§ 391.3 Overtime and holiday rate.

The overtime and holiday rate for inspection services provided pursuant to §§ 307.5, 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, 362.5, and 381.38 shall be $33.76 per hour, per program employee.

§ 391.4 Laboratory services rate.

The rate for laboratory services provided pursuant to §§ 350.7, 351.9, 352.5, 354.101, 355.12, and 362.5 shall be $48.56 per hour, per program employee.

Done at Washington, DC, on June 27, 1996.

Michael R. Taylor,

Administrator, Food Safety and Inspection Service.

[FR Doc. 96–17000 Filed 7–2–96; 8:45 am]

BILLING CODE 3410–DM–P

FEDERAL RESERVE SYSTEM

12 CFR Parts 218 and 250

[Regulation R; Docket No. R–0931]

Relations With Dealers in Securities Under Section 32, Banking Act of 1933; Miscellaneous Interpretations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board is proposing to amend its regulations to remove Regulation R concerning relations with dealers in securities under section 32 of the Banking Act of 1933, which the Board believes is no longer necessary. The Board also is proposing to amend its regulations to remove an interpretation of section 32 of the Glass-Steagall Act, which the Board believes is no longer necessary. This interpretation explains the position of the Board regarding the application of the prohibitions of section 32 to bank holding companies.

DATES: Comments must be received by August 2, 1996.

ADDRESSES: Comments should refer to Docket No. R–0931 and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Docket No. R–0931, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room MP–500 between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Richard M. Ashton, Associate General Counsel (202/452–3750), or Thomas M. Corsi, Senior Attorney (202/452–3275), Legal Division. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act)

Section 303(a) of the CDRI Act (12 U.S.C. 4803(a)) requires the Board, as well as the other federal banking agencies, to review its regulations and written policies in order to streamline and modify these regulations and policies to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. The Board has reviewed its interpretations of section 32 of the Glass-Steagall Act (12 U.S.C. 78) with this purpose in mind, and, as is explained in greater detail in the text that follows, proposes to amend these interpretations in a way designed to meet the goals of section 303(a).

Substantive Provisions of Regulation R

The Board's Regulation R (12 CFR Part 218) implements section 32 of the Glass-Steagall Act. Section 32 prohibits officer, director and employee interlocks between member banks and firms ''primarily engaged'' in underwriting and dealing in securities, and authorizes the Board to exempt from this prohibition, under limited circumstances, certain interlocks by regulation. Currently, Regulation R restates the statutory language of section 32, and sets forth the only exemption adopted by the Board since passage of the Glass-Steagall Act. The Board also has codified in the CFR 14 interpretations of the substantive provisions of section 32 and the regulation.[1] The Board also has issued other interpretations of section 32 that are contained in the Federal Reserve Regulatory Service (FRRS).

The exemption in Regulation R, adopted by the Board in 1969, permits interlocks between member banks and securities firms whose securities underwriting and dealing activities are limited to underwriting and dealing in only securities that a national bank would be authorized to underwrite and deal in. The adoption of the express exemption was apparently based on the assumption that the literal language of the section 32 prohibition could at least arguably cover bank-eligible securities activities.

Subsequently, in orders approving applications under the Bank Holding Company Act (12 U.S.C. 1841 et seq.), the Board interpreted the prohibitions of section 20 of the Glass-Steagall Act, which prohibits a member bank from being affiliated with a firm engaged principally in underwriting and dealing in securities, as not applying on their face to underwriting and dealing in securities that may be underwritten and dealt in directly by a state member bank. In these decisions, the Board also expressed the view that section 32 similarly did not cover an interlock between a member bank and a firm that was not engaged in securities activities covered by section 20.[2] Accordingly, in light of the Board's more recent view of the scope of section 32, the express exemption from the provisions of section 32 for bank-eligible securities activities is no longer necessary.[3] Moreover, the Board has never adopted any other exemption to the interlocks provision and historically, requests that the Board create new exemptions have been infrequent and have been uniformly denied.[4]

Since the exemption in Regulation R is no longer necessary, and it is not necessary to have a substantive regulation solely to restate a statutory provision, the Board is proposing to rescind Regulation R.

