§ 590.402 Conditional orders.

The Assistant Secretary may issue a conditional order at any time during a proceeding prior to issuance of a final opinion and order. The conditional order shall include the basis for not issuing a final opinion and order at that time and a statement of findings and conclusions. The findings and conclusions shall be based solely on the official record of the proceeding.

§ 590.403 Emergency interim orders.

Where consistent with the public interest, the Assistant Secretary may waive further procedures and issue an emergency interim order authorizing the import or export of natural gas. After issuance of the emergency interim order, the proceeding shall be continued until the record is complete, at which time a final opinion and order shall be issued. The Assistant Secretary may attach necessary or appropriate terms and conditions to the emergency interim order to ensure that the authorized action will be consistent with the public interest.

§ 590.404 Final opinions and orders.

The Assistant Secretary shall issue a final opinion and order and attach such conditions thereto as may be required by the public interest after completion and review of the record. The final opinion and order shall be based solely on the official record of the proceeding and include a statement of findings and conclusions, as well as the reasons or basis for them, and the appropriate order, condition, sanction, relief or denial.

§ 590.405 Transferability.

Authorizations by the Assistant Secretary to import or export natural gas shall not be transferable or assignable, unless specifically authorized by the Assistant Secretary.

§ 590.406 Compliance with orders.

Any person required or authorized to take any action by a final opinion and order of the Assistant Secretary shall file with FE, within thirty (30) days after the requirement or authorization becomes effective, a notice, under oath, that such requirement has been complied with or such authorization accepted or otherwise acted upon, unless otherwise specified in the order.

§ 590.407 Reports of changes.

Any person authorized to import or export natural gas has a continuing obligation to give the Assistant Secretary written notification, as soon as practicable, of any prospective or actual changes to the information submitted during the application process upon which the authorization was based, including, but not limited to, changes to: the parties involved in the import or export arrangement, the terms and conditions of any applicable contracts, the place of entry or exit, the transporters, the volumes accepted or offered, or the import or export price. Any notification filed under this section shall contain the FE docket number(s) to which it relates. Compliance with this section does not relieve an importer or exporter from responsibility to file the appropriate application to amend a previous import or export authorization under this part whenever such changes are contrary to or otherwise not permitted by the existing authorization.

Subpart E—Applications for Rehearing

§ 590.501 Filing.

(a) An application for rehearing of a final opinion and order, conditional order, or emergency interim order may be filed by any party aggrieved by the issuance of such opinion and order within thirty (30) days after issuance. The application shall be served on all parties.

(b) The application shall state concisely the alleged errors in the final opinion and order, conditional order, or emergency interim order and must set forth specifically the ground or grounds upon which the application is based. If an order is sought to be vacated, reversed, or modified by reason of matters that have arisen since the issuance of the final opinion and order, conditional order, or emergency interim order, the matters relied upon shall be set forth with specificity in the application. The application shall also comply with the filing requirements of § 590.103.

§ 590.502 Application is not a stay.

The filing of an application for rehearing does not operate as a stay of the Assistant Secretary's order, unless specifically ordered by the Assistant Secretary.

§ 590.503 Opinion and order on rehearing.

Upon application for rehearing, the Assistant Secretary may grant or deny rehearing or may abrogate or modify the final opinion and order, conditional order, or emergency interim order with or without further proceedings.

§ 590.504 Denial by operation of law.

Unless the Assistant Secretary acts upon the application for rehearing within thirty (30) days after it is filed, it is deemed to be denied. Such denial shall constitute final agency action for the purpose of judicial review.

§ 590.505 Answers to applications for rehearing.

No answers to applications for rehearing shall be entertained. Prior to the issuance of any final opinion and order on rehearing, however, the Assistant Secretary may afford the parties an opportunity to file briefs or answers and may order that a conference, oral presentation, or trial-type hearing be held on some or all of the issues presented by an application for rehearing.

[FR Doc. 89-30270 Filed 12-28-89; 8:45 am]
BILLING CODE 6450-01-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 202, 205, 213, and 226

[Regs. B, E, M, and Z; Docket No. R-0682]

Equal Credit Opportunity, Electronic Fund Transfers, Consumer Leasing, and Truth in Lending; Change in Enforcement Agency; Technical Amendment

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Technical amendment.

SUMMARY: The Board is making technical amendments to its regulations to reflect the transfer of enforcement functions from the Federal Home Loan Bank Board to the Office of Thrift Supervision, pursuant to the recent FIRREA legislation.

EFFECTIVE DATE: December 29, 1989.

FOR FURTHER INFORMATION CONTACT: W. Kurt Schumacher, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551 at (202) 452-2412; for the hearing impaired *only*, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544.

SUPPLEMENTARY INFORMATION: The Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA; Pub. L. No. 101-73, 103 Stat. 183) abolished the Federal Home Loan Bank Board and transferred its enforcement responsibilities to a new agency, the Office of Thrift Supervision.

The following amendments are hereby made to the Board's Regulations B (Equal Credit, Opportunity), E (Electronic Fund Transfers), M (Consumer Leasing), and Z (Truth in Lending) to reflect this change in agency structure.

List of Subjects

12 CFR Part 202

Banks, Banking, Civil rights, Counsumer protection, Credit, Federal Reserve System, Marital status

discrimination, Minority groups, Penalities, Sex discrimination, Women.

12 CFR Part 205

Banks, Banking, Consumer protection, Electronic fund transfers, Federal Reserve System, Penalties.

12 CFR Part 213

Advertising, Consumer leasing, Truth in lending.

12 CFR Part 226

Advertising, Banks, Banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties, Rate limitations, Truth in lending.

12 CFR Chapter II is amended as follows:

PART 202—EQUAL CREDIT OPPORTUNITY

1. The authority citation for 12 CFR part 202 continues to read as follows:

Authority: 15 U.S.C. 1691–1691f.

§ 202.14 [Amended]

2. Section 202.14(a)(1) is amended by removing the phrase "Federal Home Loan Bank Board" and the parenthetical information that follows, and adding the words "Office of Thrift Supervision" in its place.

Appendix A—[Amended]

3. Appendix A is amended by removing the phrase "Savings Institutions Insured by the FSLIC and Members of the FHLB System," the parenthetical information that follows, and the next full sentence, and adding the following words in place thereof:

Savings institutions insured under the Savings Association Insurance Fund of the FDIC and federally chartered saving banks insured under the Bank Insurance Fund of the FDIC (but not including state-chartered savings banks insured under the Bank Insurance Fund).

The District Director of the Office of Thrift Supervision in the District in which the institution is located.

PART 205—ELECTRONIC FUND TRANSFERS

1. The authority citation for 12 CFR Part 205 continues to read as follows:

Authority: Pub. L. 95–630, 92 Stat. 3730 (15 U.S.C. 1693b).

§ 205.13 [Amended]

2. Section 205.13(a)(1) is amended by removing the phrase "Federal Home Loan Bank Board" and the parenthetical information that follows, and adding the words "Office of Thrift Supervision" in its place.

PART 213—CONSUMER LEASING

1. The authority citation for 12 CFR Part 213 continues to read as follows:

Authority: Sec. 105, Truth in Lending Act, as amended by sec. 605, Pub. L. 92–221, 94 Stat. 170 (15 U.S.C. 1604).

Appendix D—[Amended]

2. Appendix D is amended by removing the phrase "Savings Institutions Insured by the FSLIC and Members of the FHLB System," the parenthetical information that follows, and the next full sentence, and adding the following words in place thereof:

Savings institutions insured under the Savings Association Insurance Fund of the FDIC and federally chartered savings banks insured under the Bank Insurance Fund of the FDIC (but not including state-chartered savings banks insured under the Bank Insurance Fund).

The District Director of the Office of Thrift Supervision in the District in which the institution is located.

PART 226—TRUTH IN LENDING

1. The authority citation for 12 CFR part 226 continues to read as follows:

Authority: Truth in Lending Act, 15 U.S.C. 1604 and sec. 2, Public Law 100–583, 102 Stat. 2960; sec. 1204(c), Competitive Equality Banking Act, Public Law 100–86, 101 Stat. 552.

Appendix I—[Amended]

2. Appendix I is amended by removing the phrase "Savings Institutions Insured by the FSLIC and Members of the FHLB System," the parenthetical information that follows, and the next full sentence, and adding the following words in place thereof:

Savings institutions insured under the Savings Association Insurance Fund of the FDIC and federally chartered savings banks insured under the Bank Insurance Fund of the FDIC (but not including state-chartered savings banks insured under the Bank Insurance Fund).

The District Director of the Office of Thrift Supervision in the District in which the institution is located.

Board of Governors of the Federal Reserve System, December 26, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–30287 Filed 12–28–89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 303

RIN 3064–AB03

Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control

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

ACTION: Interim rule with request for comments.

SUMMARY: The FDIC is establishing interim application and notice procedures governing: (1) Requests by state savings associations to engage directly in activities (other than as agent on behalf of customers) that are not permissible for federally chartered savings associations; (2) the direct conduct (other than agent on behalf of customers) by state savings associations of activities permissible for federal savings associations but in an amount in excess of that permissible for federals; (3) the divestiture of equity investments held by state savings associations that are no longer permissible investments as a result of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"); (4) the divestiture of "junk bonds" by state and federal savings associations; and (5) prior notice of the establishment or acquisition of a subsidiary by a state or federal savings association or the conduct of a new activity by an existing subsidiary of such institutions. Comments will be accepted on the interim rule for 60 days, after which time the FDIC will issue a final rule based upon the comments.

