

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 11 and 16

[Docket No. 03-09]

RIN 1557-AC12

Reporting and Disclosure Requirements for National Banks With Securities Registered Under the Securities Exchange Act of 1934; Securities Offering Disclosure Rules

AGENCY: Office of the Comptroller of the Currency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to revise its regulations to reflect amendments to the Securities Exchange Act of 1934 (Exchange Act) made by the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley Act). These amendments to the Exchange Act give the OCC the authority to administer and enforce a number of the Sarbanes-Oxley Act's new reporting, disclosure, and corporate governance requirements with respect to national banks that have a class of securities registered under the Exchange Act. We are also proposing to make conforming revisions to our rules which prescribe securities offering disclosure rules for national banks that issue securities that are not subject to the registration requirements of Securities Act of 1933.

DATES: Comments must be received by June 20, 2003.

ADDRESSES: Written comments should be submitted to the Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Attention: Docket No. 03-09, Public Information Room, Mailstop 1-5, Washington, DC 20219. Due to disruptions in paper mail delivery in the Washington, DC area, commenters are encouraged to submit comments by fax or electronic mail when possible. Comments may be sent by fax to (202)

874-4448 or by electronic mail to regs.comments@occ.treas.gov. Comments may be inspected and photocopied at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC. You may make an appointment to inspect comments by calling (202) 874-5043.

FOR FURTHER INFORMATION CONTACT: Mary Ann Nash, Counsel, 202-874-5090; or Martha Clarke, Acting Assistant Director, Legislative & Regulatory Activities Division, 202-874-5090.

SUPPLEMENTARY INFORMATION:

Background

Section 12(i) of the Exchange Act vests the OCC with the powers, functions, and duties otherwise vested with the Securities and Exchange Commission (SEC) to administer and enforce certain provisions of the Exchange Act as they apply to national banks that have a class of securities registered under the Exchange Act (registered national banks).¹

On July 30, 2002, President Bush signed into law the Sarbanes-Oxley Act.² Prior to the enactment of the Sarbanes-Oxley Act, section 12(i) gave the OCC the authority to administer and enforce sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act. The Sarbanes-Oxley Act amends some of those sections of the Exchange Act to impose additional requirements and, as a result, the OCC will administer and enforce these new requirements as they apply to registered national banks. In addition, the Sarbanes-Oxley Act amends section 12(i) to add new sections of the securities laws to the list of provisions that are enforced and administered by the OCC.

Titles III and IV of the Sarbanes-Oxley Act include a number of provisions that are designed to improve the corporate governance and financial disclosures of issuers that have a class of securities registered under sections 12(b) or 12(g)

¹ Under section 12(i), the OCC and the other Federal banking agencies have the power to issue rules that are necessary to carry out their functions under the Exchange Act. These rules are required to be substantially similar to the SEC's rules unless a Federal banking agency determines that substantially similar regulations with respect to the insured depository institutions that it supervises are not necessary or appropriate in the public interest or for the protection of investors and the agency publishes its findings in the *Federal Register* within 60 days after the SEC issues regulations.

² Public Law 107-204, 116 Stat. 745 (July 30, 2002).

of the Exchange Act or that are required to file periodic reports with the SEC under section 15(d) of the Exchange Act (public issuers). All registered national banks are public issuers for purposes of the law.

• Section 303 requires the SEC to issue rules prohibiting the officers and directors of public issuers, and persons acting under their direction, from fraudulently influencing, coercing, manipulating, or misleading the issuer's independent auditor for purposes of rendering the issuer's financial statements materially misleading. The SEC published proposed rules implementing this section on October 24, 2002.⁶ On April 24, 2003, the SEC voted to adopt final rules, which will take effect 30 days after publication in the **Federal Register**.⁷

• Section 304 requires the chief executive officer and chief financial officer of public issuers to reimburse the issuer for certain compensation and profits received if the issuer is required to restate its financial reports due to material noncompliance, as a result of misconduct, with any financial reporting requirements under the Federal securities laws. The requirements of section 304 took effect on July 30, 2002. No implementing regulations are required.

