that section have arisen from bank holding companies selling property they acquired in satisfaction of a debt previously contracted (''dpc property'') where the bank holding company was trying to recoup its losses on a loan from the sale of the collateral. In these cases, the record indicates that the divestitures and financing arrangements have been conducted on an arm's-length basis, and there is no evidence of divesting companies exercising control of the assets after the sale. In other cases where a bank holding company sold an asset or subsidiary that it had acquired in the normal course of business and financed the sale of the asset or subsidiary, the assets were sold because, in most cases, the bank holding company was no longer interested in engaging in that business.

The elimination of the requirement to obtain a control determination will reduce the regulatory burden on bank holding companies without eliminating the Board's ability to supervise any attempt to control the divested asset in the future. Although the Board would no longer require a bank holding company to obtain a control determination, the Board, through the examination process, can review the authority under which a bank holding company controls the asset in question, and take appropriate supervisory action if any unlawful control is found to persist. In addition, the Board would continue to require a divesting company to obtain a 2(g)(3) determination if: (i) The asset were transferred to an affiliate or principal shareholder of the divesting holding company, or a company controlled by the principal shareholder; or (ii) an interlock existed between the divesting company and the acquiring person. In these cases, staff believes that there is a greater potential for continued control by the bank holding company that should be reviewed. The General Counsel will continue to review these divestitures on a case by case basis to determine if a control determination is appropriate.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Board certifies that the proposed amendment will not have a significant adverse economic impact on a substantial number of small entities and that any impact on those entities should be positive. The amendments would reduce regulatory burdens imposed by Regulation Y, and the amendment would have no particular adverse effect on other entities.

Paperwork Reduction Act Analysis

No collection of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) is contained in these changes.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 225 as set forth below:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for 12 CFR part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. In § 225.32, paragraph (a)(2) is redesignated as paragraph (a)(3) and a new paragraph (a)(2) is added to read as follows:

§ 225.32 Divestiture proceedings.

(a) * * *

(2) The presumption of control in paragraph (a)(1)(i) of this section shall not apply to the sale or divestiture of assets or voting securities by a divesting company if:

(i) The acquiring person is not an affiliate or a principal shareholder of the divesting company, or a company controlled by such a principal shareholder; and

(ii) The acquiring person does not have any officer, director, trustee, or beneficiary in common with or subject to control by the divesting company.

* * * * *

By order of the Board of Governors of the Federal Reserve System, March 22, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–7518 Filed 3–27–95; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 334

RIN 3064–AB06

Contracts Adverse to Safety and Soundness of Insured Depository Institutions

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is withdrawing its proposed rule which would have implemented the statutory prohibition on contracts that adversely affect the safety or soundness of insured depository institutions. The statutory provision remains in place and unchanged. The FDIC has decided to withdraw the proposed rule because the existence of adverse contracts involving insured institutions has decreased considerably since the proposed rule was issued for public comment on April 1, 1991, because of the overwhelmingly negative comments received from the industry to the proposal, and because of an FDIC policy statement that recommends the withdrawal of proposed rules that have not been acted upon by the FDIC Board of Directors within nine months of the date of proposal. Many of the negative comments received in response to the proposal expressed the view that such a regulation would create unnecessary regulatory burden and that the Federal banking agencies already possess the necessary supervisory authority to deal with adverse contracts. Since the type of activity that the proposed rule was intended to eliminate (*i.e.*, abuses involving contracts made by or on behalf of an insured institution that seriously jeopardize or misrepresent its safety and soundness) has been substantially reduced through greater industry awareness and use of alternative supervisory actions by the Federal banking agencies, there appears to be no need to promulgate such a regulation at this time. However, the FDIC may decide at a later date to publish a new proposal if it determines that the existence of adverse contracts has increased or that such action is otherwise necessary or appropriate.

DATES: The withdrawal of proposed Part 334 is made on March 28, 1995.

FOR FURTHER INFORMATION CONTACT: Robert F. Miailovich, Associate Director, Division of Supervision, (202) 898–6918; Michael D. Jenkins, Examination Specialist, Division of Supervision, (202) 898–6896; or Gwen E. Factor, Counsel, Legal Division, (202) 898–8522, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

Background

Section 225 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 added new section 30 to the Federal Deposit

Insurance Act (Act), 12 U.S.C. 1831g, which prohibits any insured depository institution from entering into a written or oral contract with any person to provide goods, products or services to or for the benefit of the institution if the performance of such contract would adversely affect its safety or soundness. Section 30(b) authorizes the FDIC to prescribe such regulations as may be necessary to carry out the purposes of section 30. In accordance with this authority, the FDIC Board of Directors issued for public comment a proposal to add new Part 334 to the FDIC's rules and regulations (which was published in the **Federal Register** on April 1, 1991 (56 FR 13291)) to address adverse contracts.

