



6714-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 335 and 390

RIN 3064-AE07

Securities of State Savings Associations and Securities of Nonmember Insured Banks

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Deposit Insurance Corporation (“FDIC”) proposes to rescind and remove its regulations concerning securities of State savings associations and amend its regulations relating to securities of nonmember insured banks, extending applicability to State savings associations.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by RIN 3064-AE07, by any of the following methods:

- **Agency Website:** <http://www.fdic.gov/regulations/laws/federal/propose.html>.

Follow instructions for submitting comments on the Agency website.

- **E-mail:** Comments@fdic.gov. Include the RIN 3064-AE07 on the subject line of the message.
- **Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

- **Hand Delivery:** Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received must include the agency name and RIN 3064-AE07 for this rulemaking. All comments received will be posted without change to <http://www.fdic.gov/regulations/laws/federal/propose.html>, including any personal information provided. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E-1002, Arlington, VA 22226 by telephone at (877) 275-3342 or (703) 562-2200.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

The Federal Deposit Insurance Corporation (“FDIC”) proposes to rescind and remove from the Code of Federal Regulations 12 CFR part 390 subpart U, entitled *Securities of State Savings Associations* (“part 390 subpart U”) and all references thereto, and revise 12 CFR part 335 (“part 335”), currently entitled *Securities of Nonmember Insured Banks*, to extend its applicability to State savings associations. Part 390 subpart U was included in the

regulations that were transferred to the FDIC from the Office of Thrift Supervision (“OTS”) on July 21, 2011, in connection with the implementation of applicable provisions of Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). Upon removal of part 390 subpart U and all related references from the FDIC rules and regulations and amendment of part 335, all State nonmember banks and State savings associations having securities registered pursuant to the Securities Exchange Act of 1934 (“Exchange Act”) and for which the FDIC has been designated the appropriate federal banking agency will be subject to the disclosure and filing requirements found at part 335. The proposed rule would retitle part 335 as *Securities of State Nonmember Banks and State Savings Associations* and revise part 335 by inserting the term “State savings association” where appropriate so that the FDIC rules governing the disclosure and filing requirements of securities registered pursuant to the Exchange Act will apply to both State nonmember banks and State savings associations. Finally, the proposed rule makes minor technical and conforming amendments to part 335 by removing section 335.901 and deleting all references to the “Division of Supervision and Consumer Protection (DSC)” and adding the words “Division of Risk Management Supervision (RMS)” to reflect an internal FDIC reorganization.

I. Background

The Dodd-Frank Act

The Dodd-Frank Act, signed into law on July 21, 2010, provided for a substantial reorganization of the regulation of State and Federal savings associations and their holding companies.¹ Beginning July 21, 2011, the transfer date established by section 311 of the

¹ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 12 U.S.C. 5301 *et seq.* (2010).

Dodd-Frank Act,² the powers, duties, and functions formerly performed by the OTS were divided among the FDIC, as to State savings associations, the Office of the Comptroller of the Currency (“OCC”), as to Federal savings associations, and the Board of Governors of the Federal Reserve System (“Federal Reserve Board”), as to savings and loan holding companies. Section 316(b) of the Dodd-Frank Act,³ provides the manner of treatment for all orders, resolutions, determinations, regulations, and other advisory materials that had been issued, made, prescribed, or allowed to become effective by the OTS. The section provides that if such regulatory issuances were in effect on the day before the transfer date, they continue in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

Section 316(c) of the Dodd-Frank Act⁴ further directed the FDIC and the OCC to consult with one another and to publish a list of the continued OTS regulations which would be enforced by the FDIC and the OCC, respectively. On June 14, 2011, the FDIC’s Board of Directors approved a “List of OTS Regulations to be Enforced by the OCC and the FDIC Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.” This list was published by the FDIC and the OCC as a Joint Notice in the Federal Register on July 6, 2011.⁵

² 12 U.S.C. 5411.

³ 12 U.S.C. 5414(b).

⁴ 12 U.S.C. 5414(c).

⁵ 76 FR 39247 (July 6, 2011).