DATE: *Effective:* December 29, 1989. *Comments:* Comments must be received by February 28, 1990.

ADDRESSES: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to Room 6097 on business days between 8:30 a.m. and 5:00 p.m. Comments may also be inspected in Room 6097 between 8:30 a.m. and 5:00 p.m. on business days. [FAX number: (202) 347–2773 or 2775.]

FOR FURTHER INFORMATION CONTACT: Pamela E.F. LeCren, Counsel, (202) 898–3730, Legal Division, FDIC, 550 17th Street, NW., Washington, DC 20429; Daniel E. Austin, Review Examiner, (202) 898–6774, or Garfield Gimber, Examination Specialist, (202) 898–6913, Division of Supervision, FDIC, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this rule has been submitted to the Office of Management and Budget for review pursuant to section 3504(h) of the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*]. Comments on the collection of information should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Deposit Insurance Corporation, with copies of such comments to be sent to John R. Keiper, Jr., Assistant Executive Secretary, Room 6096, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. The collection of information in this regulation is in §§ 303.13(b), (c), (d), (e), (f), and (g). This information is required by the Federal Deposit Insurance Corporation in order that the FDIC may discharge its responsibilities under section 18(m) and section 28 of the Federal Deposit Insurance Act ("FDI Act"), as added by FIRREA. Pub. L. No. 101-73, sections 221 and 222, respectively, 103 Stat. 183, 266-269, 269-73, (1989). This information will be used to ensure compliance with the requirements of those sections of the FDI Act which (1) provide that savings associations must file notice with the FDIC prior to acquiring or establishing a subsidiary or conducting a new activity through a subsidiary, (2) set certain limits and restrictions on the permissible activities and equity investments of state savings associations, and (3) prohibit savings associations from acquiring or retaining corporate debt securities that are not of investment grade. The information will also be used to aid the FDIC in discharging its responsibilities under section 18(m) to adopt regulations, or issue orders, to prohibit activities which may be a serious threat to the Savings Association Insurance Fund (SAIF) or the Bank Insurance Fund (BIF). The likely respondents to these information collection requirements are savings associations engaging in the activities described above.

The estimated annual reporting burden for the collection of information in the regulation is summarized as follows:

Number of Respondents: 1,100
Number of Responses Per Respondent: 1
*Total Annual Responses:*1,100
Hours Per Response: 8
Total Annual Burden Hours: 8,800

Discussion of Interim Rule

Background

On August 9, 1989 President Bush signed FIRREA into law. FIRREA amended the FDI Act in a number of ways, among which was the addition of subsection (m) to section 18 of the FDI Act (12 USC 1828(m)) by § 221 of FIRREA (103 Stat. 266-269) and the addition of § 28 to the FDI Act by § 222 of FIRREA (103 Stat. 269-273).

Section 18(m)(1), as added by FIRREA, provides that (with certain exceptions) *any* insured savings association (state or federal) must notify the FDIC (and the Office of Thrift Supervision ("OTS")) at least 30 days prior to the establishment or acquisition of a subsidiary and at least 30 days prior to electing to conduct any new activity through a subsidiary. The savings association is to include in the notice such information as the FDIC requires by regulation. Section 18(m)(2) sets forth the authority of the OTS with regard to subsidiaries of insured savings associations. It also provides that should the Director of OTS determine that ownership or control of a particular subsidiary by a savings association, or the relationship between a savings association and its subsidiary, either constitutes a serious risk to the safety, soundness or stability of the savings association, is inconsistent with the purposes of the FDI Act, or is inconsistent with sound banking principles, the FDIC may order divestiture of the subsidiary.

Section 18(m)(3) provides that the FDIC may determine by regulation or order that any specific activity of a savings association poses a serious threat to the SAIF and further that the FDIC may prescribe and enforce such regulations (and/or issue such orders) that the FDIC determines are necessary to prevent actions or practices by savings associations that pose a serious threat to SAIF or BIF.

Section 28, as added to the FDI Act by FIRREA, deals, in part, with the activities and equity investments of state chartered savings associations and the investment by state or federal savings associations in "junk bonds." Section 28(a) prohibits a state chartered savings association from engaging as principal on or after January 1, 1990 in any activity of a type that is not permissible for federal savings associations unless the FDIC determines that the activity poses no significant risk to the affected deposit insurance fund *and* the savings association is, and continues to be, in compliance with the fully phased-in capital standards prescribed under section 5(t) of the Home Owners' Loan Act ("HOLA"), as amended by FIRREA (12 U.S.C. 1464(t)).

Section 28(b) deals with the direct activities of state chartered savings associations that are permissible for federal savings associations but which are authorized to state associations in an amount in excess of that which would be permissible for federal associations. The statute allows such activities to be conducted in amounts in excess of that which would be permissible directly for federal savings associations, provided that the FDIC has not determined that doing so poses any significant risk to the affected deposit insurance fund and provided that the savings association is, and continues to be, in compliance with the fully phased-in capital standards prescribed under HOLA.

Section 28(c) concerns equity investments made by state chartered savings associations. Under subsection (c), effective August 9, 1989, a state savings association is prohibited, with a limited exception for service corporations, from directly acquiring, or retaining, any equity investment of a type, or in an amount, that would not be permissible for federal savings associations. A state savings association that acquired a nonconforming equity investment prior to August 9, 1989 is required to divest such investment as soon as can be prudently done, but in any event not later than July 1, 1994. The FDIC may establish restrictions and/or requirements in connection with the divestiture of such investments.

Section 28(d) provides that no savings association (state or federal) may directly or indirectly through a subsidiary acquire or retain any corporate debt security that is not of investment grade (frequently referred to as "junk bonds"). The prohibition does not apply to acquisition or retention of such debt by a qualified affiliate of the savings association. Any savings association, or subsidiary of a savings association, that held debt securities not of investment grade prior to August 9, 1989 is required to divest those securities as quickly as can be prudently done and, in any event, not later than July 1, 1994. The FDIC is authorized to establish restrictions and/or requirements in connection with divestiture.

The FDIC is issuing regulations to implement the statutory provisions discussed above. Since the provisions being implemented relate to savings associations, the FDIC has consulted with the OTS for advice and comments during the draft of the regulation,

especially in the case of the provisions of section 18(m) of the FDI Act (§ 303.13 (f) of the regulation), under which both the FDIC and OTS have substantial responsibility. The FDIC also intends to coordinate with OTS in administering the provisions of section 28 of the FDI Act, especially where divestiture is concerned.

In applying the regulatory provisions, it is crucial that associations keep in mind that more than one filing may be necessary as a result of a single transaction. For instance, a state association which is establishing a subsidiary which is to engage in an activity not authorized to all federal associations will have to file a notice with the FDIC concerning the establishment of the subsidiary (as well as with OTS). The association's investment in the subsidiary must also conform to the requirements for equity investments. It is also possible that the association will have to adhere to various other statutory and regulatory provisions being administered by OTS. Again, the FDIC anticipates cooperation between the FDIC and OTS in such situations.

Description of Interim Rule

1. *Engaging as principal in activities after January 1, 1990 that are not "permissible" for federal savings associations*—[§ 28(a) of FDI Act—§ 303.13(b)].

Section 28(a) of the FDI Act, as added by FIRREA, seeks to, among other things, establish parallel regulations of state and federally chartered savings associations and to prevent state associations from exercising powers which are too risky to insure. (135 Cong. Rec. H2720, H2798, daily ed. June 15, 1989, statement of Rep. Torres and Rep. Kanjorski). To that end, the FDIC has been granted the authority and responsibility to ensure that any power exercised after January 1, 1990 by any state association is no greater than that "permissible" for federally chartered savings associations. Under § 28 other powers conferred by a state may only be exercised if the FDIC determines that the exercise of such power will *not* pose a significant risk to the affected deposit insurance fund and if the association in question is, and continues to be, in compliance with the fully phased-in capital standards prescribed by § 5(t) of HOLA.

Scope of § 303.13(b)

Section 303.13(b) of the interim rule sets forth application procedures which must be followed if a state savings association wishes to request the FDIC's approval to directly engage after January 1, 1990 in an activity in which a federal savings association could not engage. Under the interim rule, a state savings association must apply to the FDIC for approval if the association wishes to continue or initiate any activity directly (other than as agent on behalf of its customers) that is "not expressly authorized for all federal savings associations by statute or regulation issued by the Office of Thrift Supervision." The rule thus uses language to clarify the statute's use of the word "permissible" in order to clearly indicate the standard to which the FDIC will look in order to determine whether or not a particular activity is permissible for federal savings associations. The FDIC has specifically conferred with the OTS prior to adopting this position. Furthermore, the reference to statute or regulation is clearly consistent with FIRREA's legislative history which evidences an intent to include regulations adopted by the primary federal supervisory agency for federal associations. "An activity is not permissible for a Federal savings association for purposes of section 28 if, for example, it is impermissible for a Federal savings association under regulations prescribed by the Chairman of the Office of Savings Associations pursuant to section 5(c) of the Home Owners' Loan Act." (135 Cong. Rec. S6914, daily ed. June 19, 1989, section by section analysis of S. 774).