Bank Holding Company Interpretation of Section 32 of the Glass-Steagall Act

With one exception, the 14 interpretations of section 32 now contained in the CFR, would be retained and transferred to 12 CFR Part 250,

[1] 12 CFR 218.101–218.114.

[2] This interpretation has been upheld by the courts. *Securities Industry Association* v. *Board of Governors of the Federal Reserve System*, 839 F.2d 47, 62 (2d Cir. 1988), *cert. denied*, 486 U.S. 1059 (1988).

[3] The Board is proposing to adopt a new interpretation of section 32 to clarify this point.

[4] A footnote to Regulation R that dates to 1936 makes it clear that a broker who is engaged solely in executing orders for the purchase and sale of securities on behalf of others in the open market is not engaged in the business referred to in section 32. The Board has since authorized bank holding companies to engage in this activity directly, reiterating that securities brokerage is not a proscribed activity under either sections 32 or 20 of the Glass-Steagall Act. *BankAmerica Corporation*, 69 Federal Reserve Bulletin 105 (1983). The courts upheld the Board's interpretation. *Securities Industry Assn.* v. *Board of Governors*, 468 U.S. 207 (1984). The removal of Regulation R does not affect this interpretation.

which contains miscellaneous Board interpretations.

By their terms, the prohibitions of section 32 apply only to member banks. In 1969, the Board issued an interpretation that extended the prohibitions of section 32 to a bank holding company where the principal activity of the bank holding company is the ownership and control of member banks.[5] The Board is now seeking public comment on rescinding this interpretation.

The Board based its 1969 interpretation not so much on the literal language of section 32, but on its belief that where the ownership and control of member banks is the principal activity of a bank holding company, the same possibilities of abuse that section 32 was designed to prevent would be present in the case of a director of the holding company as in the case of the member bank.[6] The Board believed that giving cognizance to the separate corporate entities in such a situation would partially frustrate Congressional purpose in enacting section 32.

The Board now believes that it could rescind this interpretation and give some measure of regulatory burden relief to bank holding companies in a manner consistent with section 32, and without frustrating the Congressional purpose underlying the section. The Board is not barred by the literal terms of the Glass-Steagall Act from rescinding the interpretation. As noted above, section 32 specifically restricts only those interlocks involving member banks. While the bank holding company structure was not in widespread use when section 32 was adopted, Congress has amended section 32 since the section was adopted and since bank holding companies have become commonplace, but never has extended the prohibitions in the section to bank holding companies. Notably, in 1987, Congress extended the prohibitions of section 32 to cover interlocks involving nonmember banks and thrift institutions but not interlocks involving bank holding companies.[7]

The potential that removal of the interpretation could frustrate Congressional purpose in enacting section 32 is mitigated by the fact that the prohibitions of section 32 would continue to apply to member banks. Accordingly, the directors, officers and employees of these banks, none of whom may be interlocked with a securities firm, could serve as a check against the possibilities of abuse that section 32 is intended to prohibit. In addition, the Board believes that by rescinding this interpretation, it would be granting some measure of regulatory relief to bank holding companies by giving them access to a larger pool of persons from which to choose their officers, directors, and employees.[8]

Other Interpretations of Section 32

The Board also seeks comment on whether any of the other interpretations of section 32 previously adopted by the Board could be amended.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 95–354, 5 U.S.C. 601 *et seq.*), the Board of Governors of the Federal Reserve System certifies that adoption of this proposed rule will not have a significant economic impact on a substantial number of small entities that would be subject to the regulation.

This amendment will remove a regulation and an interpretation that the Board believes are no longer necessary. The amendment does not impose more burdensome requirements on bank holding companies than are currently applicable.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the proposed rule.

List of Subjects

12 CFR Part 218

Antitrust, Federal Reserve System, Securities.

12 CFR Part 250

Federal Reserve System.

For the reasons set forth in the preamble and under the authority of 12 U.S.C. 248, the Board proposes to amend Chapter II of the Code of Federal Regulations as set forth below:

[5] 12 CFR 218.114.

