

institutions and depository institution holding companies.

(b) *Applications and notices.* Applications and notices filed by an insured depository institution, a proposed or newly organized insured depository institution or a depository institution holding company shall be denied or objected to, respectively, by the appropriate federal banking agency if the agency determines, in its discretion, that the proposed transaction for which the application or notice is filed is for the purpose of evading assessments imposed on the applicable insured depository institutions with respect to SAIF-assessable deposits under section 7(b) of the Act and section 21(f)(2) of the Federal Home Loan Bank Act (12 U.S.C. 1441(f)(2)).

(c) *Imposition of entrance and exit fees.* (1) A depository institution that encourages or facilitates the shifting of deposits from SAIF-assessable deposits to BIF-assessable deposits (as defined in section 21(k) of the Federal Home Loan Bank Act (12 U.S.C. 1441(k)) for the purpose of evading SAIF assessments shall pay entrance and exit fees, as provided for in §§ 312.1 through 312.10, as if such deposit shifting constituted a "conversion transaction" under section 5(d) of the Act (12 U.S.C. 1815(d)).

(2) Subject to the FDIC's determination based on the methodology indicated in paragraph (c)(3) of this section, an abnormal increase in a depository institution's BIF-assessable deposits and a commensurate decrease in SAIF-assessable deposits of an affiliate of that depository institution within the same calendar quarter shall be presumed to be the result of deposit shifting for the purpose of evading SAIF assessments. The entrance and exit fees to be imposed under paragraph (c)(1) of this section shall apply to the dollar amount of the deposits shifted unless, pursuant to paragraph (c)(5) of this section, the affiliated depository institutions rebut the presumption that the increase in BIF-assessable deposits and the commensurate decrease in SAIF-assessable deposits resulted from deposit shifting between the affiliated institutions.

(3) For purposes of this section, the FDIC shall obtain deposit data from quarterly Consolidated Reports of Condition and Income filed by insured depository institutions with the FDIC and from Thrift Financial Reports filed by insured savings associations with the Office of Thrift Supervision, starting with the reports filed for the period ending [on the last day of the first full calendar quarter after the effective date of the final rule on deposit shifting].

(4) The FDIC, in its discretion, will determine whether to presume that the increase in an institution's BIF-assessable deposits and the commensurate decrease in the affiliated institution's SAIF-assessable deposits resulted from deposit shifting intended to evade SAIF assessments by using statistical averages and trends for the applicable affiliated depository institutions and industry averages and trends, and other information available to the FDIC. In determining whether to apply the rebuttable presumption, the FDIC will consult with the appropriate federal banking agency(ies) in cases where the FDIC is not the appropriate federal banking agency.

(5) A depository institution will be deemed to have rebutted the presumption of deposit shifting if it provides to the FDIC information and materials that the FDIC, in its discretion, determines demonstrate that the increase in BIF-assessable deposits and the commensurate decrease in SAIF-assessable deposits resulted from factors other than efforts by the depository institutions or their holding company to encourage or facilitate the shifting of deposits for the purpose of evading SAIF assessments.

(6) The FDIC shall notify, in writing, the applicable depository institutions of the intended imposition of entrance and exit fees within 90 days after the report date of the Consolidated Reports of Condition and Thrift Financial Reports from which the FDIC determines to apply the rebuttable presumption under paragraph (c)(4) of this section. The depository institutions shall have 30 days from the date of issuance of such notification to provide materials and information to the FDIC to rebut the aforementioned presumption. The FDIC shall within 60 days of the receipt of the materials and information consult with the appropriate federal banking agency(ies), if the FDIC is not the appropriate federal banking agency, and determine and notify the depository institutions whether they must pay entrance and exit fees for deposit shifting. If the FDIC indicates in such notice that the depository institutions must pay entrance and exit fees, those fees shall be paid within 15 days of the receipt of such notice. Within 30 days of the payment of the fees to the FDIC, the depository institution(s) may request a review of the determination by the FDIC. The details of the procedures for submitting materials and information to attempt to rebut the presumption of deposit shifting will be provided in writing to the depository institutions as part of the initial notice of the intended imposition of entrance and exit fees.

