determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and Transnuclear. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this rule because this amendment does not involve any provisions that would impose backfits as defined in the backfit rule. Therefore, a backfit analysis is not required.

List of Subjects in 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d–48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1021 is added to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1021.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the TN–32 Dry Storage Cask.

Docket Number: 72–1021.

Certificate Expiration Date: April 19, 2020.

Model Number: TN–32, TN–32A, TN–32B.

Dated at Rockville, Maryland, this 6th day of March, 2000.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 00–6630 Filed 3–17–00; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Regulation H; Docket No. R–1064]

Membership of State Banking Institutions in the Federal Reserve System

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule with request for public comments.

SUMMARY: The Board is amending Regulation H to implement provisions of the Gramm-Leach-Bliley Act for state member banks. The Gramm-Leach-Bliley Act authorizes state member banks to control, or hold an interest in, financial subsidiaries which may conduct certain activities that are financial in nature or incidental to a financial activity. The Board has promulgated this rule on an interim basis, effective on March 11, 2000, in order to allow state member banks that meet applicable criteria to acquire control of, or an interest in, a financial subsidiary as soon as possible following the effective date of the relevant provisions of the Gramm-Leach-Bliley Act.

The Board solicits comments on all aspects of the interim rule and will amend the rule as appropriate in response to comments received.

DATES: This interim rule is effective on March 11, 2000. Comments must be submitted on or before May 12, 2000.

ADDRESSES: Comments, which should refer to Docket No. R–1064, may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551 or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m., weekdays or delivered to the guard station in the Eccles Building Courtyard on 20th Street, N.W. (between Constitution Avenue and C Street, N.W.) at any time. Comments will be available for inspection and copying by any member of the public in the Freedom of Information Office, Room MP–500 of the Martin Building, between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in § 261.8 of the Board's Rules Regarding Availability of Information (12 CFR 261.8).

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associate General Counsel (202/452–3625), Kieran J. Fallon, Senior Counsel (202/452–5270), Michael J. O'Rourke, Counsel (202/452–3288), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), contact Janice Simms (202/872–4984).

SUPPLEMENTARY INFORMATION:

Background

The Board is amending Regulation H (Membership of State Banking Institutions in the Federal Reserve System) to implement section 121 of the Gramm-Leach-Bliley Act (GLB Act) (Pub. L. 106–102; 113 Stat. 1373–82) as it applies to state member banks. The Comptroller of the Currency has recently issued a rule to implement those parts of section 121 applicable to national banks (65 FR 12905, March 10, 2000). The Board's rule for state member

banks parallels that adopted by the Comptroller.

The GLB Act permits qualifying state member banks to control, or hold an interest in, a new type of subsidiary, referred to as a ''financial subsidiary.'' A financial subsidiary may engage in activities that have been determined to be financial in nature or incidental to financial activities under the GLB Act, including general insurance agency activities in any location and travel agency activities. In addition, a financial subsidiary may engage in underwriting, dealing in and making a market in all types of securities—activities previously prohibited for subsidiaries of state member banks by the Glass-Steagall Act. A financial subsidiary also may conduct any activity that the state member bank is permitted to conduct directly.

The GLB Act prohibits financial subsidiaries from engaging in certain types of activities. As a general matter, a financial subsidiary may not engage as principal in underwriting insurance, providing or issuing annuities, real estate development or real estate investment, and merchant banking and insurance company investment activities.

A financial subsidiary is defined as any company controlled by one or more insured depository institutions, but does not include (1) a subsidiary that the state member bank is specifically authorized to hold by the express terms of Federal law (other than section 9 of the Federal Reserve Act), such as an Edge Act subsidiary held under section 25 of the Federal Reserve Act, or (2) a subsidiary that engages only in activities that the parent bank could conduct directly and that are conducted on the same terms and conditions that govern the conduct of the activity by the state member bank.

The interim rule sets forth the criteria that state member banks must meet to own or control a financial subsidiary, the activities that financial subsidiaries may and may not engage in, and the procedures that will be applied to state member banks that own or control a financial subsidiary and that fail to continue to meet the Act's eligibility requirements. The interim rule also establishes a streamlined notice procedure for state member banks to receive the Federal Reserve's approval to acquire a financial subsidiary or engage in a newly authorized financial activity through an existing financial subsidiary.

