

[6714-01-P]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 347

RIN 3064-AE36

ALTERNATIVES TO REFERENCES TO CREDIT RATINGS WITH RESPECT TO PERMISSIBLE ACTIVITIES FOR FOREIGN BRANCHES OF INSURED STATE NONMEMBER BANKS AND PLEDGE OF ASSETS BY INSURED DOMESTIC BRANCHES OF FOREIGN BANKS

AGENCY: Federal Deposit Insurance Corporation (“FDIC”).

ACTION: Notice of Proposed Rulemaking (“NPR”).

SUMMARY: The FDIC is seeking public comment on a proposed rule to amend its international banking regulations (“Part 347”) consistent with section 939A (“section 939A”) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) and the FDIC’s authority under section 5(c) of the Federal Deposit Insurance Act (“FDI Act”). Section 939A directs each federal agency to review and modify regulations that reference credit ratings. The proposed rule would amend the provisions of subparts A and B of Part 347 that reference credit ratings. Subpart A, which sets forth the FDIC’s requirements for insured state nonmember banks that operate foreign branches, would be amended to replace references to credit ratings in the definition of “investment grade” with a standard of creditworthiness that has been adopted in other federal regulations that conform with section 939A. Subpart B would be amended to revise the FDIC’s asset pledge requirement for insured U.S. branches of foreign banks. The eligibility criteria for the types of assets that foreign banks may pledge would be amended by replacing the references to credit ratings with the revised definition of “investment grade.” The proposed rule would apply this investment grade standard to each type of pledgeable asset, establish a liquidity requirement for such assets, and subject them to a fair value discount. The proposed rule would

also introduce cash as a new asset type that foreign banks may pledge under subpart B and create a separate asset category expressly for debt securities issued by government sponsored enterprises.

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by RIN 3064-AE36, by any of the following methods:

- *Agency Website:* <http://www.fdic.gov/regulations/laws/federal/>.
Follow instructions for submitting comments on the Agency website.
- *E-mail:* Comments@fdic.gov. Include the RIN 3064-AE36 on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Public Inspection:* All comments received must include the agency name and RIN 3064-AE36 for this rulemaking. All comments received will be posted without change to <http://www.fdic.gov/regulations/laws/federal/>, including any personal information provided. Paper copies of public comments may be ordered from the FDIC Public

Information Center, 3501 North Fairfax Drive, Room E-1002, Arlington, VA 22226 by telephone at 1 (877) 275-3342 or 1 (703) 562-2200.

FOR FURTHER INFORMATION CONTACT: Eric Reither, Senior Capital Markets Specialist, Capital Markets Branch, Division of Risk Management Supervision, EReither@fdic.gov; Lanu Duffy, Senior International Advisor, International Affairs Branch, Division of Insurance and Research, LDuffy@fdic.gov; Catherine Topping, Counsel, CTopping@fdic.gov; Benjamin Klein, Senior Attorney, BKlein@fdic.gov, Legal Division.

SUPPLEMENTARY INFORMATION:

I. Policy Objectives

The intent of the proposed rule is to conform part 347 with section 939A's directive to reduce reliance on credit ratings. By removing references to credit ratings in part 347 and adopting an alternative standard of creditworthiness, the proposed rule would encourage regular, in-depth analysis of the credit risks associated with specific types of securities held by foreign branches of state nonmember banks under subpart A, or pledged for the benefit of the FDIC by the insured U.S. branches of foreign banks under subpart B. The proposed rule supports these objectives by establishing an "investment grade" definition that would be applied in both subparts A and B.

The financial crisis in 2008 highlighted the importance of considering the liquidity of a security when assessing its overall risk. To address this concern, the proposed revisions to the asset pledge requirement in subpart B would include the application of a liquidity standard to the securities pledged to the FDIC by the insured U.S. branches of foreign banks, and would subject such pledged assets to a fair value discount. These amendments would support the objective of the asset pledge requirement, which is to ensure orderly asset liquidation at maximum value in

the event such assets need to be liquidated to pay the insured deposits of the U.S. branch of the foreign bank.

II. Background

In the decades prior to the financial crisis in 2008, third party credit risk assessments by nationally recognized statistical ratings organizations (“NRSROs”) helped to provide transparency and efficiency to the securities markets. Their assessments of creditworthiness allowed originators and investors to more accurately and readily meet their risk tolerances and investment strategies. Many financial regulations used these external credit risk ratings to set limits on the activities of regulated entities in order to foster safe and sound investment practices. However, during the run up to the crisis many regulated institutions overly relied on the credit risk assessments of NRSROs, often neglecting to do a thorough analysis of their own. At the same time, flaws in the NRSROs’ business model (including certain commercial relationships with the originators of securities and strong competition by NRSROs for market share) undermined the accuracy of the credit ratings. Consequently, many investors, including banking organizations, experienced significant losses on securities with ratings that implied credit losses would be very unlikely and minimal. This prompted Congress to enact section 939A, which directs each federal agency to review and modify regulations that reference credit ratings.

Section 939A¹ requires each federal agency to review its regulations that require the use of an assessment of creditworthiness of a security or money market instrument and any references to or requirements in such regulations regarding credit ratings. Each agency must modify its regulations identified in the review by removing references to, or requirements of reliance on, credit ratings and substituting appropriate standards of creditworthiness.

¹ Pub L. No. 111-203, section 939A, 124 Stat. 1376, 1887 (July 21, 2010).

Subpart A of Part 347 – Foreign Banking and Investment by Insured State Nonmember Banks

Subpart A of part 347, 12 CFR 347.101, *et seq.*, addresses the international banking and investment activities of state nonmember banks, including the establishment and operations of foreign branches and subsidiaries.² In general, these regulations implement the FDIC's statutory authority under section 18(d)(2) of the FDI Act³ regarding branches of insured state nonmember banks in foreign countries, and section 18(l) of the FDI Act⁴ regarding insured state nonmember bank investments in foreign entities.

