(ii) Violations of the Home Ownership and Equity Protection Act;

(iii) Violations of section 5 of the Federal Trade Commission Act;

(iv) Violations of section 8 of the Real Estate Settlement Procedures Act; and

(v) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission.

(2) In determining the effect of evidence of practices described in paragraph (c)(1) of this section on the bank's assigned rating, the FDIC considers the nature, extent, and strength of the evidence of the practices; the policies and procedures that the bank (or affiliate, as applicable) has in place to prevent the practices; any corrective action that the bank (or affiliate, as applicable) has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.

■ 5. In Appendix A to part 345, revise paragraph (d) to read as follows:

Appendix A to Part 345—Ratings

* * * * *

(d) *Banks evaluated under the small bank performance standards*—(1) *Lending test ratings.*

(i) *Eligibility for a satisfactory lending test rating.* The FDIC rates a small bank's lending performance ''satisfactory'' if, in general, the bank demonstrates:

(A) A reasonable loan-to-deposit ratio (considering seasonal variations) given the bank's size, financial condition, the credit needs of its assessment area(s), and taking into account, as appropriate, other lending-related activities such as loan originations for sale to the secondary markets and community development loans and qualified investments;

(B) A majority of its loans and, as appropriate, other lending-related activities, are in its assessment area;

(C) A distribution of loans to and, as appropriate, other lending-related activities for individuals of different income levels (including low- and moderate-income individuals) and businesses and farms of different sizes that is reasonable given the demographics of the bank's assessment area(s);

(D) A record of taking appropriate action, when warranted, in response to written complaints, if any, about the bank's performance in helping to meet the credit needs of its assessment area(s); and

(E) A reasonable geographic distribution of loans given the bank's assessment area(s).

(ii) *Eligibility for an ''outstanding'' lending test rating.* A small bank that meets each of the standards for a ''satisfactory'' rating under this paragraph and exceeds some or all of those standards may warrant consideration for a lending test rating of ''outstanding.''

(iii) *Needs to improve or substantial noncompliance ratings.* A small bank may also receive a lending test rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standard for a ''satisfactory'' rating.

(2) *Community development test ratings for intermediate small banks*—(i) *Eligibility for a satisfactory community development test rating.* The FDIC rates an intermediate small bank's community development performance ''satisfactory'' if the bank demonstrates adequate responsiveness to the community development needs of its assessment area(s) through community development loans, qualified investments, and community development services. The adequacy of the bank's response will depend on its capacity for such community development activities, its assessment area's need for such community development activities, and the availability of such opportunities for community development in the bank's assessment area(s).

(ii) *Eligibility for an outstanding community development test rating.* The FDIC rates an intermediate small bank's community development performance ''outstanding'' if the bank demonstrates excellent responsiveness to community development needs in its assessment area(s) through community development loans, qualified investments, and community development services, as appropriate, considering the bank's capacity and the need and availability of such opportunities for community development in the bank's assessment area(s).

(iii) *Needs to improve or substantial noncompliance ratings.* An intermediate small bank may also receive a community development test rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standards for a ''satisfactory'' rating.

(3) *Overall rating*—(i) *Eligibility for a satisfactory overall rating.* No intermediate small bank may receive an assigned overall rating of ''satisfactory'' unless it receives a rating of at least ''satisfactory'' on both the lending test and the community development test.

(ii) *Eligibility for an outstanding overall rating.* (A) An intermediate small bank that receives an ''outstanding'' rating on one test and at least ''satisfactory'' on the other test may receive an assigned overall rating of ''outstanding.''

(B) A small bank that is not an intermediate small bank that meets each of the standards for a ''satisfactory'' rating under the lending test and exceeds some or all of those standards may warrant consideration for an overall rating of ''outstanding.'' In assessing whether a bank's performance is ''outstanding,'' the FDIC considers the extent to which the bank exceeds each of the performance standards for a ''satisfactory'' rating and its performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).

