


MEMORANDUM TO: The Board of Directors

FROM: Sandra L. Thompson   
Director  
Division of Risk Management Supervision

DATE: April 23, 2011


SUBJECT: 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 (Exchange Act) (15 U.S.C. 78l(i)) 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 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 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. The Part 335 final rule is unmodified from the Part 335 interim final rule that the FDIC published in the Federal Register on November 30, 2010. The FDIC received no comments on the interim final rule during the comment period that closed January 31, 2011.

Concur:

  
Michael H. Krimminger  
General Counsel 4/23/2011

## **DISCUSSION**

Part 335 of the FDIC's regulations generally incorporates through cross reference the SEC regulations as these regulations are issued, revised, or updated 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 final rule replaces citations to sections and subparts within the SEC regulations in the Code of Federal Regulations (CFR) with more general references to titles and parts of the SEC regulations in the CFR. 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 final rule, like 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 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.

FDIC staff recommends publishing the changes as a final rule. The FDIC sought comment on the interim final rule and received none. Staff also recommends that the Board find good cause for the final rule to take effect immediately upon publication in the Federal Register.

## **RECOMMENDATION**

The Division of Risk Management Supervision recommends that the Board approve the final rule, to be effective upon publication in the Federal Register pursuant to the attached Federal Register notice.

Staff members knowledgeable about this case:

Maureen Loviglio  
Division of Risk Management  
Supervision (x8-6777)

Dennis Chapman  
Division of Risk Management  
Supervision (x8-8922)

Mark Flanigan  
Legal Division (x8-7426)