In addition to their general banking powers, banks with foreign branches are permitted to conduct a broad range of investment activities, including investment services and underwriting of debt and equity securities.⁵ Under 12 CFR 347.115(b), a foreign branch of a bank may invest in, underwrite, distribute and deal, or trade foreign government obligations that have an investment grade rating, up to an aggregate limit of ten percent of the bank's Tier 1 capital, as calculated under the Basel III capital rules in 12 CFR part 324, subpart C.⁶ Section 347.102(o)

² A state nonmember bank may establish a non-U.S. branch with the approval of the FDIC (12 U.S.C. 1828(d)(2)). National banks must gain the approval of the Board of Governors of the Federal Reserve System ("Federal Reserve") to open a non-U.S. branch. These branches may engage in any activity that is permitted in the United States, as well as those that are usual in connection with the banking business in the foreign country where it is located. State member banks may establish foreign branches with the approval of the Federal Reserve. U.S. banking organizations may also conduct international banking activities through Edge and agreement corporations. (12 U.S.C. 611-631) ("Edge corporations"); (12 U.S.C. 601-604(a) ("agreement corporations")).

³ 12 U.S.C. 1828(d)(2).

⁴ 12 U.S.C. 1828(l).

⁵ The limitations on international investments and the definition of permissible activities found in the FDIC's regulations in part 347 are similar to, but not exactly, those found in Regulation K of the Federal Reserve.

⁶ 12 CFR 324.20, *et seq.*

currently defines "investment grade" to mean a security that is rated in one of the four highest categories by two or more NRSROs or one NRSRO if the security is rated by only one NRSRO.⁷

Subpart B of Part 347 – Foreign Banks

The regulations contained in subpart B of part 347 primarily implement provisions of the FDI Act and the International Banking Act ("IBA")⁸ concerning insured and noninsured U.S. branches of foreign banks.⁹ Each foreign banking organization maintaining an insured branch must comply with specific FDIC asset maintenance¹⁰ and asset pledge requirements under section 5(c) of the FDI Act. These requirements are separate and apart from other capital equivalency requirements of the federal or state licensing authorities.¹¹ The FDIC no longer insures the deposits accepted by branches of foreign banks, except for deposits made in branches of foreign banks that are insured by operation of the grandfathering provisions of the IBA, as

⁷ An NRSRO is an entity registered with the U.S. Securities and Exchange Commission as an NRSRO under section 15E of the Securities Exchange Act of 1934. See 15 U.S.C. 78o-7, as implemented by 17 CFR 240.17g-1.

⁸ Pub. L. No. 95-369, 92 Stat. 607 (Sept. 17, 1978) (codified at 12 U.S.C. 3101 *et seq.*).

⁹ U.S. branches of foreign banks may be licensed by the Office of the Comptroller of the Currency ("OCC") or by an individual state. The Federal Reserve is required to approve any new foreign bank branch. The Federal Reserve, among other things, is required to certify that the country from which the foreign bank is located subjects its banks, including the applicant, to comprehensive, consolidated supervision. 12 U.S.C. 3105(d).

¹⁰ The FDIC requires that an insured branch of a foreign bank maintain, on a daily basis, eligible U.S. dollar-denominated assets in an amount not less than 106% of the preceding quarter's average book value of the branch's liabilities excluding those due to other offices or wholly owned subsidiaries of the foreign bank. 12 CFR 347.210.

¹¹ Although U.S. branches and agencies of foreign banks have no capital of their own, those that are federally licensed must deposit cash or eligible securities at approved insured banks to satisfy the "capital equivalency requirement" specified by the IBA. The amount of the deposit is required to be at least 5% of the total liabilities of the branch or agency office, or the capital that would be required if it were a freestanding national bank. 12 U.S.C. 3102(g)(2). The underlying purpose of the IBA provision is to ensure that branches and agencies of a foreign bank maintain a minimum level of unencumbered assets in the United States that would be available in a liquidation of the branch or agency. State-licensed branches and agencies also must meet capital equivalency requirements, which vary from state to state. *See, e.g.,* N.Y. Banking Law §202-b.

amended by the Foreign Bank Supervision Enhancement Act of 1991 (“FBSEA”).¹² The universe of these grandfathered branches is very limited. There are currently only ten insured U.S. branches of foreign banks in operation (four federal branches and six state branches). A foreign bank that has an insured branch must pledge assets for the benefit of the FDIC to protect the DIF in the event the FDIC is obligated to pay the insured deposits of an insured branch under section 11(f) of the FDI Act.¹³ Section 347.209(d) provides a list of the types of assets that a foreign bank may pledge for the benefit of the FDIC. In describing certain asset types, 12 CFR 347.209(d) references credit ratings issued by a nationally recognized rating service in connection with a determination of the credit quality of the assets that a foreign bank may pledge.

The proposed amendments and revisions are discussed below, by subpart. The FDIC invites public comment on all aspects of the proposal, including the potential costs and benefits of the proposed rule.¹⁴

¹² Since the enactment of FBSEA, a foreign bank seeking to accept retail deposits (initial deposits under \$250,000) in the United States may do so only by establishing a U.S. subsidiary bank (or savings association) whose deposits are insured by the FDIC. Before FBSEA, a small number of foreign bank branches had obtained FDIC insurance under the provisions of the IBA and thus were permitted to accept retail deposits. These branches (insured branches) are “grandfathered”, i.e., they may continue to receive insured retail deposits pursuant to section 6(d)(2) of the IBA (12 U.S.C. 3104(d)(2)).

¹³ 12 U.S.C. 1821(f).

¹⁴ The Economic Growth and Regulatory Paperwork Reduction Act of 1996 (“EGRPRA”) requires that regulations prescribed by the Federal Financial Institutions Examination Council, OCC, FDIC, and Federal Reserve (collectively, the Agencies) be reviewed by the Agencies to identify outdated, unnecessary, or unduly burdensome regulations. The EGRPRA review is currently ongoing, and will be conducted in four separate notices, with each notice focusing on certain categories of regulations. The first notice, published on June 4, 2014, included a review of part 347, subpart A. 79 FR 32172 (June 4, 2014). The FDIC received one comment on part 347, subpart A, where the commenter requested that the Agencies increase the capital-based limits on investments in foreign organizations. The FDIC is considering this comment as part of its EGRPRA review efforts, and not as a part of this proposed rulemaking.

III. Description of the Proposed Revisions to Part 347 - International Banking Subpart A - Foreign Banking and Investment by Insured State Nonmember Banks

A. *Section 347.102. Definitions.*

The FDIC's rules in 12 CFR 347.102(o) define the term "investment grade" as a security that is rated in one of the four highest categories by two or more NRSROs; or one NRSRO if the security is rated by only one NRSRO. The proposed rule would amend the definition of "investment grade" by deleting the references to credit ratings and NRSROs. The new definition in the proposed rule would define "investment grade" as a security whose issuer has adequate capacity to meet all financial commitments under the security for the projected life of the exposure. Such an entity has adequate capacity to meet financial commitments if the risk of its default is low and the full and timely repayment of principal and interest is expected.