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act⁶ granted the OCC rulemaking authority relating to both State and Federal savings associations, nothing in the Dodd-Frank Act affected the FDIC's existing authority to issue regulations under the FDI Act and other laws as the “appropriate Federal banking agency” or under similar statutory terminology. Section 312(c) of the Dodd-Frank Act amended section 3(q) of the Federal Deposit Insurance Act,⁷ and designated the FDIC as the “appropriate Federal banking agency” for State savings associations. As a result, when the FDIC acts as the designated “appropriate Federal banking agency” (or under similar terminology) for State savings associations, as it does here, the FDIC is authorized to issue, modify, and rescind regulations involving such associations.

As noted, on June 14, 2011, operating pursuant to this authority, the FDIC’s Board of Directors reissued and redesignated certain regulations transferred from the former OTS. These transferred OTS regulations were published as new FDIC regulations in the Federal Register on August 5, 2011.⁸ When it republished the transferred OTS regulations as new FDIC regulations, the FDIC specifically noted that its staff would evaluate the transferred OTS regulations and might later recommend incorporating the transferred OTS regulations into other FDIC rules, amending them, or rescinding them, as appropriate.

One of the regulations transferred to the FDIC, 12 CFR part 390 subpart U, covers the former OTS requirements for the disclosure and reporting by State savings associations with securities registered pursuant to section 12(i) of the Exchange Act.⁹

⁶ 12 U.S.C. 5412(b)(2)(B)(i)(II).

⁷ 12 U.S.C. 1813(q).

⁸ 76 FR 47652 (August 5, 2011).

⁹ 15 U.S.C. 78l(i).

The Securities Exchange Act of 1934 and the Securities of State Nonmember Banks and State Savings Associations

The Exchange Act governs the sales of securities offered by an issuer on the secondary market and establishes a mandatory periodic disclosure process that is designed to require registered companies to make public the information that investors would find pertinent in making investment decisions.¹⁰ Section 12(i) of the Exchange Act grants authority to the Federal banking agencies to administer specific sections of the Exchange Act and the Sarbanes-Oxley Act of 2002 (“SOX Act”) with regard to depository institutions for which each Federal bank agency is the appropriate Federal banking agency.¹¹

Prior to the Dodd-Frank Act, section 12(i) of the Exchange Act provided the FDIC with the powers, functions, and duties vested in the Securities and Exchange Commission (“SEC”) to administer and enforce sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act and sections 302-304, 306, 401(b), 404, 406, and 407 of the SOX Act with respect to State nonmember banks. Also pursuant to section 12(i), the OTS had the same vested authority with respect to Federal and State savings associations. As part of the transfer of OTS authority to the OCC for Federal savings associations and FDIC for State savings associations, section 376 (2) of the Dodd-Frank Act amended section 12(i) of the

¹⁰ An issuer that is a bank or savings association is subject to the registration requirements of the Exchange Act if, in general, it has securities listed on a national exchange or, as of the last day of its last fiscal year, it has total assets exceeding \$10 million and a class of equity securities held of record by 2,000 or more persons. See sections 12(b) and 12(g)(1)(B) of the Exchange Act. A bank or savings association issuer will become exempt from the Exchange Act reporting requirements if it is no longer listed on a national exchange or, if it is not listed, the number of record holders falls below 1,200 persons. See sections 12(d) and 12(g)(4) of the Exchange Act.

¹¹ 15 U.S.C. 78l(i). The specifically enumerated sections relate to sections 10A(m) (audit committee listing standards), 12 (securities registration), 13 (periodic reporting), 14(a) (proxies and proxy solicitation), 14(c) (information statements), 14(d) (tender offers), 14(f) (election of directors contests), and 16 (beneficial ownership and reporting) of the Exchange Act, and sections 302-304 and 306 (corporate responsibilities) and 401(b), 404, 406, and 407 (enhanced financial disclosures) of the SOX Act.