[6] As noted in the Board's interpretation, section 32 is directed to the probability or likelihood that a bank director interested in the underwriting business may use his or her influence in the bank to involve it or its customers in securities sold by his or her underwriting house.

[7] The provisions extending the prohibitions of section 32 to nonmember banks and thrifts expired in 1988.

[8] Should the Board determine to rescind this interpretation, this action would not affect other Board decisions or determinations that restrict interlocks to ensure compliance with section 20 of the Glass-Steagall Act (12 U.S.C. 377). *See, e.g., Mellon Bank Corporation,* 79 Federal Reserve Bulletin 626 (1993).

PART 218—[AMENDED]

§§ 218.101 through 218.113 [Redesignated as §§ 250.400 through 250.412]

1. Sections 218.101 through 218.113 are redesignated as set forth in the following table:

0ld Section	New section
218.101	250.400
218.102	250.401
218.103	250.402
218.104	250.403
218.105	250.404
218.106	250.405
218.107	250.406
218.108	250.407
218.109	250.408
218.110	250.409
218.111	250.410
218.112	250.411
218.113	250.412

PART 218—[REMOVED]

2. Part 218 is removed.

PART 250—MISCELLANEOUS INTERPRETATIONS

1. The authority citation for part 250 is revised to read as follows:

Authority: 12 U.S.C. 78, 248(i) and 371c(e).

2. A new center heading is added immediately preceding newly designated § 250.400 to read as follows:

Interpretations of Section 32 of the Glass-Steagall Act

3. Section 250.413 is added to read as follows:

§ 250.413 ''Bank-eligible'' securities activities.

Section 32 of the Glass-Steagall Act (12 U.S.C. 78) prohibits any officer, director, or employee of any corporation or unincorporated association, any partner or employee of any partnership, and any individual, primarily engaged in the issue, flotation, underwriting, public sale, or distribution, at wholesale or retail, or through syndicate participation, of stocks, bonds, or other similar securities, from serving at the same time as an officer, director, or employee of any member bank of the Federal Reserve System. The Board is of the opinion that to the extent that a company, other entity or person is engaged in securities activities that are expressly authorized for a state member bank under section 16 of the Glass-Steagall Act (12 U.S.C. 24(7), 335), the company, other entity or individual is not engaged in the types of activities described in section 32. In addition, a securities broker who is engaged solely in executing orders for the purchase and

sale of securities on behalf of others in the open market is not engaged in the business referred to in section 32.

By order of the Board of Governors of the Federal Reserve System.

Date: June 26, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–16841 Filed 7–02–96; 8:45am]

Billing Code 6210–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AB59

Assessments

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed Rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is proposing to amend its assessment regulations by adopting interpretive rules regarding certain provisions therein that pertain to so-called Oakar institutions: institutions that belong to one insurance fund (primary fund) but hold deposits that are treated as insured by the other insurance fund (secondary fund). Recent merger transactions and branch-sale cases have revealed weaknesses in the FDIC's procedures for attributing deposits to the two insurance funds and for computing the growth of the amounts so attributed. The interpretive rules would repair those weaknesses.

In addition, the FDIC is proposing to simplify and clarify the existing rule by making changes in nomenclature.

DATES: Comments must be received by the FDIC on or before September 3, 1996.

ADDRESSES: Send comments to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand-delivered to Room F–400, 1776 F Street, N.W., Washington, D.C., on business days between 8:30 a.m. and 5:00 p.m. (FAX number: 202/898–3838. Internet address: comments@fdic.gov). Comments will be available for inspection in the FDIC Public Information Center, Room 100, 801 17th Street, N.W., Washington, D.C. between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Allan K. Long, Assistant Director, Division of Finance, (703) 516–5559; Stephen Ledbetter, Chief, Assessments Evaluation Section, Division of Insurance (202) 898–8658; Jules Bernard, Counsel, Legal Division, (202) 898–3731, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: This proposed interpretive regulation would alter the method for determining the assessments that Oakar institutions pay to the two insurance funds. Accordingly, the proposed regulation would directly affect all Oakar institutions. The proposed regulation would also indirectly affect non-Oakar institutions, however, by altering the business considerations that non-Oakar institutions must take into account when they transfer deposits to or from an Oakar institution (including an institution that becomes an Oakar institution as a result of the transfer).

