the account is held.

(3) Where an account is subject to a valid security interest or judicial lien, payment of insurance on such account will be made subject to that interest or lien.

(4) Where an account is subject to a right of setoff, payment with respect to amounts subject to such right will be made to the receiver of the institution if such payment is requested by the receiver.

(5) With respect to any account in negotiable-instrument form, the insured member shall be deemed to be holder of the instrument as of the date of default, provided that affirmative proof is presented showing that such person was in fact the holder of the instrument as of the date of default. No payment with respect to any such instrument shall be made absent such showing.

(6) Where insurance payment is in the form of a transferred account, the rules of this paragraph (e) shall apply.

(f) *Applicable law.* Any legal authorities which conflict or are inconsistent with the provisions of this Part 564 are preempted. Insofar as reference to rules of local law is necessary to make any insurance determination under any provision of this Part, the substantive law of the jurisdiction in which the insured institution's principal office is located shall govern, so long as such law is not inconsistent with the provisions of this Part.

(g) *Representations concerning insurance coverage.* No opinions, representations, or other statements concerning the insurance coverage afforded in this Part or in Title IV of the National Housing Act, whether made by an insured institution or any other person, whether or not such person is employed by the Board or the Corporation, shall be considered to have any binding effect upon the Corporation or the Board. All opinions, statements, and other representations made by employees of the Board or the Corporation or any publication, other than pertinent resolutions of the Board, this Part, and the Appendix to Part 564, are advisory only.

4. Revise § 564.2 as follows:

§ 564.2 Recordkeeping requirements.

(a) The existence of any relationship pursuant to which funds in an account are invested and upon which a claim by the insured member for additional insurance is founded must be disclosed in the records of the insured institution. No claim for additional insurance coverage based upon any relationship may be recognized in the absence of its disclosure on such records. Specific references in the account title to the capacity of the accountholder as trustee, agent, guardian, executor, or custodian, for example, would provide adequate disclosure of a relationship under this paragraph.

(b) If and only if the records of the insured institution disclose the existence of a relationship which provides the basis for additional insurance coverage, the details of the disclosed relationships and the identities and interests of persons having interests in the account may be determined as follows:

(1) In the case of an account established by or on behalf of an irrevocable express trust, employee-benefit plan, public-unit account, account held by a loan servicer, or a court registry account, the identities and interests of persons or entities with interests in such accounts must be disclosed either in the records of the insured institution or in records maintained by or on behalf of the insured member in good faith and in the ordinary course of business.

(2) In the case of an account established pursuant to any other type of relationship, the identities and interests of persons or entities having interests in the account which provide the basis for additional insurance must be disclosed in the records of the insured institution.

(c) Any account established pursuant to a relationship which is in fact an agency or nominee relationship but was erroneously disclosed as a trust relationship in the records of the insured institution, shall be insured in the same manner as an account held by an agent or nominee which was properly disclosed under paragraph (a) of this section: *Provided*, that all other recordkeeping requirements applicable to accounts held by agents or nominees shall apply to such accounts.

(d) Interests or relationships which fail to meet the disclosure and recordkeeping requirements of this section will not be recognized in determining the amount of insurance coverage on an account.

(e) For purposes of this section, the term "records of the insured institution" shall not include any records held or maintained by any person other than the insured institution with respect to an account held by such person or with respect to which such person has any interest in any capacity.

(f) This section shall not preclude a claim for additional insurance coverage where the insured member shows by clear and convincing evidence that disclosure required under this section was attempted by such insured member, but failed by reason of the improper maintenance or loss of records by the insured institution. The Corporation may require bond or similar security for payments made under this paragraph (f).

5. Revise § 564.3 as follows:

§ 564.3 Individual accounts.

(a) *Personal accounts.* Funds owned by a natural person and invested in one or more accounts in his or her own name, including accounts in the name of one member of a husband-wife community or in the name of a business of which that person is sole proprietor, shall be insured up to $100,000 in the aggregate.

(b) *Accounts of a decedent, and accounts held by administrators and executors.* Funds of a decedent held in one or more accounts in the name of the decedent or the name of the administrator or executor of the estate shall be added together and insured up to $100,000 separately from accounts of the beneficiaries of the estate or of the executor or administrator.

(c) *Accounts owned by corporations.* (1) Funds owned by a corporation engaged in an independent activity and invested in one or more accounts in the name of such corporation shall be insured up to $100,000 in the aggregate. Funds invested in one or more accounts in the name of a corporation not engaged in an independent activity shall be deemed to be held by the person or persons owning such corporation and shall be added to any amounts invested in individual accounts of such persons in the same institution and insured up to $100,000 in the aggregate.

(2) Notwithstanding any other provision of this Part, any trust or other business arrangement which has filed or is required to file a registration statement with the Securities and Exchange Commission pursuant to the Investment Company Act of 1940, or which would be required to so file if it were organized or otherwise created under the laws of the United States or of a State, shall be deemed to be a corporation for purposes of determining insurance coverage. This paragraph shall not apply to common trust funds operated by insured institutions pursuant to Part 550 of this Chapter or in conformity with § 571.15 of this Subchapter.

(d) *Accounts owned by partnerships.* Funds owned by a partnership engaged in an independent activity and invested in one or more accounts in the name of such partnership shall be insured up to $100,000 in the aggregate. Funds invested in accounts in the name of

partnership not engaged in an independent activity shall be deemed to be held by the partners and shall be added to any amounts invested in personal accounts of such partners in the same institutions and insured up to $100,000 in the aggregate.

(e) *Accounts held by unincorporated associations.* Funds owned by an unincorporated association, engaged in an independent activity and invested in one or more accounts in the name of such unincorporated association, shall be insured up to $100,000 in the aggregate. Funds invested in accounts in the name of an unincorporated association not engaged in an independent activity shall be deemed to be held by the members of such association and shall be added to any amount invested in individual accounts of such members in the same institution and insured up to $100,000 in the aggregate.

6. Remove § 564.4, redesignate § 564.9 as new § 564.4 and revise as follows:

§ 564.4 Joint accounts.

(a) *Separate insurance coverage.* Funds in accounts held jointly, whether as joint tenants with right of survivorship, as tenants by the entireties, as tenants in common, or by husband and wife as community property, shall be insured separately from funds invested in accounts held individually by the co-owners.

(b) *Qualifying joint accounts.* A joint account shall be deemed to exist only where (1) all owners of funds in the account are natural persons and (2) each co-owner has personally executed a signature card with respect to such account and possesses withdrawal rights.

(c) *Failure to qualify.* An account owned jointly which does not qualify as a joint account under paragraph (b) of this section shall be deemed to be owned by the named persons as a personal account and such ownership interest shall be added to any other personal accounts of such persons in the same institution and insured up to $100,000 in the aggregate.

(d) *Determination of interests.* The interests of co-owners in a qualifying joint account shall be deemed equal, unless, in the case of a tenancy in common only, the insured institution's records state otherwise.

(e) *Determination of coverage on joint accounts.* (1) All qualifying joint accounts owned by the same combination of individuals shall first be added together and insured up to $100,000 in the aggregate and (2) the interests of each co-owner in all joint accounts owned by different combinations of individuals shall then be added together and insured up to $100,000 in the aggregate.

(f) *Non-applicability of section.* Joint-account insurance coverage shall not apply to interests of any kind in testamentary accounts, irrevocable express trust accounts, fiduciary accounts held by agents, custodians or nominees, public-unit accounts, or employee-benefit-plan accounts.

7. Revise § 564.5 as follows:

§ 564.5 Testamentary accounts.

(a) *Insurance coverage.* Funds invested in a qualified testamentary account by a natural person who is the accountholder shall be insured up to $100,000 in the aggregate for the interest of each qualified beneficiary in such account separately from all other accounts of the owner or of the beneficiary.

(b) *Qualified testamentary account.* A qualified testamentary account shall be deemed to exist only where the account records of the institution evidence the owner's intent that the funds in such account shall belong to a qualified beneficiary on the death of the insured member. Where such account is based upon a trust agreement, such trust agreement may contain no terms other than allocating interests to specific beneficiaries or provisions governing custody of the interest of a beneficiary pending the attainment of the age of majority of such beneficiary, and a copy of or evidence of such trust agreement must be contained in the account records of the insured institutions.

