

April 1, 2016

**MEMORANDUM TO:** Board of Directors

**FROM:** Doreen R. Eberley, Director  
Division of Risk Management Supervision 

**SUBJECT:** Notice of final rulemaking: *Revisions to Part 341 of the FDIC's Rules and Regulations Requiring the Registration of Securities Transfer Agents*

**Summary:** On December 22, 2015, the FDIC issued a notice of proposed rulemaking in the *Federal Register* for public comment to amend its regulations requiring insured State nonmember banks, or subsidiaries of such banks, that act as transfer agents for qualifying securities under section 12 of the Securities Exchange Act of 1934 ('34 Act) to register with the FDIC (proposed rule). The FDIC did not receive any comments on the proposed rule, and staff is now seeking the Board of Directors' approval to issue the proposed rule as final and without change (final rule). The final rule requires insured State savings associations and subsidiaries of such State savings associations that act as transfer agents for qualifying securities to register with the FDIC, similar to the registration requirements applicable to insured State nonmember banks and subsidiaries of such banks. In addition, the final rule revises the definition of qualifying securities to reflect statutory changes to the '34 Act made by the Jumpstart Our Business Startups Act, P.L. 112-106 (2012) (JOBS Act).

**Recommendation:** That the Board of Directors adopt and issue the attached final rule and authorize its publication in the *Federal Register*.

**Concur:**



Charles Yi  
General Counsel

## **Discussion**

### Background

The '34 Act provides that an entity must register as a transfer agent if it functions as a transfer agent with respect to any security registered under section 12 of the '34 Act (Section 12) or if it would be required to be registered except for the exemption from registration provided by Section 12(g)(2)(B) or Section 12(g)(2)(G).<sup>1</sup> A transfer agent registers by filing an application for registration with the appropriate regulatory agency.<sup>2</sup> Prior to the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203 (2010) (Dodd-Frank Act), the FDIC was the appropriate regulatory agency only for a State-chartered insured bank that is not a member of the Federal Reserve System and a subsidiary of any such bank. Part 341 of the FDIC's regulations (Part 341) implements the sections of the '34 Act relating to State nonmember banks and subsidiaries thereof that are transfer agents of qualifying securities.<sup>3</sup> The Office of Thrift Supervision (OTS) did not issue a regulation comparable to Part 341.<sup>4</sup>

### Statutory Changes

#### *The Dodd-Frank Act*

In 2010, the Dodd-Frank Act provided for a substantial reorganization of the regulation of State and Federal savings associations and their holding companies. On July 21, 2011, (the "transfer date" established by section 311 of the Dodd-Frank Act), the functions formerly

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<sup>1</sup> 15 U.S.C. 78q-1(c)(1).

<sup>2</sup> 15 U.S.C. 78q-1(c)(2).

<sup>3</sup> 12 CFR Pt. 341.

<sup>4</sup> The Financial Services Regulatory Relief Act of 2007 had amended the '34 Act to name the OTS as an appropriate regulatory agency, and from 2007 until changed by the Dodd-Frank Act, savings and loan associations, their subsidiaries, and savings and loan holding companies were to register as transfer agents with the OTS. The OTS, however, never issued a rule with the registration requirement and only issued a memorandum informing covered institutions of their statutory obligation. See, OTS CEO Memorandum Number 258 (July 27, 2007), *available at* <http://www.occ.gov/static/news-issuances/ots/ceo-memos/ots-ceo-memo-258.pdf>.

assigned to the OTS were transferred to the FDIC, as to State savings associations. The Dodd-Frank Act also amended the '34 Act to define the FDIC as the appropriate regulatory agency for insured State savings associations, and subsidiaries thereof, along with insured State nonmember banks, and subsidiaries thereof.<sup>5</sup>

#### *The JOBS Act*

As discussed above, the '34 Act provides that an entity must register as a transfer agent if it functions as a transfer agent with respect to any security registered under Section 12 or if it would be required to be registered except for the exemption from registration provided by Section 12(g)(2)(B) or Section 12(g)(2)(G).<sup>6</sup>

In 2012, the JOBS Act increased the quantitative thresholds at which securities must be registered with the Securities and Exchange Commission (SEC) under Section 12.<sup>7</sup>

#### Current Regulation – Part 341

Part 341 currently requires State nonmember banks and subsidiaries of any such banks that are transfer agents for qualifying securities under Section 12 to register with the FDIC.<sup>8</sup> Part 341 defines “qualifying securities” as: securities registered on a national securities exchange; or securities issued by a company or bank with 500 or more shareholders and \$1 million or more in total assets, securities issued by investment companies registered pursuant to section 15 U.S.C. 80a-8, and securities issued by insurance companies exempt from registration under Section

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<sup>5</sup> P.L. 111-203, Section 376(a) (2010).