The authority for a state member bank to own or control a financial subsidiary is in addition to the existing authority of state member banks to establish so-called operations subsidiaries that engage in activities that the parent bank may conduct directly and that are conducted on the same terms and conditions that govern the conduct of these activities by the bank. See 12 CFR 250.141. Thus, state member banks may continue to retain and to establish new operations subsidiaries permitted under state law and the Board's interpretation without complying with the requirements of this subpart applicable to financial subsidiaries.

Description of the Interim Rule

Section 208.71—What Are the Requirements To Invest in or Control a Financial Subsidiary?

Under the GLB Act, a state member bank may control, or hold an interest in, a financial subsidiary only if certain criteria are met. First, the state member bank and each of its depository institution affiliates must be well capitalized and well managed. An institution is well capitalized if it meets or exceeds the capital levels designated as ''well capitalized'' by the institution's appropriate Federal banking agency under section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o). Well managed is defined by reference to the achievement of specific examination ratings.[1] Second, the aggregate consolidated total assets of the bank's financial subsidiaries may not exceed the lesser of 45 percent of the bank's consolidated total assets or $50 billion. This dollar figure will be adjusted according to an indexing mechanism to be established jointly by the Board and the Secretary of the Treasury.

Third, if the state member bank is one of the largest 100 insured banks, the bank must have at least one issue of outstanding eligible debt that is currently rated in one of the three highest investment grade rating categories by a nationally recognized statistical rating organization. Eligible debt refers to unsecured debt that has an initial maturity of more than 360 days. The debt must be issued and outstanding, may not be supported by any form of credit enhancement, and may not be held in whole or in any significant part by affiliates or insiders of the bank or by any other person acting on behalf of or with funds from the bank or an affiliate. If the state member bank is one of the second 50 largest insured banks, the bank may meet this debt rating requirement or an alternative criteria that the Board and the Secretary of the Treasury anticipate establishing by regulation in the near future. The debt rating and alternative criteria do not apply to a bank if its financial subsidiaries do not engage in any newly authorized financial activity as principal.

Finally, the state member bank must obtain the Federal Reserve's approval to acquire control of, or an interest in, the financial subsidiary using the streamlined notice procedures set forth in § 208.76 of the rule. The state member bank also must obtain any necessary approvals from its state supervisory authority.

Section 208.72—What activities may a financial subsidiary conduct?

A financial subsidiary of a state member bank may conduct only three types of activities:

- Activities that have been determined to be financial in nature or incidental to financial activities and permissible for financial holding companies under section 4(k) of the Bank Holding Company Act of 1956. These activities are listed in § 225.86 of the Board's Regulation Y; [2]
- Activities that the Secretary of the Treasury, in consultation with the Board, determines to be financial in nature or incidental to financial activities and permissible for financial subsidiaries of national banks pursuant to section 5136A(b) of the Revised Statutes of the United States (12 U.S.C. 24a(b)); and
- Activities that the state member bank is permitted to engage in directly, subject to the same terms and conditions that govern the conduct of the activity by the state member bank.

As required by the GLB Act, the rule prohibits a financial subsidiary of a state member bank from engaging as principal in insurance underwriting (except to the extent permitted under state law and the GLB Act), providing or issuing annuities, real estate investment or development (except to the extent expressly authorized by applicable state and Federal law), and merchant banking and insurance company investment activities permitted for financial holding companies under sections 4(k)(4)(H) or (I) of the Bank Holding Company Act.

[1] *See* 12 C.F.R. 208.77(f). A depository institution that has not been examined will be considered well managed if its appropriate Federal banking agency determines that the institution's managerial resources are satisfactory.

[2] On March 10, 2000, the Board adopted amendments to its Regulation Y, which include a new § 225.86 that sets forth the activities that are financial in nature or incidental to financial activities under section 4(k) of the Bank Holding Company Act.

Section 208.73—What Additional Restrictions Are Applicable to State Member Banks With Financial Subsidiaries?

