FEDERAL RESERVE BANK
OF DALLAS

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

DALLAS, TEXAS
75265-5906

December 4, 1995

Notice 95-117

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

SUBJECT

Request for Public Comment on a Proposed Rule Concerning the Definition of "Capital Stock and Surplus"

DETAILS

The Board of Governors of the Federal Reserve System requested public comment on a proposed definition of "capital stock and surplus" for purposes of section 23A of the Federal Reserve Act.

The proposal would conform the definition of "capital stock and surplus" for section 23A to the definition of unimpaired capital and unimpaired surplus in Regulation O and to the definition of capital and surplus adopted by the Office of the Comptroller of the Currency in calculating the limit on loans by a national bank to a single borrower. The rule will reduce the recordkeeping burden for insured depository institutions monitoring lending to their affiliates.

The Board must receive comments by January 2, 1996. Please address comments 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-0902.

ATTACHMENT

A copy of the Board's notice (Federal Reserve System Docket No. R-0902) is attached.

MORE INFORMATION

For more information, please contact Jane Anne Schmoker at (214) 922-5101. 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 250

[Docket No. R-0902]

Transactions with Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board is proposing to conform the definition of capital stock and unimpaired surplus for purposes of section 23A of the Federal Reserve Act to the definition of unimpaired capital and unimpaired surplus used in Regulation O and by Office of the Comptroller of the Currency (OCC) in calculating the limit on loans by a national bank to a single borrower. The proposed rule seeks to reduce the burden for member banks and other insured depository institutions monitoring lending to their affiliates.

DATES: Comments must be submitted on or before January 2, 1996.

ADDRESSES: Comments should refer to Docket No. R-0902, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments also may be delivered to the Board's mail room in the Eccles Building between 8:45 am and 5:15 pm weekdays, or to the guard

station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP 500 of the Martin Building between 9:00 am and 5:00 pm weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Pamela G. Nardolilli, Senior Attorney (202/452-3289) Legal Division, or Barbara Bouchard, Supervisory Financial Analyst (202/452-3072), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For users of the Telecommunications Device for the Deaf (TDD) only, please contact Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: Section 23A of the Federal Reserve Act, 12 U.S.C. 371c, regulates certain transactions between insured depository institutions and their affiliates, including transactions between affiliated depository institutions. Section 23A is designed to protect insured depository institutions from abuses that may result from lending and asset purchase transactions with their affiliates. In general, section 23A prohibits an insured depository institution from engaging in covered transactions (which include extensions of credit and purchases of assets) with any single affiliate in excess

of 10 percent of the institution's capital stock and surplus. A 20 percent aggregate limit is imposed on the total amount of covered transactions by a bank with all affiliates. Under section 23A, all extensions of credit between an insured depository institution and its affiliate must meet certain collateral requirements. Section 23A also prohibits an insured depository institution from purchasing any low-quality assets from an affiliate, and requires that all transactions with an affiliate must be conducted on terms that are consistent with safe and sound banking practices. Although section 23A, by its terms, applies only to member banks, the Federal Deposit Insurance Act applies section 23A to all nonmember insured banks (12 U.S.C. 1828 (j)) and the Home Owners' Loan Act applies section 23A to savings associations (12 U.S.C. 1468).

Section 23A does not include an explicit definition of "capital stock and surplus." A 1964 Board interpretation refers to the definition of capital as "the amount of unimpaired common stock plus the amount of preferred stock outstanding and unimpaired" but explicitly excluded debt-like instruments from the definition of capital and surplus. 12 CFR 250.161. In the interpretation, the Board recognized that certain notes and debentures could be considered as capital or capital stock for purposes of membership in the Federal Reserve

System, but concluded that for purposes of certain Federal Reserve Act limitations and requirements, such instruments could not be regarded as part of either capital or capital stock. A subsequent Board interpretation issued in 1971 states that capital stock and surplus, as used in provisions of the Federal Reserve Act, includes reserves for loan losses and valuation reserves for securities. 12 CFR 250.162. As a practical matter, this definition of capital and surplus has been implemented as total equity capital and the allowance for loan and lease losses (ALLL) as set forth in the bank's Report of Condition and Income (Call Report).