(iii) *Needs to improve or substantial noncompliance overall ratings.* A small bank may also receive a rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standards for a ''satisfactory'' rating.

* * * * *

Dated: July 19, 2005.

Julie L. Williams,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, July 26, 2005.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 19th day of July, 2005.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 05–15227 Filed 8–1–05; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 335

RIN 3064–AC88

Securities of Nonmember Insured Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is adopting a final rule amending part 335 of its regulations with one nonsubstantive change from the interim final rule published on March 31, 2005, in the **Federal Register** (see 70 FR 16398). The final rule adopts amendments to the FDIC's securities disclosure regulations applicable to state nonmember banks with securities required to be registered under section 12 of the Securities Exchange Act of 1934 (Exchange Act). The final rule reflects amendments to the Securities Exchange Act of 1934 made by the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley Act), and accommodates certain operational changes within the FDIC. The rule also incorporates through cross reference changes in regulations adopted by the Securities Exchange and Commission (SEC) into the provisions of the FDIC's securities regulations. Incorporation by reference will assure that the FDIC's regulations remain substantially similar to the SEC's regulations, as required by law.

DATES: These amendments are effective on August 2, 2005.

FOR FURTHER INFORMATION CONTACT: Dennis Chapman, Senior Staff Accountant, Division of Supervision and Consumer Protection, (202) 898–8922; Mary Frank, Senior Financial Analyst, Division of Supervision and

Consumer Protection, (202) 898–8903; or Mark G. Flanigan, Counsel, Legal Division, (202) 898–7426, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Section 12(i) of the Exchange Act, as amended (15 U.S.C. 78l(i)), authorizes the FDIC to issue regulations applicable to the securities of state nonmember banks that are substantially similar to those of the SEC with respect to its powers, functions, and duties to administer and enforce sections 10A(m) (standards relating to audit committees), 12 (securities registration), 13 (periodic reporting), 14(a) (proxies and proxy solicitation), 14(c) (information statements), 14(d) (tender offers), 14(f) (arrangements for changes in directors), and 16 (beneficial ownership and reporting) of the Exchange Act, and sections 302 (corporate responsibility for financial reports), 303 (improper influence on conduct of audits), 304 (forfeiture of certain bonuses and profits), 306 (insider trades during blackout periods), 401(b) (disclosure of pro forma financial information), 404 (management assessment of internal controls), 406 (code of ethics for senior financial officers), and 407 (disclosure of audit committee financial expert) of the Sarbanes-Oxley Act (codified at 15 U.S.C. 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265), in regard to the depository institutions for which it is the primary Federal regulator. These regulations must be substantially similar to the regulations of the SEC under the listed sections of the Exchange Act and the Sarbanes-Oxley Act, unless the FDIC publishes its reasons for deviating from the SEC's rules. The amendments to this part incorporate amendments to the Exchange Act, and changes to the SEC regulations that the FDIC is required to administer and enforce with respect to registered state nonmember banks, including the adoption of Regulation FD (Fair Disclosure).

In addition, certain changes to delegations of authority in part 335 result from FDIC's internal merger of the former Division of Supervision and the former Division of Compliance and Consumer Affairs into the Division of Supervision and Consumer Protection. The reorganization also created area offices in Memphis, Tennessee, and Boston, Massachusetts, in place of regional offices in those cities, and title changes for officials in the FDIC headquarters and other offices.

II. Interim Final Rule and Request for Comments

On March 31, 2005, the FDIC published in the **Federal Register** (70 FR 16398) an interim final rule which reflected amendments to the Exchange Act made by the Sarbanes-Oxley Act, and incorporated by cross reference changes in regulations adopted by the SEC into the provisions of the FDIC's securities regulations. The interim final rule also made certain technical amendments to part 335. The FDIC requested comments on all aspects of the rule changes, with comments due by May 31, 2005, the date the interim final rule took effect. Commenters were asked to support any suggestions that the FDIC modify the requirements of the SEC rules, regulations and forms for state nonmember banks by demonstrating how such modification would satisfy the requirements of section 12(i) of the Exchange Act. The FDIC also welcomed comments on the general organization of part 335.