(d) *Termination date.* The provisions of this section shall terminate on the earlier of December 31, 1999 or the date as of which the last savings association ceases to exist.

By the order of the Board of Directors.

Dated at Washington, D.C., this 4th day of February, 1997.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 97-3306 Filed 2-10-97; 8:45 am]

BILLING CODE 6714-01-P

12 CFR Part 328

RIN 3064-AB99

Advertisement of Membership

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking; request for comment.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is proposing to amend its regulation entitled "Advertisement of Membership". The proposed rule would: Consolidate the provisions that require insured institutions to display official signs; extend the official advertising statement that is currently required for insured banks to all insured depository institutions; streamline the exceptions to the required use of the official advertising statement; prohibit the use of the official advertising statement in advertisements concerning nondeposit investment products or similar nondeposit products; and specifically delegate authority to approve the translation of the official advertising statement to certain FDIC officials. The FDIC is inviting comment on all aspects of its proposal as well as certain alternatives to its proposal as discussed herein. In addition, the FDIC is soliciting comment with respect to issues raised regarding the applicability of this regulation to insured depository institutions that are transmitting information to, or conducting business with, existing or potential customers, over a computer network, such as the Internet.

DATES: Written comments must be received by the FDIC on or before April 14, 1997.

ADDRESSES: Written comments shall be addressed to 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-402, 1776 F Street, N.W., Washington, D.C., 20429, 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 at the FDIC's Reading Room, Room 7118, 550 17th Street, N.W., Washington, D.C. between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT:

Marc J. Goldstrom, Counsel, Legal Division, Federal Deposit Insurance Corporation, Washington, D. C. 20429, telephone (202) 898-8807; Robert W. Walsh, Manager, Policy and Program Development, Division of Supervision, Federal Deposit Insurance Corporation, Washington, D.C. 20429, telephone (202) 898-6911.

SUPPLEMENTARY INFORMATION:

A. Need for the Proposed Rule

The FDIC is issuing this proposed rule in response to two initiatives. Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA), Pub. L. 103-325, 108 Stat. 2160 (Sept. 23, 1994), requires that each federal banking agency, consistent with the principles of safety and soundness, statutory law and policy, and the public interest, conduct a review of the regulations and written policies of that agency to, among other things: streamline and modify those regulations and policies, and remove inconsistencies and outmoded and duplicative requirements. In addition, the FDIC has voluntarily committed itself to review its regulations on a 5-year cycle. See Development and Review of FDIC Rules and Regulations, 2 FED. DEPOSIT INS. CORP., LAW, REGULATIONS, RELATED ACTS 5057 (1984).

As a result of its review of part 328, and as described herein, the FDIC has determined that certain aspects of the regulation may be streamlined, another aspect of the regulation treats banks and savings associations differently and accordingly should be modified to achieve consistent treatment, another aspect of the regulation should be modified to prohibit the use of the official advertising statement with respect to the advertisement of nondeposit investment products and similar nondeposit products, and a final aspect of the regulation should clarify which FDIC officials are authorized to approve the translation of the official advertising statement. In accordance with section 303 of CDRIA, the FDIC believes that this proposal is consistent with the principles of safety and soundness, statutory law and policy, and the public interest.

B. The Current Rule and the Proposal

1. Signs

Part 328 contains requirements for the design and display of the official bank sign of the FDIC. Only insured banks may use the official bank sign. 12 U.S.C. 1828(a). 12 CFR 328.2(a).

Part 328 also contains requirements for the design and display of the official savings association sign. Insured savings associations must use the official savings association sign, and may not use the official bank sign. *Id.* § 328.4(a) and (e). Insured banks may use either sign at their option. *Id.* § 328.2(a).

The two sets of requirements are virtually identical. The FDIC proposes to combine them into one.

Part 328 speaks of "automatic service facilities" in some places, and of "remote service facilities" in other places. The two phrases have the same meaning within part 328, however. The FDIC proposes to use the phrase "remote service facility" in each place.

Part 328 contains an outdated reference to a date in 1989. The FDIC proposes to delete it.

