

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 335

RIN 3064-AD67

#### Securities of Nonmember Insured Banks

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Final rule.

**SUMMARY:** The FDIC is adopting as final the Interim Final Rule published in the **Federal Register** (see 75 FR 73947) on November 30, 2010. 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) and cross references to regulations issued by the Securities Exchange Commission (SEC). The FDIC received no comments in response to the Interim Final Rule concerning these revisions. Accordingly, the Final Rule makes no changes from the Interim Final Rule that preceded it.

The Final Rule incorporates, through cross references, changes in regulations adopted by the SEC into the provisions of the FDIC's securities regulations. Cross referencing will ensure that the FDIC's regulations remain substantially similar to the SEC's regulations, as required by law.

**DATES:** These amendments are effective on May 16, 2011.

#### FOR FURTHER INFORMATION CONTACT:

Dennis Chapman, Senior Staff Accountant, Division of Risk Management Supervision, (202) 898-8922 or [dchapman@fdic.gov](mailto:dchapman@fdic.gov); Maureen Loviglio, Senior Staff Accountant, Division of Risk Management Supervision, (202) 898-6777 or [mloviglio@fdic.gov](mailto:mloviglio@fdic.gov); or Mark G. Flanigan, Counsel, Legal Division, (202) 898-7426 or [mflanigan@fdic.gov](mailto:mflanigan@fdic.gov), 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 experts) 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 the FDIC is the appropriate Federal banking agency. 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.<sup>1</sup> The FDIC's regulations governing state nonmember banks with securities subject to the provisions of the Exchange Act are contained in part 335 of title 12 of the Code of Federal Regulations (CFR).

##### II. Interim Final Rule and Request for Comments

In November 2010, the FDIC's Board of Directors authorized publication of an Interim Final Rule in the **Federal Register** which revised Part 335 by cross referencing changes in regulations adopted by the SEC into the provisions of the FDIC's securities regulations. The Interim Final Rule also modified Part 335 by eliminating references to specific CFR sections and subparts of the SEC's rules, and by replacing them with references to titles and parts of the CFR instead. Further, these changes reflect changes to SEC regulations with respect to small business issuers and provide general guidance to FDIC filers regarding the electronic filing of certain documents.

Finally, the Interim Final Rule made certain nonsubstantive changes to part 335 to improve clarity and readability, and to correct outdated terms. The new part 335 cross referencing provisions are an efficient way to apply SEC Exchange Act rules to state nonmember banks that have securities registered pursuant to the Exchange Act. The part 335 cross referencing revisions will also minimize the need to amend part 335 each time the SEC revises its Exchange Act regulations resulting in amendments to

a CFR section or subpart. The FDIC believes that cross referencing to the regulations of the SEC simplifies the administration and enforcement of the Exchange Act and also helps promote uniformity and consistency of administration.

The FDIC requested comments on all aspects of the rule changes, with comments due by January 31, 2011. 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. No comments were received on the Interim Final Rule.

##### III. Final Rule

As explained above, the FDIC requested comments on the Interim Final Rule that was issued on November 30, 2010, and received no comments during the comment period that ended on January 31, 2011. Accordingly, the FDIC is issuing the Final Rule with no modifications.

##### IV. Regulatory Analysis and Procedure

###### A. Administrative Procedure Act

Pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), the FDIC found good cause to issue the Interim Final Rule without first seeking public comment. 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 Part 335 that are being amended are organizational; other portions result from the amendment or adoption of SEC Exchange Act regulations that were published with notice and opportunity for the public to comment. Nonetheless, the FDIC solicited public comment and received no comments on the Interim Final Rule. For these reasons, the FDIC confirms its finding that the good cause exception provided for in section 553(b)(B) of the APA applies to the Final Rule.

Section 553(d)(3) of the APA provides that the publication of a rule shall be made not less than 30 days before its effective date, except “\* \* \* (3) as otherwise provided by the agency for good cause found and published with the rule.” For reasons that supported its invocation of the good cause exception to section 553(b)(B) of the APA, the FDIC relied upon the good cause exception to section 553(d)(3) and published the Interim Final Rule with

<sup>1</sup> 15 U.S.C. 78l(i).

an immediate effective date. For the same reasons, the FDIC finds that there is good cause for this Final Rule to take effect immediately upon publication in the **Federal Register**. The Final Rule is identical to the Interim Final Rule that became effective on November 30, 2010. No purpose would be served by delaying the Final Rule's effective date.