Revisions to the Definition of Capital and Surplus

In February 1995, the OCC amended its regulation, 60 FR 8526 (February 15, 1995) (to be codified at 12 CFR 32.2(b)), setting forth lending limits on the amount a national bank may lend to a single counterparty and revised the definition of unimpaired capital and unimpaired surplus upon which lending limits are based. In June 1995, the Board amended its Regulation O, 60 FR 31053 (June 13, 1995) (to be codified at 12 CFR 215.2), to revise the definition of capital used to limit loans to insiders, to a definition that is consistent with that used for purposes of the OCC's single borrower lending limits to eliminate discrepancies in the definitions of capital used for different

lending limit purposes and to reduce regulatory burden for banks monitoring lending to their insiders. Under the revised OCC regulation, unimpaired capital and unimpaired surplus is defined as Tier 1 and Tier 2 capital as calculated under the risk-based capital guidelines plus the balance of the allowance for loan and lease losses (ALLL) excluded from Tier 2 capital.[1/]

The Board is recommending the adoption of "capital stock and surplus" for purposes of section 23A that is the same as that used for Regulation O and the national bank lending limits. Based on June 1995 Call Report data, the revised definition would decrease the limits for transactions with affiliates for a majority of banks. Unlike the current capital definition for section 23A, the revised definition would permit banks to include in capital subordinated debt that qualifies for inclusion in Tier 2. On the other hand, unlike equity capital, Tier 1 does not include securities revaluation reserves, in particular gains and losses on available-for-sale securities, which under Statement of Financial Accounting Standards Number 115 (FAS 115) are considered a component of equity capital. Overall, it is estimated that the

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[1/] Under the banking agencies' risk-based capital guidelines, Tier 1 capital includes common stock, some noncumulative perpetual preferred stock and related surplus, and minority interest in equity accounts of consolidated subsidiaries. Tier 2 capital includes the ALLL up to 1.25 percent of the bank's weighted risk assets, perpetual preferred stock and related surplus, hybrid capital instruments, and certain subordinated debt.

revised definition of capital and surplus would result in a change for most banks of 5 percent or less from their current limit, although a few community and mid-sized banks would experience substantial changes as a result of their having large gains or losses on available-for-sale securities.

Notwithstanding the decrease for many banks in the amount of capital that would be used to calculate their section 23A limit under the revised definition, the Board believes that, over all, revising the definition would be beneficial for all insured depository institutions for two reasons. First, it would provide consistency in the capital definition used for Regulation O and the national bank lending limits. Second, it would result in a more stable limit over time than the current definition because it excludes revaluation gains and losses on available-for-sale securities, a component of equity capital that tends to be volatile.

The Board also proposes to amend 12 CFR 250.161 and 12 CFR 250.162 to delete the reference to section 23A to reflect the proposed change.

Initial Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) 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.

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 insured depository institutions, regardless of size. The Board has determined that its proposed rule would impose no additional reporting or recordkeeping requirements, and that there are no relevant federal rules that duplicate, overlap, or conflict with the proposed rule. In addition, the proposed rule is not expected to have a significant economic impact on small institutions. Instead, the proposed rule is expected to relieve the regulatory burden on a majority of insured depository institutions.

Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.; 5 CFR 1320 Appendix A.1.), the Board reviewed the proposed rule under authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the proposed rule.

List of Subjects in 12 CFR Part 250

Credit, Federal Reserve System.

For the reasons set forth in the preamble, the Board proposes to amend title 12 CFR Part 250 as set forth below:

PART 250--MISCELLANEOUS INTERPRETATIONS

1. The authority citation for part 250 would continue to read as follows:

Authority: 12 U.S.C. 248(i), 371c(e).

§ 250.161 [Amended]

2. In § 250.161 paragraph (d) is amended by removing the words "loans to affiliates (12 U.S.C. 371c)," in the first sentence.

§ 250.162 [Amended]

3. In § 250.162, paragraph (a) is amended by removing the words "Loans to affiliates (12 U.S.C. 371c)," in the first sentence.

4. A new § 250.242 is added to part 250 in numerical sequence to read as follows:

§ 250.242 Section 23A of the Federal Reserve Act -- Definition of capital and surplus.

(a) An insured depository institution's capital and surplus for purposes of section 23A of the Federal Reserve Act 12 U.S.C. 371c is defined as:

(1) An institution's Tier 1 and Tier 2 capital included in the institution's risk-based capital under the capital guidelines of the appropriate Federal banking agency, based on the bank's most recent consolidated report of condition filed under 12 U.S.C. 1817(a)(3); and

(2) The balance of an institution's allowance for loan and lease losses not included in the institution's Tier 2 capital for purposes of the calculation of risk-based capital by the appropriate federal banking agency, based on the institution's most recent consolidated report of condition filed under 12 U.S.C. 1813.

(b) Definitions. For purposes of this section, the terms "appropriate Federal banking agency" and "insured depository institution" are defined as those terms are defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813.

By order of the Board of Governors of the Federal Reserve System,

November 22, 1995.

(signed) William W. Wiles

William W. Wiles,
Secretary of the Board.