2. Advertising

(a) Proposal To Extend Official Advertising Statement Requirement to Savings Associations

Part 328 requires insured banks to include the official advertising statement in all their advertisements (with certain exceptions). *Id.* § 328.3(a). The basic form of the statement is "Member of the Federal Deposit Insurance Corporation", which may be shortened to "Member FDIC". *Id.* § 328.3(b). There is no equivalent requirement for insured savings associations.

In light of the inconsistent treatment of banks and savings associations, the FDIC proposes to require savings associations to use the official statement in advertisements. The effect of this proposal is that all insured depository institutions would be required to include the statement in their advertisements.

The FDIC insures both banks and savings associations to the same extent. See 12 U.S.C. 1811, 1813(c). There is no compelling justification for applying the rule to banks and not savings associations. Inconsistent treatment of banks and savings associations on this matter only tends to confuse consumers as to whether the institution's deposits are insured by the FDIC. We are of the view that a consistent and uniform rule applicable to both banks and savings associations will best serve the interests of the public and the protection of the insurance funds.

The proposed rule is premised on the belief that if all insured institutions are required to use the official advertising statement, consumers are more likely to recognize the absence of federal deposit insurance in advertisements by non-FDIC insured entities and can better distinguish insured depository institutions from non-insured entities. In today's environment with many non-banks providing banking type services it is more important than ever that consumers have a method of recognizing insured depository institutions. Recognition of FDIC insurance is particularly needed in electronic media such as the Internet where advertisements may originate from outside the United States or from nonbank entities.

Alternatively, the FDIC could achieve consistent treatment of banks and savings associations by eliminating the requirement that insured banks use the official statement in advertisements.

The effect of such a proposal would be that all insured depository institutions would be permitted (but not required) to include such a statement if they see fit.

In support of such a proposal, one could argue that, as a general matter, it is no longer necessary to require banks to use the official statement in their advertising. Statutory and regulatory provisions requiring banks to use the statement were enacted in 1935¹, a time when the FDIC was new and unfamiliar. Moreover, having endured the worst financial crisis in the nation's history, it was necessary to restore public confidence in the banking system. Over the years, as a result of the use of the official statement and other measures, banks and FDIC insurance have become intertwined in consumers' minds. Indeed, thrift customers arguably are aware of federal deposit insurance, even though there is no requirement that thrifts use the official statement in their advertisements.

Depository institutions and federal deposit insurance may be so interconnected that, as discussed below, many consumers erroneously assume that all bank products or services are FDIC insured. Accordingly, a rule requiring all institutions to use the official advertising statement may not

¹ The statutory provision was originally enacted in the Banking Act of 1935. Sec. 101 (v)(2), Banking Act of 1935, ch. 614, 49 Stat. 684, 701 (1935). Three months later, the FDIC promulgated a regulation which, among other things, required banks to use the official statement in advertisements. See Regulation III, section 3, FDIC Annual Report 92 (1935). The statutory requirement for the official statement in advertising was repealed in 1989. See Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), Pub. L. 101-73, sec. 221, 103 Stat. 183, 266 (Aug. 9, 1989).

alleviate such confusion and possibly could increase confusion among consumers.

The issue of advertising by depository institutions is of great importance to the FDIC. We are concerned that individuals understand when they are entrusting their money to an FDIC insured institution and when they are not. We are also extremely concerned that individuals understand when their funds are insured and when they are not. The FDIC invites comment on whether the proposed rule or the alternative discussed herein (or some other alternative) would better achieve these objectives. In addition we invite comment on the related issue of the increased burden to savings associations that the proposed rule would entail versus the potential benefits to be achieved.

(b) Proposals To Consolidate and Streamline Exceptions to the Required Use of the Official Advertising Statement and To Prohibit Insured Depository Institutions From Using the Official Advertising Statement in Advertisements Concerning Nondeposit Investment Products

Part 328 contains 20 exceptions to the required use of the official advertising statement. 12 CFR 328.3(c). The FDIC proposes to consolidate and streamline this paragraph into 11 exceptions. The two separate exceptions for radio and television advertisements not exceeding thirty seconds in time, 12 CFR 328.3(8) and (9), would be combined into one exception without any change in substance.