#### *B. Riegle Community Development and Regulatory Improvement Act*

The Riegle Community Development and Regulatory Improvement Act provides that any new regulations or amendments to regulations prescribed by a Federal banking agency that impose additional reporting, disclosures, or other new requirements on insured depository institutions shall take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form, unless the agency determines, for good cause published with the rule, that the rule should become effective before such time.<sup>2</sup> For the same reasons discussed above, the FDIC finds that good cause exists for an immediate effective date for the Final Rule.

#### *C. Paperwork Reduction Act*

The Final Rule contains no new collections of information as defined by the Paperwork Reduction Act.

#### *D. Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (RFA), a regulatory flexibility analysis is required only when the agency must publish a notice of proposed rulemaking.<sup>3</sup> As discussed in the Interim Final Rule and above, the FDIC has determined for good cause that general notice and opportunity for comment is unnecessary. Therefore, the RFA, pursuant to 5 U.S.C. 601(2), does not apply.

#### *E. Small Business Regulatory Enforcement Fairness Act*

The Office of Management and Budget (OMB) has determined that the Final Rule is not a "major rule" within the meaning of the relevant sections of the Small Business Regulatory Enforcement Act of 1996 (SBREFA) (5 U.S.C. 801, *et seq.*).

As required by SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the Final Rule may be reviewed.

#### *F. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families*

The FDIC has determined that the Final Rule will not affect family well-being within the measure of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105-277, 112 Stat. 2681).

#### *G. Plain Language*

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106-102, 113 Stat. 1338, 1471 (November 12, 1999), requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the revisions to Part 335 in a simple and straightforward manner. It requested comments on all aspects of the Interim Final Rule and received none.

#### **List of Subjects in 12 CFR Part 335**

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

#### **PART 335—SECURITIES OF NONMEMBER INSURED BANKS**

■ Accordingly, the interim rule amending 12 CFR part 335 which was published at 75 FR 73947 on November 30, 2010, is adopted as a final rule without change.

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**BILLING CODE 6714-01-P**

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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 39**

**[Docket No. FAA-2011-0452; Directorate Identifier 2008-SW-27-AD; Amendment 39-16692; AD 2011-10-11]**

**RIN 2120-AA64**

#### **Airworthiness Directives; Agusta S.p.A. Model AB412 Helicopters**

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

**ACTION:** Final rule; request for comments.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for Agusta S.p.A. (Agusta) Model AB412 helicopters. This AD results from

mandatory continuing airworthiness information (MCAI) originated by the aviation authority of Italy to identify and correct an unsafe condition related to the rescue hoist hook installed on this model helicopter. The aviation authority of Italy, with which we have a bilateral agreement, states in the MCAI that a missing lock pin may cause the loss of the hoist hook and any load. The absence of the lock pin constitutes an unsafe condition, and this AD is intended to detect the presence of an identification plate marked "BT 412-124," which indicates that the hook assembly has the lock pin installed to prevent the loss of a rescue hoist hook and its load.

**DATES:** This AD becomes effective on May 31, 2011.

We must receive comments on this AD by July 15, 2011.

**ADDRESSES:** You may send comments by any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Fax:** 202-493-2251.

- **Mail:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- **Hand Delivery:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this AD from Via Giovanni Agusta, 520 21017 Cascina Costa di Samarate (VA), Italy, telephone 39 0331-229111, fax 39 0331-229605/222595, or at [http://customersupport.agusta.com/technical\\_advice.php](http://customersupport.agusta.com/technical_advice.php).

**Examining the AD Docket:** You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** George Schwab, Aerospace Engineer, Safety Management Group, FAA, Rotorcraft Directorate, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 222-5114; fax (817) 222-5961.

**SUPPLEMENTARY INFORMATION:**

<sup>2</sup> 12 U.S.C. 4802.

<sup>3</sup> 5 U.S.C. 603, 604.