The GLB Act requires that a state member bank that owns or controls a financial subsidiary comply with a number of prudential safeguards. Section 208.73 implements these requirements.

For purposes of determining its compliance with all applicable regulatory capital standards, the state member bank must deduct its aggregate outstanding equity investment, including retained earnings, in all financial subsidiaries from its total assets and tangible equity and deduct such amount from its total risk-based capital, and ''de-consolidate'' the assets and liabilities of the financial subsidiary from those of the bank. The capital deduction must be made equally from Tier 1 and Tier 2 capital. The bank must meet all applicable capital requirements—including the well capitalized requirement of § 208.71 and the capital levels established by the Board under section 38 of the Federal Deposit Insurance Act—after these adjustments.

Subsection (b) requires that the state member bank establish policies and procedures to manage the financial and operational risks arising from its ownership of a financial subsidiary and preserve the bank's separate corporate identity. In addition, the rule specifies that a financial subsidiary of a state member bank is considered an affiliate (and not a subsidiary) of the bank for purposes of sections 23A and 23B of the Federal Reserve Act, and a subsidiary of a bank holding company (and not a subsidiary of a bank) for purposes of the anti-tying prohibitions of the Bank Holding Company Act Amendments of 1970.

Section 208.74—What Happens if the State Member Bank Fails to Continue To Meet Certain Requirements?

The Board will give notice to a state member bank that owns or controls a financial subsidiary if the Board finds that the state member bank or any of its depository institution affiliates fails to continue to be well capitalized and well managed, that the assets of the bank's financial subsidiaries exceed 45 percent of the parent bank's consolidated assets, or that the state member bank has failed to comply with the operational safeguards required by the rule. To assist the Board in enforcing the requirements of the Act, the rule requires a state member bank to notify the Board if the bank learns that any of its depository institution affiliates has ceased to be well capitalized and well managed.

If a state member bank receives a notice of noncompliance from the Board, the bank must execute an agreement with the Board to bring itself back into compliance with the rule's requirements. Any relevant depository institution affiliate also must execute an agreement with its appropriate Federal banking agency to restore itself to well capitalized and well managed status. The Board and the appropriate Federal banking agency may impose conditions on the direct or indirect activities of the state member bank or depository institution affiliate, respectively, until the institution restores its compliance with rule's requirements. If the deficiencies are not corrected within 180 days (or such longer period as the Board may permit), the Board may require the state member bank to divest its financial subsidiaries.

If a state member bank that is one of the largest 100 insured banks fails to continue to meet the debt rating requirement or alternative criteria of § 208.71(b), if applicable, the state member bank may not acquire any additional equity capital (including debt qualifying as capital) of the financial subsidiary until the bank once again meets these requirements.

Section 208.75—What Happens if the State Member Bank or Any of Its Insured Depository Institution Affiliates Has Received Less Than a ''Satisfactory'' CRA Rating?

The GLB Act requires the Board to prohibit a state member bank from acquiring control of a financial subsidiary, or commencing any additional activity or acquiring control of any company through an existing financial subsidiary if the bank or any insured depository institution affiliate has received less than a ''satisfactory'' rating from its appropriate Federal banking agency at its most recent examination under the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*) (CRA). Section 208.75 implements these prohibitions. The rule clarifies that, if this prohibition is in effect, the financial subsidiary may not acquire control of another company by acquiring substantially all of the assets of the company. These prohibitions are effective until the bank or relevant insured depository institution achieves at least a ''satisfactory'' rating in its next examination under the CRA. Subsection (b) clarifies that this section does not prohibit a financial subsidiary from engaging in any additional activity, or acquiring control of a company engaged only in activities, that the state member bank is permitted to engage in directly.

The prohibition applies only if the state member bank or any of its insured depository institution affiliates has received a less than ''satisfactory'' rating in meeting community credit needs at its most recent examination under the CRA. Accordingly, the CRA rating requirement does not apply to special purpose banks that are not subject to CRA examination under the Federal banking agencies' CRA regulations,[3] or to *de novo* insured depository institutions that have not yet received (and are not the successor of an institution that has received) a CRA rating.

Section 208.76—What Federal Reserve Approvals Are Necessary for Financial Subsidiaries?