<sup>6</sup> 15 U.S.C. 78q-1(c)(1).

<sup>7</sup> P.L. 112-106. As amended by the JOBS Act, Section 12(g)(1) generally requires securities' issuers to register their securities when the issuer has total assets exceeding \$10,000,000 and a class of equity security (other than an exempted security) held of record by either-- (i) 2,000 persons or (ii) 500 persons who are not accredited investors (as such term is defined by the Commission). The JOBS Act also amended Section 12(g)(1) to provide that in the case of an issuer that is a bank or a bank holding company, the issuer's securities must be registered when the issuer has total assets exceeding \$10,000,000 and a class of equity security (other than an exempted security) held of record by 2,000 or more persons.

<sup>8</sup> Currently, 17 entities are registered with the FDIC as transfer agents. The SEC and the Federal bank regulatory agencies jointly developed the reporting form TA-1. See FFIEC Form TA-1 (rev. 2013).

12(g)(2)(G).<sup>9</sup> The second prong of the definition of qualifying securities, regarding securities issued by a company or bank with 500 or more shareholders and \$1 million or more in total assets, is derived from the quantitative threshold for registering securities with the SEC in Section 12.<sup>10</sup> As a result of the amendments to the '34 Act made by the Dodd-Frank Act and the JOBS Act, the current exclusion of State savings associations and subsidiaries thereof and the regulatory definition of qualifying securities currently found in Part 341 are inconsistent with the statutory threshold for registration requirements now provided in Section 12.<sup>11</sup>

### Final Rule

The final rule is part of the FDIC's continuing efforts to enact rule changes required by the Dodd-Frank Act and more recent statutory changes, such as the JOBS Act, and applies Part 341 to insured State nonmember banks, insured State savings associations, and the subsidiaries of such institutions. In addition, the final rule reconciles the regulatory definition of qualifying securities with the statutory amendments to the '34 Act required by the JOBS Act. The final rule defines qualifying securities as (1) securities registered on a national securities exchange pursuant to Section 12(b) (15 U.S.C. 78l(b)) or (2) securities required to be registered under Section 12(g)(1) (15 U.S.C. 78l(g)(1)), except for securities exempted from registration with the SEC by Section 12(g)(2) (C, D, E, F, and H).<sup>12</sup> The definition of "qualifying securities" cites to

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<sup>9</sup> 12 CFR 341.2.

<sup>10</sup> 15 U.S.C. 78l.

<sup>11</sup> Unlike Part 341, the comparable Federal Reserve Board (FRB) and Office of the Comptroller of the Currency (OCC) securities transfer rules generally refer to the statute and do not include a definition of qualifying securities, so the rules did not require the same amendments as this final rule. See, 12 CFR 9.20 (OCC), 12 CFR 208.31(a) (FRB), and 12 CFR 225.4 (FRB).

<sup>12</sup> The definition of qualifying securities includes: (a) securities registered on a national securities exchange; (b) securities issued by (1) a company with total assets in excess of \$10 million and a class of equity securities (other than exempted securities) held of record by either: (i) 2,000 persons, or (ii) 500 persons who are not accredited investors or (2) a bank or bank holding company with total assets exceeding \$10 million and a class of equity securities (other than exempted securities) held of record by 2,000 or more persons; (c) securities issued by investment companies registered pursuant to section 15 U.S.C. 80a-8; and (d) securities issued by insurance companies exempt from registration under Section 12(g)(2)(G).

Section 12(g)(1) instead of reciting specific quantitative statutory thresholds to ensure that the FDIC's regulations remain consistent with any future statutory changes to Section 12(g)(1) . Finally, the final rule also makes certain technical corrections to Part 341, such as revising outdated citations and removing the delegations of authority related to the registration of securities transfer agents from the rule. Staff seeks the Board's approval to place the delegations of authority in the Board's December 3, 2002 Delegations of Authority Resolution No. 071098 to maintain consistent treatment for all delegations of authority. The removal of the delegations of authority does not change them; it only removes them from the regulation to provide greater flexibility to the FDIC. Interested parties may access the FDIC's delegations of authority from its website. The final rule would likely reduce burden on small entities by increasing the number of entities that could deregister with the FDIC.

**Conclusion**

FDIC staff recommends that the FDIC Board adopt the attached final rule and authorize its publication in the *Federal Register*.

**Staff Contacts:**

RMS  
Judy Gross                      ext. 8-7047

Legal  
Rachel Ackmann                      ext. 8-6858