(c) *Qualified beneficiary.* A person is a qualified beneficiary of a testamentary account only if (1) he or she is the spouse, child, or grandchild of the owner of the funds; (2) the testamentary agreement provides that, on the death of the owner, such beneficiary's interest shall be owned by the beneficiary; and (3) such beneficiary's interest is not subject to a reversionary, remainder, or similar interest, and the use of the interest is in no way restricted. Provision for a custodial or similar arrangement pending the attainment of the age of majority of a beneficiary shall be considered to provide for full ownership of such interest by such beneficiary if such arrangement provides that the funds may be used only for the benefit of such beneficiary and for full ownership by such beneficiary upon attainment of the age of majority.

(d) Interests of non-qualified beneficiaries and amounts in non-qualified testamentary accounts shall be deemed to be a personal account of the owner of the funds, added to any other personal accounts of the owner established at the same institution and insured up to $100,000 in the aggregate.

8. Revise § 564.6 as follows:

§ 564.6 Irrevocable trust accounts.

(a) *Insurance coverage.* All trust estates for the same beneficiary invested in accounts established pursuant to valid trust arrangements created by the same settlor shall be added together and added to all employee benefit plans created by the same settlor and insured up to $100,000 in the aggregate, separately from other accounts of the trustee of such funds or of the settlor or beneficiary of such arrangement: *Provided,* that the total amount of insurance for all trust estates the beneficiaries of which are themselves irrevocable trusts shall not exceed $100,000 for each such trust estate.

(b) *Valuation of trust estates.* Trust estates in the same trust invested in one or more accounts will be separately insured as provided in paragraph (a) of this section only if the value of such trust estates is capable of determination, as of the date of default, in accordance with the present-worth tables and rules of calculation set forth in § 20.2031-10 of the Federal Estate Tax Regulations (26 CFR § 20.2031-10), and such trust estates are not subject to any contingencies other than those covered in that regulation. Trust estates meeting these requirements will be valued in accordance with the referred rules and table.

(c) In connection with trust estates created by the same settlor which are incapable of valuation in accordance with paragraphs (a) and (b) of this section, or where funds are not attributable to specific trust estates, or where one or more settlors retains or holds an interest in the trust, payment by the Corporation to the trustee with respect to all such interests shall not exceed $100,000 in the aggregate: *Provided,* that in no case shall funds attributable to a settlor under this paragraph (c), together with individual accounts of the settlor, be insured in an amount in excess of $100,000.

(d) Each trust estate in any trust established by two or more settlors shall be deemed to be derived from each settlor in proportion to his contribution to the trust.

(e) To the extent that funds deposited in an irrevocable trust account are in excess of the sume of the value of all determinable trust estates (as described in paragraph (b) of this section) and amounts payable under paragraph (c) of

this section, such funds shall not be insured.

9. Revise § 564.7 as follows:

§ 564.7 Employee-benefit plans.

(a) *Insurance coverage.* All employee-benefit estates for the same beneficiary in accounts established pursuant to employee-benefit plans created by the same settlor shall be added together, and further added to all trust estates created by the same settlor, and insured up to $100,000 in the aggregate, separately from other accounts of the settlor, trustee, administrator, or beneficiary of such plan.

(b) *Valuation of employee-benefit estates.* (1) The value of an employee-benefit estate arising from a defined contribution plan shall be deemed to be the account balance of the beneficiary as of the date of default of the insured institution.

(2) The value of an employer-benefit estate arising from a defined benefit plan shall be deemed to be the present value of the beneficiary's interest in the plan, evaluated in accordance with the method of calculation used in such plan, as of the date of default of the insured institution.

(3) For purposes of this section, all interests of beneficiaries in an employee-benefit plan small be deemed to be fully vested as of the date of the insured institution.

(4) Each employee-benefit estate arising from an employee-benefit plan created by two or more settlors shall be deemed to be derived from each settlor in proportion to his or her contribution to the plan.

(c) In the event that employee-benefit estates in an employee-benefit plan are not capable of valuation in accordance with the rules set forth in this section, or an account established for any such plan includes amounts for future participants in the plan, payment by the Corporation with respect to all such estates shall not exceed $100,000 in the aggregate.

10. Revise § 564.8 as follows:

§ 564.8 IRA and Keogh accounts.

(a) *IRAs.* All vested interests, excluding remainder interests, of any one individual in amounts deposited in an insured institution which qualify under section 408(a) of the Internal Revenue Code of 1954 shall be added together and insured up to $100,000 in the aggregate, separately from other accounts held by, or other interests in such accounts owned by the beneficiary, trustee or custodian in the same institution.

(b) *Keogh plans.* All vested interests, excluding remainder interests, of any one individual in amounts deposited in an insured institution which qualify under section 401(d) of the Internal Revenue Code of 1954 shall be added together and insured up to $100,000 in the aggregate, separately from other accounts held by or other interests in accounts owned by the beneficiary, trustee or custodian in the same institutions.

11. Add new § 564.9 as follows:

§ 564.9 Accounts held by agents and nominees.

(a) *General.* Funds owned by a principal and invested in one or more accounts in the name of names of agents or nominees shall be insured to the same extent as if held in an account in the name of the principal.

(b) *Loan Servicers.* Notwithstanding any other provision of law, a loan servicer who receives loan payments and places or maintains such payments in an insured institution prior to remittance to the lender or other parties entitled to the funds shall, for purposes of this Part only, be considered to be an agent of each borrower.

(c) *Clerks of courts or court registries.* Accounts held in an account in the name of any court of the United States or of a State or political subdivision thereof shall be deemed to be held by an agent for the owners of such funds.

(d) *Guardians, custodians, and conservators.* Funds held by a guardian, custodian, or conservator for the benefit of a ward or minor under a Uniform Gifts to Minors Act, and invested in one of more accounts in the name of the guardian, custodian, or conservator, shall be deemed to be accounts held by an agent or nominee.

12. Revise § 564.10 as follows:

§ 564.10 Public-unit accounts.

(a)(1) Each official custodian of funds of the United States, any State of the United States or any county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, any other territory of the United States or any county, municipality, or political subdivision thereof who lawfully invests such funds in accounts issued by an insured institution is separately insured up to $100,000.

(2) For purposes of this paragraph (a), if the same person is an official custodian of funds of more than one public unit, such person shall be separately insured with respect to the funds held for each unit.

(b) This section does not apply to tax and loan accounts, United States Treasury General Accounts, and United States Treasury Time Deposit Open Accounts.

13. Revise § 564.11 as follows:

§ 564.11 Insurance coverage for assumed accounts.

Whenever the liabilities of an insured institution have been assumed by another insured institution, whether by merger, consolidation or other statutory assumption, or by contract, each insured account so assumed by the surviving institution and each account originally in the surviving institution shall be separately insured to the same extent as if the institutions remained separate entities. Such separate insurance coverage shall continue until:

(a) With respect to any account which is not a time deposit, six months from the date of the assumption; or

(b) With respect to any time deposit, the earliest maturity date of such deposit after six months from the date of the assumption.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85-10819 Filed 5-06-85; 8:45 am]

BILLING CODE 6720-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-21981; File No. S7-20-85]

Request for Comments on Proposed Amendments to Broker-Dealer Successor Rules

AGENCY: Securities and Exchange Commission.

ACTION: Proposed revisions of a form and related rules.

SUMMARY: The Commission is publishing for comment proposed revisions of Form BD. Form BD is the form which is filed by an applicant to become registered as a broker-dealer under section 15(b) of the Securities Exchange Act of 1934 (the "Act"). The purpose of the proposed revisions to Form BD is to reduce the regulatory burden upon broker-dealers by revising the disciplinary question to remove duplicative information requirements and narrow the scope of tha question, and by clarifying the information required to be disclosed on the schedules. These revisions are the result of discussions with the Forms Revision Committee ("Forms Committee") of the North American Securities Administrators Association, Inc. ("NASAA"). The Commission also is

proposing to make changes to Rule 17a-3 under the Act, in order that the information requested conforms to that required in the revised Form U-4. Finally, the Commission is proposing to change its broker-dealer successor rules so that an amendment to Form BD is required rather than a new complete Form BD.

DATES: Comments should be submitted on or before June 6, 1985.

