

domestic and foreign market participants. The business practices of the Enterprises affect large and small investors, debt markets and international debt holders alike. Access to the markets and the price of that access are directly affected by investor perceptions of the transparency of the Enterprises and the safety and soundness of their operations. In such an environment, as the Enterprises themselves acknowledge, they have an interest in providing "best in class" disclosures.²

B. Disclosure and Safe and Sound Operations

Full and adequate disclosure of information by the Enterprises regarding their financial conditions and risks is an important part of OFHEO's supervisory program. Full disclosure enhances market discipline.³ OFHEO possesses both explicit and implied authorities to address the Enterprises' disclosure practices.⁴ The office has at its disposal a range of supervisory tools to require full and meaningful disclosures.⁵

While the offer and sale of their securities are exempt from the registration requirements of the Securities Act of 1933⁶ and their securities are exempted securities under the Securities Exchange Act of 1934 (Exchange Act),⁷ the Enterprises last July indicated that they would voluntarily register their common stock with the Securities and Exchange Commission (SEC) under the provisions of Section 12(g) of the Exchange Act, 15 U.S.C. 78l(g). That section permits companies not covered by the Exchange Act and its requirements for periodic disclosures to submit voluntarily to SEC rules. Voluntary registration triggers the attendant rules and regulations of the SEC, including SEC enforcement authorities. Once a company volunteers, it must remain under the strictures of the law, unless permitted to remove itself by the SEC. OFHEO is proposing this regulation, in part, to facilitate the

process of voluntary registration by the Enterprises under the Exchange Act.

OFHEO has a broad statutory mandate to adopt regulations, rules, and guidances deemed to be appropriate to assuring the safety and soundness of the Enterprises including appropriate disclosures that aid in promoting market discipline. OFHEO is empowered fully to mandate financial and securities disclosure and to take related actions to implement such regulatory requirements through filings and submissions, examination and oversight of disclosures. OFHEO anticipates no duplication of regulation as it administers its broad safety and soundness obligations.

Public Disclosure of Financial and Other Information Regulation

OFHEO issued a proposed Public Disclosure of Financial and Other Information regulation, which was published in the **Federal Register** on January 23, 2003.⁸ The proposed regulation complements the examination and supervisory programs of OFHEO and ensures that the disclosure policies and practices of the Enterprises comport with safety and soundness standards.

II. Response to Comments

OFHEO received six comment letters on the proposed regulation. Comment letters were received from Fannie Mae; Freddie Mac; America's Community Bankers, a national trade association for community banks of all charter types; FM Watch, a coalition of financial services and housing-related trade associations; Mr. James G. McDonald, a self-described civil rights attorney from Virginia, and Ms. Yvonne M. Wohlers from Williamsburg, Virginia.

Comments

The comments addressed both general and specific elements of the proposed rule. All comments endorsed increased public disclosure of information by the Enterprises.

The comment letters of Mr. McDonald and Ms. Wohlers, while supporting broad disclosure of Enterprise information, raised issues relating to immigration matters that are not germane to the purpose or scope of the proposed regulation that focuses on securities and other financial disclosures.

FM Watch characterized the proposed regulation as an interim measure stating its position that parity of securities regulation can result only through enactment of legislation that would

repeal the exempt status of Enterprise securities under the Federal securities laws. FM Watch suggested revising the proposed regulation in several areas. FM Watch recommended that the regulation specify the procedures to be used by, and the sanctions available to, OFHEO to enforce compliance with disclosure requirements.

As noted in the preamble to the proposed regulation, OFHEO possesses a broad range of explicit and implied authorities to address the Enterprises' disclosure practices. The Office has at its disposal a variety of supervisory tools to require full and meaningful disclosure. As stated in section 1730.1(b) of the proposed and final rule, the regulation in no way limits or restricts the authority of OFHEO to act under its safety and soundness mandate to regulate the Enterprises, including, but not limited to, "enforcing compliance with applicable laws, rules and regulations." For these reasons, OFHEO has determined that it is not necessary to include a separate enforcement or compliance provision in this regulation.

FM Watch also suggested that the proposed regulation be supplemented with additional sections that would delineate the respective responsibilities and remedies of OFHEO and the SEC with respect to Enterprise disclosures. In addition, FM Watch recommended that OFHEO enter into a Memorandum of Understanding with the SEC regarding compliance issues and establish a procedure for the receipt and processing of investor grievances.

As noted in the preamble to the proposed regulation, voluntary registration triggers the attendant rules and regulations of the SEC, including SEC enforcement authorities. OFHEO proposed this regulation, in large part, to facilitate the process of voluntary registration by the Enterprises under the Exchange Act. Moreover, OFHEO has a broad statutory mandate to adopt regulations, rules, and guidances to assure safe and sound operations of the Enterprises including appropriate disclosures. OFHEO regularly communicates with the SEC. Further, OFHEO regularly receives comments from private persons and groups on a range of topics and a regulation need not establish a specialized procedure for receipt of comments. In sum, the enforcement policies and practices of OFHEO with respect to Enterprise disclosures do not require additional elaboration in this rulemaking.

FM Watch also recommended that the proposed regulation be revised by adding a section detailing various disclosure commitments made by the

² *Id.* See, for example, Fannie Mae, *Franklin Raines, FDIC Panel*.

³ See Basel Committee on Banking Supervision's consultative paper entitled, "A New Capital Adequacy Framework." (Basel Committee Publications No. 50 (June 1999)).

⁴ In general, see 12 U.S.C. 4513, 12 U.S.C. 4631, 4632, and 4636; 12 U.S.C. 4514; 12 U.S.C. 4501(6) as well as the chartering acts for the Enterprises at 12 U.S.C. 1723a(k)(2) and 12 U.S.C. 1456(c)(2) and (3).

⁵ An unsafe or unsound practice may serve as a basis for enforcement action by OFHEO pursuant to 12 CFR parts 1777 and 1780.

⁶ 15 U.S.C. 77a through 77aa.

⁷ 15 U.S.C. 78a through 78jj.

⁸ 68 FR 3194 (January 23, 2003).