B. *Section 347.115. Permissible activities for a foreign branch of an insured state nonmember bank.*

Section 347.115 defines the particular activities that a foreign branch of an insured state nonmember bank may conduct. These activities are subject to safety and soundness limitations and are limited by the extent to which the activities are consistent with banking practices in the foreign country where the bank maintains a branch. The proposed rule would retain the language of 12 CFR 347.115(b), but § 347.115(b) would be affected by the proposed rule insofar as § 347.115(b) uses the proposed definition of the term "investment grade" in 12 CFR 347.102(o). Section 347.115(b) allows the foreign branch of an insured state nonmember bank to engage in certain types of transactions with respect to the obligations of foreign countries, so long as aggregate investments, securities held in connection with distribution and dealing, and underwriting commitments do not exceed ten percent of the bank's Tier 1 capital. More specifically, a foreign branch of a bank may underwrite, distribute and deal, invest in, or trade obligations of the national government of the country in which the branch is located, as well as

obligations of political subdivisions of such national government, and certain agencies or instrumentalities of such national government. Furthermore, foreign branches may, subject to the law of the issuing foreign country, underwrite, distribute and deal, invest in, or trade investment grade obligations of other foreign countries, political subdivisions, and certain agencies and instrumentalities. As provided for in the existing rule, if the obligation is an equity interest, it must be held through a subsidiary of the foreign branch and the insured state nonmember bank must meet its minimum capital requirements.

The definition of “investment grade” for obligations of governments other than the host government was adopted in 2005 when the FDIC amended its international banking regulations, part 347.¹⁵ The definition was derived from the limitations and definitions of Regulation K of the Federal Reserve, which governs the international operations of foreign branches of member banks. Under the Federal Reserve regulations, a foreign branch of a member bank may underwrite, distribute, buy, sell, and hold certain government debt obligations only if such obligations are rated investment grade.¹⁶ The Federal Reserve adopted the definition of investment grade in its revisions to Regulation K in 2001. The investment grade rating requirement for obligations of governments other than the host government was considered appropriate because it limited cross-border transfer risk.¹⁷

¹⁵ 70 FR 17550 (April 6, 2005).

¹⁶ See 12 CFR 211.4(a)(2)(C)-(D) (providing that a foreign branch of a member bank may underwrite, distribute, buy, sell, and hold obligations of (1) the national government or political subdivision of any country, where such obligations are rated investment grade, and (2) an agency or instrumentality of any national government where such obligations are rated investment grade and are supported by the taxing authority, guarantee or full faith and credit of that government).

¹⁷ 66 FR 54346 (Oct. 26, 2001).

The revisions in the proposed rule to the regulatory definition of “investment grade” will remove references to credit ratings consistent with section 939A but will not affect the general consistency between the Federal Reserve’s Regulation K and the FDIC’s part 347 with regard to permissible activities. For purposes of the proposed rule, an issuer would satisfy this requirement or new standard if the state nonmember bank appropriately determines that the obligor presents low default risk and is expected to make timely payments of principal and interest. The definition addresses the safety and soundness concerns of this activity of foreign branches - namely the exposure of the foreign branch and the DIF to the entity issuing the security - without reference to a credit rating or an NRSRO. The FDIC believes that the proposed standard provides a flexible, straightforward measure of creditworthiness that is consistent with existing policy.

C. Consistency with Other Federal Regulations

The proposed definition of investment grade in 12 CFR 347.102(o) is consistent with the definition of investment grade that was adopted by the FDIC, OCC, and Federal Reserve in the promulgation of regulatory capital rules that implement the Basel III framework (“Basel III capital rules”).¹⁸ This definition is also consistent with the non-ratings based, creditworthiness standard applicable to permissible corporate debt securities investments of savings associations adopted by the FDIC in 12 CFR part 362¹⁹ and the credit quality standards regarding permissible

¹⁸ See 78 FR 62018 (Oct. 11, 2013) (Federal Reserve and OCC) (final rule); 78 FR 55340 (Sept. 10, 2013)(interim final rule)(FDIC); 79 FR 20754 (April 14, 2014)(final rule)(FDIC). In finalizing the Basel III capital rules, Federal Reserve and OCC issued a joint final rule, and the FDIC separately issued a substantively identical interim final rule, which was later made final without substantive changes.

¹⁹ See Permissible Investments for Federal and State Savings Associations: Corporate Debt Securities, 77 FR 43151 (July 24, 2012).

investments for national banks adopted by the OCC under 12 CFR parts 1, 16, and 160.²⁰ In addition, it is consistent with the final rules adopted by the OCC that remove references to credit ratings from its regulations pertaining to foreign bank capital equivalency deposits for federal branches under 12 CFR 28.15. The OCC's regulations previously allowed for the use of certificates of deposit ("CDs") or bankers' acceptances as part of the deposit if the issuer of the instrument was rated "investment grade" by an internationally recognized rating organization. Under the revised regulation, the issuer of the certificate of deposit or banker's acceptance must have "an adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure."²¹

D. Request for Comment

This NPR seeks comment on whether:

- This standard of creditworthiness is sufficient to address safety and soundness concerns of this activity of foreign branches of state nonmember banks regarding exposure to obligations of foreign countries, and
- The proposed revisions would address the FDIC's objective of applying a standard of creditworthiness, other than the exclusive use of credit ratings, that is transparent, well defined, differentiates credit risk, and provides for the timely measurement of changes to the credit profile of the investment.

²⁰ See Alternatives to the Use of External Credit Ratings in the Regulations of the OCC, 77 FR 35253 (June 13, 2012).

²¹ See Alternatives to the Use of External Credit Ratings in the Regulations of the OCC, 77 FR 35253 (June 13, 2012).

IV. Description of the Proposed Revisions to Part 347 - International Banking Subpart B - Foreign Banks

A. Section 347.209. Pledge of assets.

The asset pledge requirement in 12 CFR 347.209 applies to insured U.S. branches of foreign banks. There are ten such branches that exist by authority of the statutory grandfathering established by FBSEA.²² The foreign banks that have branches covered by this grandfathering must pledge assets for the benefit of the FDIC.²³ The amount that each foreign bank must pledge is determined by the supervisory risk posed by each U.S. branch and the U.S. branch's asset maintenance level.²⁴ The amount of assets that a U.S. branch of a foreign bank must pledge varies from two percent to eight percent of the branch's liabilities and is determined by reference to the risk-based assessment schedule provided in 12 CFR 347.209(b)(1).