ADDRESSES: Interested persons should submit three copies of their written data, views and arguments to John Wheeler, Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and should refer to File No S7-20-85. All submissions will be available for public inspection at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Valerie S. Golden, Esq. at (202) 272-2848, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

A. Introduction

In November 1983, the Commission adopted a revised Form BD and revised Form BDW, resulting from the continuing efforts of the NASAA Special Committee to Revise Form BD.[1] The purpose of the revisions was to reduce the regulatory burden of duplicative registration requirements on broker-dealers by allowing them to use a single form to register with the states and self-regulatory organizations, as well as the Commission. In addition, the revisions made Form BD and Form BDW compatible with the Central Registration Depository ("CRD"). The CRD provides a computer database that maintains current registration information for every broker-dealer that is a member of the NASD and/or registered with a state that participates in the CRD program. The CRD program allows a broker-dealer to file a single form with the CRD and a copy thereof with the Commission and participating states.

NASAA subsequently formed the Forms Committee to review Form U-4, the form used by the states and the self-regulatory organizations to register certain associated persons or broker-dealers.[2] The NASAA Forms Committee was advised by representatives of the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc., the American Stock Exchange, Inc., the Association of Registration Management, the Securities Industry Association, representatives from the insurance and commodities industries and the staff of the Commission's Division of Market Regulation, Office of the Executive Director and Office of Applications and Reports Services. In the course of the Forms Committee's review of Form U-4, parallel improvements to Form BD were considered. The participants in the Forms Committee unanimously agreed to implement all of the Form BD changes. The NASAA membership approved the revised Form BD and Form U-4 on April 5, 1985. The Commission believes that the proposed changes to Form BD, discussed below, may reduce the regulatory burden upon broker-dealer while at the same time providing more meaningful information to the Commission and other securities regulators.[3]

B. Proposed Revisions to Form BD

Most of the proposed changes to Form BD relate to Item 7, which requests information concerning past disciplinary actions. These changes generally conform to the changes made on Form U-4 for registration of associated persons of broker-dealers and Form ADV for registration of investment advisers.[4] The proposed changes would continue to provide relevant information about statutory disqualifications and other disciplinary concerns. It is expected, however, that the new disciplinary questions will be more understandable and relevant and, as such, will generate more useful responses. In addition, the Commission proposes to amend Schedules A and B of Form BD to clarify that disclosures of the ultimate owner of the applicant is required.

1. The Disciplinary History Question—Item 7

The proposed changes would limit the scope of Item 7 to the broker-dealer itself and its control affiliates. The question in the current Form BD refers to all employees and thus imposes a substantial burden on broker-dealers, particularly large firms. The Commission proposes to define "control affiliate" on Form BD as "an individual or firm that directly or indirectly controls, is under common control with, or is controlled by the applicant." The definition of control affiliate would include any employees identified in Schedules A, B or C of Form BD as exercising control and would exclude any "employees who perform clerical, administrative, support or similar functions; or who, regardless of title, perform no executive duties or have no senior policy making authority." Accordingly, a broker-dealer would not be required to answer the disciplinary questions with respect to a registered representative that was not listed on any of the schedules and had no executive duties or senior policy making authority. The proposed changes would appear to be appropriate because Form BD is used to register the firm itself. In addition, the Commission and other securities regulators have access to Form U-4 for many of the broker-dealer's employees, including its registered representatives.

In addition, as proposed, the revised Item 7 is written in "plain English", not legalese. The Commission believes that the plain English questions will be more understandable and easier to answer. Thus, the Commission expects to receive more useful responses.

The proposed changes also would narrow certain disciplinary questions that have been previously too broad. For example, with respect to licensing, the current Form BD asks whether the applicant or any employee has ever had "any" license, permit, certificate, registration or membership denied, suspended, revoked or restricted. The new Form BD would ask whether the Commission ever denied, suspended or revoked the applicant's or control affiliates' registration or restricted its activities, as well as whether any state or other federal regulatory agency or self-regulatory agency ever took such action. In addition, the current Form BD question concerning "any" orders entered against the applicant or any employee by a foreign government has been narrowed to require disclosure of such orders only insofar as they relate

[1] Rule 15b-1 requires broker-dealers to apply for registration on Form BD.

[2] Form U-4 is no longer a Commission form because of the elimination of the SECO program.

[3] The Commission previously propsed an amendment to Rule 15b3-1 which would have required all broker-dealers to file a new Form BD at a specific date. *See* Securities Exchange Act Release No. 20407. (Nov.22, 1983). The Commission is not proposing such a requirement at this time. This Commission is considering processing Form BD on an electronic basis. Once the Commission determines how to process Form BD electronically, the Commission will require a new Form BD from all broker-dealers as part of the conversion process. The Commission anticipates giving broker-dealers sufficient notice before imposing such a requirement. However, we understand that, assuming that Form BD is adopted by the Commission this summer, all NASD registered broker-dealers will be required to file the new Form BD with the CRD by the end of 1985.

[4] The Commission today is proposing amendments to Uniform Form ADV, the form developed by NASAA and the Commission to register investment advisers. See Investment Advisers Release No. 967 (April 24, 1985).

to investments of fraud and only with respect to the applicant or a control affiliate.[5]

2. Disclosure of Ultimate Owner

Item 6 of Form BD currently requires disclosure of any person, not named in Item 1 or the Schedules, that directly or indirectly through agreement or otherwise exercises or has the power to exercise control over the management or policies of the broker-dealer. The proposed revisions to Form BD involve technical changes designed to clarify the disclosure requirements with respect to ownership and control of the broker-dealer. Schedules A and B of Form BD would be changed to make clear that the Schedules request information on the ultimate owners of the applicant. Schedule A is used by corporate broker-dealers to list officers, directors and owners of varying percentages of the firm's equity shares. Schedule B is used by broker-dealers which are partnerships to list their general partners and certain limited and special partners. The changes would make clear in Items 3 and 4 of these schedules that all intermediate owners, as well as the ultimate owners, of the applicant must be disclosed. Thus, if the broker-dealer is owned by a corporation, disclosure would be required of shareholders that own 5% or more of a class of equity security of that corporation. If the broker-dealer is owned by a partnership, disclosure would be required of general partners or any limited or special partners who have contributed 5% or more of the partnership's capital. If the intermediate corporation or partnership is subject to the reporting requirements of section 12 or 15(d) of the Act, however, disclosure of that corporation's shareholders or partnership's partners would not be required.

C. Amendments to Rule 17a-3

The Commission is proposing to amend Rule 17a-3 in an effort to conform the rule to the revised Form U–4 requirements. In this regard, Rule 17a-3(a)(12)(A) would be amended to delete the information currently required of any "associated person" in Rule 17a-3(a)(12)(A)(3) regarding his education and the information currently required in Rule 17a-3(a)(12)(A)(4) regarding his reasons for leaving any prior employment within the last ten years. Also, Rule 17a-3(a)(12)(A)(8) would be modified to conform to Form U–4 by requiring information concerning any felony, and any misdemeanor involving investments or an investment-related business, fraud, false statements, or omissions, wrongful taking of property, or bribery, forgery, counterfeiting or extortion committed by the associated person rather than, as is the current practice, requiring information on any crime involving violence or dishonesty or conspiracy to commit certain enumerated offenses.

D. Broker-Dealer Successor Rules

The Commission also proposes to simplify its broker-dealer successor rules. Section 15(b)(2)(A) of the Act provides that "any application for registration of a broker or dealer to be formed or organized may be made by a broker or dealer to which the broker or dealer to be formed or organized is to be the successor." Rule 15b2–1 permits an existing registered broker-dealer (the predecessor) to file a complete Form BD on behalf of its successor. The successor broker-dealer must then "adopt" the Form BD as its own by filing a statement to that effect within 45 days. Rule 15b1–3 permits a successor broker-dealer to operate on the basis of its predecessor's Form BD for a 75 day period, provided that the successor broker-dealer files a complete Form BD on its own behalf within 30 days of the succession. Paragraph (b) of Rule 15b1–3, however, permits a registered broker-dealer partnership to file an amendment to its Form BD, in lieu of a complete new form, where changes in the membership or composition of the partnership have occurred. The amendment filed by the successor partnership is deemed a new application for purposes of section 15(b)(2)(A) of the Act.