Exchange Act to provide the FDIC with authority over both State nonmember banks and State savings associations to administer the enumerated provisions of the Exchange Act and the SOX Act as well as the authority to make such rules and regulations as may be necessary for the execution of the functions vested in the FDIC under section 12(i).¹²

As noted above, the regulations governing OTS implementation of the securities registration and reporting requirements of the Exchange Act, formerly found at 12 CFR part 563d, were transferred in their entirety to the FDIC as they relate to State savings associations, with only non-substantive changes and are now found in the FDIC's rules at part 390 subpart U. Part 390 subpart U incorporates the SEC rules regarding the filing and processing of forms;¹³ the form and content of financial statements;¹⁴ reporting requirements of issuers;¹⁵ and the SEC's interpretations of the rules.

The FDIC's corresponding rules for State nonmember banks are found in part 335. While both part 390 subpart U and part 335 implement identical provisions of the Exchange Act and SEC rules, part 335 does so with greater specificity by incorporating the SEC rules regarding: the certification, suspension of, and removal from listing by exchanges;¹⁶ unlisted trading;¹⁷ forms for notification of action taken by national securities exchanges;¹⁸

¹² Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, section 376 (2), 124 Stat. 1376, 1569 (2010).

¹³ 17 CFR part 249.

¹⁴ 17 CFR part 210.

¹⁵ 17 CFR part 229.

¹⁶ 17 CFR part 240.

¹⁷ *Id.*

¹⁸ 17 CFR part 249.

exemptions from and termination of registration of securities;¹⁹ forms, reports, and acquisition statements of securities issuers and the maintenance of such reports;²⁰ solicitation of proxies and tender offers;²¹ and beneficial ownership statements.²²

After careful review and comparison of part 390 subpart U and part 335, the FDIC proposes to rescind part 390 subpart U and remove all such references from the Code of Federal Regulations. This subpart is substantively similar to part 335 as both State nonmember banks and State savings associations are subject to the same provisions of the Exchange Act and the SOX Act. Part 335, with minor revisions, will appropriately and sufficiently implement the requirements of section 12(i) of the Exchange Act for both State nonmember banks and State savings associations now under FDIC supervision. As discussed above, part 335 provides more detailed guidance than part 390 subpart U by incorporating the SEC rules with greater specificity. Furthermore, State savings associations would benefit from greater clarity and guidance under part 335 with regard to FDIC-specific procedures for the submission of securities filings and forms as well as other FDIC-specific administrative practices that are not provided for in part 390 subpart U.²³

Additionally, at the time of the transfer of the former OTS regulations to the FDIC, there were no registered State savings associations affected by the transfer. Currently, there is only *one* registered State savings association that would be subject to part 335. Any FDIC-

¹⁹ 17 CFR part 240.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* The FDIC incorporates section 16 of the Exchange Act and SEC rule 17 CFR part 240 on beneficial ownership of securities, but requires the filing of FDIC-specific forms in lieu of the SEC's forms. 12 CFR 337.601, 611-613.

²³ 12 CFR 335.701-901 (Addressing confidentiality requests, filing procedures, and delegations of authority).

supervised banks and State savings associations that register under section 12(i) of the Exchange Act in the future would benefit from a consistent and streamlined application of the Federal securities disclosure and filing requirements that would be facilitated through the proposed changes.

Therefore, based on the above, the FDIC proposes to rescind and remove from the Code of Federal Regulations the rules located at part 390 subpart U and expand the scope of part 335 to include State savings associations. If the proposed rule is adopted as a final rule, all State nonmember banks and State savings associations supervised by the FDIC and subject to the registration and reporting requirements of the Exchange Act will be subject to the same FDIC rules, as modified herein.

II. The Proposal

Regarding the functions of the former OTS that were transferred to the FDIC, section 316(b)(3) of the Dodd-Frank Act, 12 U.S.C. 5414(c), in pertinent part, provides that the former OTS's regulations will be enforceable by the FDIC until they are modified, terminated, set aside, or superseded in accordance with applicable law. After reviewing the rules currently found in part 390 subpart U, which concern the securities filing and disclosure requirements of State savings associations, the FDIC, as the appropriate federal banking agency for State savings associations, proposes to remove part 390 subpart U in its entirety and remove all references to Subpart U found in the FDIC rules and regulations in order to avoid confusion and inconsistency. Two references to subpart U are made in Sections 390.321(b)(2) and 390.380(a)(3) of the FDIC rules and regulations. After review, the FDIC finds that these sections would not substantively be affected by the removal of subpart U

from the Code of Federal Regulations and therefore also proposes to remove such references from each section.²⁴