FDIC rules in 12 CFR 347.209(d) describe the types of assets that may be pledged, and require that certain of these asset types have credit ratings within the top rating bands of an NRSRO. Under the existing rule, commercial paper may be eligible for pledging purposes if it is rated P-1 or P-2, or their equivalent, by an NRSRO.²⁵ Municipal general obligations are eligible under the existing rule if they have a credit rating within the top two rating bands of a NRSRO. Notes issued by bank and thrift holding companies, banks, or savings associations must also be rated within the top two rating bands of an NRSRO in order to be eligible under the asset pledge

²² 12 U.S.C. 3104(d).

²³ The pledged assets must be placed at a depository approved by the FDIC. Generally, each insured branch of the foreign bank must meet the asset pledge requirement separately; however, a foreign bank with more than one insured branch in any state may treat all of its insured branches in the state as one entity for purposes of complying with this requirement. See 12 CFR 347.209(b)(5).

²⁴ 12 CFR 347.209(b). Generally, an insured branch must maintain a level of assets that exceeds 106 percent of its liabilities. 12 CFR 347.210.

²⁵ P-1 and P-2 are Moody's top two rating bands for short-term obligations.

requirement of the existing rule. The other types of eligible assets, which must be U.S. dollar denominated, are: bank CDs with maturities of not greater than one year; Treasury bills, interest bearing bonds, notes, debentures, or other direct obligations of or fully guaranteed by the United States or any agency thereof; banker's acceptances with a maturity not greater than 180 days; and obligations of certain international development banks.²⁶

The FDIC's asset pledge requirement has been in place since 1978. The FDIC adopted the current risk-based, asset pledge requirements in part 347 in 2005.²⁷ The asset pledge requirement was established to provide the DIF protection against losses on insured deposit claims by depositors of U.S. branches of foreign banks. Since the adoption of its initial foreign banking regulation implementing the IBA and FDI Act's requirements, the FDIC has focused on the quality and marketability of assets pledged, as well as the assurance of payment within the United States, in determining whether the assets are acceptable to be pledged.²⁸ The FDIC has made clear that the essence of the asset pledge requirement is that pledged assets be as free from risk and as liquid as possible in order to provide protection to the DIF.²⁹

Under the FDIC's deposit insurance authority in the FDI Act, the FDIC may impose requirements determined to be necessary to mitigate the risks associated with providing deposit insurance to an insured U.S. branch of a foreign bank. Consistent with section 939A and the FDIC's authority in the FDI Act, the proposed rule would revise the categories of assets in 12 CFR 347.209(d) that may be used for pledging. In so doing, the proposed rule would remove

²⁶ See 12 CFR 347.209(d)(1), (2), (5), and (6).

²⁷ 70 FR 17550 (April 6, 2005).

²⁸ See 43 FR 60279, 60281 (Dec. 27, 1978).

²⁹ See 49 FR 49614, 49615 (Dec. 21, 1984).

the references to credit ratings issued by NRSROs and substitute an investment grade standard to ensure the assets have appropriate credit quality. In addition, the proposed rule would permit only highly liquid assets to be pledged, and would submit these instruments to fair value haircuts. The three instances in subpart B that must be revised contain references not to investment grade ratings, but to the highest subset of rating bands within the investment grade categories established by the ratings agencies. In other words, subpart B embodies a standard for protection of the DIF from the pledged assets that goes beyond that of simply being investment grade. The FDIC believes that adopting the investment grade and highly liquid criteria, as well as the fair value haircut, would ensure that pledged assets continue to provide a high degree of protection to the DIF. The proposed credit and liquidity standards are discussed below.

Credit and Liquidity Standards

Under the proposed rule, instruments falling within the relevant asset categories would be eligible for pledging if they are “investment grade.” The proposed rule would add the definition of “investment grade” to the definitions section of subpart B, 12 CFR 347.202. Consistent with the proposed amendment to subpart A of part 347, the proposed rule would define “investment grade” as a security issued by an entity that has adequate capacity to meet financial commitments under the security for the projected life of the security or exposure. To meet this standard for asset pledge purposes, the insured branch or foreign bank would need to determine whether the risk of default by the obligor is low and full and timely repayment of principal and interest is

expected. Using this “investment grade” standard as defined would be consistent with existing regulations and policies.³⁰

Also, under the proposed rule, instruments falling within the relevant asset categories would be eligible for pledging only if they are “highly liquid.” The proposed rule would define “highly liquid” securities as those that:

- exhibit low credit and market risk;
- are traded in an active secondary two-way market that has committed market makers and independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined within one day and settled at that price within a reasonable time period conforming with trade custom; and
- are a type of asset that investors historically have purchased in periods of financial market distress during which market liquidity has been impaired.³¹

A foreign bank would be required to demonstrate that the instrument meets the highly liquid standard.

Fair Value Discount

In addition, the FDIC is proposing that the fair values of the investment grade and highly liquid pledged assets be discounted to reflect the credit risk and market price volatility of the

³⁰ The investment grade standard is consistent with that adopted by the FDIC, OCC, and Federal Reserve in their issuance of Basel III capital rules; as adopted by the OCC under 12 CFR parts 1, 16, 28, 160; and as adopted by the FDIC under part 362 for corporate bonds held by savings associations.

³¹ The definition of a highly liquid asset is consistent with the definition established in 12 CFR part 252 subpart O Enhanced Prudential Standards for Foreign Banking Organizations (The Federal Reserve’s Regulation YY).

asset. The discounted fair value of the assets would determine the pledged dollar amount. The FDIC would expect that the valuations of the pledged assets be updated at least quarterly. Quarterly valuation updates are consistent with the quarterly valuations currently required in the pledge agreement between each of the foreign banks and the FDIC.³² The proposed method for discounting fair values is consistent with the haircuts applied to financial collateral pledged to certain transactions under the Basel III capital rules as adopted by the FDIC.³³

Further, the FDIC proposes to include a standardized haircut table, consistent with the Basel III capital rules, to promote simplicity and ease of reference.³⁴ Under this approach, the applicable haircut would be determined by reference to the asset's risk-weight and remaining maturity.³⁵ For example, a foreign insured branch may elect to pledge investment grade commercial paper with a fair value of \$100,000 and remaining maturity of less than one year. These instruments are risk-weighted at 100 percent under the Basel III capital rules. Under the proposed reference table, the corresponding haircut would be 4 percent; therefore, the amount of the \$100,000 asset that would count towards the satisfaction of the asset pledge requirement would be \$100,000 multiplied by 0.96 (1 – 0.04), or \$96,000. Consistent with the haircut

³² 12 CFR 347.209(e) provides that a foreign bank shall not pledge any assets unless a pledge agreement in a form and substance satisfactory to the FDIC has been executed by the foreign bank and the depository.