The purpose of the broker-dealer successor rules is to facilitate a smooth transition period when one broker-dealer succeeds to and continues the business of another registered broker-dealer. A broker-dealer succeeds to and continues the business of another broker-dealer when the successor broker-dealer assumes substantially all the assets and liabilities of the predecessor broker-dealer. Accordingly, the successor rules cannot be used by a broker-dealer to eliminate a substantial liability. Nor can they be used by another broker-dealer to activate the registration of a "shell" broker-dealer that does not do any business. The successor rules are used when a broker-dealer changes its date or state of incorporation, or changes its form of doing business, such as a change from partnership to corporation, or changes in the composition of a partnership.

Since the successor rules contemplate that the successor broker-dealer will closely resemble the predecessor broker-dealer, the Commission is proposing to rescind Rule 15b2–1 and amend Rule 15b1–3 to require a successor broker-dealer to file an amendment to the predecessor's Form BD within 30 days of the succession. The amendment would include page 1 of Form BD (the execution page), page 2 (indicating that the applicant is a successor), and any other pages on which changes have been made. In addition, since the amendments would be deemed an application for registration, the successor broker-dealer would be required to comply with Rule 15b1–2 and file a "Statement of Financial Condition to be Filed with . Application for Registration as a Broker-Dealer." The Commission currently permits successor investment advisers to use a similar amendment approach.[6] In addition, some self-regulatory organizations require an amendment for successors. The Commission believes that the amendment process will eliminate unnecessary paperwork and conform the Commission's successor registration process with that of some of the self-regulatory organizations.

From time to time, two broker-dealers may wish to succeed to the business of one broker-dealer, for example, when a full-service broker-dealer determines to separate its introducing broker function from its clearing broker function. The staff has treated the two resulting broker-dealers as successors and has required a complete Form BD from each broker-dealer. If the Commission determines only to require an amendment to Form BD for a succession, it would appear necessary to permit only one of the dual successors to file an amendment and require a complete Form BD for the other successor in order to accurately reflect that there are now two broker-dealers. The Commission proposes to retain subparagraph (a) of Rule 15b1–3 for dual successions. The Commission specifically seeks comment on procedures for dual successions.

E. Regulatory Flexibility Act Considerations

The Regulatory Flexibility Act establishes procedural requirements applicable to agency rulemaking that has a "significant economic impact on a

[5] The Commission proposes to define "investment or investment-related" as "pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, investment company, investment adviser, futures sponsor, bank, or savings and loan association)."

[6] 17 CFR 275.203–1 (c) and (d).

substantial number of small entities." [7] The Chairman of the Commission has certified pursuant to that Act that the proposed revision to Form BD and the related proposed amendments to Rules 15b1–3 and 17a–3, and rescission of Rule 15b2–1, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed changes may provide some cost savings to small broker-dealers in that they may no longer have to consider all their employees in answering the disciplinary question on Form BD and may use an amendment rather than a complete Form BD for successions. It is highly unlikely that the resulting cost savings would be significant, however, given the already small number of employees small broker-dealers currently have to consider on the Form BD. In addition, with respect to the proposed changes to the successor rules, small broker-dealers would merely have to file the pages of the Form BD that changed because of the succession, not the entire form. Since the information required is the same regardless of whether an amendment or a complete Form BD is required and the only change is in the number of pages to be filed, it is highly unlikely that the resulting cost savings to small broker-dealers would be significant.

F. Statutory Authority

The proposed changes to Form BD and the proposed amendments to Rules 15b1–3, 15b2–1, and 17a–3 would be adopted pursuant to sections 15(b), 17(a) and 23(a) of the Act.

List of Subjects in 17 CFR Part 240

Reporting and Recordkeeping Requirements, Securities.

Text of Amendments

Title 17, CFR is proposed to be amended as follows:

[7] Although section 601(b) of the Regulatory Flexibility Act defines the term "small entity," the statute permits agencies to formulate their own definitions. The Commission has adopted definitions of the term small entity for purposes of Commission rulemaking in accordance with the Regulatory Flexibility Act. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0–10, 17 CFR 240.0–10. *See* Securities Exchange Act Release No. 34–18452 (January 28, 1982). A broker or dealer generally is a "small business" or "small organization" if it has total capital of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to 17 CFR 240.17a–5(d). *See* Rule 0–10(c).

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT

1. The authority citation for Part 240 continues to read as follows:

Authority: Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w.

§§ 240.12b–1 to 240.12b–36 also issued under secs. 3, 12, 13, 15, 48 Stat. 892, as amended, 894, 895, as amended; 15 U.S.C. 78c, 78*l*, 78m, 78*o*. §§ 240.14c–1 to 240.14c–101 also issued under sec. 14, 48 Stat. 895; 15 U.S.C. 78n. §§ 240.15b10–1 to 240.15b10–9 also issued under secs. 15, 17, 48 Stat. 895, 897, sec. 203, 49 Stat. 704, secs. 4, 8, 49 Stat. 1379, sec. 5, 52 Stat. 1076, sec. 6, 78 Stat. 570; 15 U.S.C. 78*o*, 78q, 12 U.S.C. 241 nt.

2. By revising paragraph (b) of § 240.15b1–3 as follows:

§ 240.15b1–3 Registration of successor to registered broker or dealer.

* * * * *

(b) A Form BD filed by a broker-dealer that is not registered when such form is filed and which succeeds to and continues the business of a predecessor registered broker-dealer, shall be deemed an application for registration, even though designated as an amendment, if the succession is based on a change in the predecessor's date or state of incorporation, form of organization or change in composition of a partnership and the amendment is filed to reflect these changes.

2. By removing § 240.15b2–1.

3. By removing paragraph (a)(12)(i)(*c*) of § 240.17a–3, renumbering paragraphs (a)(12)(i)(*d*) through (a)(12)(i)(*i*) as paragraphs (a)(12)(i)(*c*) through (a)(12)(i)(*h*), and revising newly redesignated paragraphs (a)(12)(i)(*c*) and (a)(12)(i)(*g*) as follows:

§ 240.17a–3 Records to be made by certain exchange members, broker and dealers.

(a) * * *

(12)(i) * * *

(*c*) A complete, consecutive statement of all his business connections for at least the preceding ten years, including whether the employment was part-time or full-time,

* * * * *

(*g*) A record of any arrest or indictment for any felony, or any misdemeanor pertaining to securities, commodities, banking, insurance or real estate (including, but not limited to, acting as or being associated with a broker-dealer, investment company, investment adviser, futures sponsor, bank, or savings and loan association), fraud, false statements or omissions wrongful taking of property or bribery, forgery counterfeiting or extortion, and the disposition of the foregoing.

* * * * *

Text of Form—See Appendix A.

E. Solicitation of Comments

In order to assist the Commission in determining whether to approve the proposed changes to Form BD and amendments to Rules 15b1–3, 15b2–1, and 17a–3, interested persons are invited to submit written data, views and comments concerning the submission within thirty (30) days from the date of publication in the **Federal Register**. Persons wishing to comment should submit three (3) copies thereof with the Secretary of the Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. 20–85.

By the Commission.

John Wheeler,

Secretary.

April 26, 1985.

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendments to Form BD (Rule 15b1–1) set forth in Securities Exchange Act Release No–21981, if promulgated, will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are that the proposed amendments, if adopted, would narrow the scope of some questions thus providing some, albeit, insignificant cost savings to small broker-dealers.

Dated: April 24, 1985.

John S.R. Shad,

Chairman.

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendments to Rule 17a–3 set forth in Securities Exchange Act Release No. 21981, if promulgated, will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are that the proposed amendments, if adopted, would conform the information requested in that rule to that already required in the revised Form U–4.

Dated: April 24, 1985.

John S.R. Shad,

Chairman.

Regulatory Flexibility Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendments to Rule 15b2–1 and 15b1–3 set forth in Securities Exchange Act Release No. 21981, if promulgated, will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are that the

proposed amendments, if adopted, would allow small broker-dealers to use an amendment rather than a complete Form BD for successions. Thus, small broker-dealers merely would be required to submit those pages of Form BD that had changed by the succession, not the entire form.

Dated: April 24, 1985.

John S.R. Shad,

Chairman.

Appendix A—Form BD—Uniform Application for Broker Dealer Registration

Instructions for Form BD

1. Updating—By law, the applicant must update the Form BD information by submitting amendments whenever the information on file changes. Complete all amended pages in full and circle the number of the item being changed.