The FDIC also proposes to revise the heading of part 335 by retitling it as *Securities of State Nonmember Banks and State Savings Associations* and revise part 335 by inserting the term “State savings association” where appropriate. The rewording of “Nonmember Insured Banks” to “State Nonmember Banks” reflects more consistent use of defined terms under section 3 of the FDI Act.²⁵ Additionally, minor technical amendments to part 335 will be made by removing section 335.901, which contains the FDIC Board of Directors’ Delegations of Authority related to Part 335, and deleting all references to the “Division of Supervision and Consumer Protection (DSC)” and adding the words “Division of Risk Management Supervision (RMS)” to reflect an internal FDIC reorganization. If the proposal is finalized, 12 CFR part 335 would apply to the securities of both State nonmember banks and State savings associations registered under the Exchange Act, and part 390 subpart U would be removed.

III. Request for Comments

The FDIC invites comments on all aspects of this proposed rulemaking. In particular, the FDIC requests comments on the following questions:

1. Are the provisions of 12 CFR part 335 sufficient to provide consistent and effective filing and disclosure requirements for securities registered under the Exchange Act,

²⁴ Both sections are also part of the transferred OTS regulations pursuant to the Dodd-Frank Act. Section 390.321 (part 390 subpart R) relates to regulatory reporting standards and section 390.380 (part 390 subpart T) relates to the form and content of financial statements.

²⁵ 12 U.S.C. 1813(e).

regardless of whether they are securities of insured State nonmember banks or insured State savings associations? Please provide a detailed response.

2. Should part 390 subpart U pertaining to the securities of State savings associations be retained in whole or in part? Please substantiate your response.

3. What negative impacts, if any, can you foresee in the FDIC's proposal to rescind part 390 subpart U and remove it from the Code of Federal Regulations?

4. What negative impacts, if any, can you foresee in the FDIC's proposal to apply part 335 to State savings associations?

Written comments must be received by the FDIC no later than [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

IV. Regulatory Analysis and Procedure

A. The Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act ("PRA") of 1995 (44 U.S.C. 3501-3521), the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget ("OMB") control number. The information collection affected by this NPR is Securities of Insured Nonmember Banks, 3064-0030.²⁶ The FDIC proposes to remove from its regulations 12 CFR part 390 subpart U. Part 390 subpart U was transferred with only nominal changes to the FDIC from the OTS when the OTS was abolished by Title III of the Dodd-Frank Act. Part 390 subpart U has been determined to be substantively similar to the FDIC's rule at part 335 regarding the securities of insured State

²⁶ The information collection for Securities of Insured Nonmember Banks, OMB No. 3064-0030, was renewed by OMB on September 11, 2013, and now expires on September 30, 2016.

nonmember banks. Removing part 390 subpart U will not involve any new collections of information pursuant to the PRA.

This rule also proposes to amend part 335 to incorporate State savings associations into the part. The revision of part 335 to include “State savings associations” would add additional burden to the FDIC’s current information collection under OMB control number 3064-0030, Securities of Insured Nonmember Banks, as State savings associations would be required to submit the appropriate forms and financial statements to comply with the filing and disclosure requirements of part 335. Currently, there is only one State savings association that is registered pursuant to the Exchange Act requirements that would be affected by the proposed revision to part 335. The FDIC proposes to revise this information collection as follows:

Title: Securities of State Nonmember Banks and State Savings Associations.

OMB Number: 3064-0030.

Form Numbers: 6800/03, 6800/04, 6800/05, Form 8-A, Form 8-C, Form 8-K, Form 10, Form 10-C, Form 10-K, Form 10-Q, Form 12b-25, Form 15, Form 25, Schedule 13D, Schedule 13E-3, Schedule 13G, Schedule 14A, Schedule 14C, Schedule 14D-1 (Schedule TO).

Affected Public: Generally, any issuer of securities, reporting company, or shareholder registered under the Securities Exchange Act of 1934 with respect to securities registered under 12 CFR part 335.

