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Foreign Bank Exemption From the Insider Lending Prohibition of Exchange Act Section 13(k); Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–48481, International Series Release No. 1272; File No. S7–15–03]

RIN 3235–AI81

Foreign Bank Exemption From the Insider Lending Prohibition of Exchange Act Section 13(k)

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We propose to exempt qualified foreign banks from the insider lending prohibition under Section 13(k) of the Securities Exchange Act of 1934, as added by Section 402 of the Sarbanes-Oxley Act. This section prohibits both domestic and foreign issuers from making or arranging for loans to their directors and executive officers unless the loans fall within the scope of specified exemptions. One of these exemptions permits certain insider lending by a bank or other depository institution that is insured under the Federal Deposit Insurance Act. Foreign banks whose securities are registered with the Securities and Exchange Commission are not eligible for the bank exemption under Section 13(k). The proposed rule would remedy this disparate treatment of foreign banks by exempting from Section 13(k)'s insider lending prohibition those foreign banks that meet specified criteria similar to those that qualify domestic banks for this statutory exemption.

DATES: Please submit your comments on or before October 17, 2003.

ADDRESSES: Send three copies of your comments to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. You also may submit your comments electronically to the following electronic mail address: *rule-comments@sec.gov*. Your comment letter should refer to File No. S7–15–03; include this file number in the subject line if you use electronic mail. To help us process and review your comments more efficiently, comments should be sent by hard copy or e-mail, but not by both methods. We will make comment letters available for public inspection and copying in our Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. We will post electronically submitted comment letters on our Internet Web site *(http://www.sec.gov)*.[1]

FOR FURTHER INFORMATION CONTACT: Elliot Staffin, Special Counsel, Office of International Corporate Finance, Division of Corporation Finance at (202) 942–2990.

SUPPLEMENTARY INFORMATION: We propose to add Rule 13k–1 [2] and amend Form 20–F [3] under the Securities Exchange Act of 1934.[4]

I. Background

In the wake of well-publicized corporate scandals, Congress enacted Section 402 of the Sarbanes-Oxley Act [5] in order to prevent corporations from issuing personal loans to their executives.[6] This section added Section 13(k), entitled ''Prohibition on Personal Loans to Executives,'' to the Exchange Act.[7] Section 13(k)(1) prohibits any issuer from directly or indirectly extending or maintaining credit, arranging for the extension of credit, or renewing an extension of credit ''in the form of a personal loan'' to or for any director or executive officer of that issuer.[8] Because the Sarbanes-Oxley Act's definition of issuer draws no distinction between U.S. and non-U.S. companies, Section 402's insider lending prohibition applies to any domestic or foreign entity that has Exchange Act reporting obligations or that has filed a registration statement under the Securities Act of 1933[9] that, although not yet effective, has not been withdrawn.[10]

Four categories of personal loans are expressly exempt from Section 402's prohibition:

(1) any extension of credit existing before the Sarbanes-Oxley Act's enactment as long as no material modification or renewal of the extension of credit occurs on or after the date of enactment;[11]

(2) specified home improvement and consumer credit loans if:

- Made in the ordinary course of the issuer's consumer credit business,
- of a type generally made available to the public by the issuer, and
- on terms no more favorable than those offered to the public;

(3) loans by a broker-dealer to its employees that:

- Fulfill the three conditions of paragraph (2) above,
- are made to buy, trade or carry securities other than the broker-dealer's securities, and
- are permitted by applicable Federal Reserve System regulations;[12] and

(4) ''any loan made or maintained by an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), if the loan is subject to the insider lending restrictions of section 22(h) of the Federal Reserve Act (12 U.S.C. 375b).''[13]

This last exemption applies only to an ''insured depository institution,'' which, as defined by the Federal Deposit Insurance Act (''FDIA''),[14] is a bank or savings association that has insured its deposits with the Federal Deposit Insurance Corporation (''FDIC'').[15] Although this Section 402 provision does not explicitly exclude foreign banks from the exemption, under current U.S. banking regulation a foreign bank cannot be an ''insured depository institution'' and, therefore, cannot qualify for the bank exemption. Since 1991, following enactment of the Foreign Bank Supervision Enhancement Act (''FBSEA''), a foreign bank that seeks to accept and maintain FDIC-insured retail deposits in the United States must establish a U.S. subsidiary, rather than a branch, agency or other entity, for that purpose.[16] These U.S. subsidiaries of foreign banks, and the limited number of grandfathered U.S. branches of foreign banks that had obtained FDIC insurance prior to FBSEA's enactment,[17] can engage in FDIC-insured, retail deposit activities and, thus, qualify as ''insured depository institutions.'' But the foreign banks that own the U.S. insured depository subsidiaries or operate the grandfathered insured depository branches are not themselves ''insured

[1] We do not edit personal, identifying information, such as names or electronic mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

[2] Proposed 17 CFR 240.13k–1.