2. Contact Employee—The individual listed on page 1 as the contact employee must be authorized to receive all compliance information, communications and mailings and be responsible for disseminating it within the applicant's organization.

3. Format.

• Attach an execution page (page 1) with original manual signatures to the initial BD filing and each amendment to the Form or Schedules A through D.

• Type of information.

• Give the broker-dealer and date on each page.

• Use only the Form BD and its Schedules or a reproduction of them.

4. Definitions.

• Applicant—The broker-dealer applying on or amending this form.

• Control—The power to direct or cause the direction of the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any individual or firm that is a director, partner or officer exercising executive responsibility (or having similar status or functions) or that directly or indirectly has the right to vote 25 per cent or more of the voting securities or is entitled to 25 per cent or more of the profits is presumed to control that company.

• Jurisdiction—Any non-Federal government or regulatory body in the United States, Puerto Rico or Canada.

• Person—An individual, partnership, corporation or other organization.

• Self-regulatory organization—Any national securities or commodities exchange or registered association, or registered clearing agency.

5. Schedule A, B and C—Individuals not required to have a Form U–4 (individual registration) in the CRD who are listed on Schedules A, B or C must attach page 2 of Form U–4. The applicant broker-dealer must appear in U–4 Item 19 or 20. Signatures are not required.

6. Schedule D—Schedule D provides additional space for explaining "Yes" answers to Form BD items, but not for continuing Schedules A, B or C. To continue Schedules A, B or C, use copies of the Schedule being continued.

7. Schedule E—Schedule E Amendments to report changes in Branch Offices may be submitted without an execution page.

BILLING CODE 8010-01-M

FORM BD PAGE 1 (Execution Page) (revised 4/85)	UNIFORM APPLICATION FOR BROKER DEALER REGISTRATION	OFFICIAL USE

WARNING: Failure to keep this form current and to file accurate supplementary information on a timely basis, or the failure to keep accurate books and records or otherwise to comply with the provisions of law applying to the conduct of business as a broker-dealer would violate the Federal securities laws and the laws of the jurisdictions and may result in disciplinary, administrative, injunctive or criminal action.

INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

☐ APPLICATION ☐ AMENDMENT FIRM CRD NO.:_____

1. Exact name, principal business address, mailing address, if different, and telephone number of applicant:

(A) Full name of applicant (If sole proprietor, state last, first, and middle name) (B) IRS Empl. Ident. No.:

(B) Name under which business is conducted, if different:

(D) If name of business is hereby amended, state previous name:

(F) Firm main address:

(Number and Street) (City) (State) (Zip Code)

Mailing Address, if different:

(F) Telephone Number:

(Area Code) (Telephone Number) (G) CONTACT EMPLOYEE

EXECUTION: For the purpose of complying with the laws of the State(s) I have designated in Item 2 relating to either the offer or sale of securities or commodities, I hereby certify that the applicant is in compliance with applicable state surety bonding requirements and irrevocably appoint the administrator of each of those State(s), or such other person designated by law, and the successors in such office, my attorney in said State(s) upon whom may be served any notice, process or pleading in any action or proceeding against me arising out of or in connection with the offer or sale of securities or commodities, or out of the violation or alleged violation of the laws of those State(s) and I do hereby consent that any such action or proceeding against me may be commenced in any court of competent jurisdiction and proper venue within said State(s) by service of process upon said appointee with the same effect as if I were a resident in said State(s) and had lawfully been served with process in said State(s).

The undersigned, being first duly sworn, deposes and says that he has executed this form on behalf of, and with the authority of, said applicant. The undersigned and applicant represent that the information and statements contained herein, including exhibits attached hereto and other information filed herewith, all of which are made a part hereof, are current, true, and complete. The undersigned and applicant further represent that to the extent any information previously submitted is not amended, such information is currently accurate and complete.

Date Name of Applicant

By:_____
Signature and Title

Subscribed and sworn before me this_____day of_____, 19____by_____

My commission expires_____County of_____State of_____

This page must always be completed in full with original, manual signature and notarization.
To amend, circle item(s) being amended.

DO NOT WRITE BELOW THIS LINE . . . . FOR OFFICIAL USE ONLY

To amend, circle question numbers amended and file with a completed Execution page (Page 1).

FORM BD Page 2

Applicant Name: _____

Date _____ Firm CRD No.: _____

OFFICIAL USE

2. To be registered with the following, (designate) "1" Initial Registration, "2" Pending, "3" Already Registered. If any license, registration or membership listed herein is of a restricted nature, explain fully on Schedule D.

☐ SECURITIES & EXCHANGE COMMISSION

SRO	☐ ASE	☐ BSE	☐ CBOE	☐ CSE	☐ MSE	☐ NASD	☐ NYSE	☐ PHLX	☐ PSE	☐ OTHER (Specify) _____

JURISDICTION	☐ AL	☐ AK	☐ AZ	☐ AR	☐ CA	☐ CO	☐ CT	☐ DE	☐ DC	☐ FL	☐ GA	☐ HI	☐ ID
	☐ IL	☐ IN	☐ IA	☐ KS	☐ KY	☐ LA	☐ ME	☐ MD	☐ MA	☐ MI	☐ MN	☐ MS	☐ MO
	☐ MT	☐ NE	☐ NV	☐ NH	☐ NJ	☐ NM	☐ NY	☐ NC	☐ ND	☐ OH	☐ OK	☐ OR	☐ PA
	☐ RI	☐ SC	☐ SD	☐ TN	☐ TX	☐ UT	☐ VT	☐ VA	☐ WA	☐ WV	☐ WI	☐ WY	☐ PR

3. Date of formation _____ Place of filing _____ for:

☐ Corporation - Complete Schedule A ☐ Partnership - Complete Schedule B ☐ Sole Proprietorship - Complete Schedule C

☐ Other (specify) _____ Complete Schedule C

4. If applicant is a sole proprietor, state full residence address and social security number.

Social Security No.: _____

_____ (Number and Street) _____ (City) _____ (State) _____ (Zip Code)

5. Is applicant a successor to a registered broker-dealer? YES ☐ NO ☐

If "yes," explain on Schedule D. . . . . .

If "yes," state:

(a) Date of Succession _____

(b) Full name, IRS Empl. Ident. No., SEC File No. and Firm CRD No. of predecessor broker-dealer.

Name _____

IRS Empl. Ident. No. _____ FIRM CRD No.: _____

SEC File Number: _____

6. (a) Does any person not named in Item 1 or Schedules A, B or C, directly or indirectly through agreement or otherwise, exercise or have the power to exercise control over the management or policies of applicant? . . . . . YES ☐ NO ☐ 1

(If "yes," state on Schedule D the exact name of each person (if individual, state last, first, and middle names) and describe the agreement or other basis through which such person exercises or has the power to exercise control.)

(b) Is the business of applicant wholly or partially financed, directly or indirectly, by any person not named in Item 1, or Schedules A, B or C, in any manner other than by: (1) a public offering of securities made pursuant to the Securities Act of 1933, (2) credit extended in the ordinary course of business by suppliers, banks and others, or a satisfactory subordination agreement, as defined in Rule 15c3-1 under the Securities Exchange Act of 1934 (17 CFR 240.15c3-1)? YES ☐ NO ☐ 2

(If "yes," state on Schedule D the exact name (last, first, middle) of each person and describe the agreement or arrangement through which such financing is made available, including the amount thereof.)

To amend, circle question numbers amended and file with a completed Execution page (Page 1).

FORM BD Page 3

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE

7. ***Definitions***

- **Control affiliate** – An individual or firm that directly or indirectly controls, is under common control with, or is controlled by the applicant. Included are any employees identified in Schedules A,B or C of this form as exercising control. Excluded are any employees who perform clerical, administrative, support or similar functions; or who, regardless of title, perform no executive duties or have no senior policy making authority.
- **Investment or investment-related** – Pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, investment company, investment adviser, futures sponsor, bank, or savings and loan association).
- **Involved** – Doing an act or aiding, abetting, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.