The rule establishes a streamlined notice procedure for state member banks that seek to engage in newly authorized financial activities through a financial subsidiary. As a general matter, the notice must provide basic information on the financial subsidiary and its existing and proposed activities and include a certification that the state member bank and its depository institution affiliates meet the requirements of the GLB Act and the rule to own or control a financial subsidiary. If the notice relates to the initial affiliation of the state member bank with a company engaged in insurance activities, the notice also must describe the company's insurance activities and identify the states where the company holds an insurance license. This additional information will assist the Board in fulfilling its obligations to consult with the relevant state insurance authorities under section 307(c) of the GLB Act.

A state member bank must file a notice with the appropriate Reserve Bank prior to acquiring control of, or an interest in, a financial subsidiary, or engaging in an additional financial activity through an existing financial subsidiary. A notice is not required for a financial subsidiary to engage in an additional activity that the parent state member bank is permitted to conduct directly. A notice will be deemed approved on the fifteenth day after receipt by the appropriate Reserve Bank of an informationally complete submission, unless the notice is disapproved or the bank is notified that additional time to review the notice is needed.

[3] *See* 12 C.F.R. 228.11(c)(3).

II. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires an agency to publish an initial regulatory flexibility analysis with this interim regulation. The interim rule implements the new investment powers granted to state member banks under authority of section 121 of the Gramm-Leach-Bliley Act. (Pub. L. 106–102; 113 Stat. 1373–82). As the rule authorizes expanded activities by state member banks, no additional burdens are being placed on the banks and, in fact, these new powers should enhance the overall efficiency and flexibility of the banks. The rule does not overlap with other federal rules, and enables state member banks to engage in an expanded range of activities using a streamlined notification procedure. The notice procedure described in this rule is voluntary, and the criteria set forth in the rule to control, or hold an interest in, a financial subsidiary, are those required by the Gramm-Leach-Bliley Act.

The initial regulatory flexibility analysis also requires a description of and, where feasible, an estimate of the number of small entities to which the rule will apply. The interim rule will apply to all state member banks (which numbered 1011 as of December 31, 1999), regardless of size, and allows small banking organizations to take advantage of the expanded powers conferred by the Gramm-Leach-Bliley Act with minimal additional burdens. The Board specifically seeks comment on the likely burden that the interim rule may impose on banks that seek to control or hold an investment in financial subsidiaries.

III. Administrative Procedure Act

The Board will make the interim rule effective on March 11, 2000, without first reviewing public comments. Pursuant to 5 U.S.C. 553, the Board finds that it is impracticable to review public comments prior to the effective date of the interim rule, and that there is good cause to make the interim rule effective on March 11, 2000. This is because the rule sets forth procedures to implement statutory changes that will become effective on March 11, 2000. The Board is seeking public comment on the interim rule and will amend the rule as appropriate after reviewing the comments.

IV. 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 interim rule under the authority delegated to the Board by the Office of Management and Budget.

The OMB control number for this interim rule is 7100–0292. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the Board has displayed a currently valid OMB control number.

The collection of information requirements in this rulemaking are found in 12 CFR 208.76. This information is required to evidence compliance with section 121 of the Gramm-Leach-Bliley Act. The respondents are current and future state member banks.

The notice cited in 12 CFR 225.76 provides that a state member bank may control, or hold an interest in, a financial subsidiary, or engage in an additional financial activity through an existing financial subsidiary, by filing a single written declaration with the appropriate Federal Reserve Bank. The notice must identify the financial subsidiary and its activities and certify that the bank meets the relevant statutory criteria to own or control a financial subsidiary. In addition, if the notice reflects the initial affiliation of a bank with a company engaged in permissible insurance activities, information regarding the nature, scope, and authority of such activities must be provided. There will be no reporting form for this information collection. The agency form number for this declaration will be the FR 4017. The Board estimates that approximately 100 state member banks will file this notice during the first year and that it will take an average of 1 hour to complete this notice. This would result in an estimated annual burden of 100 hours. Based on a rate of $20 per hour, the annual cost to the public for this information collection is estimated to be $2,000.

A bank may request confidentiality for the information contained in these information collections pursuant to section (b)(4) and (b)(6) of the Freedom of Information Act (5 U.S.C. 552(b)(4) and (b)(6)).