• Section 306(a) prohibits the directors and executive officers of any public issuer of equity securities from purchasing, selling, or transferring any equity security acquired by the director or executive officer in connection with his or her service as a director or executive officer during any "blackout period" with respect to the security. A "blackout period" generally is a period of three consecutive business days during which trading in the issuer's securities is suspended for 50% or more of the beneficiaries of the issuer's individual account plans. The SEC adopted final regulations pursuant to section 306(a) on January 26, 2003.⁸ The rules took effect on the same day.

• Section 401(b) requires the SEC to issue rules that prohibit issuers from including misleading *pro forma* financial information in their reports under the securities laws or in any public release. Issuers also must reconcile any *pro forma* financial information included in such filings or public releases with the issuer's financial statements prepared in

accordance with generally accepted accounting principles (GAAP). The SEC has issued final implementing regulations,⁹ which apply to releases and disclosures made after March 28, 2003, and to annual and quarterly reports filed with respect to fiscal periods ending after March 28, 2003.

• Section 404 mandates that the SEC issue rules that require all annual reports filed under section 13(a) or 15(d) of the Exchange Act to include certain statements and assessments related to the issuer's internal control structures and procedures for financial reporting.¹⁰ There is no statutory deadline for adoption of final rules implementing the requirements of section 404. The SEC published a proposed rule on October 30, 2002.¹¹

• Section 406 mandates that the SEC adopt rules that require public issuers to (1) disclose in their periodic reports filed under the Exchange Act whether the issuer has adopted a code of ethics for its senior financial officers and, if not, the reasons why such a code has not been adopted; and (2) promptly disclose on Form 8-K any change to, or waiver of, the issuer's code of ethics. The SEC published a final rule implementing this section on January 31, 2003.¹² The requirements of that rule took effect on March 3, 2003.

• Section 407 mandates that the SEC adopt rules that require public issuers to disclose in their periodic reports filed under the Exchange Act whether the audit committee of the issuer includes at least one financial expert and, if not, the reasons why the audit committee does not include such an expert. The SEC published a final rule implementing this section on January 31, 2003.¹³ The requirements of that rule took effect on March 3, 2003.

Description of the Proposed Rule

Part 11 of the OCC's regulations, entitled "Securities Exchange Act Disclosure Rules," currently implements the requirements of section 12(i) by applying to registered national banks, by means of cross-reference, the SEC's regulations implementing the reporting and disclosure provisions of sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act. Part 11 requires national banks to file with the

OCC any reports or forms required by the SEC's regulations.

We are proposing to amend part 11 to reflect the new provisions of the Sarbanes-Oxley Act that the OCC is required to administer and enforce with respect to registered national banks. Accordingly, the proposal revises § 11.2 to cross-reference new subsection 10A(m) of the Exchange Act and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act. The effect of the proposal is to require registered national banks to comply with the rules issued by the SEC pursuant to those statutory provisions.

Part 16 of the OCC's regulations, entitled "Securities Offering Disclosure Rules," sets forth rules governing the offer and sale of securities by national bank issuers that are not subject to the registration and reporting requirements of the Securities Act of 1933.¹⁴ Section 16.20 of the regulation mirrors the requirements of section 15(d) of the Exchange Act¹⁵ and requires each national bank that files a registration statement that has been declared effective by the OCC pursuant to part 16 to file the current and periodic reports required by section 13 of the Exchange Act¹⁶ in accordance with the SEC's regulation 15D, as if the securities covered by the registration statement were securities registered pursuant to section 12 of the Exchange Act.

The proposal revises section 16.20 to reference sections 10A(m) and 13 of the Exchange Act and to cross-reference the requirements of the revised § 11.2(a)(1)(ii). The effect of the proposal is to require banks filing registration statements pursuant to part 16 to comply with certain provisions of the Exchange Act, including new subsection 10A(m), and those sections of the Sarbanes-Oxley Act that are directly applicable to section 15(d) filers and that are administered and enforced by the OCC with respect to registered national banks. The proposal is thus consistent with the objectives of part 16

those provisions. The proposed rule eliminates cross-references to the specific sections of the SEC's regulations in favor of a more general reference to the rules, regulations, and forms adopted by the SEC pursuant to the listed statutory provisions. The existing statutory cross-references in parts 11 and 16 are adequate, in our judgment, to alert registered national banks and national banks required by part 16 to make filings pursuant to section 15(d) of the Exchange Act of the requirements that apply to them and to prompt them to consult the appropriate SEC regulations.