One comment letter was filed on the interim final rule. The commenter, a banker, raised two separate comments regarding provisions of the interim final rule. The FDIC considered each point.

The first comment is that the FDIC's cross reference in section 335.121 (Listing standards related to audit committees) incorporating the SEC's regulation under section 10(A)(m) of the Exchange Act, codified at 17 CFR 240.10A–3, is duplicative. Section 12(i) of the Exchange Act specifically gives the appropriate bank regulatory agencies the powers, functions, and duties to administer and enforce section 10A(m) of the Exchange Act with respect to the institutions under their supervision. While the FDIC has the ability under section 12(i) of the Exchange Act to issue additional or different regulations compared to those of the SEC, the FDIC generally believes that cross referencing the regulations of the SEC simplifies the administration and enforcement of the Exchange Act. It also helps promote uniformity and consistency of administration. Therefore, the FDIC is retaining the direct cross reference to 17 CFR 240.10A–3 in 12 CFR 335.121.

The second comment is that the FDIC's incorporation of SEC Regulation FD (Fair Disclosure) in section 335.221(d) under the heading ''Forms for registration of securities and similar matters'' may not be the most appropriate placement for this cross reference. The commenter suggested that the FDIC give the item its own section within part 335 to make it more prominent and easily recognizable to bankers and their counsel. The FDIC recognizes the concern for making the cross reference to Regulation FD more prominent, and is changing the heading of section 335.221 from its current title to ''Forms for registration of securities; optional forms for small business issuers; and incorporation of Regulation FD (Fair Disclosure).'' The FDIC considers this change in section heading to be a nonsubstantive technical change.

III. Section by Section Analysis

Part 335 is being amended throughout to reflect the addition of section 10A(m) of the Exchange Act and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act to those sections that the FDIC is currently required to administer and enforce under section 12(i) of the Exchange Act.

Section 335.101(b) is amended to clarify that part 335 generally incorporates through cross reference the regulations of the SEC as these regulations are routinely issued, revised, or updated from time to time by the SEC under sections 10A(m), 12, 13, 14, and 16 of the Exchange Act and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act, except as provided at section 335.801 of this part.

New section 335.121 (Listing standards relating to audit committees) specifically incorporates by reference the SEC rule 10A–3 (17 CFR 240.10A–3), adopted pursuant to section 10(A)(m) of the Exchange Act and section 301 of the Sarbanes-Oxley Act, which prohibits any national securities exchange and national securities association from listing the securities of an issuer that fails to comply with specific audit committee requirements including member independence, oversight, complaint procedures, engagement of counsel and other advisors, and funding.

Section 335.201 (Securities exempted from registration) and section 335.261 (Exemptions; terminations and definitions) add SEC Rule 12h–5 (Exemption for subsidiary issuers of guaranteed securities and subsidiary guarantors) (17 CFR 240.12h–5)

Section 335.211 (Registration and reporting) adds SEC Rule 17 CFR 240.12b–37 (Satisfaction of filing requirements).

Section 335.221 (Forms for registration of securities; optional forms for small business issuers; and incorporation of Regulation FD (Fair Disclosure)) adds new paragraph (d) to adopt the requirements of SEC Regulation FD (Fair Disclosure) (17 CFR 243.100 through 243.103), which is designed to address problems of selective disclosure of material information by reporting entities. The

section heading is also being revised to explicitly reference Regulation FD.

Section 335.331 (Acquisition statements, acquisition of securities by issuers, and other matters) is amended to add SEC Rule 13k–1 (Foreign bank exemption from the insider lending prohibition under section 13(k) of the Exchange Act) (17 CFR 240.13k–1) and to change the title.

Section 335.801 (Inapplicable SEC regulations; FDIC substituted regulations; additional information) is amended to add section 10A(m) of the Exchange Act and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act.