A. In the past ten years has the applicant or control affiliate been convicted of or plead guilty or nolo contendere ("no contest") to:			
(1) a felony or misdemeanor involving: investments or an investment-related business, fraud, false statements or omissions, wrongful taking of property, or bribery, forgery, counterfeiting or extortion?	YES ☐	NO ☐	3
(2) any other felony?	YES ☐	NO ☐	4
B. Has any court:			
(1) In the past ten years enjoined the applicant or a control affiliate in connection with any investment-related activity?	YES ☐	NO ☐	5
(2) ever found that the applicant or a control affiliate was involved in a violation of investment-related statutes or regulations?	YES ☐	NO ☐	6
C. Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:			
(1) found the applicant or a control affiliate to have made a false statement or omission?	YES ☐	NO ☐	7
(2) found the applicant or a control affiliate to have been involved in a violation of its regulations or statues?	YES ☐	NO ☐	8
(3) found the applicant or a control affiliate to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted?	YES ☐	NO ☐	9
(4) entered an order denying, suspending or revoking the applicant's or a control affiliate's registration or otherwise disciplined it by restricting its activities?	YES ☐	NO ☐	10
D. Has any other Federal regulatory agency or any state regulatory agency:			
(1) ever found the applicant or a control affiliate to have made a false statement or omission or been dishonest unfair, or unethical?	YES ☐	NO ☐	11
(2) ever found the applicant or a control affiliate to have been involved in a violation of investment regulations or statutes?	YES ☐	NO ☐	12
(3) ever found the applicant or a control affiliate to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted?	YES ☐	NO ☐	13
(4) in the past ten years entered an order against the applicant or a control affiliate in connection with investment-related activity?	YES ☐	NO ☐	14
(5) ever denied, suspended, or revoked the applicant's or a control affiliate's registration or license, prevented it from associating with an investment-related business, or otherwise disciplined it by restricting its activities?	YES ☐	NO ☐	15
(6) ever revoked or suspended the applicant's or a control affiliate's license as an attorney or accountant?	YES ☐	NO ☐	16

To amend, circle question numbers amended and file with a completed Execution page (Page 1).

FORM BD Page 4

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE

E. Has any self-regulatory organization or commodities exchange:

(1) found the applicant or a control affiliate to have made a false statement or omission or been dishonest, unfair or unethical? YES ☐ NO ☐ 17

(2) found the applicant or a control affiliate to have been involved in a violation of its rules? YES ☐ NO ☐ 18

(3) found the applicant or a control affiliate to have been the cause of an investment-related business having its authorization to do business denied, suspended, revoked or restricted? YES ☐ NO ☐ 19

(4) disciplined the applicant or a control affiliate by expelling or suspending it from membership, by barring or suspending its association with other members, or by otherwise restricting its activities? YES ☐ NO ☐ 20

F. Has any foreign government, court, regulatory agency, or exchange ever entered an order against the applicant or a control affiliate related to investments or fraud? YES ☐ NO ☐ 21

G. Is the applicant or a control affiliate now the subject of any proceeding that could result in a "yes" answer to parts A-F of this item? YES ☐ NO ☐ 22

H. Has a bonding company denied, paid out on, or revoked a bond for the applicant? YES ☐ NO ☐ 23

I. Does the applicant have any unsatisfied judgments or liens against it? YES ☐ NO ☐ 24

J. Has the applicant or a control affiliate of the applicant ever been a securities firm or a control affiliate of a securities firm that has been declared bankrupt, had a trustee appointed under the Securities Investor Protection Act, or had a direct payment procedure initiated? YES ☐ NO ☐ 25

Item 7 Instructions

If a "yes" answer on Item 7 involves:

- the applicant broker-dealer, or an individual without a Form U-4 (individual registration) in the CRD, give the details on Schedule D.
- an individual with a Form U-4 (individual registration) in the CRD, attach any necessary U-4 amendments to the Form BD. The CRD will update the U-4 and BD.

For each "yes" to Item 7, give the following details of any court or regulatory action:

- the broker-dealer and individuals named,
- the title and date of the action,
- the court or body taking the action, and
- a description of the action.

8. Does applicant:

(a) Have any arrangement with any other person, firm or organization under which:

(1) Any of the accounts or records of applicant are kept or maintained by such person, firm, or organization? YES ☐ NO ☐ 26

(2) Such other person, firm or organization (other than a bank or satisfactory control location as defined in paragraph (c) of Rule 15c3-3 under the Securities Exchange Act of 1934, 17 CFR 240. 15c3-3) holds or maintains funds or securities of applicant or of any of its customers? YES ☐ NO ☐ 27

(b) Have any arrangements with any other broker or dealer under which applicant refers or introduces customers to such other broker or dealer? YES ☐ NO ☐ 28

(If the answer to any question of Item 8 is "yes," furnish as to each such arrangement the full name and principal business address of the other person, firm, or organization, and the summary of each such arrangement on Schedule D.)

9. Does applicant control, is applicant controlled by, or is applicant under common control with, directly or indirectly, any partnership, corporation, or other organization engaged in the securities or investment advisory business? YES ☐ NO ☐ 29

(If "yes," state full name and principal business address of such partnership, corporation, or other organization and describe the nature of control on Schedule D. See instructions for definition of control.)

To amend, circle question numbers amended and file with a completed Execution page (Page 1).

FORM BD Page 5 Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE

10. Check types of business engaged in (or to be engaged in, if not yet active) by applicant. Do not check any category which accounts for or is expected to account for less than 10% of annual revenue from the securities or investment advisory business.

(a) Exchange member engaged in exchange commission business	☐ EMC
(b) Exchange member engaged in floor activities	☐ EMF
(c) Broker or dealer making inter-dealer markets in corporate securities over-the-counter	☐ IDM
(d) Broker or dealer retailing corporate securities over-the-counter	☐ BDR
(e) Underwriter or selling group participant (corporate securities other than mutual funds)	☐ USG
(f) Mutual fund underwriter or sponsor	☐ MFU
(g) Mutual fund retailer	☐ MFR
(h) U.S. government securities dealer	☐ GSD
(i) Municipal securities dealer	☐ MSD
(j) Municipal securities broker	☐ MSB
(k) Broker or dealer selling variable life insurance or annuities	☐ VLA
(l) Solicitor of savings and loan accounts	☐ SSL
(m) Real estate syndicator	☐ RES
(n) Broker or dealer selling oil and gas interests	☐ OGI
(o) Put and call broker or dealer or option writer	☐ PCB
(p) Broker or dealer selling securities of only one issuer or associated issuers (other than mutual funds)	☐ BIA
(q) Broker or dealer selling securities of non-profit organizations (e.g., churches, hospitals)	☐ NPB
(r) Investment advisory services	☐ IAD
(s) Broker or dealer selling tax shelters or limited partnerships	☐ TAP
(t) Other (give details on Schedule D)	☐ OTH

	YES	NO	
11. (a) Does applicant effect transactions in commodity futures, commodities or commodity options as a broker for others or dealer for its own account?	☐	☐	30
(b) Does applicant engage in any other non-securities business? (If "yes," describe each other business briefly on Schedule D.)	☐	☐	31

To amend, complete the schedule in full in accordance with the instructions below and file with a completed Execution page (Page 1).

OFFICIAL USE

Schedule A of FORM BD

(revised 4/85)

FOR CORPORATIONS

Applicant Name _____

(Answers in response to ITEM 3 of FORM BD.) Date: _____ Firm CRD No.: _____

1. This form requests information on the owners and executive officers of the applicant.
2. Please complete for:
   (a) each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer, director, and individuals with similar status or functions, and
   (b) every person who is directly, or indirectly through intermediaries, the beneficial owner of 5% or more of any class of equity security of the applicant.
3. If a person covered by 2(b) above owns applicant indirectly through intermediaries, list all intermediaries and below them, if they are not public reporting companies under Sections 12 or 15(d) of the Securities and Exchange Act of 1934 but are:
   (a) **corporations**, give their shareholders who own 5% or more of a class of equity security, or
   (b) **partnerships**, give their general partners or any limited special partners who have contributed 5% or more of the partnership's capital.

   (If the intermediary's shareholders or partners listed under 2 above are not individuals, continue up the chain of ownership listing their 5% shareholders, general partners, and 5% limited or special partners until individuals are listed.)
4. Ownership codes are: NA - 0 up to 5% B - 10% up to 25% D - 50% up to 75%
   A - 5% up to 10% C - 25% up to 50% E - 75% up to 100%
5. Asterisk (*) names reporting a change in title, status, stock ownership, partnership interest, or control. Double asterisk (**) names new on this filing.
6. Check "Control Person" column if person has "control" as defined in the instructions to this form.
7. Applicants indicating an options business in item 10 must enter "SROP" for their Senior Registered Options Principal and "CROP" for their Compliance Registered Options Principal in the "Title or Status" column.