Under the interim rule, an activity that is not expressly authorized by statute or regulation, but that has been found permissible under a staff interpretation of the statute or regulation, does not qualify as "permissible". An association that wishes to conduct such an activity must file an application under the regulation. By adopting a conservative posture the FDIC will ensure that activities not clearly contemplated under statute or regulation are assessed in light of their potential impact on the insurance fund. Additionally, the reference in the interim rule to activities expressly authorized "for all" federal savings associations has the effect of limiting the universe of activities that will *not* trigger the need for prior approval to those generally available to all federal savings associations. Thus, the fact that federal association "X" is authorized to exercise a particular power (as a result, for example, of having retained a state-granted power when the association converted from a state to a federal charter sometime prior to August 9, 1989 or as a result of an OTS order or resolution granting it permission to so engage in a given set of circumstances) does not mean that state associations in general may exercise that power without the FDIC's approval. Particular OTS orders or resolutions are likely to be based upon facts and circumstances peculiar to the particular applicant. In brief, that power is not permissible for "all" federal associations. Again, this conservative approach allows the FDIC to assess the ability of any particular state association to engage in any activity within the context of the potential impact on the insurance fund.

The statutory prohibition in the rule against engaging "as principal" in activities not authorized to federal associations translates in the interim rule to a requirement for approval if a state savings association wishes to *directly* engage in a nonpermissible activity unless the association is strictly acting as agent on behalf of its customers. This reading of the statute is based upon legislative history. "Subsection (a) does not apply to activities that a savings association engages in strictly as its customer's agent. This is the effect of the subsection's references to engaging in activities as principal." 135 Cong. Rec. S10203, daily ed. Aug. 4, 1989, statement of Sen. Riegle. Although activities in which the association is acting strictly as agent are not subject to prior approval under § 28(a) and this rule, the activities could be restricted under other provisions of law. (Joint Explanatory Statement of the Committee of Conference, p. 403.)

Despite the fact that nonresidential real estate lending is a permissible activity for federal associations, the procedures set forth in § 303.13(b) must also be followed if a state association wishes to make loans secured by nonresidential real property in an amount in excess of that authorized to all federal savings associations. Although § 28(a) generally deals only with activities of a type that are not permissible for federal savings associations, nonresidential real estate lending is specifically identified by the statute as being subject to subsection (a).

Thus, nonresidential real estate lending is dealt with by the statute in the same manner as an activity that is not permissible for a federal savings association. ("Subsection (b) [of section 28 which generally governs the exercise of federally permissible activities in an amount in excess of that permitted to federal associations] does not apply to nonresidential real-estate loans, which are governed by subsection (a) [of section 28]." Joint Explanatory Statement of the Committee of Conference, p. 403.)

Section 28(g) of the FDI Act, as added by FIRREA, provides that subsections (a) and (b) of § 28 shall not be construed to require any state association that held an asset prior to August 9, 1989 to divest that asset. In accordance therewith, paragraph (b)(2) of § 303.13 indicates that paragraph (b)(1) of that section shall not be read to require the divestiture of an asset that was held by a state association prior to August 9, 1989, even though the asset (*e.g.*, an office building) is utilized in connection with the conduct of an activity for which the association must obtain the FDIC's approval (*e.g.*, real estate brokerage). Divestiture of the asset is not required pursuant to § 303.13(b)(1), even if approval to continue the activity is denied. Thus, the association could retain a building that had been used for an impermissible activity and convert its use to something else. This does not preclude the FDIC, however, from requiring the divestiture of the asset, in appropriate circumstances, pursuant to authority granted the FDIC by other provisions of the FDI Act or other statute. In fact, an asset acquired prior to August 9, 1989, may be subject to divestiture under section 28(c) of the FDI Act and § 303.13(d) of this rule if it is an equity investment. (135 Cong. Rec. S6914, 6915, daily ed. June 19, 1989, section by section analysis of S. 774).

Content and Filing of Application

Applicants do not need to file a particular form or application under § 303.13(b) but may simply file a letter application. The letter application is to be filed with the regional director for the Division of Supervision for the FDIC regional office in which the savings association's principal office is located. For the purposes of the rule the phrase "principal office" is intended to refer to the office of the headquarters of the savings association.

The rule requires that the following information be set forth in the letter application: (1) A brief description of the activity and the manner in which it is (or will be) conducted; (2) a copy, *if available*, of any feasibility study, management plan, financial projections, business plan, or similar document concerning the conduct of the activity; (3) an estimate of the present or expected dollar volume of the activity; (4) a copy of resolutions by the board of directors or board of trustees of the applicant authorizing the conduct of the activity in question and the submission of the application; (5) the most recent statement of the applicant's assets, liabilities, and capital on both a consolidated and non-consolidated basis; (6) a discussion by management of its analysis regarding the impact of the activity on the applicant's earnings, capital adequacy, and general condition; (7) a statement by the applicant of whether or not it is in compliance with the fully phased-in capital standards prescribed under section 5(t) of HOLA, including a calculation of the relevant capital ratio; and (8) a statement indicating the authority which the savings association is relying upon for the conduct of the activity.

In addition, the rule allows the regional director to request additional information. The FDIC wishes to emphasize that applicants are not generally required to develop feasibility studies or similar information under item (2) but are merely required to submit to the FDIC copies of whatever such information the association prepared or reviewed in connection with its decision to initiate the activities covered by the application. The FDIC reserves the right, however, to determine in the appropriate circumstances, that such a plan should have been developed or that the lack of any such plan constitutes an unsafe or unsound banking practice.

Standard for Processing Applications

Under the statute, the FDIC is precluded from approving the conduct by state savings associations of activities that are not permissible for federally chartered savings associations *unless* two tests are met: (1) The association in question is, and continues to be, in compliance with the fully phased-in capital standards prescribed by section 5(t) of HOLA, and (2) the conduct of the activity will pose no significant risk to the affected deposit insurance fund. Both conditions must be met if an activity is to be approved. In short, section 28(a) does not allow the FDIC to authorize the conduct of the activity absent such compliance. In fact, unless an association is in compliance with the fully phased-in capital standards, the association need not apply to engage in an activity not permissible to a federal savings association. Thus, an association which is not in compliance with the fully phased-in capital standards will have to terminate, and cannot initiate, an activity not allowable to a federal association. Any association that has not terminated an impermissible activity by January 1, 1990 which is not eligible to apply for the FDIC's permission to continue the activity is subject to enforcement action.

The second requirement for allowing the activity is that the FDIC determine that the activity poses no "significant risk" to the fund. This phrase is defined in the rule to mean that it is likely that either of the insurance funds administered by the FDIC will suffer a loss as a result of the conduct of the activity. This definition is discussed at length below, along with the other definitions contained in the rule. Applicants should be aware that an application may be denied even though both the capital and significant risk test have been met, provided that the FDIC has an independent basis under other provisions of the FDI Act, or any other statute, or regulation to condition, restrict, or prohibit the conduct of the activity in question. ("Section 28 does not limit any authority of the FDIC under other provisions of law." 135 Cong. Rec. S6915, daily ed. June 19, 1989, section by section analysis of S. 774.)

Capital standards—For the purposes of applying § 28 of the FDI Act and this rule, the FDIC intends to construe the phrase "fully phased-in capital standards" to refer to those capital requirements that will be generally applicable to all savings associations after any phase-in periods provided by FIRREA, or by regulations adopted by OTS, have expired. Thus, the relevant standards are those that will be applicable after the Director of OTS no longer has authority to make temporary exceptions to the capital standards set forth in section 5(t) of HOLA (January 1, 1991); the requirement that investments in, and extensions of credit to, certain subsidiaries be excluded from the capital of the parent savings association is in full force (July 1, 1994); and the transitional period for including qualifying supervisory goodwill in the calculation of core capital has expired (January 1, 1995). Additionally, since section 5(t)(1)(B) requires the Director of OTS to adopt regulations setting forth capital requirements that are no less stringent than the capital standards applicable to national banks, the relevant capital level for the application of § 303.13 also includes the risk-based capital requirements that will be in effect for national banks as of December 31, 1992. A savings association that is operating under an exemption granted by OTS, or a business plan acceptable to OTS, will not be considered to be in compliance with the fully phased-in capital requirements. (135 Cong. Rec. S6913, daily ed. June 19, 1989).

2. *Engaging in activities authorized to a federal association but to an extent not authorized for federals*—[Section 28(b) of FDI Act, § 303.13(c)].

Activities previously being conducted—Section 303.13(c)(1)(i) of the rule requires those state savings associations that are engaging, as of the

effective date of the regulation, in an activity of the type which is expressly authorized for federal savings associations by statute or regulation adopted by OTS, but which are engaging in such activity to a greater extent than is authorized to federal associations to file a notice with the FDIC. The notice must be sent, return receipt requested, to the regional director for the Division of Supervision for the region in which the association's principal office is located. The notice must be received by the regional director no later than 30 days after the effective date of the regulation. The notice must contain the information listed in § 303.13(b)(1) of the rule. In addition, the regional director may request such other information as the director deems appropriate.

A state savings association filing notice pursuant to paragraph (c)(1)(i) may continue the activities described in the notice at the level described unless the FDIC notifies the association to the contrary. No association will be permitted to continue such activities if the association is not in compliance with the fully phased-in capital standards prescribed by section 5(t) of HOLA or the FDIC determines that the conduct of such activities at the level described poses a significant risk to either of the deposit insurance funds. As is the case with activities covered by § 303.13(b) of the rule, a state savings association may not engage in a permissible activity at a level in excess of that permissible for federal associations unless it is in compliance with the fully phased-in capital standards. Such an institution must reduce the activity to a level which conforms to that applicable to a federal association. The FDIC is also not precluded from prohibiting the conduct of the activities at the level described if the activities, or the manner in which they are conducted, is contrary to statute or regulation. (135 Cong. Rec. S6915, daily ed. June 19, 1989, section by section analysis of S. 774).