Section 335.901 (Delegation of authority to act on matters with respect to disclosure laws and regulations) is amended to reflect certain changes in the organizational structure of the FDIC and to shorten the section heading.

IV. Regulatory Analysis and Procedure

a. Administrative Procedure Act

Public Comment Waiver and Effective Date: Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b) (APA), the FDIC found good cause to issue the interim final rule without first seeking public comment. Section 553(b) of the APA does not apply to rules of agency organization, procedure, or practice, or when the agency for good cause finds that notice and public comment on the rules being promulgated are impractical or unnecessary. The Exchange Act requires that the FDIC issue regulations substantially similar to those of the SEC or publish its reasons for not doing so. Certain portions of 12 CFR 335 that are being amended are organizational; other portions result from amendments to section 12(i) of the Exchange Act or the adoption of regulations by the SEC that were published in proposed form by the SEC. For these reasons, the FDIC confirms its finding that providing notice and an opportunity for public comment on these rules is unnecessary. Nonetheless, the FDIC solicited public comment on the interim final rule and has fully considered the comments that were filed.

As authorized by section 553(d) of the APA, the FDIC finds that there is good cause for this final rule to take effect immediately upon publication in the **Federal Register**. With the exception of the change in the section heading of section 335.221, the final rule is identical to the interim final rule which became effective on May 31, 2005. No purpose would be served by delaying the rule's effective date.

b. Paperwork Reduction Act

This rule contains no new collections of information as defined by the Paperwork Reduction Act.

c. Regulatory Flexibility Act

A regulatory flexibility analysis is required only when the agency must publish a notice of proposed rulemaking (5 U.S.C. 603, 604). Because the revisions to part 335 were published as an interim final rule without a notice of proposed rulemaking, no regulatory flexibility analysis is required.

d. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*) (SBREFA) provides generally for agencies to report rules to Congress and for Congress to review these rules. The reporting requirement is triggered in instances where the FDIC issues a final rule as defined by the Administrative Procedure Act (APA). Because the FDIC is issuing a final rule as defined by the APA, the FDIC will file the reports required by SBREFA.

List of Subjects in 12 CFR Part 335

Accounting, Banks, Banking, Confidential business information, Reporting and recordkeeping requirements, Securities.

■ The Board of Directors of the Federal Deposit Insurance Corporation hereby amends part 335 to Title 12 of the Code of Federal Regulations as follows:

PART 335—SECURITIES OF NONMEMBER INSURED BANKS

■ 1. The authority citation for part 335 continues to read as follows:

Authority: 12 U.S.C. 1819; 15 U.S.C. 78l(i), 78m, 78n, 78p, 78w, 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265.

■ 2. Section 335.101 is amended by revising paragraph (b) to read as follows:

§ 335.101 Scope of part, authority, and OMB control number.

* * * * *

(b) Part 335 generally incorporates through cross reference the regulations of the SEC as these regulations are issued, revised, or updated from time to time under sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley Act), except as provided at § 335.801 of this part. References to the Commission in the regulations of the SEC are deemed to refer to the FDIC unless the context otherwise requires.

■ 3. Section 335.121 is revised to read as follows:

§ 335.121 Listing standards related to audit committees.

The provisions of the applicable SEC regulation under section 10(A)(m) of the Exchange Act shall be followed as codified at 17 CFR 240.10A–3.

■ 4. Section 335.201 is revised to read as follows:

§ 335.201 Securities exempted from registration.

Persons generally subject to registration requirements under Exchange Act section 12 and subject to this part shall follow the applicable and currently effective SEC regulations relative to exemptions from registration issued under sections 3 and 12 of the Exchange Act as codified at 17 CFR 240.3a12–1 through 240.3a12–11, 240.12a–4 through 240.12a–9, and 240.12g–1 through 240.12h–5.

■ 5. Section 335.211 is revised to read as follows:

§ 335.211 Registration and reporting.