Comments are invited on: (1) whether the collections of information are necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility; (2) the accuracy of the Federal Reserve's estimate of the burden of the information collections, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503, with copies of such comments to be sent to Mary M. West, Federal Reserve Clearance Officer, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

V. Solicitation of Comments Regarding the Use of ''Plain Language''

Section 722 of the GLB Act requires the Board to use ''plain language'' in all proposed and final rules published after January 1, 2000. The Board invites comments about how to make the interim rule easier to understand, including answers to the following questions:

(1) Is the material organized is an effective manner? If not, how could the material be better organized?

(2) Are the terms of the rule clearly stated? If not, how could the terms be more clearly stated?

(3) Does the rule contain technical language or jargon that is unclear? If not, which language requires clarification?

(4) Would a different format (with respect to the grouping and order of sections and use of headings) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

(5) Would increasing the number of sections (and making each section shorter) clarify the rule? If so, which portions of the rule should be changed in this respect?

(6) What additional changes would make the rule easier to understand?

List of Subjects in 12 CFR Part 208

Accounting, Agriculture, Banks, Banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, Title 12, Chapter II, Part 208 of the Code of Federal Regulations is amended as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for Part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9),

1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106 and 4128.

2. The existing Subpart G—Interpretations is redesignated as Subpart H.

3. A new Subpart G is added to read as follows:

Subpart G—Financial Subsidiaries of State Member Banks

Subpart G—Financial Subsidiaries of State Member Banks

§ 208.71 What are the requirements to invest in or control a financial subsidiary?

(a) *In general.* A state member bank may control, or hold an interest in, a financial subsidiary only if:

(1) The state member bank and each depository institution affiliate of the state member bank are well capitalized and well managed;

(2) The aggregate consolidated total assets of all financial subsidiaries of the state member bank do not exceed the lesser of:

(i) 45 percent of the consolidated total assets of the parent bank; or

(ii) $50,000,000,000, which dollar amount shall be adjusted according to an indexing mechanism jointly established by the Board and the Secretary of the Treasury;

(3) The state member bank, if it is one of the largest 100 insured banks (based on consolidated total assets of the bank as of the end of each calendar year), meets the debt rating or alternative requirement of paragraph (b) of this section, if applicable; and

(4) The Board or the appropriate Reserve Bank has approved the bank to acquire the interest in or control the financial subsidiary under § 208.76.

(b) *Debt rating or alternative requirement for 100 largest insured banks—*

(1) *General.* A state member bank meets the debt rating or alternative requirement of this paragraph (b) if:

(i) The bank has at least one issue of outstanding eligible debt that is currently rated in one of the three highest investment grade rating categories by a nationally recognized statistical rating organization; or

(ii) If the bank is one of the second 50 largest insured banks (based on consolidated total assets of the bank as of the end of each calendar year), the bank satisfies any alternative criteria jointly established by the Board and the Secretary of the Treasury.

(2) *Financial subsidiaries engaged only in financial agency activities.* This paragraph (b) does not apply to a state member bank if the financial subsidiaries of the bank engage in financial activities described in § 208.72(a)(1) and (2) only in an agency capacity.

§ 208.72 What activities may a financial subsidiary conduct?

(a) *Authorized activities.* A financial subsidiary may engage in only the following activities:

(1) Any activity listed in § 225.86 of the Board's Regulation Y (12 CFR 225.86);

(2) Any activity that has been determined to be financial in nature or incidental to a financial activity by the Secretary of the Treasury, in consultation with the Board, pursuant to Section 5136A(b) of the Revised Statutes of the United States (12 U.S.C. 24a(b)); and

(3) Any activity that the state member bank is permitted to engage in directly (subject to the same terms and conditions that govern the conduct of the activity by the state member bank).

(b) *Impermissible activities.* Notwithstanding paragraph (a) of this section, a financial subsidiary may not engage as principal in the following activities:

(1) Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability or death (except to the extent permitted under applicable state law and sections 302 or 303(c) of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1407–1409, 15 U.S.C. 6712 or 6713(c)), or providing or issuing annuities the income of which is subject to tax treatment under section 72 of the Internal Revenue Code (26 U.S.C. 72);

(2) Real estate development or real estate investment, unless otherwise expressly authorized by applicable state and Federal law; and

(3) Any activity permitted for financial holding companies by section 4(k)(4)(H) or (I) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H) and (I)).

