FEDERAL RESERVE BANK
OF DALLAS

ROBERT D. McTEER, JR.
PRESIDENT
AND CHIEF EXECUTIVE OFFICER

May 21, 1993

DALLAS, TEXAS 75222

Notice 93-57

TO: The Chief Executive Officer of each member bank and others concerned in the Eleventh Federal Reserve District

SUBJECT

Interim Rule and Request for Comment on Proposals Regarding Regulation O (Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks)

DETAILS

The Federal Reserve Board has requested public comment on whether the Board should retain, modify, or terminate a provision in Regulation O, which establishes procedures for smaller banks to increase their aggregate insider lending limit up to 200 percent of unimpaired capital and surplus.

In accordance with authority provided by the Federal Deposit Insurance Corporation Improvement Act, the Board amended Regulation O, effective May 18, 1992, to permit banks with deposits under $100 million to increase the lending limit from 100 percent up to 200 percent of unimpaired capital and unimpaired surplus, if they followed certain procedures. The smaller bank's board of directors was required to adopt and send to the Board a resolution determining, on the basis of the bank's lending experience, that a higher limit was prudent and was necessary to attract or retain directors or to prevent restricting credit.

The higher limit was to be in effect for one year--through May 18, 1993. To provide time for the Board to receive and consider public comment, the current provision is being extended for an additional six months.

The Board must receive comments by July 15, 1993. Comments should be addressed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. All comments should refer to Docket No. R-0800.

ATTACHMENT

A copy of the Board's notice (Federal Reserve System Docket No. R-0800) is attached.

MORE INFORMATION

For more information, please contact Jane Anne Schmoker at (214) 922-5104. For additional copies of this Bank's notice, please contact the Public Affairs Department at (214) 922-5254.

Sincerely yours,

Robert D. McTeer, Jr.

FEDERAL RESERVE SYSTEM

12 CFR Part 215

[Docket No. R-0800]

Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks; Loans to Holding Companies and Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule and request for comment.

SUMMARY: The Board is asking for comment on whether to make permanent, modify, or permit to expire a provision in Regulation O permitting smaller banks to raise their limit on aggregate lending to insiders from 100 percent of unimpaired capital and surplus to 200 percent of unimpaired capital and surplus. In this regard, the Board is seeking comment on whether this provision is "important to avoid constricting the availability of credit in small communities or to attract directors of such banks," the statutory standard the Board must meet to make this provision permanent. In order to allow time to solicit and consider public comment on this matter, the Board is extending for six months the May 18, 1993, expiration date for this provision.

COMMENT DATE: Comments should be submitted on or before July 15, 1993.

ADDRESSES: Comments should be mailed to Mr. William W. Wiles, Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551, attention: Docket No. R-0800, or delivered to Room B-2223, Eccles Building, between 8:45 am and 5:00 pm. Comments may be inspected in Room B-1122 between 9:00 am and 5:00 pm, except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8. Resolutions should be mailed to Mr. William G. Spaniel, Supervisory Financial Analyst, Mail Stop 186, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551.

FOR FURTHER INFORMATION CONTACT: Gordon Miller, Attorney (202/452-2534), Legal Division; William G. Spaniel, Supervisory Financial Analyst (202/452-3469), or Mark Benton, Senior Financial Analyst (202/452-5205), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th & C Street, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

Section 22(h) of the Federal Reserve Act (12 U.S.C. 375b) restricts the amount and terms of extensions of credit from a bank to its executive officers,

directors, and principal shareholders (collectively, ''insiders'') and to any related interest of an insider. The Federal Deposit Insurance Corporation Improvement Act of 1991 (''FDICIA'') amended section 22(h) of the Federal Reserve Act to establish a limit on the total amount a bank may lend in the aggregate to its insiders and their related interests as a class. *See* Pub. L. No. 102-242 § 306, 105 Stat. 2236 (1991). In general, the limit is equal to the bank's unimpaired capital and unimpaired surplus. FDICIA also authorized the Board to set a higher limit for banks with deposits of less than $100 million if the Board determined that the exception was ''important to avoid constricting the availability of credit in small communities or to attract directors of such banks.'' Pub. L. No. 102-242 § 306(d), 105 Stat. 2236, 2358. The statute provides that the higher limit for smaller banks may not exceed 200 percent of the bank's unimpaired capital and unimpaired surplus.

Effective May 18, 1992, the Board amended Regulation O to implement the amendments to section 22(h) contained in FDICIA. The general limit in FDICIA on lending to insiders and their related interests—100 percent of the bank's unimpaired capital and unimpaired surplus—was adopted. After considering public comment on the higher aggregate lending limit authorized by FDICIA for smaller banks, the Board determined as an interim measure to permit banks with deposits under $100 million to adopt a higher limit, not to exceed 200 percent of the bank's unimpaired capital and unimpaired surplus, for a period of one year to expire May 18, 1993.

