

Federal Housing Finance Board

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(1) Shall provide that the Bank may not issue stock other than in accordance with §931.2 of this chapter;

(2) Shall provide that the stock of the Bank may be issued only to and held only by the members of that Bank;

(3) Shall specify whether the stock of the Bank may be transferred among members, and, if such transfer is allowed, shall specify the procedures that a member should follow to effect such transfer, and that the transfer shall be undertaken only in accordance with §931.6 of this chapter;

(4) Shall specify that the stock of the Bank may be traded only between the Bank and its members;

(5) May provide for a minimum investment for members that purchase Class B stock that is lower than the minimum investment for members that purchase Class A stock, provided that the level of investment is sufficient for the Bank to comply with its regulatory capital requirements;

(6) Shall specify the fee, if any, to be imposed on a member that cancels a request to redeem Bank stock; and

(7) Shall specify the period of notice that the Bank will provide to a member before the Bank, on its own initiative, determines to repurchase any excess Bank stock from a member.

(g) *Termination of membership.* The capital plan shall address the manner in which the Bank will provide for the disposition of its capital stock that is held by institutions that terminate their membership, and the manner in which the Bank will liquidate claims against its members, including claims resulting from prepayment of advances prior to their stated maturity.

(h) *Implementation.* The capital plan shall demonstrate that the Bank has made a good faith determination that the Bank will be able to implement the plan as submitted and that the Bank will be in compliance with its regulatory total capital requirement and its regulatory risk-based capital requirement after the plan is implemented.

[66 FR 8310, Jan. 30, 2001, as amended at 66 FR 54108, Oct. 26, 2001; 70 FR 9510, Feb. 28, 2005]

§ 933.3 Independent review of capital plan.

Prior to submitting its capital plan, each Bank shall conduct a review of the plan by an independent certified public accountant to ensure, to the extent possible, that the implementation of the plan would not result in any write-down of the redeemable stock owned by its members, and shall conduct a separate review by at least one NRSRO to determine, to the extent possible, whether the implementation of the plan would have a material effect on the credit rating of the Bank. The Bank shall submit a copy of each report to the Finance Board as part of its proposed capital plan.

§ 933.4 Transition provisions.

(a) The capital plan of a Bank may include a transition provision that would allow a period of time, not to exceed three years, during which the Bank shall increase its total and permanent capital to levels that are sufficient to comply with its minimum leverage capital requirement and its minimum risk-based capital requirement. The capital plan of a Bank may also include a transition provision that would allow a period of time, not to exceed three years, during which institutions that were members of the Bank on November 12, 1999, shall increase the amount of Bank stock to a level that is sufficient to comply with the minimum investment established by the capital plan. The length of the transition periods need not be identical.

(b) Any transition provision shall comply with the requirements of §931.9.

§ 933.5 Disclosure to members concerning capital plan and capital stock conversion.

(a) No capital plan shall become effective until disclosure required by paragraphs (b) and (c) of this section has been provided to members. All disclosure required under this section shall be transmitted, sent or given to members not less than 45 days and not more than 60 days prior to the opt-out date established in the Bank's capital plan in accordance with §933.2(e).

(b) The following information shall be provided to members about the Class A and/or Class B stock that a

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Bank intends to issue on the effective date of its capital plan:

(1) With regard to each class or subclass of authorized stock, a description of:

- (i) Dividend rights;
- (ii) The terms of conversion;
- (iii) Redemption and repurchase rights;
- (iv) Voting rights and preferences,
- (v) Liquidation rights; and
- (vi) Any liability to further calls or to assessments by the Banks;

(2) A description of any material differences between the securities to be converted into Class A and/or Class B stock and the Class A and/or Class B stock with regard to the rights addressed in paragraph (b)(1) of this section.

(3) A statement of the reasons for the conversion to Class A and/or Class B stock and of the general effect thereof upon the rights of existing members; and

(4) A description of any other material features concerning the Bank's initial issuance of Class A and/or Class B stock.

(c) In addition to the disclosure about Class A and/or Class B stock, the following information shall be provided to members:

(1) The Bank shall disclose financial information as follows:

(i) Audited balance sheets as of the end of the two most recent fiscal years, audited statements of income and cash flows for each of the three fiscal years preceding the date of the most recent audited balance sheet being presented, and unaudited interim balance sheets and statements of income and cash flows as of and for appropriate interim dates that in form and content meet the requirements of §989.4 of this chapter;

(ii) A pro forma capitalization table that reflects the Bank's projected new capital structure relative to its actual capitalization as of the date of the latest balance sheet required to be provided to members by paragraph (c)(1)(i) of this section. The Bank shall also provide a description of any material assumptions underlying the pro forma capitalization table and the basis for these assumptions, and shall provide estimates of its risk-based capital re-

quirement, calculated in accordance with §932.3 of this chapter, and of its total capital-to-asset ratio (both of which shall be based on the same financial data used for the capitalization table), along with a discussion of material assumptions underlying these estimates and the basis for these assumptions; and

(iii) Any of the financial information required to be disclosed by paragraph (c)(1) of this section may be incorporated by reference, provided the information being incorporated is contained in an annual or quarterly Bank report prepared in accordance with §989.4 of this chapter or an annual or quarterly Bank System report, and the disclosure identifies the information being incorporated by reference;

(2) A narrative discussion of anticipated developments that could materially affect the liquidity, capital, earnings or continuing operations of the Bank, including those affecting dividends, product volumes, investment volumes, new business lines and risk profile.

(3) A description of any amendments anticipated to be made to the Bank's by-laws, policies or other governance documents as a result of the implementation of the capital plan;

(4) To the extent that such information has not been provided under paragraph (b) of this section, the Bank shall disclose information related to the capital plan as follows:

(i) A description of the minimum stock investment requirements set forth in the capital plan;

(ii) A statement outlining the requirements for amending the capital plan;

(iii) A description of any restrictions or limitations under a Bank's capital plan on a member's rights to buy, or redeem its class A or class B stock, to have such stock repurchased, or otherwise to make use of such stock to fulfill the member's minimum stock investment requirement;

(iv) A statement setting forth the opt-out date, on or before which a member's written notice to withdraw must be filed with the Finance Board (as established in accordance with §933.2(e) of this part) for the member not to have its existing Bank stock

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converted to Class A or Class B stock on the effective date of the Bank's capital plan and describing the effect on a member's effective date of withdrawal of failing to file its notice to withdraw on or before the opt-out date; and

(v) A description of a member's rights under the capital plan to have its stock redeemed or repurchased upon voluntary or involuntary termination of its membership;

(5) The Bank should state the name, address and telephone number where members may direct written or oral requests for a copy of the capital plan and any other instrument or document

that defines the rights of the member/stockholders. This information shall be provided to the members without charge; and

(6) The Bank shall provide a statement as to the anticipated accounting treatment for the transaction and the federal income tax implications of the transaction that members should consider in consultation with their own accounting and tax advisors.

(d) Nothing in this section shall create or be deemed to create any rights in any third party.

[66 FR 54109, Oct. 26, 2001]