Paragraph (c)(1)(iii) of the rule indicates that a savings association which held assets on its books prior to August 9, 1989 in connection with the conduct of an activity which gives rise to a notice pursuant to paragraph (c)(1) shall not be requried to divest those assets based upon section 28(b) of the FDI Act. This is so even if the FDIC notifies the association that it may not continue the conduct which has been the subject of a notice. This section of the rule thus tracks the language found in § 303.13(b)(2) and is based upon section 28(g) of FIRREA.

Commencing activities for the first time—State associations proposing to conduct activities of the sort described in paragraph (c)(1)(i) are required under paragraph (c)(2) of the rule to file a notice with the FDIC at least 60 days before initiating the activity. The notice is required to be filed with the regional director for the Division of Supervision for the region in which the association's principal office is located. The same information must be contained in the notice as is required for the notice for activities previously conducted. The regional director may request additional information. Provided that the association is in compliance with the fully phased-in capital standards prescribed by § 5(t) of HOLA and unless the 60-day notice period is extended or the association has been notified to the contrary, the association may begin to conduct the activity 60 days after the notice is received in the regional office (or in less than 60 days if so notified). The 60-day period may be extended by the regional director upon notice to the association if the notice as received is incomplete or the notice raises issues that require additional information or time for analysis. if the regional office extends the 60-day period, the association may begin the conduct of the activities only upon receipt of written notification from the FDIC. No savings association will be permitted to initiate activities at a level that is determined to pose a significant risk to either of the deposit insurance funds administered by the FDIC.

3. *Acquisition or retention of equity investments after August 9, 1989*—[section 28(d) of FDI Act, § 303.13(d)].

Section 303.13(d) of the rule implements the prohibition contained in section 28(c) of the FDI Act on state chartered savings associations' *directly* acquiring or retaining after August 9, 1989 equity investments of the sort not permissible for federal savings associations. ("If the owners of a thrift want to make investments [that a federally chartered thrift cannot make], they must do so with a separately capitalized subsidiary cut off from Federal deposit insurance * * *" 135 Cong. Rec. S3996, daily ed. April 17, 1989, statement of Sen. Riegle.) "Equity investment" is defined in the rule to mean any equity security, any partnership interest, any equity interest in real estate, and any transaction which in substance falls within any of these categories, even though it may be structured as some other form of business transaction. For an in-depth discussion of what constitutes an equity investment for the purposes of this rule see the discussion below covering definitions.

As indicated previously, section 28 requires the FDIC to direct state savings associations to divest any nonconforming *equity investments* held as of August 9, 1989 as quickly as prudently possible. Additionally, section 28(c) may require the divestiture of an *asset* that was held by a state savings association prior to August 9, 1989 if that asset is a nonconforming equity investment. (135 Cong. Rec. S6915, daily ed. June 19, 1989, section by section analysis of S. 774). The latest allowable date for completion of divestiture is July 1, 1994. Under the statute, the FDIC is the final arbiter of when divestiture can be prudently accomplished. (Joint Explanatory Statement of the Committee of Conference, p. 403, 135 Cong. Rec. S4091, daily ed. April 18, 1989, excerpts from Report accompanying S. 774).

As is the case with the sections of the rule described above, paragraph (d)(1) refers to investments that are expressly authorized by statute or regulation adopted by OTS for all federal savings associations. Thus, for example, the fact that one or more federal savings associations have been permitted by order or resolution of the OTS (or its predecessor, the Federal Home Loan Bank Board) to acquire a certain equity investment, or staff of the OTS (or its predecessor) have issued an interpretive opinion indicating that a particular investment is permissible given the facts and circumstances, does not qualify that investment as one expressly authorized by statute or regulation to all federal savings associations.

Under the interim rule, any state chartered savings association that as of August 9, 1989 held one or more equity investments subject to the restrictions of section 28(c) must file a letter application, return receipt requested, with the regional director for the Division of Supervision for the region in which the association's principal office is located not later than 30 days from the effective date of the regulation. The letter must describe the obligor, type, amount, and book and market values of the equity investment(s) held by the savings association which trigger(s) the application; evaluate the anticipated gain or loss from the divestiture of the investment and the impact thereof on the association; enclose a copy of the association's plan to comply with the divestiture requirement as quickly as prudently possible; enclose a copy of the board of directors' (or board of trustees in a mutual association) resolution authorizing the filing of the application; and request the FDIC's permission to

accomplish divestiture in accordance with the plan set forth in the application. The regional director may request additional information as deemed appropriate.

It is the FDIC's intent to review each application, along with such additional information as requested, for the purpose of determining whether or not the savings association which filed the application can prudently divest the equity investments in question in a more expeditious fashion than that contemplated under the plan filed with the regional office. In connection therewith, and as recited in the interim rule, the FDIC may impose such conditions and requirements as it deems appropriate (in its sole discretion) with regard to the divestiture, including setting a date for final divestiture in advance of July 1, 1994 or the date contemplated by the association. The FDIC also reserves the right under the interim rule to set conditions and restrictions regarding divestiture at any time during the divestiture period. It was the clear intent of Congress in enacting section 28(c) of the FDI Act to preclude state chartered savings assocations from making nontraditional equity investments which involve unacceptable risks in the future. It is also clear that Congress intended to change the FDIC with the responsibility to see that savings associations which already had such investments rid themselves of those investments as quickly as possible so that those institutions would not suffer losses from those investments. (135 Cong. Rec. S4091, daily ed. April 18, 1989, excerpts from Report accompanying S.774; 135 Cong. Rec. S3996, daily ed. April 17, 1989, statement of Sen. Riegle). It is therefore equally as clear that any approval the FDIC may give of an association's plan to divest nonconforming equity investments cannot be frozen in time. The FDIC must be able to reassess that plan in light of subsequent events and in light of the association's condition on an on-going basis. Any approval will therefore be conditioned upon the continuing validity of any assumptions upon which the plan is based, the continuing vitality of the association in question, and the facts and circumstances existing at the time the approval was granted and during the course of the divestiture period. The FDIC also wishes to make clear that the FDIC intends to consult with OTS regarding the approval of divestiture plans filed with the regional offices.

Service corporation exception—Paragraph (2) of § 303.13(d) concerns the investment by state savings associations in service corporations. (Under the interim rule, a "service corporation" is a corporation the capital stock of which is available for purchase only by savings associations.) Section 28(c) of the FDI Act permits a state savings association to acquire an equity investment in a service corporation without the FDIC's approval if the service corporation is engaged in activities that are permissible for all service corporations owned by federal savings associations, that is, not just some service corporations, and the association's investment in the service corporation does not exceed that permissible for a federal savings association. Equity investments can be made in service corporations with the FDIC's approval even if the above conditions are not met, provided that the FDIC (1) determines that the acquisition does not pose a significant risk of loss to either deposit insurance fund administered by the FDIC, and (2) the association in question is, and continues to be, in compliance with the fully phased-in capital standards prescribed by section 5(t) of HOLA. Similarly to § 303.13 (b) and (c), if an association is not in compliance with the fully phased-in capital standards, that association cannot take advantage of the service corporation exception and need not file an application to do so.

Under § 303.13(d)(2) of the interim rule, a state savings association that wishes to acquire an equity investment in a service corporation that engages in activities in which a service corporation of a federal savings association is not expressly authorized to engage either by statute or a regulation adopted by the OTS must file a letter application with the regional director for the Division of Supervision for the region in which the savings association's principal office is located. Likewise, a state savings association that wishes to make an investment in a service corporation in excess of the amount of an investment which is permissible for federal savings associations to make in a service corporation must file a letter application with the appropriate FDIC regional director. Those associations which held investments such as those described above as of August 9, 1989 and which would like to retain those investments must file an application with the regional director no latter than 30 days after the effective date of the regulation requesting permission to retain the investments.

The letter application must contain the information set forth in § 303.13(b)(1), as it relates both to the service corporation and to the parent savings association; a listing of the officers (contemplated officers) of the service corporation; a listing of any other shareholders (existing or prospective) of the service corporation and their respective holdings; and a list of the locations (expected locations) of all of the offices of the service corporation. The regional director may request other information deemed appropriate.

As stated earlier, approval to acquire or retain the investment in question will not be granted if the association is not in compliance with the fully phased-in capital standards prescribed by section 5(t) of HOLA or if it is determined that the retention or acquisition of such investment would pose a significant risk to either deposit insurance fund administered by the FDIC. The FDIC is not precluded from denying an application based upon some other independent basis, however. If a request to retain an investment is denied, as association will need to divest the investment as quickly as prudently possible, but in any event not later than July 1, 1994. The interim rule, therefore, requires an association whose application to retain an investment has been denied to file a plan of divestiture with the regional director requesting permission to accomplish divestiture in accordance therewith.

Commitments entered into prior to August 9, 1989—It is the FDIC's opinion that state savings associations which, prior to August 9, 1989, entered into commitments to acquire equity investments at some time after August 9, 1989 of the type, or in an amount, which is now prohibited to state associations pursuant to section 28(c) may not proceed with the acquisition. Generally speaking, associations in this circumstance should have a defense to a breach of contract claim on the basis of impossibility of performance (*i.e.*, performance under the contract would be illegal as a result of subsequently enacted legislation). *See Connolly v. Pension Benefit Guaranty Corporation*, 475 U.S. 211 (1986); *Omnia Commercial Co. v. U.S.*, 261 U.S. 502, 511 (1923); *Louisville and Nashville R.R. Co. v. Mottley*, 219 U.S. 467 (1911). In short, the FDIC is adopting the position that, with regard to fully executory contracts, there had been no "acquisition" of an equity investment as of August 9, 1989 which is eligible for retention over the divestiture period. Partially performed contracts will need to be reviewed on the facts in order to determine whether it can be said that an equity investment was acquired before August 9, 1989. Associations should be reminded, however, that, even if it is determined

that the completion of a partially performed contract does not violate the prohibition of section 28(c), the equity investment must be divested if it is a nonconforming investment.