The nine exceptions for advertisements relating to various types of products or services which do not relate to deposits, 12 CFR 328.3(12) through (20), would be combined into a single exception for advertisements which do not relate to deposit products or services. The current rule only has exceptions for advertisements relating to certain types of nondeposit products or services. The proposed rule would create an exception for any advertisement which does not relate to a deposit product or service. This would have the effect of broadening the exceptions to the required use of the official advertising statement. The FDIC believes that there is no need to require the use of the official advertising statement in any advertisement which does not relate to deposit products or services. This proposal is consistent with the purpose of the regulation and the mandates of section 303 of the CDRIA.

Paragraph (d) of the proposed rule would prohibit an insured depository

institution from including the official advertising statement or any similar statement in advertisements relating to nondeposit investment products or similar nondeposit products. In advertisements containing information about both insured deposits and nondeposit investment products (or similar nondeposit products), the information concerning insured deposits shall be clearly segregated from the information about nondeposit investment products (or similar nondeposit products) and shall contain either the official statement, or any similar statement, including, but not limited to, statements to the effect that the depository institution's deposits or depositors are insured by the Federal Deposit Insurance Corporation to the maximum of \$100,000 for each depositor, or that specific deposit products are insured by the Federal Deposit Insurance Corporation.

As indicated above, many consumers erroneously believe that *all* bank or thrift products or services are FDIC insured. A recent independent survey found that 30% of investors are not aware that the FDIC does not insure bank mutual funds.² The FDIC is making this proposal because it is extremely concerned that depository institution customers understand what is and is not covered by FDIC insurance. The FDIC believes that a prohibition on the use of the official advertising statement in advertisements relating to nondeposit investment products or similar nondeposit products and a requirement that advertisements containing information about both insured deposits and nondeposit investment products (or similar nondeposit products) clearly segregate the information about the different products will help to minimize customer confusion on this matter.

This proposal is premised on the belief that it would minimize customer confusion with respect to the non-insured status of nondeposit investment products, such as mutual funds, and other similar nondeposit products. Conversely, there are other alternatives which may be more effective at alleviating customer confusion. For example, it could be argued that the proposal to require the use of the official statement (or similar statement) in advertisements concerning both types of products will further confuse consumers as to the insured and non-insured status

of the products involved. Accordingly, not requiring, or prohibiting, the use of the official statement (or similar statement) in advertisements containing information on both types of products may be more effective at minimizing customer confusion. The FDIC invites comment on the rule as proposed in paragraph (d), the alternatives discussed herein, or any other possible approach. In addition we invite comment on the related issue of the increased burden to insured depository institutions that the proposed rule or the alternatives would entail, versus the potential benefits to be achieved.

Another alternative to minimize customer confusion as to the insured or non-insured status of the various products offered by insured depository institutions is to require insured depository institutions to make certain disclosures when they advertise nondeposit investment products, such as mutual funds. Specifically, insured depository institutions would be required to disclose that such products are: not insured by the FDIC; not deposits or other obligations of, or guaranteed by, the depository institution; and subject to investment risk, including possible loss of the principal amount invested.

These disclosure requirements would not impose a new obligation on insured depository institutions. In fact, these provisions are contained in the Federal banking agencies' "Interagency Statement on Retail Sales of Nondeposit Investment Products". Financial Institution Letter FIL 9-94 dated February 17, 1994 (the "Interagency Statement"). Among other things the Interagency Statement provides that insured depository institutions should make the aforementioned disclosures in all of their advertising and promotional materials with respect to the retail sale of nondeposit investment products.

It may be desirable to include these provisions in part 328 in light of the recent FDIC study which showed more than a fourth of the institutions surveyed are still failing to make basic disclosures required under the Interagency Statement.³ By including the advertising disclosure provisions in part 328, such provisions would be of greater weight and enforceability.