§ 208.73 What additional provisions are applicable to state member banks with financial subsidiaries?

(a) *Capital deduction.*

(1) *Capital deduction required.* For purposes of determining compliance with applicable regulatory capital standards (including the well capitalized standard of § 208.71(a)(1)), a state member bank that controls or holds an interest in a financial subsidiary must:

(i) Deduct the aggregate amount of the bank's outstanding equity investment, including retained earnings, in all financial subsidiaries from its total assets and tangible equity and deduct such investment from its total risk-based capital (this deduction shall be made equally from Tier 1 and Tier 2 capital); and

(ii) Not consolidate the assets and liabilities of any financial subsidiary with those of the bank.

(2) *Financial statement disclosure of capital deduction.* Any published financial statement of a state member bank that controls or holds an interest in a financial subsidiary must, in addition to providing information prepared in accordance with generally accepted accounting principles, separately present financial information for the bank reflecting the capital deduction and adjustments required by paragraph (a)(1) of this section.

(b) *Safeguards for the bank.* A state member bank that establishes, controls or holds an interest in a financial subsidiary must:

(1) Establish procedures for identifying and managing financial and operational risks within the state member bank and the financial subsidiary that adequately protect the state member bank from such risks; and

(2) Establish reasonable policies and procedures to preserve the separate corporate identity and limited liability of the state member bank and the financial subsidiaries of the state member bank.

(c) *Application of sections 23A and 23B of the Federal Reserve Act.* For purposes of sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c, 371c–1):

(1) A financial subsidiary of a state member bank shall be deemed an affiliate, and not a subsidiary, of the bank;

(2) The restrictions contained in section 23A(a)(1)(A) of section 23A shall not apply with respect to covered transactions between the bank and any

individual financial subsidiary of the bank;

(3) The bank's investment in a financial subsidiary shall not include retained earnings of the financial subsidiary;

(4) Any purchase of, or investment in, the securities of a financial subsidiary by an affiliate of the bank will be considered to be a purchase of, or investment in, such securities by the bank; and

(5) Any extension of credit by an affiliate of the bank to a financial subsidiary of the bank will be considered to be an extension of credit by the bank to the financial subsidiary if the Board determines that such treatment is necessary or appropriate to prevent evasions of the Federal Reserve Act and the Gramm-Leach-Bliley Act.

(d) *Application of anti-tying prohibitions.* A financial subsidiary of a state member bank shall be deemed a subsidiary of a bank holding company and not a subsidiary of the bank for purposes of the anti-tying prohibitions of section 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1971 et seq.).

§ 208.74 What happens if the state member bank fails to continue to meet certain requirements?

(a) *Qualifications and safeguards.* The following procedures apply to a state member bank that controls or holds an interest in a financial subsidiary.

(1) *Notice by Board.* If the Board finds that a state member bank or any of its depository institution affiliates fails to continue to be well capitalized and well managed or comply with the asset limitation set forth in § 208.71(a)(2) or the safeguards set forth in § 208.73(b), the Board will notify the state member bank in writing and identify the areas of noncompliance.

(2) *Notification by state member bank.* A state member bank must promptly notify the Board if the bank becomes aware that any depository institution affiliate of the bank has ceased to be well capitalized and well managed.

(3) *Execution of agreement.* Within 45 days after receiving a notice under paragraph (a)(1) of this section, or such additional period of time as the Board may permit, the:

(i) State member bank must execute an agreement acceptable to the Board to comply with all applicable capital, management, asset and safeguard requirements; and

(ii) Any relevant depository institution affiliate of the state member bank must execute an agreement acceptable to its appropriate Federal banking agency to comply with all applicable capital and management requirements.