[3] 17 CFR 249.220f.

[4] 15 U.S.C. 78a *et. seq.* (''Exchange Act'').

[5] Pub. L. 107–204, 116 Stat. 745 (2002).

[6] *See* Senator Charles Schumer's remarks in 148 Cong. Rec. S. 7350, 7360–7361 (July 25, 2002). *See also* Senator Carl Levin's letter, dated September 25, 2002, to Chairman Harvey Pitt, reprinted in 149 Cong. Rec. S. 2178, 2179–2180 (February 11, 2003).

[7] 15 U.S.C. 78m(k).

[8] 15 U.S.C. 78m(k)(1). Section 13(k)(1) further prohibits personal loans to an issuer's executive officers or directors by any subsidiary of that issuer.

[9] 15 U.S.C. 77a *et seq.* (''Securities Act'').

[10] Sarbanes-Oxley Act Section (2)(a)(7).

[11] Exchange Act Section 13(k)(1).

[12] Exchange Act Section 13(k)(2) [15 U.S.C. 78m(k)(2)] establishes the exemptions for the specified home improvement and consumer credit loans as well as the broker-dealer loans.

[13] Exchange Act Section 13(k)(3) [15 U.S.C. 78m(k)(3)].

[14] 12 U.S.C. 1811 *et seq.*

[15] 12 U.S.C. 1813(c)(2).

[16] 12 U.S.C. 3104(d)(1).

[17] 12 U.S.C. 3104(d)(2).

depository institutions'' under the FDIA.[18]

Because foreign banks cannot meet the threshold criterion for the ''insured depository'' exemption under Section 402, some foreign banks [19] believe that Section 402 runs counter to the principle of ''national treatment,'' which has been a fundamental goal of federal banking legislation concerning foreign banks.[20] Federal banking law generally permits foreign financial institutions to operate in the United States without incurring either significant advantage or disadvantage compared with U.S. financial institutions.[21] Foreign banks have commented that the inability of foreign banks to qualify for the ''insured depository'' exemption places them at a disadvantage compared to their U.S. counterparts. Foreign banks have also noted that many of them are already subject in their home jurisdictions to insider lending restrictions that are similar although not identical to those imposed by Federal Reserve rules.

Some foreign banks have further commented that, under foreign banking regulations, their directors and executive officers are prohibited from borrowing money from other banks and financial institutions. In addition, although not required by local regulations, some foreign banks, like some of their U.S. counterparts, have implemented policies that prohibit senior insiders from borrowing money from other banks for the purpose of enhancing oversight and surveillance of financial transactions by insiders. The combination of these prohibitions and the provisions of Section 402 would arguably effectively foreclose a director or executive officer of a foreign bank whose securities are registered with the Commission from borrowing money. Consequently, several foreign banks have urged the Commission to adopt an exemption for foreign banks from the Exchange Act's insider lending prohibition.

When crafting this proposed foreign bank exemption, we have attempted to strike the appropriate balance among various approaches. Subjecting foreign banks to all of the Federal Reserve System's detailed requirements in this area does not seem necessary or appropriate, especially when many foreign banking regulators have well developed regulatory schemes related to insider lending. Thus, the proposed exemption is based on principles that underlie relevant U.S. banking regulations without applying certain of the specific requirements contained in those regulations. Yet we have also striven to be specific enough to ensure that the exemption is faithful to the principles of Section 402 while giving issuers adequate guidance regarding whether the exemption is available.