4. *Corporate debt securities not of investment grade*—[Section 28(d) of FDI Act, § 303.13(e)].

Section 303.13(e) of the rule establishes application procedures covering the direct or indirect retention of "junk bonds" by savings associations (State or federal) during the divestiture period provided for by § 28(d) of the FDI Act. (Acquisition or retention of junk bonds by a qualified affiliate of a savings association is not prohibited under the statute.) Under this section of the interim rule, any savings association which, as of August 9, 1989, held corporate debt securities that were not of investment grade when acquired must file an application with the regional director for the Division of Supervision for the region in which the savings association's principal office is located. The application must be filed within 30 days from the effective date of the regulation. The application may take the form of a letter to the regional director and must contain the following: (1) A description of the obligor, type, and amount of each debt security and of its book and market value; (2) the association's plans to comply with the requirements of § 28(d) to divest the securities as quickly as prudently possible, but in no event later than July 1, 1994; (3) a description of the anticipated gain or loss from the sale of the securities and the impact of the sale on the association's capital (including capital ratios before and after the sale); (4) a copy of the resolution of the board of directors (or trustees) authorizing the filing of the submission; and (5) a request for the FDIC's permission to accomplish divestiture in accordance with the submitted plan. The regional director may request such other information as the director deems appropriate.

Upon review of the notice and such additional information as requested by the director, the FDIC may impose such conditions and requirements as it deems appropriate, in its sole discretion, with regard to the divestiture, including requiring divestiture to be accomplished in advance of July 1, 1994 and the date called for in the association's plan of divestiture. The rule also makes clear that the FDIC may impose conditions and restrictions at any time during the divestiture period, *i.e.*, the FDIC is not precluded from notifying the association at some date subsequent to the agency's original review of the association's plan that new conditions or restrictions are being imposed by the FDIC. Thus, it is the FDIC's intent that any "approval" of a divestiture plan will be conditioned upon the continued validity of any assumptions upon which the association's plan is based, the continued vitality of the association in question, and the facts and circumstances which exist at the time of the association's application and during the divestiture period.

5. *Notice of acquisition or establishment of a subsidiary or the conduct of new activities through a subsidiary*—[Section 18(m)(1) of FDI Act, § 303.13(f)].

General—Paragraph (f) of § 303.13 of the interim rule implements the newly enacted statutory requirement that all insured savings associations (State or federal) must give the FDIC at least 30 days prior notice before establishing or acquiring a subsidiary or initiating the conduct of any "new" activity through a subsidiary. The term "subsidiary" does not include an insured depository institution for purposes of the prior notice. Under the rule, a notice is required, subject to certain exceptions identified below, when a savings association establishes a subsidiary after August 9, 1989 or when an existing subsidiary initiates the conduct of an activity "new" to that subsidiary after August 9, 1989. The notice is to be filed, return receipt requested, with the regional director for the Division of Supervision for the region in which the savings association's principal office is located.

The notice is to contain the same information as required under § 303.13(b)(1), plus the following additional information: (i) a description of how the subsidiary will fund the activity, (ii) the amount of the savings associations investment and the form it will take, (iii) the percentage of ownership in the subsidiary, (iv) a list of other owners of the subsidiary, and (v) in the case of the acquisition of a going concern, the terms and conditions of the acquisition including an appraisal, assessment of value or other substantiation of the purchase price plus operating statements for the concern for the previous three years (if applicable). If the filing with OTS under § 18(m)(1) of the FDI Act contains all of the information required under § 303.13(f)(1), a copy of the material filed with OTS may be filed with the FDIC regional office in satisfaction of the notice requirement contained in § 303.13(f)(1). If the filing with OTS does not contain all of the information required by § 303.13(f)(1), the filing may still be submitted in satisfaction of § 303.13(f)(1) provided that the filing is supplemented with the necessary information. The regional director may request additional information as deemed appropriate. If additional information is requested, or if the notice when received is incomplete, the 30-day period will not begin to run until the additional information is received or the incomplete notice is completed.

Catch-up notice as to existing subsidiaries—The rule also requires any insured savings association that had one or more subsidiaries as of August 9, 1989 to file an abbreviated notice to that effect with the regional director for the Division of Supervision for the region in which the savings association's principal office is located. The notice must be filed with the regional director within 30 days after the effective date of the regulation. This requirement will not be burdensome, since the interim rule only requires that the notice contain a minimal amount of information. This provision has been included in the rule in order to supply the FDIC with information regarding the nature of activities being indirectly conducted by insured savings associations. The FDIC is charged with protecting the solvency of the deposit insurance funds and pursuant to § 18(m)(3) of the FDI Act may prohibit the conduct of specific activities, as well as certain acts or practices, if the FDIC determines that said activities may pose a serious threat to either of the funds. In order to properly discharge this responsibility, the FDIC must have complete, accurate, and up to date information regarding savings associations and their activities.

Federal savings banks chartered prior to October 15, 1982—Section 18(m)(5) of the FDI Act provides that the prior notice requirements of paragraph (1) of that section shall not apply to any federal savings bank that was chartered prior to October 15, 1982 as a savings bank under state law nor to any savings association that acquired its principal assets from such an institution. In accordance therewith, § 303.13(f)(2) the interim rule indicates that such savings associations are not subject to the prior notice requirements of § 303.13(f)(1).

6. *Subsequent notice by certain federal savings associations enjoying grandfather rights*—[Section 303.13(g)].

Section 5(i)(4) of HOLA provides that, subject to the FDIC's authority to determine that the conduct of a specific activity or an act or practice is a serious threat to either deposit insurance fund administered by the FDIC, any federal savings bank chartered as such prior to October 15, 1982 may make any

investment, or engage in any activity, not otherwise authorized under section 5 of HOLA, to the degree it was permitted to do so as a federal savings bank prior to October 15, 1982. Likewise, subject to the same authority of the FDIC, any federal savings bank organized prior to October 15, 1982 that had previously been a state-chartered mutual savings bank may continue to make any investment, or engage in any activity, not otherwise authorized under section 5 of HOLA, to the degree it was authorized to do so as a state mutual savings bank. Finally, any other federal savings bank that acquires a federal savings bank that falls into either of the above categories will receive the benefit of the same grandfather treatment.

Under the interim rule, any federal savings association that enjoys grandfather rights pursuant to section 5(i)(4) of HOLA must file a notice with the regional director for the Division of Supervision for the region in which the federal savings association's principal office is located. This notice must be filed within 30 days after the effective date of the regulation or within 30 days after the date the association first enjoys grandfather rights, whichever comes first. The notice must briefly describe the activity or investment with regard to which the association enjoys grandfather rights. A notice should be filed even if the association is not actually exercising the additional authority or does not have, at that time, any investment which is greater than that permitted other federal savings associations under section 5 of HOLA. The FDIC is adopting this notice requirement as a means of gathering information so that it can properly discharge its responsibilities under section 18(m)(3) of the FDI Act.

7. *Definitions.* *"Activity"* is defined, for the purposes of paragraphs (b) and (c) of § 303.13, to include acquiring or retaining any investment other than an equity investment. The definition is taken from § 28(g) of the FDI Act which provides that for the purposes of the activity and magnitude restrictions of section 28(a) and (b), the term "activity" shall include acquiring or retaining any investment. As it is clear based upon FIRREA's legislative history that section 28(c) of the FDI Act, which places a prohibition on acquiring or retaining equity investments other than those that are permissible for federal savings associations, was intended to override paragraphs (a) and (b), the rule makes clear that the reference to "activity" does not encompass the acquisition or retention of an equity investment.

"Control" is defined in the rule to mean the power to vote, directly or indirectly, 25 per centum or more of any class of the voting stock of a company, the ability to control in any manner the election of a majority of a company's directors or trustees, or the ability to exercise a controlling influence over the management and policies of a company. The definition used in the rule is the same as is used in § 337.4 of the FDIC's regulations. 12 CFR 337.4.

"Corporate debt securities not of investment grade" for the purposes of the interim rule refers to any corporate debt security that when acquired was not rated among the four highest rating categories by at least one nationally recognized statistical rating organization. The definition specifically indicates, however, that the phrase should not be read to include any obligation issued or guaranteed by a corporation that may be held by a federal savings association without limitation as to percentage of assets under subparagraphs (D), (E), or (F) of section 5(c)(1) of HOLA. Subparagraph (D) covers investments in the stock or bonds of a Federal home loan bank or in the stock of the Federal National Mortgage Association. Subparagraph (E) refers to investments in mortgages, obligations, or other securities which are or have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454, 1455). Subparagraph (F) refers to investments in obligations, participations, securities, or other instruments issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association, the Student Loan Marketing Association, the Government National Mortgage Association, or any agency of the United States. It also includes securities guaranteed pursuant to section 306(g) of the National Housing Act (12 U.S.C. 1721).