The proposed rule would have implemented section 30 of the Act by prohibiting any insured depository institution from entering into any contract determined to be adverse and would have treated all adverse contracts uniformly without distinguishing between contracts with affiliates and those with non-affiliates. The proposed rule would not have defined with specificity the types of contracts that would be considered adverse. Instead, the proposal provided examples of terms that could indicate an adverse arrangement and identified prohibited actions by a discussion of previously encountered abuses.

Under the proposed rule, each contract would have been evaluated separately on the basis of its own terms and by comparison with the terms of similar contracts entered into by the institution and other institutions. The burden of establishing the propriety of a contract with respect to which the appropriate Federal banking agency has made an initial determination of adverse effect on the institution's safety or soundness would have been on the institution and its contractor. As discussed in the preamble, the ''preponderance of evidence'' standard normally would have applied, but where there was evidence of bad faith, intentional wrong-doing or fraud, the propriety and legality of the contract would have been determined by clear and convincing evidence. The proposed rule also would have made clear that enforcement actions may be taken directly against any contractor, as an ''institution-affiliated party''.

The proposed rule also requested specific comment on how to prevent abuses involving contracts with holding companies and other affiliates. Although an approach for dealing with affiliate contracts was discussed in the preamble, no rule was proposed. It was suggested that the FDIC might establish a rebuttable regulatory presumption that certain types of contracts between an insured institution and its affiliates are adverse. However, it was specifically noted that such a rebuttable presumption would not prohibit all affiliate contracts. Instead, only certain specified types of contracts would be covered and contracts with other insured institutions or with subsidiaries of insured institutions would be excluded from being presumed adverse.

Discussion

Summary of Comments Received

The FDIC received 206 comments on the proposed rule. Almost all of the comments received opposed the proposed rule or suggested major changes, while many commenters requested that the FDIC withdraw the proposed rule. Many commenters expressed the view that a regulation dealing with adverse contracts would create an unnecessary regulatory burden and that the Federal banking agencies already possess the necessary supervisory authority to deal with such contracts. Many of the objections to the proposal focused on the possibility of treating contracts with affiliates differently from those with non-affiliates and were virtually unanimous in their opposition to developing an additional rule dealing with affiliate contracts. Other objections to the proposed rule focused on: (1) Inadequacies in the definition of ''contract''; (2) the requirement that an insured institution must rebut a prima facie case that a particular contract is adverse with clear and convincing evidence; and (3) including independent contractors as ''institution-affiliated parties'' who could be joined to FDIC cease-and-desist actions against insured institutions and/or named as respondents in civil money penalty and prohibition actions.

Policy Statement

The FDIC's policy statement on Development and Review of FDIC Rules and Regulations (44 FR 31007, May 30, 1979) calls for withdrawal of any proposed regulation with respect to which final action by the FDIC Board of Directors has not been taken within nine months from the date of proposal. The FDIC believes that withdrawal of the proposed rule is appropriate because no action has been taken with respect to the proposal for over nine months.

Effect of Withdrawal of Proposed Rule

Section 30 of the Act authorizes (but does not require) the FDIC to promulgate such regulations as may be necessary to administer and carry out the purposes of, and prevent evasions of, the statutory prohibition. The statute is enforceable by its own terms by the FDIC and the other Federal banking agencies in the absence of an implementing regulation. The FDIC has decided to withdraw the proposed rule because of the significant decrease in the type of activity that the proposed rule was intended to eliminate (i.e., abuses involving contracts made by or on behalf of an insured institution that seriously jeopardize or misrepresent its safety and soundness), the overwhelmingly negative comments received on the proposed rule, and an FDIC policy statement that recommends the withdrawal of proposed rules that have not been acted upon by the FDIC Board of Directors within nine months of the date of proposal. Moreover, the FDIC believes that the statute can be administered without regulation. The FDIC may decide, however, at a later date to publish a new proposal if it determines that the existence of adverse contracts has increased or that such action is otherwise necessary or appropriate. If the FDIC wishes at a later date to promulgate a regulation that deals with or addresses adverse contracts, it will begin the rulemaking process anew.

In consideration of the foregoing, the FDIC hereby withdraws proposed new Part 334 of Title 12 of the Code of Federal Regulations.

By Order of the Board of Directors.

Dated at Washington, DC, this 21st day of March 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 95–7522 Filed 3–27–95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27 and 29

Airworthiness Standards; Fiscal Year 1998 Rotorcraft Research and Development Initiative, Program Identification

AGENCY: Federal Aviation Administration, DOT.

ACTION: Call for part 27 and 29 research and development program proposals.

SUMMARY: This notice announces a call for proposals that will define the Federal Aviation Administration (FAA), Aircraft Certification Service, Rotorcraft Directorate Research and Development