

INFORMATION section in the context of specific regulatory requirements.

B. Authorization To Invest in AMA—Section 955.2

Section 955.2 of the current rule authorizes a Bank to invest in AMA, and establishes a three-part test for AMA-eligible investments. See 12 CFR 955.2. The current rule prescribes the types of assets that may qualify as AMA, the required nexus between the Bank and its member or housing associate, and the details of the credit risk-sharing provisions. Under the proposed rule, this section would simply authorize a Bank to invest in AMA, subject to the provisions of part 955 and 12 CFR part 980 (relating to new business activities). The existing provisions relating to asset type, member nexus, and credit risk sharing would be relocated to separate sections.

The proposed rule also would add a definition of “AMA” to § 955.1, and would make conforming changes to the existing definition of “AMA” in 12 CFR 900.2. Under those definitions, the term “AMA” would mean any assets acquired in accordance with, and satisfying the applicable requirements of, proposed §§ 955.3, 955.4 and 955.5, which address the asset type, member nexus, and credit enhancement requirements, respectively.

C. Three-Part Test—Proposed §§ 955.3, 955.4 and 955.5

The proposed rule would relocate and revise each element of the three-part test, which currently is set forth in §§ 955.2(a), 955.2(b) and 955.2(c).

1. Asset Requirement—Proposed § 955.3

Proposed § 955.3, which would specify the types of assets that are AMA-eligible, would eliminate one item that currently qualifies as AMA and add another item that the Finance Board has included as AMA by interpretation. The proposed rule would retain the provisions of the current rule relating to the acquisition of whole loans that are eligible to secure Bank advances, or that are secured by manufactured housing. See 12 CFR 955.2(a)(1), (a)(2). The proposed rule would eliminate the current provision that allows certain state or local housing finance agency (HFA) bonds to qualify as AMA. 12 CFR 955.2(a)(3). The Banks are authorized to invest in certain highly rated HFA bonds under other provisions of the regulations, and the Finance Board believes that eliminating the separate investment authority under the AMA regulation would not affect the ability of a Bank to invest in HFA bonds rated AA or higher. See 12 CFR 956.2(f),

956.3(a)(4)(iii). Because the proposed rule would remove HFA bonds as AMA, the proposed rule also would eliminate provisions that establish a process for acquiring HFA bonds as AMA from a member or housing associate of another Bank. 12 CFR 955.2(b)(2)(ii).

AMA-qualified interests in whole loans. Section 955.3(c) of the proposed rule would expressly authorize as AMA investments certain instruments that represent an interest in qualifying whole loans. The Banks currently are authorized to make such AMA investments, based on Finance Board guidance provided in the preamble to the current rule. See final AMA rule, 65 FR at 43974–78. The proposed rule would codify the existing guidance. The several provisions of the proposed rule that relate to these interests are discussed together below, under the section captioned *AMA-Qualified Interests in Whole Loans*.

2. Member or Housing Associate Nexus Requirement Proposed § 955.4

Section 955.4 of the proposed rule would retain a nexus requirement by providing that a Bank may acquire AMA-eligible loans only from its members and housing associates, from members and housing associates of another Bank, or from another Bank. The nexus requirement is intended to ensure that AMA assets have an appropriate connection to the Bank’s member or housing associate. That connection advances the cooperative nature of the Bank System, and effectively precludes the extension of membership benefits to nonmembers. The proposed rule, however, would simplify this member or housing associate nexus requirement. The specific revisions are described below.

“Valid business purpose” requirement. The proposed rule would eliminate the “valid business purpose” requirement from § 955.2(b)(1)(ii) of the current rule. 12 CFR 955.2(b)(1)(ii). This provision of the current rule recognizes that members often acquire mortgage loans both by originating them, as well as by purchasing them from other parties and allows the Banks to acquire loans originated by third parties, provided that the members have acquired them for a valid business purpose. It is intended to discourage the use of members as conduits for the sole purpose of passing mortgage loans from a nonmember to the Bank. The current rule, however, does not define what constitutes a “valid business purpose,” and this provision has been difficult to enforce as written. The proposed elimination of this requirement is intended only to simplify the rule, and

does not alter the underlying policy that AMA-eligible whole loans may be acquired only from members and housing associates.

Origination or issuance requirement. The proposed rule would eliminate the requirement that AMA must be originated or issued by or through a member, housing associate, or affiliate thereof. 12 CFR 955.2(b)(1)(i). Eliminating this requirement is consistent with the elimination of the “valid business purpose” requirement, noted above. To eliminate only the “valid business purpose” requirement would render ineligible for purchase by Banks AMA-qualifying loans owned by, but not originated by, members. This limitation would put a large segment of the mortgage market out of reach of the AMA programs.

If the “valid business purpose” and “origination or issuance” provisions are eliminated, as proposed, the AMA rule would no longer use the term “affiliate.” Thus, the Finance Board is also proposing to delete the definition of “affiliate” from § 955.1.

Acquisition of assets from affiliates of a member. As noted previously, the proposed rule would retain the requirement that a Bank may acquire AMA only from a member, a housing associate, or another Bank. 12 CFR 955.2(b)(2). Accordingly, a Bank could not purchase mortgage assets directly from an affiliate of a member, and any such assets would have to be acquired by the member before a Bank could acquire them as AMA. A number of Banks have suggested that the Finance Board permit the Banks to acquire assets directly from affiliates of a member. As noted above, the nexus requirement ensures that AMA assets have a connection to the members that reflects the cooperative nature of the Bank System. Allowing a Bank to purchase AMA directly from an affiliate would raise concerns about the extension of membership benefits to a nonmember, even if the nonmember were under common control with a member. Such an arrangement might also present practical and operational concerns relating to AMA collateral and credit enhancement because a Bank would have more extensive means of requiring a member to meet its obligations than would be the case for a nonmember institution. The Finance Board, however, is willing to consider this issue further and requests comment on whether, and under what conditions, a Bank may be permitted to acquire AMA-qualifying assets from an affiliate of a member. Among the issues on which the Finance Board seeks comments are whether the rule should treat a wholly-