(4) *Imposition of limits.* Until the Board determines that the conditions described in the notice under paragraph (a)(1) of this section are corrected:

(i) The Board may impose any limitations on the conduct or activities of the state member bank or any subsidiary of the bank as the Board determines to be appropriate under the circumstances and consistent with the purposes of section 121 of the Gramm-Leach-Bliley Act (12 U.S.C. 24a, 335, 371c, and 1971), including requiring the Board's prior approval for any financial subsidiary of the bank to acquire any company or engage in any additional activity; and

(ii) The appropriate Federal banking agency for any relevant depository institution affiliate may impose any limitations on the conduct or activities of the depository institution or any subsidiary of that institution as the agency determines to be appropriate under the circumstances and consistent with the purposes of section 121 of the Gramm-Leach-Bliley Act (12 U.S.C. 24a, 335, 371c, and 1971).

(5) *Divestiture.* The Board may require a state member bank to divest control of any financial subsidiary if the conditions described in a notice under paragraph (a)(1) of this section are not corrected within 180 days of receipt of the notice or such additional period of time as the Board may permit. Any divestiture must be completed in accordance with any terms and conditions established by the Board.

(6) *Consultation.* The Board will consult with all relevant Federal and state regulatory authorities in taking any action under this subsection.

(b) *Debt rating or alternative requirement.* If a state member bank does not continue to meet any applicable debt rating or alternative requirement of § 208.71(b), the bank may not, directly or through a subsidiary, purchase or acquire any additional equity capital of any financial subsidiary until the bank restores its compliance with the requirements of that section. For purposes of this paragraph, the term ''equity capital'' includes, in addition to any equity investment, any debt instrument issued by the financial subsidiary if the instrument qualifies as capital of the subsidiary under federal or state law, regulation or interpretation applicable to the subsidiary.

§ 208.75 What happens if the state member bank or any of its insured depository institution affiliates has received less than a ''satisfactory'' CRA rating?

(a) *Limits on establishment of financial subsidiaries and expansion of existing financial subsidiaries.* If a state member bank, or any of its insured depository institution affiliates, has received less than a ''satisfactory'' rating in meeting community credit needs in its most recent examination under the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*):

(1) The state member bank may not, directly or indirectly, acquire control of any financial subsidiary; and

(2) Any financial subsidiary controlled by the state member bank may not commence any additional activity or acquire control, including all or substantially all of the assets, of any company.

(b) *Exception for certain activities.* The prohibition in paragraph (a)(2) of this section does not apply to any activity, or to the acquisition of control of any company that is engaged only in activities, that the state member bank is permitted to conduct directly and that are conducted on the same terms and conditions that govern the conduct of the activity by the state member bank.

(c) *Duration of prohibitions.* The prohibitions described in paragraph (a) of this section shall continue in effect until such time as the state member bank and each insured depository institution affiliate of the state member bank has achieved at least a ''satisfactory'' rating in meeting community credit needs in its most recent examination under the Community Reinvestment Act.

§ 208.76 What Federal Reserve approvals are necessary for financial subsidiaries?

(a) *Notice requirements.* (1) A state member bank may not acquire control of, or an interest in, a financial subsidiary unless it files a notice (in letter form, with enclosures) with the appropriate Reserve Bank.

(2) A state member bank may not engage in any additional activity pursuant to § 208.72(a)(1) or (2) through an existing financial subsidiary unless the state member bank files a notice (in letter form, with enclosures) with the appropriate Reserve Bank.

(b) *Contents of notice.* Any notice required by paragraph (a) of this section must:

(1) In the case of a notice filed under paragraph (a)(1) of this section, describe the transaction(s) through which the bank proposes to acquire control of or an interest in the financial subsidiary;

(2) Provide the name and head office address of the subsidiary;

(3) Provide a description of the current and proposed activities of the financial subsidiary and the specific authority permitting each activity;

(4) Certify that the bank and each of its depository institution affiliates, was well capitalized at the close of the previous calendar quarter, and remains well capitalized as of the date the bank files its notice;

(5) Certify that the bank and each of its depository institution affiliates is well managed as of the date the bank files its notice;

(6) Certify that the bank meets the debt rating or alternative requirement of § 208.71(b), if applicable; and

(7) Certify that the bank and its financial subsidiaries are in compliance with the asset limit set forth in § 208.71(a)(3) both before the proposal and on a pro forma basis.