The FDIC invites comment as to whether codifying these disclosure provisions in part 328 will more effectively minimize customer confusion with respect to the insured or non-insured status of the various

²Scott Smith, "Survey Says 70% of Investors Know U.S. Doesn't Insure Mutual Funds", *American Banker*, May 15, 1996, at 3 (discussing results of a survey of Investor Protection Trust conducted by Princeton Survey Research Associates).

³"Survey of Nondeposit Investment Sales at FDIC-Insured Institutions", prepared for the FDIC by Market Trends, Inc., dated May 5, 1996.

products offered by insured depository institutions. In addition, we invite comment on the related issue of any possible increased burden to insured depository institutions that such provisions would entail versus the potential benefits to be achieved.

(c) Proposals Enhance Safety and Soundness of Insured Depository Institutions and Consumer Protection

In testimony before the U.S. House of Representatives' Subcommittee on Financial Institutions and Consumer Credit⁴ the Chairman of the Board of Directors of the FDIC indicated that in conducting its review of regulations pursuant to section 303 of CDRIA, the FDIC would consider, among other things, whether the regulations are necessary to ensure a safe and sound banking system and whether the regulations can be justified on strong public policy grounds related to consumer protection. The FDIC believes that the proposed rule meets these criteria. It is intended to promote stability and confidence in the banking system and to minimize the possibility of customer confusion with respect to whether they are dealing with an FDIC insured institution and whether the advertised product is insured by the FDIC.

(d) Statutory Authority

The FDIC has the statutory authority to, by regulation, require all insured depository institutions to use the official statement in advertising and to prohibit its use in the advertisement of nondeposit investment products. Section 9 of the FDIA authorizes the FDIC to prescribe "such rules and regulations as it may deem necessary to carry out the provisions of [the FDIA] or of any other law which it has the responsibility of administering or enforcing". 12 U.S.C. 1819(a) Tenth. The Supreme Court has stated that "[w]here the empowering provision of a statute states simply that the agency may 'make * * * such rules and regulations as may be necessary to carry out the provisions of this Act,' * * * the validity of the regulation will be sustained so long as it is 'reasonably related to the purposes of the enabling legislation'". *Mourning v. Family Publications Service, Inc.*, 411 U.S. 356, 369 (1973) (quoting *Thorpe v. Housing Authority of the City of Durham*, 393 U.S. 268, 280-281 (1969)). Congress, in creating the FDIC, sought to instill public confidence in the banking system, promote safe and sound banking

practices, eliminate runs on banks by depositors, and safeguard deposits. See *FDIC v. Allen*, 584 F. Supp. 386, 397 (E.D. Tenn. 1984); *Doherty v. United States*, 94 F.2d 495, 497 (8th Cir. 1938); *Weir v. United States*, 92 F.2d 634, 636 (7th Cir. 1937). The proposed rule seeks to promote stability and confidence in the banking system and avoid runs on banks by depositors. It is therefore reasonably related to the enabling legislation. Similarly, in promoting the aforementioned goals, the use or non-use of the official statement is related to the safety and soundness of insured depository institutions and is therefore subject to regulation under section 8(a) of the FDIA, 12 U.S.C. 1818(a), and section 9(a) of the FDIA, 12 U.S.C. 1819(a) Tenth. See also *FDIC v. Sumner Fin. Corp.*, 451 F.2d 898, 903 ("the FDIC has the power to make such rules as are reasonable and necessary to effectuate the purposes of the act").

(e) Clarification of Delegated Authority

Part 328 provides that the non-English equivalent of the official advertising statement may be used in any advertisement, provided, that the translation has had the prior written approval of the Corporation. 12 CFR 328.3(e). The proposed rule clarifies that the Director, Division of Compliance and Consumer Affairs; the Deputy Director, Division of Compliance and Consumer Affairs; and any Regional Director, Division of Compliance and Consumer Affairs, may provide such approval on behalf of the FDIC.