Overlaying all of these concerns has been our strong commitment to implement fully the spirit of the Sarbanes-Oxley Act for all companies that are subject to the Act. We believe that our proposed foreign bank rules are consistent with the legislative intent underlying Section 402. There is little legislative history to assist in discerning Congressional intent regarding Section 402. The legislative history that does exist reveals that Section 402 was introduced in an amendment to the Sarbanes-Oxley Act just prior to its passage on July 25, 2002 in order to curb corporate corruption by preventing corporations from making personal loans to their executives.[22] While there is no discussion concerning the scope of the Section 402 exemptions, there also is nothing to indicate that Congress intended to treat foreign banks differently than domestic banks. The proposed foreign bank exemption would be consistent with the Sarbanes-Oxley Act by extending Section 13(k)'s banking exemption to foreign banks but only if they meet specified criteria comparable to those required for domestic banks.

II. Discussion

A. Overview of the Proposed Foreign Bank Exemption

Proposed Rule 13k–1 would exempt from Section 13(k)(1)'s insider lending prohibition an issuer that is a foreign bank or the parent company of a foreign bank with respect to loans by the foreign bank to its insiders or the insiders of its parent company as long as:

(1) either:

(a) The laws or regulations of the foreign bank's home jurisdiction require the bank to insure its deposits; or

(b) the Federal Reserve Board has determined that the foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by its home jurisdiction supervisor under 12 CFR 211.24(c); and

(2) the laws or regulations of the foreign bank's home jurisdiction restrict the foreign bank from making loans to its executive officers and directors or those of its parent company unless the foreign bank extends the loan:

(a) on substantially the same terms as those prevailing at the time for comparable transactions by the foreign bank with other persons who are not executive officers, directors or employees of the foreign bank or its parent company; or

(b) pursuant to a benefit or compensation program that is widely available to the employees of the foreign bank or its parent company and does not give preference to any of the executive officers or directors of the foreign bank or its parent company over any other employees of the foreign bank or its parent company; or

(c) following the express approval of the loan by the foreign bank's home jurisdiction supervisor; and

(3) for any loan that, when aggregated with the amount of all other outstanding loans to a particular executive officer or director, exceeds $500,000:

(a) a majority of the foreign bank's board of directors has approved the loan in advance; and

(b) the loan's intended recipient has abstained from participating in the vote regarding the loan.

B. Definition of Foreign Bank

The proposed rule would employ a definition of ''foreign bank'' that is similar to the definition under Regulation K of the Board of Governors of the Federal Reserve System (''Federal Reserve Board'').[23] Under this

[18] Most foreign banks with U.S. operations are engaged in wholesale banking activities in the United States, not in the retail deposit business. *See* U.S. General Accounting Office, ''Foreign Banks—Assessing Their Role in the U.S. Banking System,'' pp. 3, 5 (February 1996) (''*GAO Foreign Banks Report*''). These U.S. operations of foreign banks have been extensive. For example, in calendar year 2002, there were $1.34 trillion in assets dedicated to the U.S. operations of foreign banks. During this year, only 68 (12.4%) of the 547 U.S.-based entities owned or operated by foreign banks were FDIC-insured. *See* the Federal Reserve Bank's ''Report Regarding Structure Data for U.S. Offices of Foreign Banks as of December 31, 2002,'' which is available on the Federal Reserve Bank's Web site at *http://www.federalreserve.gov/releases/iba.* Of the 46 foreign banks that are currently Exchange Act reporting companies and, thus, subject to the Sarbanes-Oxley Act, only 10 have U.S.-based operations that are FDIC-insured.

[19] The Commission has received several letters from foreign banks and their counsel discussing specific proposals relating to, and urging us to adopt, an insider lending exemption for foreign banks. We will make these letters publicly available along with comment letters that we will receive in response to this rule proposal.

[20] *See, for example,* the *GAO Foreign Banks Report* at 2.

[21] *GAO Foreign Banks Report* at 16.

[22] *See* Senator Charles Schumer's remarks in 148 Cong. Rec. S. 7350 at 7360–7361. *See also* Senator Carl Levin's letter to Chairman Harvey Pitt reprinted in 149 Cong. Rec. S 2178 at 2179–2180.