Estimated Number of Respondents: Form 6800/03—58; Form 6800/04—297; Form 6800/05—69; Form 8-A—2; Form 8-C—2; Form 8-K—21; Form 10—2; Form 10-C—1; Form 10-K—21; Form 10-Q—21, Form 12b-25—6; Form 15—2; Form 25—2; Schedule 13D—2; Schedule 13E-3—2; Schedule 13G—2; Schedule 14A—21; Schedule 14C—21; Schedule 14D-1 (Schedule TO)—2

Estimated Time per Response: Form 6800/03—1 hour; Form 6800/04—30 minutes; Form 6800/05—1 hour; Form 8-A—3 hours; Form 8-C—2 hours; Form 8-K—2 hours; Form 10—215 hours; Form 10-C—1 hour; Form 10-K—140 hours; Form 10-Q—100 hours; Form 12b-25—3 hours; Form 15—1 hours; Form 25—1 hours; Schedule 13D—3 hours; Schedule 13E-3—3 hours; Schedule 13G—3 hours;

Schedule 14A—40 hours; Schedule 14C—40 hours; Schedule 14D-1 (Schedule TO)—5 hours

Frequency of Response: Forms 6800/05 and 10-K and Schedule 14A are filed annually. Form 10-Q is filed quarterly. All other forms are filed based on each event or transaction.

Existing annual burden: 717 hours

New estimated additional annual burden: 10,829 hours

Total Estimated Annual Burden: 11,546 hours

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities (defined in regulations promulgated by the Small Business Administration to include banking organizations with total assets of less than or equal to \$500 million).²⁷ However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a

²⁷ 5 U.S.C. 601 *et seq.*

significant economic impact on a substantial number of small entities, and publishes its certification and a short explanatory statement in the Federal Register together with the rule.

As discussed in this notice of proposed rulemaking, part 390 subpart U was transferred from the OTS's part 563d, which governs the public disclosure and filing requirements of State savings associations that issue securities registered pursuant to the Exchange Act. The corresponding FDIC rule for State nonmember banks is 12 CFR part 335. After careful review of both rules, the FDIC proposes to remove part 390 subpart U in its entirety and revise part 335 to incorporate State savings associations into the scope of the part.

For the purposes of the RFA analysis, savings associations with total assets of \$500 million or less are considered "small entities." Additionally, the Exchange Act exempts an issuer of securities from the registration and reporting requirements of the Act if it does not meet the statutory registration threshold under section 12(g) of the Exchange Act unless the issuer lists its securities on a national exchange and is subject to registration under section 12(b) of the Exchange Act. Under section 12(g), a savings association that issues securities is subject to the Exchange Act requirements if, as of the last day of its last fiscal year, it has total assets of more than \$10 million and a class of equity securities (other than an exempted security) held of record by either 2,000 persons or 500 persons who are not accredited investors.²⁸

Consequently, insured State savings associations that have total assets of \$500 million or less and meet the registration threshold under section 12(g) would be affected by this proposed rule. Based on both of the section 12(g) criteria, as of the current date, there is

²⁸ 15 U.S.C. 78l(g)(1)(A). Based on the statutory language of the Exchange Act, savings associations would not fall under the higher registration exemption thresholds provided to banks and bank holding companies pursuant to the Jumpstart Our Business Startups Act ("JOBS Act"), which was enacted April 5, 2012.

one insured State savings associations that would be affected by the proposed rule out of a total universe of 58 insured State savings associations. The proposed rule also would apply to insured State savings associations with securities listed on a national exchange; however, as of the current date, no insured State savings association has listed securities. Therefore, a substantial number of small entities would not be affected.

Additionally, as discussed in the proposed rule, part 390 subpart U and part 335 are substantively similar as both State nonmember banks and State savings associations are subject to the same provisions of the Exchange Act and the SOX Act. Both parts incorporate by reference the same SEC rules such that registered State nonmember banks and State savings associations currently must comply with substantially similar forms and reporting obligations. Therefore, there would be no additional compliance burden imposed on registered State savings associations that would result in a significant economic impact on small State savings associations.

