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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 344

RIN 3064-AB55

Recordkeeping Requirements for Securities Transactions

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is amending its regulation which establishes recordkeeping and confirmation requirements for securities transactions undertaken by an insured state nonmember bank for its customers. The amendment provides the FDIC the express authority to waive the requirements of the regulation for good cause. The purpose of the amendment is to afford the FDIC more flexibility in applying its regulations.

EFFECTIVE DATE: The amendment is effective February 7, 1995.

FOR FURTHER INFORMATION CONTACT: Gerald J. Gervino, Senior Attorney, (202) 898-3723, or Cristeena Naser, Attorney, (202) 898-3687, Legal Division, FDIC, 550 17th Street, NW., Washington, DC 20429 or Curtis L. Vaughn, Examination Specialist, (202) 898-6759, Division of Supervision, FDIC, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Part 344 generally sets forth the recordkeeping requirements for insured state nonmember banks effecting customer securities transactions whether conducted as discount or full-service brokerage or through the bank's trust department. Part 344 specifies the content and timing of the bank's internal records as well as customer statements and disclosures. An insured state nonmember bank involved in an arrangement with a third party selling

securities on bank premises is generally considered subject to Part 344 if the bank receives transaction-based compensation. Part 344 also requires that banks effecting securities transactions for customers establish written policies and procedures for supervising securities personnel generally and for avoiding conflicts of interest both between the bank and its customers and between customers. The Office of the Comptroller of the Currency (OCC) and the Board of Governors of the Federal Reserve System (Board of Governors) have securities recordkeeping regulations that are virtually identical to Part 344 except that the OCC's regulations have specific waiver authority (12 CFR Part 12 and 12 CFR 208.8(k) respectively).

Recently it has come to the FDIC's attention that some banks are having practical difficulty complying with Part 344 and in particular with § 344.4 which sets forth requirements for the content of confirmations of customers' securities transactions effected by the bank. We understand that this difficulty results from developments in the industry. The practical difficulty in complying with § 344.4 illustrates how developments in the industry as well as changes in industry practice can cause a regulation to be burdensome or make compliance difficult.

The FDIC is generally concerned that to the fullest extent possible its regulations should not impose any undue or unnecessary burden or expense (competitive or otherwise) on insured banks. Having the flexibility to readily tailor the application of a regulation to particular circumstances if warranted furthers that objective. In keeping with that goal the FDIC has therefore determined that it is appropriate to add express waiver authority to Part 344. The addition of the waiver allows an insured state nonmember bank to obtain a waiver of all or any part of Part 344 if the FDIC determines that there is good cause for a waiver to be granted. The adoption of the amendment will enable the FDIC to more readily adapt the application of its regulation to developments in the industry and changes in industry wide practice as well as to unique problems faced by particular institutions. It is the FDIC's intent to provide relief as appropriate taking due care not to undermine the purposes of Part 344.

The amendment is being adopted in final form without opportunity for public comment pursuant to the authority of section 553(b)(A) of the Administrative Procedure Act (5 U.S.C. 553(b)(A)) which authorizes the waiver of notice and public comment in the case of procedural rules. The amendment will be effective immediately upon publication in the **Federal Register**. This action is taken pursuant to the authority of section 553(d) of the Administrative Procedure Act (5 U.S.C. 553(d)) which permits waiver of the 30 day delayed effective date requirement if a rule grants an exemption or relieves a restriction. The amendment is not required by section 302(b) of the Reigle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103-325) to be made effective on the first day of a calendar quarter after the date of publication of the amendment as the amendment does not impose additional reporting, disclosure or other new requirements on insured depository institutions.

Paperwork Reduction Act

The final amendment does not create any new recordkeeping, reporting or collection of information requirements within the meaning of the Paperwork Reduction Act (44 U.S.C. 3500 et seq.).

List of Subjects in 12 CFR Part 344

Insured banks, Banking, Securities transactions, Recordkeeping, Confirmations.

For the reasons set forth in the preamble, Part 344 of Chapter III of Title 12 is amended as set forth below:

PART 344—RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR SECURITIES TRANSACTIONS

1. The authority citation for Part 344 continues to read as follows:

Authority: 12 U.S.C. 1817, 1818, 1819.

2. Section 344.8 is added to read as follows:

§ 344.8 Waiver.

The Board of Directors of the FDIC, in its discretion, may waive for good cause all or any part of this part 344.

By Order of the Board of Directors.