Persons with securities subject to registration under Exchange Act sections 12(b) and 12(g), required to report under Exchange Act section 13, and subject to this part shall follow the applicable and currently effective SEC regulations issued under section 12(b) of the Exchange Act as codified at 17 CFR 240.12b–1 through 240.12b–37.

■ 6. Section 335.221 is amended by revising the section heading and by revising paragraph (d) to read as follows:

§ 335.221 Forms for registration of securities; optional forms for small business issuers; and incorporation of Regulation FD (Fair Disclosure).

* * * * *

(d) The provisions of the applicable and currently effective SEC regulation FD shall be followed as codified at 17 CFR 243.100 through 243.103.

■ 7. Section 335.261 is revised to read as follows:

§ 335.261 Exemptions; terminations; and definitions.

The provisions of the applicable and currently effective SEC regulations under sections 12(g) and 12(h) of the Exchange Act shall be followed as codified at 17 CFR 240.12g–1 through 240.12h–5.

■ 8. Section 335.331 is revised to read as follows:

§ 335.331 Acquisition statements, acquisition of securities by issuers, and other matters.

The provisions of the applicable and currently effective SEC regulations

under sections 13(d) and 13(e) of the Exchange Act shall be followed as codified at 17 CFR 240.13d–1 through 240.13e–102 and 240.13k–1.

■ 9. Section 335.801 is amended by revising paragraph (a) to read as follows:

§ 335.801 Inapplicable SEC regulations; FDIC substituted regulations; additional information.

(a) *Filing fees.* Filing fees will not be charged relative to any filings or submissions of materials made with the FDIC pursuant to the cross reference to regulations of the SEC issued under sections 10A(m), 12, 13, 14, and 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78), sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265), and this part.

* * * * *

■ 10. Section 335.901 is amended by revising the section heading and paragraph (a) as follows:

§ 335.901 Delegation of authority to act on matters with respect to disclosure laws and regulations.

(a) Except as provided in paragraph (b) of this section, authority is delegated to the Director, Division of Supervision and Consumer Protection (DSC), and where confirmed in writing by the director, to a deputy director or an associate director, or to the appropriate regional director or deputy regional director or area director, to act on disclosure matters under and pursuant to sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78), sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265), and this part.

* * * * *

Dated at Washington, DC, this 19th day of July, 2005.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 05–15107 Filed 8–1–05; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20111; Directorate Identifier 2004–NM–154–AD; Amendment 39–14207; AD 2005–16–02]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model HS.125 Series 700A Airplanes, Model BAe.125 Series 800A Airplanes, and Model Hawker 800 and Hawker 800XP Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Raytheon Model HS.125 series 700A airplanes, Model BAe.125 series 800A airplanes, and Model Hawker 800 and Hawker 800XP airplanes. This AD requires inspecting to determine the current rating of the circuit breakers of certain cockpit ventilation and avionics cooling system blowers; and replacing the circuit breakers and modifying the blower wiring, as applicable. This AD results from a report indicating that a blower motor seized up and gave off smoke. We are issuing this AD to prevent smoke and fumes in the cockpit in the event that a blower motor seizes and overheats due to excessive current draw.

DATES: Effective September 6, 2005.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of September 6, 2005.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Philip Petty, Aerospace Engineer, Electrical Systems Branch, ACE–119W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4139; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Raytheon Model HS.125 series 700A airplanes, Model BAe.125 series 800A airplanes, and Model Hawker 800 and Hawker 800XP airplanes. That supplemental NPRM was published in the **Federal Register** on May 9, 2005 (70 FR 24341). That supplemental NPRM proposed to require inspecting to determine the current rating of the circuit breakers of certain cockpit ventilation and avionics cooling system blowers; and replacing the circuit breakers and modifying the blower wiring, as applicable.

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

There are about 350 airplanes of the affected design in the worldwide fleet. This AD will affect about 250 airplanes of U.S. registry. The required inspection will take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of this AD on U.S. operators is $16,250, or $65 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.