For these reasons, the FDIC certifies that the Proposed Rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities, within the meaning of those terms as used in the RFA. Accordingly, a regulatory flexibility analysis is not required.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106-102, 113 Stat. 1338, 1471, 12 U.S.C. 4809, requires each Federal banking agency to use plain language in all of its proposed and final rules published after January 1, 2000. As a Federal banking agency subject to the provisions of this section, the FDIC has sought to present the proposed rule to rescind part 390 subpart U and revise part 335 in a simple and straightforward manner. The

FDIC invites comments on whether the proposal is clearly stated and effectively organized, and how the FDIC might make the proposal easier to understand.

D. The Economic Growth and Regulatory Paperwork Reduction Act

Under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (“EGRPRA”), the FDIC is required to review all of its regulations, at least once every 10 years, in order to identify any outdated or otherwise unnecessary regulations imposed on insured institutions.²⁹ The FDIC completed the last comprehensive review of its regulations under EGRPRA in 2006 and is commencing the next decennial review. The action taken on this rule will be included as part of the EGRPRA review that is currently under way. As part of that review, the FDIC invites comments concerning whether the Proposed Rule would impose any outdated or unnecessary regulatory requirements on insured depository institutions. If you provide such comments, please be specific and provide alternatives whenever appropriate.

List of Subjects

12 CFR part 335

Banks, banking, Savings Associations, Securities

12 CFR part 390

Savings Associations, Securities

Authority and Issuance

For the reasons stated in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend parts 335 and 390 of title 12 of the Code of Federal Regulations as follows:

²⁹ Pub. L. 104-208 (Sept. 30, 1996).

**PART 335—SECURITIES OF STATE NONMEMBER BANKS AND STATE
SAVINGS ASSOCIATIONS**

1. The authority citation for part 335 is revised as follows:

AUTHORITY: 12 U.S.C. 1819; 15 U.S.C. 78l(i), 78m, 78n, 78p, 78w, 5412, 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265.

2. Revise the heading of part 335 to read as set forth above:

3. In § 335.101, revise paragraph (a) to read as follows:

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

(a) This part is issued by the Federal Deposit Insurance Corporation (the FDIC) under section 12(i) of the Securities Exchange Act of 1934, 15 U.S.C. 78 *et seq.* (the Exchange Act), and applies to all securities of FDIC-insured State nonmember banks (including foreign banks having an insured branch) and State savings associations that are subject to the registration requirements of section 12(b) or section 12(g) of the Exchange Act. The FDIC is vested with the powers, functions, and duties of the Securities and Exchange Commission (SEC) to administer and enforce sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act (15 U.S.C. 78l, 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78(p)), and 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) regarding State nonmember banks and State savings associations with one or more classes of securities subject to the registration provisions of sections 12(b) and 12(g) of the Exchange Act.

* * * * *

4. In § 335.221, revise paragraph (b) to read as follows:

§ 335.221 Forms for registration of securities and cross reference to Regulation FD (Fair Disclosure).

* * * * *

(b) The requirements for Financial Statements can generally be found in Regulation S-X (17 CFR part 210). Banks and State savings associations may also refer to the instructions for Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income when preparing unaudited interim statements. The requirements for Management's Discussion and Analysis of Financial Condition and Results of Operations can be found at 17 CFR part 229. Additional requirements are provided at Industry Guide 3, Statistical Disclosure by Bank Holding Companies, which is found at 17 CFR part 229.

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5. In § 335.311, revise paragraph (b) to read as follows:

§ 335.311 Forms for annual, quarterly, current, and other reports of issuers.

* * * * *

(b) The requirements for Financial Statements can generally be found in Regulation S-X (17 CFR part 210). Banks and State savings associations may also refer to the instructions for FFIEC Consolidated Reports of Condition and Income when preparing unaudited interim reports. The requirements for Management's Discussion and Analysis of Financial Condition and Results of Operations can be found at 17 CFR part 229. Additional requirements are included in Industry Guide 3, Statistical Disclosure by Bank Holding Companies, which is found at 17 CFR part 229.

6. In § 335.701, revise paragraphs (a) and (b) to read as follows:

§ 335.701 Filing requirements, public reference, and confidentiality.