FULL NAME Last	First	Middle	Beginning Date Mo	Yr.	Title or Status	Ownership Code	Control Person	CRD Number or, if none, Social Security Number	Official Use Only
									01
									02
									03
									04
									05
									06
									07
									08
									09
									10
									11
									12

List below names reported in the most recent previous filing that are DELETED hereby:

FULL NAME Last	First	Middle	Ending Date Mo.	Yr.	CRD Number or, if none, Social Security Number

To amend, complete the schedule in full in accordance with the instructions below and file with a completed Execution page (Page 1).

OFFICIAL USE

Schedule B of FORM BD

(revised 4/85)

FOR PARTNERSHIPS

Applicant Name _____

(Answers in response to ITEM 3 of FORM BD.) Date: _____ Firm CRD No.: _____

1. This form requests information on the owners and executive officers of the applicant.
2. Please complete for all general partners and those limited and special partners who have contributed directly, or indirectly through intermediaries, 5% or more of the partnership's capital.
3. If a person owns applicant indirectly through intermediaries, list all intermediaries and below them, if they are not public reporting companies under Sections 12 or 15(d) of the Securities and Exchange Act of 1934 but are:
   (a) **corporations,** give their shareholders who own 5% or more of a class of equity security, or
   (b) **partnerships,** give their general partners or any limited special partners who have contributed 5% or more of the partnership's capital.

   (If the intermediary's shareholders or partners listed under 3 above are not individuals, continue up the chain of ownership listing their 5% shareholders, general partners, and 5% limited or special partners until individuals are listed.)
4. Ownership codes are: NA - 0 up to 5% B - 10% up to 25% D - 50% up to 75%
   A - 5% up to 10% C - 25% up to 50% E - 75% up to 100%
5. Asterisk (*) names reporting a change in title, status, stock ownership, partnership interest, or control. Double asterisk (**) names new on this filing.
6. Check "Control Person" column if person has "control" as defined in the instructions to this form.
7. Applicants indicating an options business in item 10 must enter "SROP" for their Senior Registered Options Principal and "CROP" for their Compliance Registered Options Principal in the "Title or Status" column.

FULL NAME Last	First	Middle	Beginning Date Mo	Yr	Title or Status	Ownership Code	Control Person	CRD Number or, if none, Social Security Number	Official Use Only
									01
									02
									03
									04
									05
									06
									07
									08
									09
									10
									11
									12

List below names reported in the most recent previous filing that are DELETED hereby:

FULL NAME Last	First	Middle	Ending Date Mo.	Yr.	CRD Number or, if none, Social Security Number

To amend, complete the schedule in full in accordance with the instructions below and file with a completed Execution page (Page 1).

OFFICIAL USE

Schedule C of FORM BD

(revised 4/85)

FOR APPLICANTS OTHER THAN PARTNERSHIPS AND CORPORATIONS

Applicant Name: _____

(Answers in response to ITEM 3 of FORM BD.) Date: _____ Firm CRD No.: _____

1. This form requests information on the owners and executive officers of the applicant.
2. Please complete for each person, including trustees, who participates in directing or managing the applicant.
3. Give each listed person's title or status, and describe the nature of their authority and their beneficial interest in applicant. Sole proprietors must be identified in the "Title or Status" column.
4. Asterisk (*) names reporting a change in title, status, stock ownership or partnership interest. Double asterisk (**) names new on this filing.
5. Applicants indicating an options business in item 10 must enter "SROP" for their Senior Registered Principal and "CROP" for their Compliance Registered Options Principal in the "Title or Status" column.

FULL NAME Last	First	Middle	RELATIONSHIP Beginning Date Mo.	Yr	Title or Status	CRD Number or, if none, Social Security Number	Description of Authority and Beneficial Interest

List below names reported in the most recent previous filing that are DELETED hereby:

FULL NAME Last	First	Middle	Ending Date Mo.	Yr	CRD Number or, if none, Social Security Number

When amending Form BD, provide complete detail for the item(s) being amended. File with a completed Execution page (Page 1).

OFFICIAL USE

Schedule D of FORM BD

(revised 4/85)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

(Use this Schedule to report details of affirmative responses to questions on Form BD.)

Item of Form (Identify)	Answer

Schedule E of FORM BD

(revised 4/85)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

INSTRUCTIONS FOR SCHEDULE E: Initial filings must include report of all business locations other than the main office. Amendments must include only those branch offices to be added or amended. Complete addresses, including zip code, are to be listed at all times.

Use the following codes in the Nature of Change Column:

To request registration of a new branch office, enter "A".

To report a branch office closing, enter "B".

To report a change of address list the old address immediately followed by the new address; enter "C" next to the old address and "D" next to the new address.

To report a change in supervisor, enter "S".

Place one asterisk (*) under the OSJ column to report designation of a branch as an office of supervisory jurisdiction.

Place a double asterisk (**) under the OSJ column to eliminate designation of a branch as an office of supervisory jurisdiction.

Complete Address of Branch Office	Name and CRD No. of Supervisor	OSJ	Nature of Change	Effective Date

BILLING CODE 8010-01-C

Securities and Exchange Commission

Washington, D.C. 20549

Special Instructions for Completing Form BD Uniform Application for Registration as a Broker-Dealer or To Amend Such an Application

Under sections 15(b), 17(a) and 23(a) of the Securities Exchange Act of 1934 and the rules and regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this form from applicants for registration as a broker-dealer (and persons associated with applicants). Disclosure of the information specified on this form is mandatory prior to processing of applications for registration as a broker-dealer, except Social Security numbers, disclosure of which is voluntary. The information will be used for the principal purpose of determining whether the Commission should grant or deny registration to an applicant; Social Security numbers, if furnished, will be used only to assist the Commission in identifying applicants and, therefore, in promptly processing applications. Information supplied on this form will be included routinely in the public files of the Commission and will be available for inspection by any interested person. A form which is not prepared and executed in compliance with applicable requirements may be returned as not acceptable for filing. Acceptance of this form, however, shall not constitute any finding that it has been filed as required or that the information submitted is true, current, or complete. Intentional misstatements or ommissions of fact constitute Federal criminal violations. (see 18 U.S.C. 1001 and U.S.C. 78ff(a).)

Section 709 of title 18 of the United States Code provides that it shall be a criminal offense for anyone to use the words "national," "Federal," "United States," "Reserve," or "Deposit Insurance" as part of the business or firm name of a person, corporation, partnership, business trust, association or other business entity engaged in the brokerage business, except as permitted by the provisions of that section or as otherwise permitted by the laws of the United States. If any of such word(s) is used as part of the business or firm name of any applicant, there should be included with the completed form BD an opinion of counsel setting forth the basis on which the use of any such word is permitted.

Applicants who are not, and do not intend to become, members of the National Association of Securities Dealers, Inc., should note the provisions of sections 15(b) (7), (8) and (9) of the Securities Exchange Act of 1934 and the rules thereunder.

Introduction

Form BD was revised effective January 1, 1984, and all references herein relate to the revised form.

Who Must File

Every broker or dealer whose registration is effective, or whose application for registration is pending on January 1, 1984, is required to file as an amendment to the registration or application a complete Form BD. Form BD is to be filed the first time an amendment otherwise is filed, but in no event later than January 1, 1985.

Every broker or dealer who submits an application for registration to the Commission on or after January 1, 1984, shall file as an application a complete Form BD.

How and Where to File

Form BD and the appropriate schedules are to be filed *in triplicate* with the Securities and Exchange Commission, Washington, D.C. 20549. All three copies of the form filed with the Commission shall be executed with a *manual signature* and notarized on the execution page. An exact copy should be retained. Copies of the form and schedules may be obtained from any office of the Commission. Copies of the form, mechanically duplicated, are acceptable for filing if an original manual signature is affixed to the execution page of *each* copy after duplication. The form may be duplicated by any method producing legible copies of type size identical to that in the form on good quality, unglazed, white paper 8½ x 11 inches in size.