[23] Codified at 12 CFR 211.1 *et seq.*, Regulation K comprises the Federal Reserve Board's rules pertaining to international banking operations. Regulation K's definition of foreign bank is found at 12 CFR 211.2(j).

definition, a foreign bank is an institution that is:

(1) incorporated or organized under the laws of a country other than the United States or a political subdivision of a country other than the United States;[24]

(2) regulated as a bank by that country's or subdivision's government; and

(3) engaged substantially in the business of banking.[25]

This definition would also include a provision explaining that, in order to be an institution engaged substantially in the business of banking, a foreign entity must receive deposits to a substantial extent in the regular course of its business, have the power to accept demand deposits, and extend commercial or other types of credit.[26] Thus, this definition would exclude from the exemption foreign companies that are in the business of extending credit but, because they do not accept deposits in the home country, are subject to a less stringent regulatory regime there.

Comment Solicited

We solicit comment on the proposed definition of foreign bank as well as on all other aspects of the proposed rule. Here and throughout the release, when we solicit comment, we are interested in hearing from all interested parties, including members of the investing public, representatives of the foreign and domestic banking community, other foreign private issuers and domestic issuers. We are further interested in learning from all parties what aspects of the rule proposal they deem essential, what aspects they believe are preferred but not essential, and what aspects they believe should be modified.

Regarding the proposed definition of foreign bank, should we exclude from the definition financial institutions that extend credit but do not customarily accept deposits in their home jurisdictions, as proposed? Are there other types or characteristics of foreign financial or lending institutions that should be included or excluded from the definition of foreign bank and, if so, why? Is it appropriate to look to Regulation K under the Federal Reserve Act for the proposed definition of foreign bank? Is there another regulation or law that would be more appropriate and, if so, why?

C. The Home Jurisdiction Deposit Insurance or CCS Condition

Proposed Rule 13k–1(b)(1) would establish two alternative conditions. Under the first condition, a foreign bank would be eligible for the exemption if it were subject to a deposit insurance regime in its home jurisidiction. This condition would be consistent with the Sarbanes-Oxley Act by making it more likely that a qualifying foreign bank is subject in its home jurisdiction to a banking regulatory regime that generally addresses the risks that Section 402 was intended to guard against. Moreover, since domestic banks are currently subject to a deposit insurance requirement, adoption of a similar requirement for foreign banks would assist in ensuring that foreign banks are not viewed as advantaged over domestic banks when determining eligibility for the Section 13(k) exemption.

While there appears to be some difference of opinion among foreign banking regulators and economists as to the role of an insurance scheme in ensuring an effective and sound banking regulatory regime,[27] numerous countries have nevertheless adopted some form of a deposit insurance scheme, including approximately 34 European countries, 10 African countries, 8 Asian countries, 4 Middle Eastern countries, and 16 countries from North or South America.[28] Therefore, our proposed home country deposit insurance requirement for foreign banks, if adopted, would likely be satisfied by most foreign banks.

Moreover, we have phrased the deposit insurance requirement in general terms in recognition that there are differences among deposit insurance schemes in the foreign banks' home countries. In the interest of comity, we believe that deference to the foreign banking supervisor regarding the details of its deposit insurance scheme is appropriate.

Proposed Rule 13k–1(b)(1)'s alternative condition would render a foreign bank eligible for the exemption if the Federal Reserve Board has determined that the foreign bank is subject to comprehensive supervision or regulation on a consolidated basis (''CCS'') by its home jurisdiction supervisor. CCS refers to a Federal banking regulatory requirement that provides that, before a foreign bank can establish a U.S. branch or agency or acquire a U.S. bank or commercial lending company, the Federal Reserve Board must determine that the foreign bank is subject to CCS in its home jurisdiction.[29] In order to make this determination, among other considerations, the Board must find that the supervisor in the bank's home jurisdiction receives information on the bank's worldwide operations sufficient to assess the bank's overall financial condition and compliance with laws and regulations.[30]

We recommend establishing a favorable CCS determination as an alternative condition to a deposit insurance requirement primarily in order to accommodate foreign banks located in jurisdictions that lack a deposit insurance scheme yet have received a favorable CCS determination. This alternative would be consistent with Section 402 by rendering eligible for the bank exemption those foreign banks permitted to do business in the United States because the Board has found their home country banking laws and supervision to be sufficiently comprehensive.

By requiring either a home country deposit insurance scheme or a favorable CCS determination, we would ensure that the insider lending exemption would apply only to qualified foreign banks and not to other foreign entities, such as insurance companies or pension funds, that may also be subject to oversight in their home countries. Moreover, by positing a home

[24] Under the Exchange Act, the term ''United States'' includes the District of Columbia, Puerto Rico, the Virgin Islands, and any other possession of the United States. *See* the definition of ''State'' in Exchange Act Section 3(a)(16) [15 U.S.C. 78c(a)(16)]. The proposed rule would assume this statutory definition.