C. Request for Comment—Electronic Banking Issues

In recent years, new and innovative media by which insured depository institutions may market their products and transact business have developed. Such media include computer networks such as the Internet. Many financial institutions have established "world wide web sites"⁵ by which customers may obtain information about an institution and, in certain cases, transact business with the institution. This recent proliferation of world wide web sites gives rise to certain issues concerning whether and under what circumstances part 328 should apply with respect to the Internet or other computer networks. The FDIC is not currently proposing any changes to the rule to address explicit questions arising out of this new technology. However, these issues are discussed below and the FDIC is also soliciting comment for the

purpose of gathering information from the public on such issues.

Neither the proposed or existing rule define the term "advertisement". The staff is of the view that such term as used in the proposed and existing rule is not limited to television, radio, or print advertisements. Rather, such term would include, but not be limited to, advertisements transmitted via computer networks such as the Internet. Consumers using the Internet may typically view any one of an institution's web pages⁶ directly, or may enter the institution's top level or "home page". The staff is of the view that every institution's home page is to some extent an advertisement and accordingly should contain the official statement to the extent required by the rule.⁷ Whether subsidiary web pages contain advertisements will vary depending upon the content of the information within the particular web page. The staff is of the view that each such subsidiary web page that contains an advertisement should include the official statement, unless such advertisement is subject to one of the exceptions in § 328.3(c).

The FDIC also seeks comment on whether and under what circumstances it should require insured depository institutions to utilize the electronic equivalent of the official bank or savings association sign in their world wide web sites. Should such determination be different with respect to world wide web sites at which business may be transacted as opposed to sites where only information is conveyed?

D. Paperwork Reduction Act

The proposed rule would not constitute a "collection of information" within the meaning of section 3502(3) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Accordingly, the procedural and analytical requirements prescribed by that Act do not apply to the proposed rule.

E. Regulatory Flexibility Act

Compliance with the proposed rule takes only nominal advertising space or time and does not add significantly to the cost of advertisement. Insured banks have complied with the identical requirement for over sixty years without significant expense. Accordingly, the

⁶Web pages vary in length and may in certain cases encompass several computer screens of information.

⁷The staff's view is with respect to part 328 only. We do not express an opinion as to whether institutions' home pages are advertisements for other purposes. Furthermore, staff's views on this matter would not preclude an institution from demonstrating that its home page does not contain an advertisement for purposes of part 328.

⁴Also reported in 60 FR 62345 (December 6, 1995).

⁵The FDIC is aware of over 200 insured depository institutions that have a presence on the Internet.

Board hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603 and 604) are not applicable.

List of Subjects in 12 CFR Part 328

Advertising, Bank deposit insurance, Savings associations, Signs and symbols.

For the reasons stated in the preamble, the Board of Directors of the FDIC proposes to amend 12 CFR part 328 as follows:

PART 328—ADVERTISEMENT OF MEMBERSHIP

1. The authority citation for part 328 is revised to read as follows:

Authority: 12 U.S.C. 1818(a), 1819, 1828(a).

2. Section 328.0 is revised to read as follows:

§ 328.0 Scope.

This part 328 describes the official bank sign and the official savings association sign, and prescribes their use by insured depository institutions. It also prescribes the official advertising statement insured depository institutions must include in certain advertisements. Finally, it prohibits the use of the official advertising statement and similar statements in advertisements concerning nondeposit investment products. For purposes of this part 328, the term "insured depository institution" includes insured branches of a foreign bank. Insured depository institutions which maintain offices that are not insured in foreign countries are not required to include the advertising statement in advertisements published in foreign countries.

3. Section 328.2 is revised to read as follows:

§ 328.2 Procurement and display of official signs.

(a) *Display*—(1) *Official sign*. Each insured depository institution shall continuously display its official sign at the locations specified in paragraph (a)(2)(i) of this section, as follows:

(i) *Insured banks*. At the option of the insured bank, its official sign is either the official bank sign or the official savings association sign.

(ii) *Insured savings associations*. Insured savings associations shall display the official savings association sign as provided herein. An insured

savings association shall not display the official bank sign at its principal place of business or at any of its branches.

(2) *Locations*—(i) *Required locations*. Except as provided in paragraph (a)(2)(ii) of this section, an insured depository institution shall display its official sign at each station or window where insured deposits are usually and normally received in the depository institution's principal place of business and in all its branches.