³³ FDIC-supervised institutions may use the risk-mitigating effects of financial collateral, subject to a market price volatility haircut, in determining the exposure amount of such transactions for risk-weighting purposes. *See* 79 FR 20760 (April 14, 2014).

³⁴ In 12 CFR 324.37(c)(3), the FDIC established requirements for applying standardized haircuts for market price volatility which are scheduled on Table 1 to § 324.37 – Standard Supervisory Market Price Volatility Haircuts (Table 1). A portion of Table 1 concerning haircuts for non-sovereign issuers serves as the basis for the reference table included in the proposed rule.

³⁵ *See* 12 CFR 324.32 for general risk weights.

requirements in the risk-based capital rules, pledged assets that receive a zero percent risk weight will generally not require a fair value haircut.³⁶

Assets That May Be Pledged

The proposed rule also amends 12 CFR 347.209(d) by adding cash as a new asset type that foreign banks may pledge under subpart B and creating a separate asset category expressly for debt securities issued by government sponsored enterprises (“GSEs”). Cash and securities issued by GSEs are included in the definition of highly liquid assets in the Federal Reserve’s regulation prescribing enhanced prudential standards for foreign banking organizations.³⁷ With respect to debt securities issued by GSEs, the FDIC understands that some insured branches of foreign banks currently pledge such instruments under 12 CFR 347.209(d)(2) because they qualify as obligations of a U.S. government “instrumentality.” The Basel III capital rules recognize that the risk characteristics of GSE securities differ from those guaranteed by the U.S. government. The capital rules bear this out by assigning the former a twenty percent risk weight and the latter a zero percent risk weight.³⁸ Therefore, the proposed rule would eliminate the reference to obligations of U.S. “instrumentalities” in 12 CFR 347.209(d)(2), and would create a separate category expressly for GSE securities. Creating a separate category for GSE securities is necessary because such securities would be subject to a haircut under the proposed rule to account for their twenty percent risk weight under the Basel III capital rules, whereas securities

³⁶ Assets with zero percent risk weight include cash; Treasury bills, interest bearing bonds, notes, debentures, or other direct obligations of or obligations fully guaranteed as to principal and interest by the United States or any agency thereof; and obligations of the African Development Bank, Asian Development Bank, Inter-American Development Bank, and the International Bank for Reconstruction and Development.

³⁷ 12 CFR part 252 subpart O.

³⁸ 12 CFR 324.32(a) and (c).

guaranteed by the U.S. government would not be subject to a haircut given their zero percent risk weight.

Under the proposed rule, a foreign bank would be permitted to pledge the assets listed below, provided that such assets are denominated in United States dollars, and satisfy both the investment grade and highly liquid standards. Further, such assets would be discounted at the rates set forth in the haircut table.

The proposed pledgeable asset categories include:

- (1) Cash;
- (2) Treasury bills, interest bearing bonds, notes, debentures, or other direct obligations of or obligations fully guaranteed as to principal and interest by the United States or any agency thereof;
- (3) Obligations of U.S. GSEs;
- (4) Negotiable CDs that are payable in the United States and that are issued by any state bank, national bank, state or federal savings association, or branch or agency of a foreign bank which has executed a valid waiver of offset agreement or similar debt instruments that are payable in the United States; provided, that the maturity of any certificate or issuance is not greater than one year; and provided further, that the issuing branch or agency of a foreign bank is not an affiliate of the pledging bank or from the same country as the pledging bank's domicile;
- (5) Obligations of the African Development Bank, Asian Development Bank, Inter-American Development Bank, and the International Bank for Reconstruction and Development;
- (6) Commercial paper;

(7) Notes issued by bank and savings and loan holding companies, banks, or savings associations organized under the laws of the United States or any state thereof or notes issued by branches or agencies of foreign banks, provided that the notes are payable in the United States, and provided further, that the issuing branch or agency of a foreign bank is not an affiliate of the pledging bank or from the same country as the pledging bank's domicile;

(8) Banker's acceptances that are payable in the United States and that are issued by any state bank, national bank, state or federal savings association, or branch or agency of a foreign bank; provided, that the maturity of any acceptance is not greater than 180 days; and provided further, that the branch or agency issuing the acceptance is not an affiliate of the pledging bank or from the same country as the pledging bank's domicile;

(9) General obligations of any state of the United States, or any county or municipality of any state of the United States, or any agency, instrumentality, or political subdivision of the foregoing or any obligation guaranteed by a state of the United States or any county or municipality of any state of the United States; and

(10) Any other asset determined by the FDIC to be acceptable.³⁹

Cash, treasury bills or other direct obligations of or fully guaranteed by the United States or any agency thereof, and the obligations of the stated international development banks will categorically satisfy the investment grade and highly liquid standards discussed above.⁴⁰

³⁹ The FDIC also reserves the right to require the substitution of pledged assets with other assets deemed more acceptable to the FDIC, as currently provided in 12 CFR 347.209(d).

⁴⁰ A direct debt obligation issued by a U.S. government-sponsored enterprise or an asset-backed security guaranteed by a U.S. GSE will categorically satisfy the investment grade standard only if the GSE is

Therefore, foreign banks that pledge these assets will not be required to perform individual analyses to verify that the assets meet the investment grade and highly liquid standards.

Pledgeable assets that receive a zero percent risk weight will generally not require a fair value haircut.

Foreign banks pledging assets that do not categorically satisfy the investment grade and highly liquid standards, will need to demonstrate that the assets being pledged meet the investment grade and highly liquid standards. Foreign banks can find the appropriate haircut by identifying the risk weight associated with the asset in the capital rules. Although requiring foreign banks to verify that pledged assets satisfy these standards may require some adjustment of existing processes, the FDIC believes that it will impose minimal additional burden. The FDIC believes that conducting credit analysis on these instruments will ensure they satisfy the investment grade standard necessary for pledging. In addition, market data (e.g., price quotes, bid/ask spreads, trade activity levels, or other price discovery information) are accessible through an insured branch's normal data source channels used in pre-purchase and ongoing investment due diligence. These resources and others should be available to confirm whether the assets pledged meet the highly liquid asset standard.