National banks may also monitor the **Federal Register**, the SEC's Web site,¹⁸ and other appropriate publications to ensure that they are aware of developments that affect them. If the rules or forms issued by the SEC under these sections require issuers to file documents with the SEC, national banks must make such filings with the OCC in accordance with the provisions of part 11 or part 16, as appropriate.

Request for Comments

The OCC solicits comment on all aspects of the proposed rule. Commenters who suggest that the OCC modify the requirements of the SEC's rules, regulations, and forms for registered national banks should support their request by demonstrating how such a modification would satisfy the standard in section 12(i); that is, with respect to registered national banks, that the SEC's rules, regulations or forms are not necessary or appropriate in the public interest or for the protection of investors.

Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106-102, section 722, 113 Stat. 1338, 1471 (November 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated? Is it appropriate to eliminate specific cross-references in our rules to specific provisions of the SEC's rules?
- Does the proposed regulation contain 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 to the format would make the regulation easier to understand?

- What else could we do to make the regulation easier to understand?

Regulatory Analysis

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under section 604 of the RFA 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** along with its rule. As of December 31, 2002, there were approximately 25 national banks that had a class of securities registered under sections 12(b) or 12(g) of the Exchange Act and therefore subject to the proposed amendments to part 11. As of the same date, only 15 of these institutions have assets of less than \$100 million and are considered small entities for purposes of the RFA. See 5 U.S.C. 601; 13 CFR 121.201. As of December 31, 2002, there were approximately 20 national banks subject to part 16 reporting requirements.

Based on the relatively small number of national banks affected by the proposed revisions to parts 11 and 16 of our rules, the OCC hereby certifies that this proposal will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not needed.

Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995, the OCC may not conduct or sponsor, and a 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 information collection requirements contained in this notice of proposed rulemaking have been submitted to OMB for review and approval under OMB Control Number 1557-0106 ((MA)—Securities Exchange Act Disclosure Rules—12 CFR part 11) and OMB Control Number 1557-0120 ((MA)—Securities Offering Disclosure Rules—12 CFR part 16).

The OCC is proposing to revise 12 CFR part 11 to reflect amendments to

section 12(i) of the Securities Exchange Act of 1934 (Exchange Act) made by the Sarbanes-Oxley Act of 2002. These amendments to section 12(i) give the OCC the authority to administer and enforce a number of the Sarbanes-Oxley Act's new reporting, disclosure, and corporate governance requirements with respect to national banks that have a class of securities registered under the Exchange Act.

The OCC is also proposing to make conforming revisions to 12 CFR part 16, which prescribes securities offering disclosure rules for national banks that issue securities that are not subject to the

registration statement with the OCC. Section 16.4 requires a national bank to submit certain communications not deemed an offer to the OCC. Section 16.5 provides an exemption for items that satisfy the requirements of SEC Rule 144, which, in turn, requires certain filings. Section 16.6 requires a national bank to file documents with the OCC and to make certain disclosures to purchasers in sales of nonconvertible debt. Section 16.7 requires a national bank to file a notice with the OCC. Section 16.8 requires a national bank to file offering documents with the OCC. Section 16.15 requires a national bank to file a registration statement and sets forth content requirements for the registration statement. Section 16.17 requires a national bank to file four copies of each document filed under part 16, and requires filers of amendments or revisions to underline or otherwise indicate clearly any changed information. Section 16.18 requires a national bank to file an amended prospectus when the information in the current prospectus becomes stale, or when a change in circumstances makes the current prospectus incorrect. Section 16.19 requires a national bank to submit a request to the OCC if it wishes to withdraw a registration statement, amendment, or exhibit. Section 16.20 requires a national bank to file current and periodic reports as required by sections 10A and 13 of the Exchange Act and those provisions of the Sarbanes-Oxley Act that the OCC is authorized to enforce. Section 16.30 requires a national bank to include certain elements and follow certain procedures in any request to the OCC for a no-objection letter.

Estimated number of respondents: 73.

Estimated number of responses: 73.

Average hours per response: Varies.