(c) *Insurance activities.* (1) If a notice filed under paragraph (a) of this section relates to the initial affiliation of the bank with a company engaged in insurance activities, the notice must describe the type of insurance activity that the company is engaged in or plans to conduct and identify each state where the company holds an insurance license and the state insurance regulatory authority that issued the license.

(2) The appropriate Reserve Bank will send a copy of any notice described in this subsection to the appropriate state insurance regulatory authorities and provide such authorities with an opportunity to comment on the proposal.

(d) *Approval procedures.* A notice filed with the appropriate Reserve Bank will be deemed approved on the fifteenth day after receipt of a complete notice by the appropriate Reserve Bank, unless prior to that date the Board or the appropriate Reserve Bank notifies the bank that the notice is approved, that the notice will require additional review, or that the bank does not meet the requirements of this subpart.

§ 208.77 Definitions.

The following definitions shall apply to this subpart:

(a) *Affiliate, Company, Control, and Subsidiary.* The terms ''affiliate'', ''company'', ''control'', and ''subsidiary'' have the meanings given those terms in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).

(b) *Appropriate Federal Banking Agency, Depository Institution, Insured Bank and Insured Depository Institution.* The terms ''appropriate Federal banking agency'', ''depository institution'', ''insured bank'' and ''insured depository institution'' have the meanings given those terms in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(c) *Eligible Debt.* The term ''eligible debt'' means unsecured debt with an initial maturity of more than 360 days that:

(1) Is not supported by any form of credit enhancement, including a guarantee or standby letter of credit; and

(2) Is not held in whole or in any significant part by any affiliate, officer, director, principal shareholder, or employee of the bank or any other person acting on behalf of or with funds from the bank or an affiliate of the bank.

(d) *Financial Subsidiary.* The term ''financial subsidiary'' means any company that is controlled by one or more insured depository institutions *other than:*

(1) A subsidiary that only engages in activities that the state member bank is permitted to engage in directly and that are conducted on the same terms and conditions that govern the conduct of the activities by the state member bank; or

(2) A subsidiary that the state member bank is specifically authorized by the express terms of a Federal statute (other than section 9 of the Federal Reserve Act (12 U.S.C. 321 *et seq.*)), and not by implication or interpretation, to control, such as by section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601–604a or 12 U.S.C. 611–631) or the Bank Service Company Act (12 U.S.C. 1861 *et seq.*).

(e) *Well Capitalized.* The term ''well capitalized'' has the meaning given the term in section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831.).

(f) *Well Managed.* The term ''well managed'' means:

(1) Unless otherwise determined in writing by the appropriate Federal banking agency, the institution has received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under an equivalent rating system) in connection with its most recent examination or subsequent review and at least a rating of 2 for management (if such rating is given); or

(2) In the case of any depository institution that has not been examined by its appropriate Federal banking agency, the existence and use of managerial resources that the appropriate Federal banking agency determines are satisfactory.

By order of the Board of Governors of the Federal Reserve System, March 10, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 340

RIN 3064–AB37

Restrictions on the Sale of Assets from the Federal Deposit Insurance Corporation

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is issuing this rule to implement certain requirements of the Resolution Trust Corporation Completion Act of 1993. Under that law, people or entities that may have done certain acts that might have contributed to the failure of an insured institution may not buy assets of failed institutions from the FDIC. This rule establishes a self-certification process as a prerequisite to the purchase of assets from the FDIC and provides definitions of various terms in the law in order to make the limitations of the law clearer.

EFFECTIVE DATE: July 1, 2000.

FOR FURTHER INFORMATION CONTACT: Steven K.Trout, Senior Resolutions Specialist, Division of Resolutions and Receiverships, Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 898–3758; or Elizabeth Falloon, Counsel, Legal Division, Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 736–0725.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

I. Background

The FDIC is required to issue regulations that accomplish two things. First, the regulations must prohibit the sale of an asset of a failed financial institution to certain individuals or entities who may have contributed to the demise of that institution. Second, the regulations must prohibit the sale of an asset using FDIC financing to certain persons who have defaulted and engaged in fraudulent activities with respect to a loan from the institution.