Regulation O sets forth a specific procedure for a smaller bank to follow in order to implement the higher aggregate lending limit for itself. The board of directors of the bank must by resolution determine that a higher aggregate lending limit is consistent with prudent, safe, and sound banking practices in light of the bank's experience in lending to its insiders, and that a higher limit is necessary to attract or retain directors or to prevent restricting the availability of credit in small communities. The resolution must set forth the facts and reasoning that support this determination, including the amount of the bank's aggregate lending to insiders, expressed as a percentage of unimpaired capital and unimpaired surplus, as of the date of the resolution. The bank also must submit its resolution to the appropriate federal banking agency, with a copy to the Board. Finally, the bank must meet or exceed all applicable capital requirements. *See* 12 CFR 215.4(d)(2).

The Board stated at the time it adopted this interim provision that, apart from anecdotal evidence, commenters on the proposed regulation had not provided specific information regarding the amount of lending by banks to their directors and related interests, or other specific information that would allow the Board to determine the effect of the aggregate lending limit on the availability of credit and the service of directors. The Board further stated that, during the one year period of this provision, the Board, in consultation with the other federal banking agencies, would collect data on the lending practices of banks in order to analyze these effects. At the end of the one year period, the Board would revisit the issue of an appropriate aggregate lending limit for smaller banks. *See* 57 **FR** 22417, 22420 (1992).

Accordingly, the Board is requesting comment through July 15, 1993, on whether this interim provision permitting smaller banks to raise their aggregate lending limits to 200 percent of unimpaired capital and surplus should be made permanent, modified, or permitted to expire. In this regard, FDICIA permitted the Board to make an exception to the aggregate lending limit for smaller banks only if the Board determined that the exception would be "important" to avoid constricting the availability of credit in small communities or to attract directors to smaller banks. In order to assist the Board in making a decision on the higher limit for smaller banks, the Board requests commenters to provide specific information concerning the needs of banks with deposits under $100 million to have aggregate lending limits in excess of 100 percent of their unimpaired capital and unimpaired surplus in order to meet the credit needs of their communities and to attract and retain qualified directors. Resolutions of boards of directors of smaller banks, adopted pursuant to 12 CFR 215.4(d)(2), may continue to be submitted, as well as comments in general from smaller banks and other members of the public.[1]

In order to provide time to solicit and consider public comment on this issue, the Board is extending for six months, through November 18, 1993, the procedures set forth in Regulation O under which smaller banks may establish higher aggregate lending limits for themselves. Resolutions adopted by smaller banks to increase their aggregate lending limits and that expire by their terms on May 18, 1993, will be considered by the Board to remain in effect through November 18, 1993.

The Board finds that it is necessary to issue its rule on an interim basis subject to public comment in order to prevent any lapse in the availability of this provision to smaller banks while public comment is being considered. Accordingly, the Board, for good cause, finds that the notice and public comment procedure normally required is impractical and contrary to the public interest under 5 U.S.C. 553(b)(B). The Board further finds that, for the same reasons, there is good cause under 5 U.S.C. 553(d)(3) to make the interim rule effective immediately, without regard for the 30-day period provided for in 5 U.S.C. 553(d).

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking. Two of the requirements of an initial regulatory flexibility analysis (5 U.S.C. 603(b))—a description of the reasons why the action by the agency is being considered and a statement of the objectives of, and legal basis for, the proposed rule—are contained in the supplementary information above.

The proposed rule imposes no additional reporting or recordkeeping requirements with respect to a bank's monitoring and maintaining compliance with the aggregate lending limits applicable to the bank. An additional reporting

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[1] The Board has received copies of resolutions adopted by 22 smaller banks to increase their aggregate lending limits.

or recordkeeping requirement is imposed upon smaller banks that elect to prepare the board of directors resolution required in order to establish a higher aggregate lending limit for themselves. The proposed rule does not duplicate, overlap, or conflict with other relevant federal rules.

Another requirement for the initial regulatory flexibility analysis is a description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply. The proposed rule would apply to all banks with deposits under $100 million. As of December 31, 1992, 8,643 banks would have been subject to the proposed rule. The proposed rule should have an insignificant economic impact on smaller banks.

List of Subjects in 12 CFR Part 215

Credit, Federal Reserve System, Penalties, Reporting and record keeping requirements.

For the reasons set forth in the preamble, the Board proposes to amend Title 12 of the Code of Federal Regulations, Part 215, Subpart A, as follows:

PART 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS

1. The authority citation for part 215 continues to read as follows:

Authority: 12 U.S.C. 248(i), 375a, 375b(7), 1817(k)(3), and 1972(2)(F)(vi), and Pub. L. 102-550, 106 Stat. 3895 (1992).

Subpart A—Loans by Member Banks to Their Executive Officers, Director, and Principal Shareholders

2. 12 CFR 215.4 is amended by revising paragraph (d)(2) to replace the phrase "one-year period ending May 18, 1993" with the phrase "18-month period ending November 18, 1993."

By order of the Board of Governors of the Federal Reserve System, May 6, 1993.

(Signed) William W. Wiles

William W. Wiles
Secretary of the Board
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J.J.J.