Estimated total burden hours: 2,275 hours.

Likely respondents: National banks.

Comments

The OCC invites comments on:

(1) Whether the collection of information contained in the proposed rulemaking is necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(2) The accuracy of the OCC's estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

OMB is required to make a decision concerning these collections of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Comments should be sent to:

Jessie Dunaway, Clearance Officer, Office of the Comptroller of the Currency, Legislative and Regulatory Activities Division, Attention: 1557-0106 & 1557-0120, 250 E Street, SW., Mailstop 8-4, Washington, DC, 20219. Due to delays in delivery of paper mail in the Washington area, commenters are encouraged to submit comments by fax or email. Comments may be sent by fax to 202-874-4448 or by e-mail to regs.comments@occ.treas.gov.

Joseph F. Lackey, Jr., Desk Officer, Office of Information and Regulatory Affairs, Attention: 1557-0106 & 1557-0120, Office of Management and Budget, Room 10235, Washington, DC 20503. Comments may also be sent by e-mail to jlackey@omb.eop.gov.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, or \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Reform Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that this proposal will not result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, or \$100 million or more in any one year. Accordingly, we have not prepared a budgetary impact statement.

Executive Order 12866

The Comptroller of the Currency has determined that this proposal does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

List of Subjects

12 CFR Part 11

Confidential business information, National banks, Reporting and recordkeeping requirements, Securities.

2. Section 16.20 is revised to read as follows:

§ 16.20 Compliance with requirements of the securities laws.

(a) Each bank that files a registration statement that has been declared effective pursuant to this part shall comply with the rules, regulations, and forms adopted by the Commission pursuant to sections 10A(m) and 13 of the Exchange Act and those provisions of the Sarbanes-Oxley Act of 2002 that are listed in § 11.2(a)(1)(ii) of this chapter as if the securities covered by the registration statement were securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78J).

(b) Suspension of the duty to file current and periodic reports under this section will be in accordance with section 15(d) of the Exchange Act (15 U.S.C. 78o(d)).

(c) Paragraph (a) of this section does not apply if the bank is a subsidiary of a one-bank holding company, the financial statements of the bank and the parent bank holding company are substantially the same, and the bank's parent bank holding company files current and periodic reports pursuant to section 13 of the Exchange Act (15 U.S.C. 78m).

(d) Paragraph (a) of this section does not apply if the bank files the registration statement in connection with a merger, consolidation, or acquisition of assets subject to 12 CFR 5.33(e)(8).

Dated: April 29, 2003.

John D. Hawke, Jr.,
Comptroller of the Currency.

[FR Doc. 03-12259 Filed 5-20-03; 8:45 am]

BILLING CODE 4810-33-P

FARM CREDIT ADMINISTRATION

12 CFR Parts 613, 614, and 618

RIN 3052-AC06

Eligibility and Scope of Financing; Loan Policies and Operations; General Provisions; Credit and Related Services

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA, we, our) proposes to amend regulations governing domestic and international lending, certain intra-Farm Credit System (FCS or System) agreements concerning similar entity participation transactions, provisions of general financing agreements, and related services. We are

proposing amendments to conform our regulations to recent changes in the Farm Credit Act of 1971, as amended (Act), to address comments we received requesting that the FCA reduce regulatory burden, ensure compliance with the Act, and clarify certain regulations.

DATES: Please send your comments to the FCA by June 20, 2003.

ADDRESSES: You may send comments by electronic mail to "reg-comm@fca.gov," through the Pending Regulations section of FCA's Web site, "<http://www.fca.gov>," or through the government-wide "<http://www.regulations.gov>" portal. You may also send comments to Robert E. Donnelly, Acting Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090 or by facsimile to (703) 734-5784. You may review copies of all comments we receive at our office in McLean, Virginia.

FOR FURTHER INFORMATION CONTACT:

Dale Aultman, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498; TTY (703) 883-4434; or

James Morris, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TTY (703) 883-4020.

SUPPLEMENTARY INFORMATION:

I. Objectives

The primary objectives of our proposal are to conform our regulations to recent statutory amendments and to reduce regulatory burden imposed on System institutions, while ensuring compliance with the Act and FCA regulations. We expect our amendments to improve the flow of credit to System