(ii) *Other locations*—(A) *Within the institution*. An insured depository institution may display its official sign in other locations within the insured depository institution in other sizes, colors, or materials.

(B) *Other facilities*. An insured depository institution is permitted, but is not required, to display its official sign on remote service facilities including automated teller machines, cash dispensing machines, point-of-sale terminals, and other electronic facilities where deposits are received. If an insured depository institution displays its official sign at a remote service facility, and if there are any noninsured institutions that share in the remote service facility, any insured depository institution that displays its official sign must clearly show that the sign refers only to a designated insured depository institution(s).

(3) *Newly insured institutions*—(i) *Initial grace period*. A depository institution becoming an insured depository institution shall not be required to display its official sign until twenty-one (21) days after its first day of operation as an insured depository institution.

(ii) *Early display permitted*. An insured depository institution may display its official sign prior to the date display is required.

(b) *Obtaining signs*—(1) *Procurement from the FDIC*—(i) *Cost; design*. An insured depository institution may procure the appropriate official signs from the Corporation for official use at no charge.

(ii) *Order blanks*. The Corporation shall, upon request, furnish an order blank to an insured depository institution for use in procuring official signs.

(iii) *Safe harbor rule*. Any insured depository institution which promptly, after the receipt of an order blank, fills it in, executes it, and properly directs and forwards it to the Federal Deposit Insurance Corporation, Washington, D.C. 20429, shall not be deemed to have violated this section on account of not displaying an official sign, or signs, unless the insured depository institution shall omit to display such

official sign or signs after receipt thereof.

(2) *Procurement from other sources*. Insured depository institutions may procure official signs or signs reflecting variations in size, colors, or materials from commercial suppliers.

(c) *Receipt of deposits at same teller's station or window as noninsured institution*. An insured depository institution may not receive deposits at any teller's station or window where any noninsured institution receives deposits or similar liabilities, except a remote service facility as defined in § 303.0(b)(18) of this chapter.

(d) *Required changes in signs*. The Corporation may require any insured depository institution, upon at least 30 days' written notice, to change the wording of its official signs in a manner deemed necessary for the protection of depositors or others.

4. Section 328.3 is revised to read as follows:

§ 328.3 Official advertising statement and manner of use by insured depository institutions.

(a) *Mandatory use*. Each insured depository institution shall include the official advertising statement, prescribed in paragraph (b) of this section, in all of its advertisements except as provided in paragraphs (c) and (d) of this section.

(1) An insured depository institution is not required to include the official advertising statement in its advertisements until thirty (30) days after its first day of operation as an insured depository institution.

(2) In cases where the Board of Directors of the Federal Deposit Insurance Corporation shall find the application to be meritorious, that there has been no neglect or willful violation in the observance of this section and that undue hardship will result by reason of its requirements, the Board of Directors may grant a temporary exemption from its provision to a particular depository institution upon its written application setting forth the facts. For the procedure to be followed in making such application see § 303.8 of this chapter.

(3) In cases where advertising copy not including the official advertising statement is on hand on the date the requirements of this section become operative, the insured depository institution may cause the official advertising statement to be included by use of a rubber stamp or otherwise.

(4) When a foreign depository institution has both insured and noninsured U.S. branches, the depository institution must identify

which branches are insured and which branches are not insured in all of its advertisements requiring the use of the official advertising statement.

(b) *Official advertising statement.* The official advertising statement shall be in substance as follows: "Member of the Federal Deposit Insurance Corporation". The word "the" or the words "of the" may be omitted. The words "This bank is a", "This savings association is a", "This savings and loan is a", or the words "This institution is a" or the name of the insured depository institution followed by the words "is a" may be added before the word "member." The short title "Member of FDIC" or "Member FDIC" or a reproduction of the "symbol" may be used by insured depository institutions at their option as the official advertising statement. The official advertising statement shall be of such size and print to be clearly legible. Where it is desired to use the "symbol" of the Corporation as the official advertising statement, and the "symbol" must be reduced to such proportions that the small lines of type and the Corporation seal therein are indistinct and illegible, the Corporation seal in the letter C and the two lines of small type may be blocked out or dropped.