It should be noted that the general supervisory definition of investment quality security as utilized by the FDIC and discussed in the Division of Supervision Manual of Examination Policies (FDIC) includes unrated securities that are of an equivalent quality to securities in the four highest rating categories. The definition as used in this rule which is taken from section 28(d) does not extend to unrated securities, whether or not those unrated securities are of equivalent quality.

"Equity Investment" is defined for the purposes of the rule to mean any equity security (discussed below), any partnership interest (general or limited), and any equity interest in real estate (also discussed below). ("Effective as soon as the bill becomes law, subsection (c) [section 28(c)] prohibits a State savings association from acquiring or retaining any equity investment of a type of [sic] in an amount that is not permissible for a Federal savings association to acquire and retain directly. *The prohibition applies to equity investments in real estate, investments in equity securities, and other equity investment[s].*" 135 Cong. Rec. S10203, daily ed. August 4, 1989, statement of Sen. Riegle. (emphasis added).

The term also includes any transaction which in substance falls within any of these categories, even though it may be structured as some other form of business transaction. Transactions which in substance give rise to an equity investment, as that term is defined in the interim rule, are included within the scope of the definition, based upon clear statements in the legislative history that it was the intent of Congress that "[i]n applying subsection (c) [section 28(c) of the FDI Act] Federal regulators should look to the substance of the investment and not merely to the form. Any transaction that is in substance an equity investment is covered by subsection (c), even if the transaction is nominally a loan or other permissible transaction." Joint Explanatory Statement of the Committee of Conference, p. 403; 135 Cong. Rec. S10203, daily ed. August 4, 1989, statement of Sen. Riegle. (See also 135 Cong. Rec. S6914, daily ed. June 19, 1989, section by section analysis of S. 774; 135 Cong. Rec. S4091, daily ed. April 18, 1989, excerpts from Report accompanying S. 774).

"Equity interest in real estate" as defined in the interim rule refers to any form of direct or indirect ownership of any interest in real property (whether in the form of an equity interest, partnership, joint venture or other form) which is accounted for as an investment in real estate or real estate joint ventures under generally accepted accounting principles. The phrase also includes transactions that have been determined to be investments in real estate ventures for purposes of the Federal Financial Institutions Examination Council instructions for the preparation of reports of condition. For the purposes of applying these two standards the FDIC will generally look to the guidance prepared by the American Institute of Certified Public Accountants (AICPA) in Notices to Practitioners issued in November 1983, November 1984, and February 1986 (as

well as any relevant notices that may supersede the same) and the Federal Financial Institutions Examination Council Call Report Instructions on Schedule RC-M—Memoranda Item on Direct and Indirect Investments in Real Estate Ventures. Under these standards certain acquisition, development, and construction loans, as well as loans with high loan to value ratios or equity participation clauses, may be considered to be equity investments.

The following interests in real estate are specifically excluded from the overall definition of equity interest in real estate: (1) Interests in real property primarily used, or intended to be used in the future, by a savings association, its subsidiaries, or its affiliates as offices (or related facilities) for the conduct of its business; (2) an interest in real property acquired in satisfaction of a previously contracted debt or at sales under judgments, etc. provided the property is not intended to be held for investment purposes by is expected to be disposed of in a timely fashion as permitted by applicable law; and (3) interests in real property that are primarily in the nature of charitable contributions to community development.

"Equity security" is defined in the rule to mean any stock, certificate of interest, or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, or voting-trust certificate; any security immediately convertible at the option of the holder without payment of substantial additional consideration into such a security; any security carrying any warrant or right to subscribe to or purchase any such security; and any certificate of interest or participation in, temporary or interim certificate for, or receipt for any of the foregoing. The term "equity security" does not include any of the foregoing, however, if it is acquired through foreclosure or settlement in lieu of foreclosure. The definition in the interim rule is in keeping with the legislative history of the Act which indicates that the prohibitions of § 28(c) are intended to extend to "any type of equity investment including common stock and preferred stock (whether voting or non-voting), options, warrants, and interests in partnerships (whether general or limited)." 135 Cong. Rec. S4091, daily ed. April 18, 1989, excerpts from Report accompanying S. 774.

"Service corporation" as used in the rule means any corporation the stock of which may only be purchased by savings associations.

"Subsidiary" as defined in the rule means any corporation, partnership, business trust, association, joint venture, pool, syndicate or other similar business organization directly or indirectly controlled by a savings association. For the purposes of § 303.13(f), an "insured depository institution" is excluded from the definition of subsidiary.

"Significant risk" to the deposit insurance fund is present under the rule whenever it is likely that either of the deposit insurance funds administered by the FDIC may suffer any loss whatever. Although the statute and the regulation use the term "significant" in conjunction with the word "loss", the test of significant risk is met if there is a likelihood of any loss whatsoever regardless of how small. Therefore, the amount, or the relative or absolute size of the loss that may result from a state savings association engaging in an activity is not probative. What is relevant, rather, is the likelihood that some loss may occur. Joint Explanatory Statement of the Committee of Conference, p. 402–403. Additionally, it is not necessary that the conduct of a certain activity may result in the failure or threatened failure of a savings association before the conduct of such activity is considered to pose a significant risk of loss to either fund. For example, the ownership and operation of a motor hotel or a ski lodge and the related investment(s) in such ventures may be minimal on both an absolute and relative size basis vis-a-vis a particular savings association, however, such activities could still be presumed to present a significant risk to the deposit insurance funds.

"Qualified affiliate" as defined in the rule means, in the case of a stock savings association, an affiliate other than a subsidiary or an insured depository institution; and in the case of a mutual savings association, a subsidiary other than an insured depository institution, so long as all of the savings association's investments in, and extensions of credit to, the subsidiary are deducted from the savings association's capital. This definition conforms to that found in section 28(d) of the FDI Act.

8. *Delegations of authority and reconsideration of denied applications*

Under the rule the authority to act on all applications and notices filed pursuant to § 303.13 is delegated to the Director of the Division of Supervision, and where confirmed in writing, to an Associate Director of the Division of Supervision or regional director or deputy regional director. The procedures set forth in § 303.6(e) are to be used in the event an applicant wishes to obtain reconsideration of a denial.

9. *Adoption of interim rule without opportunity for comment*

The FDIC is amending part 303 of its regulations ("Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control") by adding a new § 303.13 that establishes interim notice and application requirements in order to implement the provisions described above. Comments are being requested, however, for 60 days after its publication. Inasmuch as the majority of the provisions of FIRREA implemented by these procedures were effective immediately upon enactment of the statute on August 9, 1989 and the prohibition regarding the conduct of activities impermissible for federal savings associations takes effect January 1, 1990, the Board of directors has determined that there is good cause to dispense with opportunity for public comment with regard to these amendments and to make them immediately effective upon publication in the **Federal Register**. These regulations provide guidance to affected institutions as to the meaning of the statute and the FDIC's opinion as to what is and is not a permissible activity and what investments are permissible for state savings associations in the context of FIRREA. All savings associations have an affirmative obligation to divest themselves of nonconforming equity investments and junk bonds which they now hold. Unless and until the FDIC reviews each individual savings association's plan to comply with that requirement, each savings association can continue to hold those investments and bonds without an objective assessment of the effect of doing so on the institution's safety and soundness. In light of the fact that the number of investments which must be divested (and the volume of junk bonds) could be very large on an industry-wide basis, it is imperative for the FDIC to oversee the divestiture with the broader picture in mind as well. It is therefore in the public interest to have these procedures in place as soon as possible. It is in the best interests of the institutions as well to provide guidance on these matters as soon as possible so that institutions can have some certainty in the conduct of their ongoing operations as well as in their future ventures.

In view of the foregoing, opportunity for public comment is impracticable and there is good cause for the procedures

established hereby to be immediately effective. The FDIC will, however, accept comment for a period of 60 days after the interim rule is published and will republish the rule with whatever changes are appropriate based upon the comments as soon as possible after the close of the comment period.

Regulatory Flexibility Analysis

As the amendment to part 303 is not required to be published for public comment, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

In addition, pursuant to the FDIC's statement of policy on the drafting of regulations, it has been determined that a cost-benefit analysis, including a small bank impact statement, is not required.

List of Subjects in 12 CFR Part 303:

Administrative practice and procedure, authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Insured depository institutions, Savings associations.

In consideration of the foregoing, the FDIC hereby amends part 303 of title 12 of the Code of Federal Regulations to add new § 303.13 as follows:

PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES OF ACQUISITION OF CONTROL

1. The authority citation for part 303 is revised to read as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817(j), 1818, 1819 ["Seventh" and "Tenth"], 1828, Pub. L. No. 101-73, sec. 221, 103 Stat. 183, 267-266 (1989) (12 U.S.C. 1828(m)); Pub. L. No. 101-73, sec. 222, 103 Stat. 183, 269-273 (1989) (12 U.S.C. 1831e); 15 U.S.C. 1607.

2. Section 303.13 is added to read as follows:

§ 303.13 Applications and notices by savings associations.

(a) Definitions. For the purposes of this section, the following definitions apply:

(1) As used in paragraphs (b) and (c) of this section, the term "activity" includes acquiring or retaining any investment other than an equity investment.

(2) "Control" means the power to vote, directly or indirectly, 25 per centum or more of any class of the voting stock of a company, the ability to control in any manner the election of a majority of a company's directors or trustees, or the ability to exercise a controlling influence over the management and policies of a company.

(3) "Corporate debt securities not of investment grade" refers to any corporate debt security that when acquired was not rated among the four highest rating categories by at least one nationally recognized statistical rating organization. The term shall not include any obligation issued or guaranteed by a corporation that may be held by a federal savings association without limitation as to percentage of assets under subparagraphs (D), (E), or (F) of section 5(c)(1) of the Home Owners' Loan Act (12 U.S.C. 1464(c)(1)).

