

Congress assigned to the Finance Board the statutory duty "to ensure that the Federal Home Loan Banks remain adequately capitalized and able to raise funds in the capital markets."¹⁵

F. Current Bank System Securities Disclosure

Bank System Combined Reports. Subject to certain specifically enumerated exceptions, Finance Board regulations currently require the OF to prepare combined annual and quarterly financial reports for the Bank System (Bank System Combined Reports) in scope, form and content generally consistent with the requirements of SEC Regulation S-K and Regulation S-X.¹⁶ Under these Finance Board regulations, the OF prepares an annual and three quarterly Bank System Combined Reports. The annual report portion of the Bank System Combined Reports contains: (i) Audited balance sheets for the prior two years and income statements for the prior three years; (ii) a discussion and analysis of the Bank System's financial condition and results of operations; and (iii) supplemental information describing the Bank System's business and senior Bank System management. The quarterly report portions of the Bank System Combined Reports contain unaudited interim financial statements with accompanying discussion and analysis of the Bank System's financial condition and results of operations.

Bank Annual and Quarterly Reports. Finance Board regulations also require that any financial statements contained in an annual or quarterly financial report issued by an individual Bank be consistent in both form and content with the financial statements presented in the Bank System Combined Reports.¹⁷ Except for this obligation, there is no Finance Board regulatory requirement that individual Bank annual or quarterly reports be in scope, form and content generally consistent with the requirements of SEC Regulation S-K and Regulation S-X. Each Bank currently prepares and distributes to its members an annual report containing audited financial statements and a management discussion and analysis section. Each Bank also distributes brief quarterly or semi-annual summary financial reports to its members.

Additional OF 1933 Act Disclosure Documents. The OF distributes various offering documents to investors in connection with issuances of Bank

System consolidated obligations. These OF disclosure documents are modeled on the disclosure documents that are prepared by issuers of investment grade debt who issue debt securities under cover of a Form S-3 shelf registration statement.

G. Reassessment of the Securities Disclosure of the Individual Banks

Bank System's Need to Remain Adequately Capitalized

Comprehensive, fully transparent securities disclosure is necessary if the Banks are to maintain the long-term confidence of the investment community and the national rating agencies. The rules and regulations that form the 1934 Act's periodic disclosure system establish the best practices standard for disclosure by U.S. corporations. The SEC has the resources and the expertise to ensure that individual Bank disclosure documents meet this standard. Congress established the SEC in 1934 to enforce the newly enacted federal securities laws, to promote stability in the financial markets and to protect investors. For the last 69 years, the SEC has been in the forefront of investor protection and has significantly contributed to the integrity of the United States securities markets.

Because of the SEC's expertise and resources and the credibility that SEC review brings to a registrant's financial statements, the Finance Board has concluded that the Bank System's ability to access the capital markets may be better secured if each of the 12 Banks voluntarily registers a class of its securities with the SEC under Section 12(g) of the 1934 Act, thereby subjecting the Banks to the SEC's periodic disclosure system, as interpreted and administered by the SEC.

The Finance Board's proposal that each Bank should be required to voluntarily register a class of its securities under Section 12(g) of the 1934 Act also rests on the fact that Bank accounting and financial statement reporting issues have become significantly more complex in recent years because of new Financial Accounting Standards Board (FASB) statements. In particular, Statement of Financial Accounting Standards No. 133, *Accounting for Derivative Instruments and Hedging Activities*, has given rise to interpretative complexities. These more complex FASB financial statement reporting requirements necessitate more comprehensive and detailed disclosure by individual Banks. The SEC staff has the extensive accounting expertise required to review this Bank disclosure.

Finally, the Finance Board recognizes that Fannie Mae has voluntarily registered its common stock with the SEC under Section 12(g) of the 1934 Act and that Freddie Mac has agreed to do so upon the completion of its restatement of its financial statements. There may be merit in having the core securities disclosures of all of the housing GSEs overseen by the same disclosure regulator.

Finance Board Will Continue to Oversee the Bank System Combined Reports in Consultation with the SEC. The OF is a joint office of the 12 Banks and is not a separate legal entity. Thus, the OF would not fit into a 1934 Act registration regime that is premised on registrants being separate legal entities with distinct managements. Moreover, the Bank System Combined Reports combine rather than consolidate financial information from each of the 12 Banks. If each of the 12 Banks subjects itself to the SEC's integrated disclosure regime, this will make available to the OF and the Finance Board 1934 Act periodic disclosure documents prepared by each Bank that have been reviewed by SEC staff. With this foundation, the Finance Board believes that its extensive knowledge of the Bank System and the Bank System Combined Reports make the Finance Board the appropriate regulator to continue to supervise the Bank System Combined Report's disclosure. In carrying out this responsibility, the Finance Board will consult with the SEC.

III. Analysis of Proposed Regulation

A. Section 900.3 Definitions

The proposed regulation would amend § 900.3¹⁸ to include the following three additional definitions of terms related to securities disclosure that are used in the proposed regulation: "GLB Act," "SEC," and "1934 Act."

B. Section 998.1 General

1. Section 998.1(a) Purpose

This section describes the purpose of part 998, which is to require each Bank to prepare and submit the financial and other disclosures required by the Finance Board by voluntarily registering a class of its securities with the SEC under Section 12(g) of the 1934 Act. The voluntary registration of a class of the securities of each Bank will bring each Bank under the 1934 Act periodic disclosure regime, as interpreted and administered by the SEC.

¹⁵ 12 U.S.C. 1422a(a)(3)(B)(iii).

¹⁶ 12 CFR 985.6(b)(1).

¹⁷ 12 CFR 989.4.

¹⁸ 12 CFR 900.3.