

October 26, 2010

MEMORANDUM TO: The Board of Directors

FROM: Sandra L. Thompson 
Director
Division of Supervision and Consumer Protection

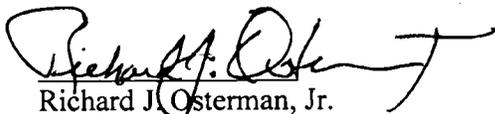
SUBJECT: Interim Final Rule Amending Part 335
to Conform with Requirements
of the Securities and Exchange Commission

SUMMARY

Section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(i)) (Exchange Act) authorizes the Federal banking agencies to administer and enforce certain sections of the Exchange Act and the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley Act) with respect to the depository institutions for which each Federal banking agency is the primary Federal supervisor. The FDIC, in administering and enforcing statutory provisions specified in Section 12(i) of the Exchange Act, is authorized to promulgate regulations applicable to the securities of state nonmember banks. These regulations, which are set forth in Part 335, must be substantially similar to the regulations of the Securities and Exchange Commission (SEC) under the specified sections of the Exchange Act, unless the FDIC publishes its reasons for deviating from the SEC's rules.

The interim final rule formally incorporates amendments reflecting changes in the SEC's regulations as they affect state nonmember banks with securities registered under the Exchange Act. The interim final rule also broadens certain references to SEC regulations in order to minimize the necessity of updating Part 335 as the SEC revises its regulations. In addition, it amends Part 335 to address the electronic filing of securities disclosure documents.

Concur:


Richard J. Osterman, Jr.
Acting General Counsel

DISCUSSION

Part 335 of the FDIC's regulations generally incorporates through cross reference the regulations of the SEC as these regulations are issued, revised, or updated from time to time by the SEC under Sections 10A(m), 12, 13, 14, and 16 of the Exchange Act and Sections 301, 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act, except as provided specifically at Section 335.801. The interim final rule would provide more general references to SEC regulations found in the Code of Federal Regulations (CFR) by replacing citations in Part 335 to specific CFR sections and subparts within the SEC regulations. These revisions, which affect 19 of the 21 sections within Part 335, are intended to minimize the necessity of updating the FDIC's regulations as the SEC periodically revises its Exchange Act rules and regulations.

The interim final rule also amends Part 335 by deleting outdated Section 335.221(c), which references optional forms for small business issuer filing requirements that the SEC has eliminated. In addition, the interim final rule revises Part 335 to reflect the availability of voluntary electronic filing of securities disclosure documents using *FDICconnect* as an alternative to filing paper forms with the FDIC, except for beneficial ownership reports for which electronic filing is mandatory pursuant to the Sarbanes-Oxley Act. Finally, the amendments make certain nonsubstantive changes to Part 335 to improve its clarity and readability and to correct outdated terms.

The FDIC staff recommends publishing the changes as an interim final rule because a notice of proposed rulemaking is not required under the Administrative Procedures Act (APA). Specifically, certain portions of Part 335 that are being amended result from the issuance of regulations by the SEC, which SEC issuances already have been subjected to public notice and request for comment. As such, a notice and public comment period for these revisions is unnecessary under the good cause exception in the APA. In addition, certain other changes to Part 335 are organizational in nature, and therefore they are exempt from the requirements as well. However, we recommend including a 60-day comment period to allow interested parties a chance to suggest modifications to the changes, and to comment on the current organization of Part 335 and its specific references to rules, regulations, and forms of the SEC. The FDIC will consider all comments prior to issuing the rule in final form.

RECOMMENDATION

DSC recommends that the Board approve the interim final rule, to be effective upon publication in the Federal Register, with a 60-day period of public comment pursuant to the attached Federal Register notice.

Staff members knowledgeable about this case:

Maureen Loviglio
Division of Supervision and
Consumer Protection (x86777)

Dennis Chapman
Division of Supervision and
Consumer Protection (x88922)

Mark Flanigan
Legal Division (x87426)