I. Background

Section 5(d)(2) of the FDI Act, 12 U.S.C. 1815(d)(2), places a moratorium on inter-fund deposit-transfer transactions: mergers, acquisitions, and other transactions in which an institution that is a member of one insurance fund (primary fund) assumes the obligation to pay deposits owed by an institution that is a member of the other insurance fund (secondary fund). The moratorium is to remain in place until the reserve ratio of the Savings Association Insurance Fund (SAIF) reaches the level prescribed by statute. *Id.* 1815(d)(2)(A)(ii); see *id.* 1817(b)(2)(A)(iv) (setting the target ratio at 1.25 percentum).

The next paragraph of section 5(d)—section 5(d)(3) of the FDI Act—is known as the Oakar Amendment. *See* Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Pub. L. 101–73 section 206(a)(7), 103 Stat. 183, 199–201 (Aug. 9, 1989); 12 U.S.C. 1815(d)(3). The Amendment permits certain deposit-transfer transactions that would otherwise be prohibited by section 5(d)(2) (Oakar transactions).

The Oakar Amendment introduces the concept of the ''adjusted attributable deposit amount'' (AADA). An AADA is an artificial construct: a number, expressed in dollars, that is generated in the course of an Oakar transaction, and that pertains to the buyer. The initial value of a buyer's AADA is equal to the amount of the secondary-fund deposits that the buyer acquires from the seller. The Oakar Amendment specifies that the AADA then increases at the same underlying rate as the buyer's overall deposit base—that is, at the rate of growth due to the buyer's ordinary business operations, not counting growth due to the acquisition of deposits from another institution (*e.g.*, in a merger or a branch purchase). *Id.* 1815(d)(3)(C)(iii). The FDIC has adopted the view that ''growth'' and ''increases'' can refer to ''negative growth'' under the FDIC's interpretation of the Amendment, an AADA decreases when the institution's deposit base shrinks.

An AADA is used for the following purposes:

—*Assessments.* An Oakar institution pays two assessments to the FDIC—one for deposit in the institution's secondary fund, and the other for deposit in its primary fund. The secondary-fund assessment is based on the portion of the institution's assessment base that is equal to its AADA. The primary-fund assessment is based on the remaining portion of the assessment base.

—*Insurance.* The AADA measures the volume of deposits that are ''treated as'' insured by the institution's secondary fund. The remaining deposits are insured by the primary fund. If an Oakar institution fails, and the failure causes a loss to the FDIC, the two insurance funds share the loss in proportion to the amounts of deposits that they insure.

For assessment purposes, the AADA is applied prospectively, as is the assessment base. An Oakar institution has an AADA for a current semiannual period, which is used to determine the institution's assessment for that period.[1] The current-period AADA is calculated using deposit-growth and other information from the prior period.

II. The proposed rule

A. Attribution of transferred deposits

1. The FDIC's Current Interpretation: The ''Rankin'' Rule

The FDIC has developed a methodology for attributing deposits to the Bank Insurance Fund (BIF) on one hand and to the SAIF on the other when the seller is an Oakar institution. *See* FDIC Advisory Op. 90–22, 2 FED. DEPOSIT INS. CORP., LAW, REGULATIONS, RELATED ACTS 4452 (1990) (Rankin letter). The Rankin letter adopts the following rule: an Oakar institution transfers its primary-fund deposits first, and only begins to

[1] Technically, each Oakar transaction generates its own AADA. Oakar institutions typically participate in several Oakar transactions. Accordingly, and Oakar institution generally has an overall or composite AADA that consists of all the individual AADAs generated in the various Oakar transactions, plus the growth attributable to each individual AADA. The composite AADA can generally be treated as a unit as a practical matter, because all the constituent AADAs (except initial AADAs) grow at the same rate.