[25] *See* proposed 17 CFR 240.13k–1(a).

[26] *See* proposed 17 CFR 240.13k–1(a)(3).

[27] *See for example,* U.S. GAO, ''Deposit Insurance: Overview of Six Foreign Systems'' (February 1991); and James R. Barth, ''Bank Regulation and Supervision: What Works Best?'', 11, n. 5 (January 2002), a Basel Committee Working Paper available at *http://www.bis.org/bcbs/events/b2ealev.pdf.*

[28] *See* Federal Deposit Insurance Corporation, ''International Directory of Deposit Insurers'' (2000), which is available at *http://www2.fdic.gov/iddi/intguide00.pdf;* and Working Paper 99/54 for the International Monetary Fund, ''Deposit Insurance: A Survey of Actual and Best Practices,'' 30–34 (April 1999) (''IMF Working Paper'').

[29] *See* 12 U.S.C. 3105(d)(2)(A) and 12 CFR 211.24(c).

[30] When making this CCS determination, the Board must assess a number of factors, including the extent to which the home country supervisor:

(1) Ensures that the foreign bank has adequate procedures for monitoring and controlling its activities worldwide;

(2) obtains information on the condition of the foreign bank and its subsidiaries and offices outside the home country through regular reports of examination, audit reports, or otherwise;

(3) obtains information on the dealings and relationships between the foreign bank and its affiliate companies;

(4) receives from the foreign bank consolidated financial reports on a worldwide basis or comparable information that permits analysis of the foreign bank's financial condition on a worldwide, consolidated basis; and

(5) evaluates prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis.

12 CFR 211.24(c)(1)(ii).

jurisdiction deposit insurance requirement as an alternative to a favorable CCS determination, we would enable foreign banks that have U.S. offices approved by the Federal Reserve Board under a standard other than CCS to qualify for the exemption.[31] In addition, if we required only a favorable CCS determination, the proposed rule would deny the exemption to a foreign bank that has never applied to the Board for approval of a U.S. office even if the foreign bank's home country has promulgated insider lending restrictions similar to those under U.S. law and the bank otherwise meets our proposed requirements.

Comment Solicited

We solicit comment on proposed Rule 13k–1(b)(1). Should we rely alternatively on a home jurisdiction deposit insurance requirement or a favorable CCS determination, as proposed? Should we use only a favorable CCS determination as the sole criterion? If so, would we be excluding banks from countries that appear to have a developed bank regulatory regime but have nevertheless not received a favorable CCS determination? Conversely, should we rely exclusively on a home jurisdiction deposit insurance requirement? If so, should we require that the home jurisdiction deposit insurance requirement meet certain specified criteria? Or are we correct in deferring to the home jurisdiction bank supervisor and positing only a general home jurisidiction deposit insurance requirement, as proposed? Are there other criteria that should be used, either as alternatives to those that have been proposed or as the sole criteria?

We have based the proposed CCS determination alternative on the Federal Reserve Board's practice of determining whether, upon application to the Board, a specific bank is subject to CCS in its home jurisdiction. However, for the purpose of the proposed foreign bank exemption under Section 402, because most banks within a particular jurisidiction are likely to be similarly regulated, it may be appropriate to require that at least one bank in the foreign bank's home jurisidiction has been the subject of a favorable CCS determination. We solicit comment on whether the proposed exemption should be available to a foreign bank that has specifically received a favorable CCS determination, as proposed. Should we instead permit a foreign bank to qualify for the proposed exemption if its home jurisidiction is also the home jurisdiction of at least one bank that has received a favorable CCS determination?