For purposes of carrying out the section 939A review related to subpart B, the FDIC surveyed the insured U.S. branches of foreign banks to examine the composition of assets pledged. At the time of the review, treasury bills, bank notes, and CDs were the primary instruments pledged. Consequently, the haircut provision could impact foreign banks that pledge bank notes or CDs because they may need to pledge additional collateral under the proposed rule

operating with capital support or another form of direct financial assistance from the U.S. government. All GSEs will categorically satisfy the liquidity standard.

compared with the pledge requirements under the existing rule. The FDIC views the proposed amendments to the pledgeable asset criteria as resulting in minimal impact on the insured U.S. branches of foreign banks.

Other Technical Revisions

The proposed rule would also add a definition of “agency” to the definitions section of subpart B, 12 CFR 347.202, which already contains a definition of “branch” under the existing regulation, in order to clarify that negotiable CDs, banker’s acceptances, and notes issued by a branch or agency of a foreign bank located only in the United States would be eligible for pledging. The definition is not currently in existing subpart B. The term agency is used in 12 CFR 347.209(d)(1), (d)(4), and (d)(7) to describe the types of bank CDs, banker’s acceptances, and notes issued by a branch or agency of a foreign bank that are eligible for pledging by a U.S. branch of a foreign bank. The proposed rule would use the definition of “agency” found in section 1(b)(1) of the IBA, which defines “agency” to mean “any office or any place of business of a foreign bank located in any State of the United States at which credit balances are maintained incidental to or arising out of the exercise of banking powers, checks are paid, or money is lent but at which deposits may not be accepted from citizens or residents of the United States”.⁴¹ This definition makes clear that only negotiable CDs, banker’s acceptances, or notes issued by an agency of a foreign bank located in the United States are eligible pledged assets. The FDIC does not allow for the pledging of these instruments unless they are issued by an agency of a foreign bank located in the United States. It is also consistent with the definition of “branch” in subpart B, which means any office or place of business of a foreign bank located

⁴¹12 U.S.C. 3101(1). The proposed definition is also consistent with the definition of agency in the Federal Reserve’s and OCC’s international banking regulations. *See* 12 CFR 211.21(b) (Federal Reserve) and 12 CFR §28.11(g) (OCC).

in any state of the United States.⁴² The proposed rule would also amend 12 CFR 347.209(d)(7) to remove the reference to “United States” in the description of branches or agencies of foreign banks because those terms as defined in existing subpart B, and as proposed, necessarily mean an office or place of business of a foreign bank located in the United States. Furthermore, the proposed rule would amend 12 CFR 347.209(d)(7) to clarify that, consistent with requirements associated with pledging CDs and banker’s acceptances in (d)(1) and (d)(4), a pledging U.S. branch of a foreign bank may not pledge a note issued by a branch or agency of a foreign bank that has the same country of domicile as the pledging bank. This requirement avoids potential same-country risks represented by the branches and agencies as direct extensions of foreign banks.

The FDIC proposes to amend the list of eligible collateral to eliminate the obsolete exception for non-negotiable CDs that were “pledged as collateral to the FDIC on March 18, 2005, until maturity according to the original terms of the existing deposit agreement.” In 2005, when the FDIC amended its international banking regulations in part 347, it adopted 12 CFR 347.209(d)(1)(i) requiring only negotiable CDs.⁴³ The FDIC surveyed the composition of assets pledged by insured branches in 2005 before finalizing the regulations and found that only one branch had pledged a non-negotiable CD. In addition, the maturity date for any non-negotiable CD that was grandfathered under this provision has passed. Consequently, the provision by its terms is obsolete and no longer serves a useful purpose.

⁴² 12 CFR 347.202(b).

⁴³ 70 FR 17550 (April 6, 2005).

B. *Request for Comment*

The FDIC seeks comment on all aspects of this proposal, and specifically whether:

- The proposed investment grade and liquidity standards and haircut requirements for pledged assets under subpart B of part 347 are reasonable provisions.
- The removal of references to external credit ratings required under section 939A should be implemented as proposed or whether there are alternatives that would achieve a creditworthiness standard that is sufficiently risk sensitive.
- Pledged assets should be subject to the highly liquid standard as proposed and whether the criteria for highly liquid assets provide reasonable standards of assurance, or whether other criteria should be considered in addition to, or in lieu of, the criteria proposed.
- Pledged assets be discounted as proposed, or whether the full fair values of assets pledged under the existing risk-based assessment schedule already provide sufficient protection to the DIF.
- Pledged assets should be discounted using the table of risk weights and remaining maturities as proposed, or whether pledged assets should be discounted by each foreign bank based on an internal assessment of any credit risk and market price volatility for each asset pledged.
- Another method of discounting would advance the objective of ensuring that pledged assets be as free from risk and as liquid as possible.
- The types of assets that may be pledged should be expanded to include cash and obligations of U.S. GSEs as proposed and whether these asset types constitute appropriate additions to the assets that currently may be pledged.

- There are any other asset types that should be considered for inclusion as a pledgeable asset.
- The proposed provisions would have a material economic impact on foreign banking organizations subject to part 347.
- Imposing the highly liquid standard and haircut requirement would cause undue regulatory burden.

V. Expected Effects

A. Subpart A

The applicability of the proposed revision to subpart A of part 347 would be limited to state nonmember banks that operate branches in foreign countries. As of March 31, 2016, there were nine state nonmember banks operating 16 foreign branches in seven countries. The majority of the state nonmember banks with foreign branches consist of larger multi-billion dollar financial institutions with commensurate systems and capabilities, while two of the foreign branches operated by the smaller state nonmember banks are limited-service facilities. The revision to subpart A would therefore apply to a small number of generally larger nonmember banks with more sophisticated operations, and the effect of the revision to the definition of “investment grade” would impose minimal additional burden. Note that prior to the enactment of the Dodd-Frank Act and implementation of section 939A, state nonmember banks were expected to have a credit risk management framework for securities and investments that included robust pre-purchase analysis and ongoing monitoring by the banking organization. The proposed revision in subpart A will shift the focus away from reliance on credit ratings and onto this in-depth analysis and monitoring. The revision to the definition of “investment grade” in part 347 would encourage regular, in-depth analysis by the banking organization of credit risks of securities, which is a prudent practice already expected of banks. This would likely result in

little or no additional costs associated with credit risk analysis over those currently expended. However, potential credit losses will likely decline as covered institutions are more diligent in assessing their credit risk exposure, which would provide a benefit.