Filing Form BD as an Application

Rule 15b1–2 requires a statement of finanical condition to be filed *in duplicate* with every application for registration as a broker-dealer with the Securities and Exchange Commission. This rule also requires certain statements and representations concerning the business of the applicant. A separate oath or affirmation must be attached to the financial statement and the statements and representations. (See Securities Exchange Act Release No. 9594, May 12, 1972)

The Designation of Recipient for Service of Notice of Commission Proceeding attached to these special instructions must be completed and submitted *in triplicate* with every application for registration as a broker-dealer with the Commission.

Consult Rules 15b1–5 and 17a–7 under the Securities Exchange Act of 1934 to determine whether any *nonresident* of the United States named in the form is required to file a consent and power of attorney, or a notice or undertaking with respect to books and records. *Appropriate forms will be sent upon request.*

If this form is filed as an application by a broker-dealer on behalf of a successor not yet formed or organized, the information furnished shall relate to the successor to be formed. The form shall be executed by the predecessor. Section 15(b) of the Securities Exchange Act of 1934 and Rule 15b2–1 thereunder provide that registration shall terminate on the forty-fifth day after the effective date unless prior thereto the successor shall adopt the application as its own. *This procedure cannot be used where the successor is a sole proprietor.*

Amending Form BD

Rule 15b3–1 requires that if the information contained in the application for registration, or in any supplement or amendment thereto, is or becomes inaccurate for any reason, an amendment correcting such information must be filed promptly on Form BD.

When any item on a page is amended, it is necessary to answer all items on the page being amended. Pages which contain obsolete information are retired to the Commission's inactive files.

How To Complete Form BD

Item 1. *Broker-dealers who were registered or whose registration was pending with the Commission on January 1, 1984,* designate the filing as an *Amendment* and answer all other items in the form completely. If any item is not applicable, indicate by "none" or "N/A."

Subsequently, when amending Form BD, check and complete those items which are being amended or which have changed since the most recent previous filing, and complete all other items on the page or pages being amended. File the amended pages with completed copies of the execution page.

Broker-dealer filing Form BD as an application for registration, designate the filing as an *Application* and answer all other items completely. If any item is not applicable, indicate by "none" or "N/A".

Item 3. *Reminder*: If a registered partnership is dissolved an a new one is created to continue the business of the old one, the new partnership must file a new application for registration as a broker-dealer. (See Rule 15b1–3 concerning successor filings)

Item 5. Complete if applicant is taking over substantially all the assets and liabilities and continuing the business of a *registered* broker-dealer.

Item 11. Answer this item for the applicant as identified in Item 1 and *not* for associated persons.

OMB APPROVAL
OMB subject to provisions of P.L. 96-511

DESIGNATION OF RECIPIENT FOR SERVICE OF NOTICE OF COMMISSION PROCEEDING

Applicant consents that the notice of any proceeding before the Securities and Exchange Commission in connection with its application for registration, or its registration, as a broker-dealer may be given by sending notice by registered or certified mail or confirmed telegram to the person named below, at the address given.

Last Name:	First Name:	Middle Name:
Address (Include number and street):		
City:	State:	Zip Code:

[FR Doc. 85–10779 Filed 5–6–85; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

Public Comment Period and Opportunity for Public Hearing on an Amendment to the Texas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and for a public hearing on an amendment submitted by the State of Texas to amend its permanent regulatory program which was conditionally approved by the Secretary of the Interior under the Surface Mining Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Texas regulatory program concerning lands unsuitable for mining and notices of violation.

This notice sets forth the times and locations that the proposed amendment is available for public inspection, the comment period during which interested persons may submit written comments on the proposed program amendment and information pertinent to the public hearing.

DATE: Comments not received on or before 4:00 p.m. June 6, 1985 will not necessarily be considered.

If requested, a public hearing on the proposed modifications will be held on May 23, 1985, beginning at 10:00 a.m. at the location shown below under **"ADDRESSES."**

ADDRESSES: Written comments should be mailed or hand delivered to: Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, Room 3014, 333 West 4th Street, Tulsa, Oklahoma 74103.

If a public hearing is held, its location will be at: The Federal Building, Room 752, 300 East 8th Street, Austin, Texas 78746.

See **"SUPPLEMENTARY INFORMATION"** for addresses where copies of the Texas program amendment and administrative record on the Texas program are available. Each requestor may receive, free of charge, one single copy of the proposed program amendment by contacting the OSM Tulsa Field Office listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Markey, Director, Tulsa Field Office, Office of Surface Mining Room 3014, 333 West 4th Street, Tulsa, Oklahoma 74103, Telephone: (918) 581–7927.

SUPPLEMENTARY INFORMATION:

Availability of Copies

Copies of the Texas program amendment, the Texas program and the administrative record on the Texas program are available for public review and copying at the OSM offices and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays:

Tulsa Field Office, Office of Surface Mining, 333 West 4th Street, Room 3014, Tulsa, Oklahoma 74103, Telephone: (918) 581–7927.

Office of Surface Mining, 1100 L Street NW., Room 5124, Washington, D.C. 20240, Telephone: (202) 343–4855.

Surface Mining Reclamation Division, Railroad Commission of Texas, Capitol Station, P.O. Drawer 12967, Austin, Texas 78711, Telephone: (512) 475–8715.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the

commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than Tulsa, Oklahoma, will not necessarily be considered and included in the Administrative Record for this final rulemaking.

Public Hearing

Persons wishing to comment at a public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by the close of business May 17, 1985. If no one requests to comment at a public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will also allow OSM officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

Public Meeting

Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM office listed in "ADDRESSSES" by contacting the person listed under "FOR FURTHER INFORMATION CONTACT."

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

Background

On July 20, 1979, the Secretary of the Interior received a proposed regulatory program from the State of Texas. On February 16, 1980, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary conditionally approved the Texas program (45 FR 12998, February 27, 1980).

Information pertinent to the general background of the permanent program submission, as well as the Secretary's findings, the disposition of comments and explanation of the condition of approval of the Texas program, can be found in the February 27, 1980 Federal Register.

Proposed Amendment

On March 29, 1985, the State of Texas submitted to OSM an amendment to its approved permanent regulatory program. The amendment consists of proposed modifications to Texas regulations concerning lands unsuitable for mining and notices of violation.

The following changes are proposed:

1. Texas proposes to amend rule 051.07.04.069 concerning general provisions on lands unsuitable for mining, to delete existing language and replace it with a general introductory paragraph.

2. Rule 051.07.04.070 would be amended to revise certain definitions pertaining to lands unsuitable for mining.

3. Texas would amend rule 051.07.04.072 to revise the requirements and restrictions for lands unsuitable determinations.

4. Texas proposes to amend rules 051.07.04.073 through 051.07.04.077 under part 762, Criteria for Designating Areas as Unsuitable for Surface Coal Mining Operations. Definitions within this part are proposed to be revised and other minor changes are proposed.

5. Texas proposes to amend Rules 051.07.04.078 through 051.07.04.085 under Part 764, Process for Designating Areas Unsuitable for Surface Coal Mining Operations. The amendment would revise criteria for petitions to have an area designated as unsuitable for surface coal mining operations or to have an existing determination terminated. The revisions would add specific information to be contained in the petitions. The requirements for procedures for initial processing, recordkeeping and notification requirements would be amended. Procedures for hearing requirements and decisions by the Texas Railroad Commission would be revised. A confidentiality provision concerning properties nominated to or listed in *The National Register of Historic Places* would be added. Other minor changes are proposed.

6. Texas proposes to revise paragraph (c) and add paragraphs (f) through (j) of rule 051.07.04.681 concerning notices of violation. The revisions pertain to granting of abatement periods of longer than 90 days under certain circumstances.

The full text of the program modification submitted by Texas for OSM's consideration is available for public review at the addresses listed under "ADDRESSES."

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSM is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act.* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 943

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: 30 U.S.C. 1253.

Dated: April 29, 1985.

Jed D. Christensen,

Director, Office of Surface Mining.

[FR Doc. 85-10987 Filed 5-6-85; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-47002D; TSH-FRL 2810-7]

Chloromethane; Withdrawal of Proposed Health Effects Test Rule

AGENCY: Environmental Portection Agency (EPA).

ACTION: Proposed rule; withdrawal.

SUMMARY: This notice presents EPA's final decision not to require oncogenicity and structural teratogenicity testing of chloromethane