(a) *Filing requirements.* Unless otherwise indicated in this part, one original and four conformed copies of all papers required to be filed with the FDIC under the Exchange Act or regulations thereunder shall be filed at its office in Washington, DC. Official filings may be filed electronically at <https://www2.fdicconnect.gov/index.asp>, except for FDIC Beneficial Ownership Forms 3, 4, and 5 for which electronic filing is mandatory as described in Sec. 335.801(b). Paper filings should be submitted to the FDIC's office in Washington, DC, and should be addressed as follows: Accounting and Securities Disclosure Section, Division of Risk Management Supervision, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Material may be filed by delivery to the FDIC through the mails or otherwise. The date on which paper filings are actually received by the designated FDIC office shall be the date of filing.

(b) *Inspection.* Except as provided in paragraph (c) of this section, all information filed regarding a security registered with the FDIC will be available for inspection at the Federal Deposit Insurance Corporation, Accounting and Securities Disclosure Section, Division of Risk Management Supervision, 550 17th Street, NW., Washington, DC. Beneficial ownership report forms and other official filings that are electronically submitted to the FDIC are available for inspection on the FDIC's Web site at <http://www2.fdic.gov/efr/>

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7. In § 335.801, revise paragraphs (b)(6)(i) introductory text, (b)(7)(iii), (d) introductory text and (d)(1), (e)(1), (e)(2)(i), (e)(2)(ii), and (f)(2) to read as follows:

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

* * * * *

(b) * * *

(6) * * *

(i) A filer may apply in writing for a continuing hardship exemption if all or part of a filing or group of filings otherwise to be filed in electronic format cannot be so filed without undue burden or expense. Such written application shall be made at least ten business days prior to the required due date of the filing(s) or the proposed filing date, as appropriate, or within such shorter period as may be permitted. The written application shall be sent to the Accounting and Securities Disclosure Section, Division of Risk Management Supervision, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429, and shall contain the information set forth in paragraph (b)(6)(ii) of this subsection.

* * * * *

(7) * * *

(iii) Where the FDIC's rules require a filer to furnish a national securities exchange, a national securities association, a bank, or State savings association, paper copies of a document filed with the FDIC in electronic format, signatures to such paper copies may be in typed form.

* * * * *

(d) *Indebtedness of management.* Whenever this part of cross referenced provisions of the SEC regulations require disclosure of indebtedness of management, extensions of credit to specified persons in excess of ten (10) percent of the equity capital accounts of the bank or State savings associations or \$5 million, whichever is less, shall be deemed material and shall be disclosed in addition to any other required disclosure. The disclosure of this material

indebtedness shall include the largest aggregate amount of indebtedness (in dollar amounts, and as a percentage of total equity capital accounts at the time), including extensions of credit or overdrafts, endorsements and guarantees outstanding at any time since the beginning of the bank or State savings association's last fiscal year, and as of the latest practicable date.

(1) If aggregate extensions of credit to all specified persons as a group exceeded 20 percent of the equity capital accounts of the bank or State savings association at any time since the beginning of the last fiscal year, the aggregate amount of such extensions of credit shall also be disclosed.

* * * * *

(e) * * *

(1) Three preliminary copies of each information statement, proxy statement, form of proxy, and other item of soliciting material to be furnished to security holders concurrently therewith, shall be filed with the FDIC by the bank, State savings association, or any other person making a solicitation subject to 12 CFR 335.401 at least ten calendar days (or 15 calendar days in the case of other than routine meetings, as defined in paragraph (e)(2) of this section) prior to the date such item is first sent or given to any security holders, or such shorter date as may be authorized.

(2) * * *

(i) A meeting with respect to which no one is soliciting proxies subject to 12 CFR 335.401 other than on behalf of the bank or State savings association and at which the bank or State savings association intends to present no matters other than:

(A) The election of directors;

(B) The election, approval or ratification of accountants;

(C) A Security holder proposal included pursuant to SEC Rule 14(a)-8 (17 CFR 240.14a-8); and

(D) The approval or ratification of a plan as defined in paragraph (a)(7)(ii) of Item 402 of SEC Regulation S-K (17 CFR 229.402(a)(7)(ii)) or amendments to such a plan; and

(ii) The bank or State savings association does not comment upon or refer to a solicitation in opposition (as defined in 17 CFR 240.14a-6) in connection with the meeting in its proxy material.