B. Subpart B

The revisions to subpart B of part 347 would apply only to the insured U.S. branches of foreign banks. As of March 31, 2016, there were ten insured branches of foreign banks. The FDIC would expect the revisions to subpart B to have the effect of ensuring that collateral pledged by these institutions is very low risk and as liquid as possible in order to provide protection to the DIF. The FDIC expects that these revisions would do so while imposing minimal additional burden and with little or no alteration of the composition or types of assets that insured branches of foreign banks currently pledge, or have pledged in the recent past, under the current provisions of subpart B.

VI. Alternatives Considered

Section 939A requires that agencies adopt standards of creditworthiness that, to the extent feasible, are uniform. The adoption of an alternative definition of “investment grade” would be inconsistent with section 939A’s directive to adopt uniform standards.

In addition to adopting the definition of “investment grade,” the proposal would amend subpart B of part 347 to impose liquidity and discounting requirements for assets pledged by insured branches of foreign banks operating in the United States. Alternatives to the proposed definition of “highly liquid” would contradict the definition of highly liquid assets as adopted in other Dodd-Frank Act rulemakings, thereby creating different treatment of the same securities. Similarly, the calculation of fair value discounts for pledged assets is based on the risk weights assigned to such assets in the capital rules. The FDIC welcomes and requests public comment

on all aspects of the proposed rule, including the presentation of alternatives that would advance the FDIC's objective of ensuring that assets pledged under subpart B of part 347 be free from risk and as liquid as possible in order to provide protection to the DIF.

VII. Regulatory Analyses

A. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 ("PRA")⁴⁴ the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget ("OMB") control number. The collection of information associated with subpart A is entitled Foreign Branching and Investment by Insured State Nonmember Banks (OMB No. 3064-0125). This information collection consists of applications related to establishing and closing a foreign branch; applications related to acquiring stock of a foreign organization; and records and reports which a nonmember bank must maintain once it has established a foreign branch or foreign organization. As described above, the proposed rule's revision to subpart A consists of a change to the definition of "investment grade" and imposes no additional reporting burden on insured state nonmember banks. Therefore, the FDIC expects that the PRA burden estimates of this collection will not be affected by this proposed rule. Accordingly, the FDIC will not be submitting any information collection request to OMB relating to the information collection associated with subpart A (OMB 3064-0125).

The collection of information associated with subpart B is entitled Foreign Banks (OMB No. 3064-0114). This information collection consists of, among other things, internal

⁴⁴ 44 U.S.C. 3501 *et seq.*

recordkeeping by insured branches of foreign banks, and reporting requirements related to an insured branch's pledge of assets to the FDIC. Under the proposed rule, all assets pledged to the FDIC under subpart B must be investment grade, highly liquid, and subject to a fair value discount. Several types of assets pledged by banks under subpart B would be categorically investment grade and highly liquid, and subject to a zero percent discount under the proposed rule. Insured branches of foreign banks would be able to continue to pledge these assets without any adjustment to their reporting and recordkeeping requirements. To the extent that an insured branch of a foreign bank pledges an asset that would not be categorically investment grade, highly liquid, or that would not receive a zero percent discount, the FDIC would expect minimal additional burden to accompany such a pledge of assets. Recordkeeping associated with the diligence that would be required for determining that an asset is highly liquid and investment grade is already expected of these institutions as part of their pre-purchase and ongoing investment due diligence. Similarly, the calculation of the applicable fair value discount is based on the risk weight of the applicable asset under the Basel III capital rules, which is an analysis that should already be undertaken by these institutions. Therefore, the FDIC expects that any resulting changes in burden would be so minimal that they would not alter the existing PRA burden estimates of this collection. Notwithstanding the fact that the FDIC does not expect a change in burden, the proposed rule may alter to some extent the nature of the recordkeeping and reporting requirements associated with subpart B. Accordingly, the FDIC will be submitting an information collection request to OMB relating to the information collection associated with subpart B (OMB 3064-0114). The existing burden estimates for the information collection associated with subpart B are as follows:

Title	Times/year	Respondents per year	Hours per response	Total Burden Hours
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moving a branch	1	1	8	8
consent to operate	1	1	8	8
conduct activities	1	1	8	8
recordkeeping	1	10	120	1,200
pledge of assets				
documents	4	10	0.25	10
reports	4	10	2	80
Total Burden				1,314

The FDIC welcomes comment on its existing information collections. Specifically, comments are invited on:

- Whether the collections of information are necessary for the proper performance of the Agencies' functions, including whether the information has practical utility;
- The accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, utility, and clarity of the information to be collected;
- Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and
- Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. A copy of the comments may also be submitted to the OMB desk officer for the FDIC by mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503, by facsimile to 202-395-5806, or by e-mail to oir_submission@omb.eop.gov, Attention, Federal Banking Agency Desk Officer.

B. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (“RFA”) generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities (defined in regulations promulgated by the Small Business Administration to include banking organizations with total assets of less than or equal to \$550 million). A regulatory flexibility analysis, however, is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, and publishes its certification and a short explanatory statement in the **Federal Register** together with the proposed rule. For the reasons provided below, the FDIC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The proposed rule makes revisions to the existing rules in subpart A of part 347 consistent with section 939A of the Dodd-Frank Act.⁴⁵ The rules in subpart A of part 347 address issues related to the international activities and investments of insured state nonmember banks. In general, they implement the FDIC's statutory authority under section 18(d)(2) of the FDI Act regarding branches of insured state nonmember banks in foreign countries, and section 18(l) of the FDI Act regarding insured state nonmember bank investments in foreign entities. As

⁴⁵ Subpart J of part 303 contains the procedural rules that implement part 347. No revisions are proposed to these rules.

of June 30, 2015, there were nine state nonmember banks that report having foreign branches. There are 16 foreign branches between these nine institutions. Available information indicates that state nonmember banks with foreign investments or foreign branches are not small entities.