(c) *Types of advertisements which do not require the official advertising statement.* The following types of advertisements need not include the official advertising statement:

(1) Statements of condition and reports of condition of an insured depository institution which are required to be published by state or federal law;

(2) Stationery (except when used for circular letters), envelopes, deposit slips, checks, drafts, signature cards, deposit passbooks, certificates of deposit, and other similar items;

(3) Signs or plates in the banking office or attached to the building or buildings in which the banking offices are located;

(4) Listings in directories;

(5) Advertisements not setting forth the name of the insured depository institution;

(6) Display advertisements in depository institution directory, provided the name of the depository institution is listed on any page in the directory with a symbol or other descriptive matter indicating it is a member of the Federal Deposit Insurance Corporation;

(7) Joint or group advertisements of banking services where the names of insured depository institutions and noninsured institutions are listed and form a part of such advertisements;

(8) Advertisements by radio or television, other than display advertisements, which do not exceed thirty (30) seconds in time;

(9) Advertisements which are of the type or character making it impractical to include thereon the official advertising statement including, but not limited to, promotional items such as calendars, matchbooks, pens, pencils, and key chains;

(10) Advertisements which contain a statement to the effect that the depository institution is a member of the Federal Deposit Insurance Corporation, or that the depository institution is insured by the Federal Deposit Insurance Corporation, or that its deposits or depositors are insured by the Federal Deposit Insurance Corporation to the maximum of \$100,000 for each depositor;

(11) Advertisements which do not relate to insured deposit products or services.

(d) *Prohibited use.* (1) Except as provided in paragraph (d)(2) of this section, an insured depository institution may not include the official advertising statement or refer to either federal deposit insurance or the Federal Deposit Insurance Corporation in any advertisement relating to nondeposit investment products or similar nondeposit products.

(2) In advertisements containing information about both insured deposits and nondeposit investment products or similar nondeposit products, the information concerning insured deposits shall be clearly segregated from the information about nondeposit investment products (or similar nondeposit products) and shall contain either the official statement, or any similar statement, including, but not limited to, statements to the effect that the depository institution's deposits or depositors are insured by the Federal Deposit Insurance Corporation to the maximum of \$100,000 for each depositor, or that specific deposit products are insured by the Federal Deposit Insurance Corporation.

(e) *Billboard advertisements.* Where an insured depository institution has billboard advertisements in use as of [the effective date of the final rule] which are required to include the official advertising statement and the insured depository institution has direct control of such advertisements either by possession or under the terms of a contract, the institution shall, as soon as it can consistent with its contractual obligations, cause the official advertising statement to be included therein.

(f) *Official advertising statement in non-English language.* The non-English equivalent of the official advertising statement may be used in any advertisement: *Provided,* That the translation has had the prior written approval of the Corporation. Authority to provide such approval on behalf of the Corporation is hereby delegated to the Director, Division of Compliance and Consumer Affairs; the Deputy Director, Division of Compliance and Consumer Affairs; and each Regional Director, Division of Compliance and Consumer Affairs.

§ 328.4 [Removed]

5. Section 328.4 is removed.

By order of the Board of Directors.

Dated at Washington, D.C., this 21st day of January, 1997.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 97-3319 Filed 2-10-97; 8:45 am]

BILLING CODE 6714-01-P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: In response to concerns expressed by a number of small business investment companies (SBICs), SBA is proposing to modify the examination fees charged to SBICs. SBA believes that the current fee schedule places a disproportionate burden on certain classes of licensees (particularly those with the largest amount of total assets) and, in some cases, results in fee assessments that exceed reasonable charges based on the level of effort and time associated with the examination process.

DATES: Comments must be submitted on or before March 13, 1997.

ADDRESSES: Written comments should be addressed to Don A. Christensen, Associate Administrator for Investment, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6300, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Leonard W. Fagan, Investment Division, at (202) 205-7583.

SUPPLEMENTARY INFORMATION: On January 31, 1996 the Small Business Administration (SBA) published final regulations which, among other things, increased the examination fees charged to SBICs. See 61 FR 3177. Fees