* * * * *

(f) * * *

(2) The FDIC may, upon the written request of the bank or State savings association, and where consistent with the protection of investors, permit the omission of one or more of the statements or disclosures herein required, or the filing in substitution therefor of appropriate statements or disclosures of comparable character.

* * * * *

§ 335.901—[Removed]

8. Remove § 335.901.

PART 390 -- REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

9. The authority citation for part 390 is revised to read as follows:

AUTHORITY: 12 U.S.C. 1819.
Subpart A also issued under 12 U.S.C. 1820.

Subpart B also issued under 12 U.S.C. 1818.
 Subpart C also issued under 5 U.S.C. 504; 554-557; 12 U.S.C. 1464; 1467; 1468; 1817; 1818; 1820; 1829; 3349, 4717; 15 U.S.C. 78l; 78o-5; 78u-2; 28 U.S.C. 2461 note; 31 U.S.C. 5321; 42 U.S.C. 4012a.
 Subpart D also issued under 12 U.S.C. 1817; 1818; 1820; 15 U.S.C. 78l.
 Subpart E also issued under 12 U.S.C. 1813; 1831m; 15 U.S.C. 78.
 Subpart F also issued under 5 U.S.C. 552; 559; 12 U.S.C. 2901 *et seq.*
 Subpart G also issued under 12 U.S.C. 2810 *et seq.*, 2901 *et seq.*; 15 U.S.C. 1691; 42 U.S.C. 1981, 1982, 3601-3619.
 Subpart I also issued under 12 U.S.C. 1831x.
 Subpart J also issued under 12 U.S.C. 1831p-1.
 Subpart K also issued under 12 U.S.C. 1817; 1818; 15 U.S.C. 78c; 78l.
 Subpart L also issued under 12 U.S.C. 1831p-1.
 Subpart M also issued under 12 U.S.C. 1818.
 Subpart N also issued under 12 U.S.C. 1821.
 Subpart O also issued under 12 U.S.C. 1828.
 Subpart P also issued under 12 U.S.C. 1470; 1831e; 1831n; 1831p-1; 3339.
 Subpart Q also issued under 12 U.S.C. 1462; 1462a; 1463; 1464.
 Subpart R also issued under 12 U.S.C. 1463; 1464; 1831m; 1831n; 1831p-1.
 Subpart S also issued under 12 U.S.C. 1462; 1462a; 1463; 1464; 1468a; 1817; 1820; 1828; 1831e; 1831o; 1831p-1; 1881-1884; 3207; 3339; 15 U.S.C. 78b; 78l; 78m; 78n; 78p; 78q; 78w; 31 U.S.C. 5318; 42 U.S.C. 4106.
 Subpart T also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78l; 78m; 78n; 78w.
 Subpart V also issued under 12 U.S.C. 3201-3208.
 Subpart W also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78l; 78m; 78n; 78p; 78w.
 Subpart X also issued under 12 U.S.C. 1462; 1462a; 1463; 1464; 1828; 3331 *et seq.*
 Subpart Y also issued under 12 U.S.C. 1831o.
 Subpart Z also issued under 12 U.S.C. 1462; 1462a; 1463; 1464; 1828 (note).

Part 390 Subpart U – [Removed and reserved]

10. Remove and reserve part 390 subpart U, consisting of §§ 390.390 through 390.395.

11. In § 390.321, revise paragraph (b)(2) to read as follows:

§ 390.321 Regulatory reports.

* * * * *

(b) * * *

(2) *Exceptions.* Regulatory reporting requirements that are not consistent with GAAP, if any, are not required to be reflected in the audited financial statements, including financial statements contained in securities filings submitted to the FDIC pursuant to the Securities Exchange Act of 1934 or subpart W and 12 CFR part 192.

§ 390.380 – [Amended]

12. In § 390.380, remove paragraph (a)(3).

Dated at Washington, D.C., this 8th day of April, 2014.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman

Executive Secretary

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