The proposed rule also would amend subpart B of part 347 as applied to insured U.S. branches of foreign banks. As of March 31, 2016, there were ten insured branches of foreign banks, only one of which qualifies as a small entity. Therefore, the revisions to subpart B of part 347 would not have a significant impact on a substantial number of small entities.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the FDIC to use plain language in all proposed and final rules published after January 1, 2000. The FDIC invites comment on how to make this proposed rule easier to understand.

For example:

- Has the FDIC organized the material to inform your needs? If not, how could the FDIC present the rule more clearly?
- Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would achieve that?
- Is this section format adequate? If not, which of the sections should be changed and how?

- What other changes can the agencies incorporate to make the regulation easier to understand?

List of Subjects in 12 CFR Part 347

Bank deposit insurance, Banks, banking, Foreign banking, Insured foreign branches, Investments, Reporting and recordkeeping requirements, United States investments abroad.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

- For the reasons stated in the preamble, the Federal Deposit Insurance Corporation proposes to amend part 347 of chapter III of Title 12, Code of Federal Regulations as follows:

PART 347

1. The authority citation for part 347 is amended to read as follows:

AUTHORITY: 12 U.S.C. 1813, 1815, 1817, 1819, 1820, 1828, 3103, 3104, 3105, 3108, 3109; Pub L. No. 111-203, section 939A, 124 Stat. 1376, 1887 (July 21, 2010) (codified 15 U.S.C. 78o-7 note).

2. In § 347.102, amend paragraph (o) to read as follows:

§ 347.102 Definitions.

* * * * *

(o) Investment grade means a security issued by an entity that has adequate capacity to meet financial commitments for the projected life of the exposure. Such an entity has adequate capacity to meet financial commitments if the risk of its default is low and the full and timely repayment of principal and interest is expected.

* * * * *

3. In § 347.202, paragraphs (b) through (j) are redesignated as paragraphs (c) through (k); existing paragraphs (k) through (o) are redesignated as paragraphs (m) through (q),

existing paragraphs (p) through (y) are redesignated as paragraphs (s) through (bb), and new paragraphs (b), (l), and (r) are added to read as follows:

§ 347.202 Definitions.

* * * * *

(b) Agency means any office or any place of business of a foreign bank located in any State of the United States at which credit balances are maintained incidental to or arising out of the exercise of banking powers, checks are paid, or money is lent but at which deposits may not be accepted from citizens or residents of the United States.

* * * * *

(l) Highly liquid means, with respect to a security, that the security has low credit and market risk; is traded in an active secondary two-way market that has committed market makers and independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined within one day and settled at that price within a reasonable time period conforming with trade custom; is a type of asset that investors historically have purchased in periods of financial market distress during which market liquidity has been impaired.

* * * * *

(r) Investment grade means a security issued by an entity that has adequate capacity to meet financial commitments for the projected life of the exposure. Such an entity has

adequate capacity to meet financial commitments if the risk of its default is low and the full and timely repayment of principal and interest is expected.

* * * * *

4. In § 347.209, amend paragraph (d) to read as follows:

§ 347.209 Pledge of assets.

* * * * *

(d) *Assets that may be pledged.* This paragraph sets forth the kinds of assets that may be pledged to satisfy the requirements of this section. A foreign bank shall be deemed to have pledged any such assets for the benefit of the FDIC or its designee at such time as any such asset is placed with the depository. The FDIC reserves the right to require the substitution of pledged assets with other assets deemed acceptable to the FDIC.

(1) A foreign bank may pledge the kinds of assets set forth in this subparagraph, provided that: such assets are denominated in United States dollars; such assets are investment grade, as that term is defined in § 327.202(q); and such assets are highly liquid, as that term is defined in § 347.202(k). Furthermore, for the purposes of calculating the amount of assets required to be pledged under paragraph (b) of this section, the assets that are eligible for pledging under this subparagraph (d)(2) must be discounted at the rates set forth in Table 1 to § 347.209.

(i) Cash

(ii) Treasury bills, interest bearing bonds, notes, debentures, or other direct obligations of or obligations fully guaranteed as to principal and interest by the United States or any agency thereof;

- (iii) Obligations of United States government-sponsored enterprises;
- (iv) Negotiable certificates of deposit that are payable in the United States and that are issued by any state bank, national bank, state or federal savings association, or branch or agency of a foreign bank which has executed a valid waiver of offset agreement or similar debt instruments that are payable in the United States; provided, that the maturity of any certificate or issuance is not greater than one year; and provided further, that the issuing branch or agency of a foreign bank is not an affiliate of the pledging bank or from the same country as the pledging bank's domicile;
- (v) Obligations of the African Development Bank, Asian Development Bank, Inter-American Development Bank, and the International Bank for Reconstruction and Development;
- (vi) Commercial paper;
- (vii) Notes issued by bank and savings and loan holding companies, banks, or savings associations organized under the laws of the United States or any state thereof or notes issued by branches or agencies of foreign banks, provided that the notes are payable in the United States, and provided further, that the issuing branch or agency of a foreign bank is not an affiliate of the pledging bank or from the same country as the pledging bank's domicile;
- (viii) Banker's acceptances that are payable in the United States and that are issued by any state bank, national bank, state or federal savings association, or branch or agency of a foreign bank; provided, that the maturity of any acceptance is not greater than 180 days; and provided further, that the branch or agency issuing the acceptance is not an affiliate of the pledging bank or from the same country as the pledging bank's domicile;

- (ix) General obligations of any state of the United States, or any county or municipality of any state of the United States, or any agency, instrumentality, or political subdivision of the foregoing or any obligation guaranteed by a state of the United States or any county or municipality of any state of the United States;
- (x) Any other asset determined by the FDIC to be acceptable.

* * * * *

5. At the end of § 347.209, add the following:

TABLE 1 TO § 347.209 – SUPERVISORY HAIRCUTS FOR ASSETS PLEDGED UNDER § 347.209(d).

Haircut % Assigned Based on Maturity and Risk Weight				
Remaining Maturity	Risk Weight (%) by Issuer as specified in Part 324.32			
	0%	20%	50%	100%
<= to 1 Year	0	1.0	2.0	4.0
> 1 Year but <= 5 Years	0	4.0	6.0	8.0
> 5 years	0	8.0	12.0	16.0

By order of the Board of Directors.

Dated at Washington, D.C., this []th day of [], 2016

FEDERAL DEPOSIT INSURANCE CORPORATION

Robert E. Feldman
Executive Secretary

(Seal)