Dated at Washington, DC, this 31st day of January 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 95-2858 Filed 2-6-95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. 94-ANE-18; Special Conditions No. SC-33-ANE-08]

Special Conditions; General Electric (GE) Aircraft Engines Model(s) GE90-75B/-85B/-76B Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the General Electric (GE) Aircraft Engines Model(s) GE90-75B/-85B/-76B turbofan engines. These special conditions contain the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards of part 33 of the Federal Aviation Regulations (FAR).

EFFECTIVE DATE: March 6, 1995.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Background

On December 16, 1991, General Electric Aircraft Engines applied for type certification of Model(s) GE90-75B/-85B/-76B turbofan engines. These engines incorporate a first stage fan blade manufactured using carbon graphite composite material. This unusual design feature results in the GE90 fan blade having significant differences in material property characteristics when compared to conventionally designed fan blades using non-composite materials. For example, the probability that a composite fan blade will fail below the inner annulus flowpath line may be highly improbable, questioning the appropriateness of the requirement contained in § 33.94(a)(1) to show blade containment after a failure of the blade at the outermost retention feature.

The current requirements of § 33.94 are based on metallic blade characteristics and service history, and are not appropriate for the unusual design features of the composite fan blade found on the GE90 series turbofan engines. The FAA has determined that a more realistic blade out test will be achieved with a fan blade failure at the inner annulus flowpath line (only the airfoil) instead of the outermost retention feature as is currently required by § 33.94(a)(1).

The FAA has also determined that the composite fan blades construction presents other factors that must be considered. Tests and analyses must account for the effects of in-service deterioration of, manufacturing and materials variations in, and environmental effects on the composite material. Further, tests and analyses must show that a lightning strike on the composite fan blade will not result in a hazardous condition to the aircraft, and that the engine will meet the requirements of § 33.75. Therefore, these special conditions are additional requirements which the Administrator considers necessary to establish a level of safety equivalent to that established by the Airworthiness Standards of part 33.

Type Certification Basis

Under the provisions of § 21.101 of the Federal Aviation Regulations (FAR), General Electric Aircraft Engines must show that the Model(s) GE90-75B/-85B/-76B turbofan engines meet the requirements of the applicable regulations in effect on the date of the application. Those Federal Aviation Regulations are § 21.21, as amended through Amendment 21-68, August 10, 1990, and part 33, as amended 33-14, August 10, 1990.

The Administrator finds that the applicable airworthiness regulations in part 33, as amended, do not contain adequate or appropriate safety standards for the General Electric Aircraft Engines Model(s) GE90-75B/-85B/-76B turbofan engines because of unique design criteria. Therefore, the Administrator prescribes special conditions under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice and opportunity for comment, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Discussion of Comments

Interested persons have been afforded the opportunity to participate in the making of these special conditions. Due consideration has been given to comments received.

Two commenters express no objection to the adoption of these special conditions as proposed.

Two commenters cite the apparent departure by the FAA from its general practice of involving industry prior to effecting significant changes to certification requirements, and recommend that the FAA evaluate the proposed changes in harmony with industry through the Aviation Rulemaking Advisory Committee (ARAC).

The FAA has not determined that these special conditions will form the basis to a rulemaking change to amend 14 CFR part 33. These special conditions prescribe for a specific design, the testing and analyses necessary to achieve an equivalent level of safety. The FAA may consider whether it is necessary to revise § 33.94 to include the requirements of these special conditions. The ARAC may be used to gather industry and public participation in that rulemaking project. For this specific application for type certification, however, the FAA has followed the rulemaking procedures provided by 14 CFR part 11 that allow for industry and public comment.

Two commenters state that applying the maximum load criteria used for propellers to a fan blade, with significantly different mechanical arrangement and dynamic behavior, is technically unjustified.

The FAA disagrees. The two times maximum load criteria test is designed to show the capability of the fan blade retention system to withstand without separation centrifugal loads significantly greater than will be seen in service. A safety factor of two is a reasonable safety factor as demonstrated by its success in propeller applications. The blade and its retention system must be capable of retaining the blade under this load condition.

Two commenters state that the additional requirements, in conjunction with any available analyses, cannot guarantee that the failure probability will be extremely improbable. Inherent characteristics of complex composite hardware design, latent defects and susceptibility to manufacturing variations, and nonconformance are identified as reasons for the statement.

The FAA agrees in part. The FAA has reviewed its position and concurs with the commenters that a failure