(4) "Equity investment" means any equity security as defined herein; any partnership interest; any equity interest in real estate as defined herein; and any transaction which in substance falls into any of these categories, even though it may be structured as some other form of business transaction.

(5) "Equity interest in real estate" means any form of direct or indirect ownership of any interest in real property (whether in the form of an equity interest, partnership, joint venture or other form) which is accounted for as an investment in real estate or real estate joint ventures under generally accepted accounting principles or is otherwise determined to be an investment in a real estate venture under Federal Financial Institutions Examination Council instructions for the preparation of reports of condition. The term "equity interest in real estate" shall not include:

(i) An interest in real property that is primarily used or intended to be used for future expansion by a savings association, its subsidiaries, or its affiliates as offices or related facilities for the conduct of its business;

(ii) An interest in real property that is acquired in satisfaction of a debt previously contracted in good faith or acquired in sales under judgments, decrees, or mortgages held by a savings association, provided that the property is not intended to be held for real estate investment purposes but is expected to be disposed of in a timely fashion as permitted by applicable law; and

(iii) Interests in real property that are primarily in the nature of charitable contributions to community development.

(6) "Equity security" means any stock, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, or voting-trust certificate; any security immediately convertible at the option of the holder without payment of substantial additional consideration into such a security; any security carrying any warrant or right to subscribe to or purchase any such security; and any certificate of interest or participation in, temporary or interim certificate for, or receipt for any of the foregoing. The term "equity security" does not include any of the foregoing if it is acquired through foreclosure or settlement in lieu of foreclosure.

(7) "Qualified affiliate" means, in the case of a stock savings association, an affiliate other than a subsidiary or an insured depository institution; and, in the case of a mutual savings association, a subsidiary other than an insured depository institution, so long as all of the savings association's investments in, and extensions of credit to, the subsidiary are deducted from the savings association's capital.

(8) The term "service corporation" means any corporation the capital stock of which is available for purchase only by savings associations.

(9) A "significant risk" is present whenever it is likely that any insurance fund administered by the FDIC may suffer any loss whatever.

(10) "Subsidiary" means any corporation, partnership, business trust, association, joint venture, pool, syndicate or other similar business organization directly or indirectly controlled by a savings association. For the purposes of § 303.13(f), the term does not include an "insured depository institution" as that term is defined in section 3(c)(2) of the Federal Deposit Insurance Act, ("FDI Act," 12 U.S.C. 1813(c)(2)).

(b) Engaging other than as agent on behalf of customers in activities not permissible for federal savings associations.

(1) After January 1, 1990, no state savings association may directly engage, other than as agent on behalf of its customers, in an activity that is not expressly authorized by statute or regulation adopted by the Office of Thrift Supervision ("OTS") for all federal savings associations unless the state savings association obtains the approval of the FDIC. Any state savings association that wishes to obtain approval to initiate or continue such an activity, as well as any state savings association that wishes to make, or already has, nonresidential real property loans in an amount exceeding that described in section 5(c)(2)(B) of the Home Owners' Loan Act ("HOLA") (12 U.S.C. 1464(c)(2)(B)) must file a letter application with the regional director for the Division of Supervision for the region in which the state savings association's principal office is located.

The letter application should contain the following information:

(i) A brief description of the activity and the manner in which it is (or will be) conducted;

(ii) A copy, if available, of any feasibility study, management plan, financial projections, business plan, or similar document concerning the conduct of the activity;

(iii) An estimate of the present or expected dollar volume of the activity;

(iv) Resolutions by the board of directors (or the board of trustees in a mutual association) of the savings association authorizing the conduct of such activity and the filing of this submission;

(v) A current statement of the association's assets, liabilities, and capital on both a consolidated and a non-consolidated basis, respectively;

(vi) A discussion by management of its analysis regarding the impact of the proposed activity on the association's earnings, capital adequacy, and general condition;

(vii) A statement by the savings association of whether or not it is in compliance with the fully phased-in capital standards prescribed under section 5(t) of HOLA (12 U.S.C. 1464(t)), including a calculation of the relevant capital ratio; and

(viii) A statement of the authority the savings association is relying upon for the conduct of the activity in the amount set forth in the letter application.

The regional director may request that the state savings association provide such other information as the director deems appropriate. Approval will not be granted if it is determined by the FDIC that engaging in the activity poses a significant risk to the affected deposit insurance fund. Furthermore, no savings association will be granted approval unless it is in compliance with the fully phased-in capital standards prescribed in section 5(t) of HOLA. Consequently, no application to engage in an activity after January 1, 1990 should be filed if a state association is not in compliance with the fully phased-in capital requirements.

(2) Paragraph (b)(1) of this section shall not be read to require the divestiture by a state savings association of any asset it had on its books prior to August 9, 1989 despite the fact that such asset may be held in connection with the conduct of an activity for which the state savings association must obtain the FDIC's approval under § 303.13(b)(1). A notice describing the activities and those assets is nevertheless required by this section.

(c) Engaging other than as agent on behalf of customers in activities authorized for federal savings associations but to an extent not so authorized.

(1) *Activities conducted as of December 29, 1989.* (i) Any state savings association which as of December 29, 1989 is directly engaging, other than as agent on behalf of its customers, in an activity expressly authorized to all federal savings associations by statute or regulation adoped by OTS in an amount in excess of that permitted to federal savings associations and intends to continue to do so after January 1, 1990, must file a notice, return receipt requested, with the regional director for the Division of Supervision for the region in which the state savings association's principal office is located. The notice must contain the same information that is required to be included in a letter application filed pursuant to § 303.13(b)(1). The regional director may request such other information as the regional director deems appropriate. The notice must be received by the regional director no later than January 29, 1990.

(ii) A state savings association which is, and continues to be, in compliance with the fully phased-in capital standards prescribed under section 5(t) of HOLA and which has filed notice with the FDIC pursuant to paragraph (c)(1)(i) of this section may continue the activities that are the subject of the 30-day notice in the amount set forth in the notice unless the FDIC notifies the state savings association to the contrary. No state savings association will be permitted to continue the activities at the level described in a notice filed pursuant to this section if it is determined that to do so poses a significant risk to the affected deposit insurance fund. A state savings association which is not in compliance with the fully phased-in capital standards as of December 29, 1989 must decrease the level of the activity to that allowed to a federal savings association in order for continuation of the activity to be permissible.

(iii) Paragraph (c)(1) of this section shall not be read to require the divestiture by a state savings association of any asset it had on its books before August 9, 1989. A notice describing those assets is nevertheless required by this section if the assets are held in connection with the conduct of an activity in an amount that triggers notice under § 303.13(c)(1)(i).

(2) *Initiation of activities after December 29, 1989.* Any state savings association that intends to initiate activities of a type and in an amount described in paragraph (c)(1)(i) of this section must file a notice, return receipt requested, with the regional director for the Division of Supervision for the region in which the state savings association's principal office is located at least 60 days prior to the initiation of the level of the activity described in the notice. Unless the FDIC notifies the state savings association to the contrary, a state association that files a 60-day notice may initiate the level of activity as described in its notice 60 days after the FDIC's receipt thereof (or in less than 60 days if so notified), provided that the state association is, and continues to be, in compliance with the fully phased-in capital standards prescribed under section 5(t) of HOLA. Consequently, no application should be filed if a state savings association is not in compliance with the fully phased-in capital standards. The notice must contain the same information required by § 303.13(b)(1). The regional director may request such other information as the regional director deems appropriate.

The 60-day period may be extended upon notice to the state savings association if the notice as received is incomplete or the notice raises issues that require additional information or time for analysis. If the 60-day period is extended, the state savings association may begin the conduct of the activities only upon receipt of written notification to that effect. No state savings association will be permitted to initiate activities subject to this paragraph if it is determined that to do so would pose a significant risk to the affected deposit insurance fund.

(d) *Equity investments.* (1) *General.* No state savings association may directly acquire or retain any equity investment after August 9, 1989 of a type or in an amount that is not expressly authorized by statute or regulation adopted by OTS for all federal savings associations. Any state savings association which, as of August 9, 1989, had one or more such equity investments must file an application, return receipt requested, with the regional director for the Division of Supervision for the region in which the state savings association's principal office is located no later than 30 days from December 29, 1989. The application shall:

(i) Describe the obligor, type, amount and book and market values of the equity investment;

(ii) Set forth the association's plans to comply with the requirements of section 28(c) of the FDI Act to divest the investment as quickly as prudently

possible, but in any event not later than July 1, 1994;

(iii) Describe the anticipated gain or loss (anticipated or realized) from the sale of the investment and the impact thereof on the association's capital (including capital ratios before and after their sale);

(iv) Include a copy of a resolution by the board of directors, or board of trustees in the case of a mutual association, authorizing the filing of this submission; and

(v) Request the FDIC's permission to accomplish divestiture in accordance with said plans.

The regional director may request such additional information as the regional director deems appropriate. Upon review of the application and such additional information as requested, and at any time during the divestiture period thereafter, the FDIC may impose such conditions and requirements as it deems appropriate in its sole discretion with regard to the divestiture of the equity investment, including requiring completion of divestiture in advance of July 1, 1994.

