

includes a variety of other provisions that will affect all public companies, including state member banks that report to the Board under the Exchange Act. For example, the Act includes important changes relating to the independence of the external auditors of public companies. In addition, the Sarbanes-Oxley Act added several new disclosure requirements to sections 13 and 16 of the Exchange Act that apply to public companies that the Board will be responsible for administering and enforcing with respect to registered banks.<sup>12</sup>

Public banking organizations are encouraged to review the Sarbanes-Oxley Act and any implementing rules issued by the SEC. The Board also recently issued supervisory guidance designed to assist registered banks and other public banking organizations supervised by the Federal Reserve in understanding and complying with the requirements of the Sarbanes-Oxley Act.<sup>13</sup>

### Regulatory Flexibility Act

Pursuant to section 4(a) of the Regulatory Flexibility Act (5 U.S.C. 604(a)), the Board must publish a final regulatory flexibility analysis with this rulemaking. The rule implements for registered banks several of the new reporting and disclosure obligations imposed by the Sarbanes-Oxley Act on public companies. Consistent with section 12(i) of the Exchange Act, the final rule requires registered banks to comply with any rules, regulations or forms that the SEC may issue under the relevant provisions of the Sarbanes-Oxley Act. By incorporating the SEC's rules, regulations and forms by reference, the rule seeks to minimize the potential conflict between the rule and the corresponding SEC rules and, thus, reduce the potential burden associated with complying with the Board's rule.

<sup>12</sup> See Sarbanes-Oxley Act, sections 401(a), 402, 403 and 409 (to be codified at 15 U.S.C. 78m(i), (j), (k) and (l), and 78p(a)).

<sup>13</sup> See The Sarbanes-Oxley Act of 2002, SR Letter 02-20 (Oct. 29, 2002). One commenter expressed concern that the Board and the other Federal banking agencies may require all banking organizations to comply with some or all of the provisions that the Sarbanes-Oxley Act imposes only on public companies. As the Board previously has stated, the Board, in conjunction with the other Federal banking agencies, is reviewing its existing regulations and supervisory guidance to determine what, if any, changes may be appropriate in light of the Sarbanes-Oxley Act. Such review is outside the scope of this rulemaking. Nevertheless, the Board recognizes that nonpublic banking organizations typically have fewer resources and less complex operations than public banking organizations and that it may be inappropriate to require all nonpublic banking organizations to comply with requirements legislatively mandated only for public companies.

Moreover, as noted above, the Board intends to monitor the SEC rules incorporated by reference into the Board's rule to determine whether it would be appropriate to modify these rules for registered banks.

The objectives and legal basis for the rule are discussed in the supplementary information set forth above. As of December 10, 2002, 17 state member banks had a class of securities registered under sections 12(b) or 12(g) of the Exchange Act and, thus, would be subject to the rule. As of September 30, 2002, only six of these institutions have assets of less than \$100 million and are considered small entities for purposes of the Regulatory Flexibility Act. See 5 U.S.C. 601; 13 CFR 121.201.

### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A), the Board has reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. Consistent with the requirements of section 12(i) of the Exchange Act, the final rule requires registered banks to abide by any collection of information requirements adopted by the SEC under sections 301, 302, 303, 304, 306(a), 401(b), 404, 406 and 407 of the Sarbanes-Oxley Act of 2002, unless such collections are modified by the Board. As of December 10, 2002, there were 17 registered banks that will be subject to the final rule. Registered banks may request confidential treatment of any information submitted to the Board under the final rule in the manner described in section 208.36(d) of the Board's Regulation H (12 CFR 208.36(d)).

Because the SEC has not yet adopted final rules to implement many of the sections of the Sarbanes-Oxley Act referenced above, the Board is unable at this time to estimate the annual burden registered banks will incur in complying with the final rule. The Board notes that the SEC must consider the paperwork burden imposed by its rules in connection with its rulemaking process, and provide an estimate of the number of hours persons subject to the rule would spend each year in complying with any collections of information imposed by the SEC's rule. Registered banks and other persons interested in the potential paperwork burden imposed by the Board's rule should monitor the SEC's rulemaking process under the Sarbanes-Oxley Act.

The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, an information collection unless the Board has

displayed a currently valid OMB control number. The OMB control number for the information collections required by the final rule is 7100-0091. The Federal Reserve has a continuing interest in the public's opinion of our collections of information. At any time, comments regarding any aspect of the collections of information required by the final rule, including suggestions for reducing burden, may be sent to: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100-0091), Washington, DC 20503.

### Plain Language

Section 722 of the Gramm-Leach-Bliley Act (12 U.S.C. 4809) requires the Board to use "plain language" in all rules published in the **Federal Register** after January 1, 2000. The Board believes that the final rule is presented in a simple and straightforward manner and is consistent with this "plain language" directive.

### Effective Date of Rule

The final rule will become effective on April 1, 2003. Because some of the provisions of the Sarbanes-Oxley Act to be administered and enforced by the Board had previously become effective, the Board made the interim rule effective immediately on publication in the **Federal Register** (*i.e.* September 13, 2002). The Board requested comment on all aspects of the interim rule and has carefully considered those comments in adopting this final rule.

### List of Subjects in 12 CFR Part 208

Accounting, Banks, banking, Reporting and recordkeeping requirements, Securities.

### Authority and Issuance

For the reasons set forth in the preamble, the Board of Governors of the Federal Reserve System amends part 208 of chapter II of title 12 of the Code of Federal Regulations as follows:

### PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

**Authority:** 12 U.S.C. 24, 24a, 36, 92a, 93a, 248(a), 248(c), 321-338a, 371d, 461, 481-486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p-1, 1831r-1, 1831w, 1831x, 1835a, 1843(l), 1882, 2901-2907, 3105, 3310, 3331-3351, and 3906-3909; 15 U.S.C. 78b, 781(b), 781(g),