(2) *Service corporations.* (i) *General.* Section 303.13(d)(1) notwithstanding, a state savings association may acquire or retain an equity investment in a service corporation, provided that the service corporation's activities are limited solely to those expressly authorized either by statute or by regulation adopted by OTS for all service corporations owned by federal savings associations *and* provided that the investment in such service corporation does not exceed that permissible for a federal savings association pursuant to statute or regulation of OTS. If either of these two conditions does not exist, the state association must file a letter application under paragraph (d)(2)(ii) with the regional director for the Division of Supervision for the region in which the state savings association's principal office is located requesting permission to acquire or retain the equity investment in the service corporation in question.

(ii) *Content and filing of application.* An application requesting permission to retain an equity investment in a service corporation in which a federal association could not invest that was held as of August 9, 1989 must be filed with the regional office no later than January 29, 1990. Approval of the acquisition or retention of an equity investment in a service corporation in which a federal association could not invest will not be granted if the state association is not in compliance with the fully phased-in capital standards prescribed by section 5(t) of HOLA. Consequently, no application to acquire or retain an equity investment in such a service corporation should be filed if a state association is not in compliance with these capital requirements. In addition, approval of the retention or acquisition of such investments will not be granted if the acquisition or retention is determined to pose a significant risk to the affected deposit insurance fund. If an application to retain an investment is denied, the state association must file a divestiture plan with the regional director requesting the FDIC's permission to accomplish divestiture in accordance with said plan.

The letter application required hereby should contain the information required by § 303.13(b)(1), as it relates both to the service corporation and to its parent state savings association. In addition, the application should contain: A listing of the officers (contemplated officers) of the service corporation, a listing of any other shareholders of the service corporation (existing or prospective) and their respective holdings, and a listing of the locations (expected locations) of all of the offices of the service corporation. The regional director may request such other information as the regional director deems appropriate.

(e) *Corporate debt securities not of investment grade.* Notwithstanding anything to the contrary in § 303.13, no state or federal savings association may, directly or through a subsidiary (other than a subsidiary that is a qualified affiliate), acquire or retain after August 9, 1989 any corporate debt security that is not of investment grade. Any state or federal savings association which, as of August 9, 1989, held corporate debt securities not of investment grade must divest those securities as quickly as can prudently be done, but in no event later than July 1, 1994. Any state or federal savings association that must divest corporate debt securities shall file an application with the regional director for the Division of Supervision for the region in which the state or federal savings association's principal office is located not later than 30 days from December 29, 1990. The application shall:

(1) Describe the obligor, type, amount, and book and market values of the corporate debt securities;

(2) Set forth the state or federal association's plans to comply with the requirements of § 28(d) of the FDI Act to divest the securities as quickly as prudently possible, but in any event not later than July 1, 1994;

(3) Describe the gain or loss (anticipated or realized) from the sale of the securities and the impact thereof on the association's capital (including capital ratios before and after the sale);

(4) Include a copy of the resolution by the board of directors, or the board of trustees in the case of a mutual association, authorizing the filing of this submission; and

(5) Request the FDIC's permission to accomplish divestiture in accordance with said plans.

The regional director may request such additional information as the regional director deems appropriate. Upon review of the application and such additional information as requested, and at any time during the divestiture period thereafter, the FDIC may impose such conditions and requirements as it deems appropriate in its sole discretion with regard to the divestiture of the debt securities, including requiring completion of divestiture in advance of July 1, 1994.

(f) *Notice of acquisition or establishment of a subsidiary or the conduct of new activities through a subsidiary.* (1) No insured savings association may establish or acquire a subsidiary, or conduct any new activity through a subsidiary, without providing the regional director for the Division of Supervision for the region in which the insured savings association's principal office is located prior notice of the association's intent to do so. Notice must be sent return receipt requested and be received by the regional director at least 30 days prior to the establishment or acquisition of the subsidiary or the commencement of the new activity. The notice shall contain the same information required to be in a letter application filed pursuant to § 303.13(b)(1) plus the following:

(i) A description of how the activities of the subsidiary will be funded;

(ii) The amount of the insured savings association's investment in the subsidiary and the form of the investment;

(iii) The percentage ownership the insured savings association will have in the subsidiary;

(iv) A listing of the other owners of the subsidiary if any; and

(v) In the case of the acquisition of an existing concern, the terms and conditions of the acquisition including an appraisal, assessment of value, or other substantiation of the purchase price and operating statements for the previous three years (if applicable).

If the insured savings association's filing with the OTS under section 18(m)(1) of the FDI Act contains all of the information required, that filing may be submitted to the FDIC in satisfaction

of this provision. In any case, the regional director may request such additional information as the regional director deems appropriate. In all such cases, the 30-day period will not begin to run until the response to the request for additional information is complete.

(2) Any federal savings bank that was chartered prior to October 15, 1982 as a savings bank under state law, and any savings association that acquired its principal assets from such an institution, is not required to file prior notice in accordance with paragraph (f)(1) of this section.

(3) Any insured savings association that had one or more subsidiaries prior to August 9, 1989 must file a notice with the regional director for the Division of Supervision for the region in which the insured savings association's principal office is located within 30 days from December 29, 1989. The notice should set forth the name, location, and type of activity conducted by the subsidiary and the amount of the insured savings association's investment in the subsidiary.

(g) *Notice by federal savings associations conducting grandfathered activities.* Any federal savings association authorized by § 5(i)(4) of HOLA (12 U.S.C. 1464(i)(4)) to make any investment or engage in any activity not otherwise generally authorized to federal savings association by section 5 of HOLA must file a notice with the regional director for the Division of Supervision for the region in which the federal savings association's principal office is located within 30 days after December 29, 1989 or within 30 days after the date the federal savings association is first able to rely upon section 5(i)(4) of HOLA as a result of the acquisition of an association that is covered by such section. The notice should briefly describe the activity or investment.

(h) *Delegations.* The authority to act on applications and notices filed pursuant to § 303.13, and to make any and all determinations called for in regard to the same, is delegated to the Director of the Division of Supervision, and where confirmed in writing by the Director, to an associate director of the Division of Supervision or the regional director (Division of Supervision) or deputy regional director (Division of Supervision).

By Order of the Board of Directors. Dated at Washington, DC this 12th day of December, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-30248 Filed 12-28-89; 8:45 am]

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12 CFR Part 303

RIN 3064-AA98

Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control

AGENCY: Federal Deposit Insurance Corporation ("FDIC" or "Corporation").

ACTION: Final rule.

SUMMARY: The FDIC is amending its regulation respecting applications, requests, submittals, delegations of authority, and notices of acquisition of control (part 303) to reflect the changes in part 303 necessitated by virtue of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA").

The FDIC is also amending this regulation to clarify and, in some cases, to modify its delegations of authority for acting on a variety of applications (*e.g.*, mergers, insurance fund conversions, branches, relocations, deposit insurance, trust and other banking powers, changes in control, management interlocks, and other applications). These amendments are designed to clarify and define certain provisions of the delegations and to correct certain ambiguities in the delegations that have come to light since the delegations were substantially revised in September 1987 (52 FR 35396). The amendments do not alter any rights or obligations of any person, depository institution, or other applicant.

EFFECTIVE DATE: December 12, 1989.

FOR FURTHER INFORMATION CONTACT: Jesse G. Snyder, Assistant Director, Office of Supervision and Applications, Operations Branch, Division of Supervision (202) 898-6915, or F. Douglas Birdzell, Special Counsel to the Deputy General Counsel, Legal Division (202) 898-3716, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC, 20429.

SUPPLEMENTARY INFORMATION:

Reason for Adoption Without Prior Notice and Comment

I. Immediate adoption of this final rule is necessary in the public interest to conform to the provisions of FIRREA placing savings associations under the FDIC's authority for a number of applications covered under part 303. As the changes in part 303 are essentially dictated by FIRREA, and due to the necessity for advising savings associations of the requirements of part 303 applicable to them at the earliest possible time, so that applications can be processed with minimum delay, the notice and public participation provisions of the Administrative Procedure Act (5 U.S.C. 553) were not followed in connection with this action.

II. Furthermore, the amendments are being published in final form without opportunity for public comment under authority of 5 U.S.C. 553(b)(A) (Administrative Procedure Act), which exempts from required publication for comment interpretive rules, general statements of policy, and rules of agency practice and procedure.

All of the amendments, which constitute nonsubstantive changes to the FDIC's rules of practice and procedure, are being made immediately effective inasmuch as the requirement found in 5 U.S.C. 553(d) that substantive rules be published not less than 30 days prior to their effective date has been dispensed with, the Board having found, for good cause, that making the regulation effective immediately will pose no compliance problem or otherwise adversely affect the public interest, and will serve to expedite the applications process.

Background

On August 9, 1989, FIRREA was signed into law. This statute made massive changes in the body of Federal law regulating financial institutions by abolishing the Federal Home Loan Bank Board (the former savings and loan regulator), and replacing it with the Office of Thrift Supervision ("OTS") under the Department of the Treasury. The Federal Savings and Loan Insurance Corporation ("FSLIC"), the deposit insurance agency formerly under the FHLBB was dismantled, and its functions transferred to the FDIC. Because of this restructuring, the FDIC has assumed a number of responsibilities with respect to savings and loan associations in addition to its traditional role as insurer of bank deposits and regulator of insured state nonmembers banks.

Because of this increased responsibility, part 303 of FDIC's regulations is being substantially revised to reflect the changes brought about by FIRREA.

The principal changes relfect the fact that savings associations now apply to FDIC for insurance under a special fund, the so-called "SAIF" or Savings Association Insurance Fund. The Bank Merger Act, as amended by FIRREA,