D. The Home Jurisdiction Insider Lending Restriction Condition

In addition to having to fulfill one of the two conditions set forth in proposed Rule 13k–1(b)(1), a foreign bank would also have to meet one of three alternate conditions in proposed Rule 13k–1(b)(2) in order to be eligible for the foreign bank exemption. The first two conditions are based on primary requirements of the Federal Reserve Act's insider lending restrictions.[32] These conditions would require a foreign bank's loan to an executive officer or director to be either on market terms to unrelated parties or, if pursuant to an employee benefit or compensation plan, on terms no more beneficial to those offered to its other employees. Moreover, because Section 13(k) prohibits an issuer from making or arranging for an insider loan through a subsidiary,[33] proposed Rule 13k–1(b)(2) would permit a foreign bank to make a loan to the executive officers or directors of its parent company[34] only when the loan is on market terms to unrelated parties or, if pursuant to the parent company's employee benefit or compensation plan, on terms no more favorable to those offered to the parent company's other employees. Alternatively, a foreign bank insider loan could also qualify for the Section 13(k) exemption if it has received the prior approval of the foreign bank's home jurisdiction supervisor.

This second provision of proposed Rule 13k–1(b) would be consistent with Section 402 by conditioning the exemption on a foreign bank's adherence to one of the main insider lending restrictions of Regulation O. Since many jurisdictions have adopted insider lending restrictions similar to those of Regulation O,[35] we do not believe that this proposed provision should pose an undue burden for many foreign banks.

The proposed exemption would recognize that differences exist between and among Regulation O and bank insider lending regulatory regimes in foreign jurisdictions. For example, as proposed Rule 13k–1(b)(2)'s last alternative condition reflects, some jurisdictions hinge the legality of a bank insider loan on its pre-approval by the home jurisdiction bank supervisor. Again in the interest of comity, we believe that some measure of deference to the home jurisdiction bank supervisor regarding the content of its insider lending restrictions is appropriate.

We are aware that some foreign banks believe that a favorable CCS determination for its home jurisdiction should suffice to qualify a foreign bank for the exemption from insider lending.[36] We have not based our proposed rule on this approach because whether a foreign bank is subject to insider lending restrictions in its home country is not a specific statutory or regulatory criterion that the Federal Reserve Board must consider when making its CCS determination. Consequently, in many instances, a favorable CCS determination does not reveal whether a foreign bank's home country has insider lending restrictions similar to those under Federal Reserve

[31] The Federal Reserve Board has approved several applications from foreign banks for U.S. branch or agency offices under a standard that does not require a CCS determination but only a finding that the home country supervisor is ''actively working to establish arrangements for the consolidated supervision'' of the bank and all other factors are consistent with approval. *See* 12 CFR 211.24(c)(1)(iii). A less rigorous standard also exists for the Board's approval of a foreign bank's application for a U.S. ''representative'' office. *See* 12 CFR 211.24(d)(2). The home country of a foreign bank that has received Board approval under either of these other standards may have adopted insider lending restrictions although its banking regulations may not yet fully meet CCS criteria. This foreign bank would not be eligible for the exemption from Exchange Act Section 13(k)'s insider lending prohibition if we were to adopt a rule that made a favorable CCS determination the sole criterion for the exemption.

[32] The Federal Reserve Act's insider lending restrictions are set forth in Regulation O (12 CFR 215.1 *et seq.*) as well as in the Act itself at 12 U.S.C. 375a and 375b.

[33] Exchange Act Section 13(k)(1).

[34] Proposed Rule 13k–1(a)(4) would define the ''parent company'' of a foreign bank as a corporation or other organization that directly or indirectly owns more than 50 percent of the voting securities or equity of the foreign bank.

[35] The Basel Committee on Bank Supervision of the Bank for International Settlements (''Basel Committee'') has developed its ''Core Principles for Effective Banking Supervision'' (''*Core Principles*'') and its ''*Core Principles Methodology*'' in order to provide the international financial community with a benchmark against which the effectiveness of bank supervisory regimes can be assessed.'' *See* Basel Committee, *Core Principles Methodology,* 3 (1999). Principle 10 of the *Core Principles Methodology* provides that ''banking supervisors must have in place requirements that banks lend to related companies and individuals on an arms-length basis, that such extensions of credit are effectively monitored, and that other appropriate steps are taken to control or mitigate the risks.'' *Core Principles Methodology* at 25. According to the Basel Committee, ''the vast majority of countries have endorsed the Core Principles and have declared their intention to implement them.'' *Core Principles* at 1.

[36] For example, the Institute of International Bankers has requested that we adopt a rule that would exempt a foreign bank under Section 402 if it derives from a country that the Federal Reserve Board has determined provides CCS over its banking institutions *or* if it is subject in its home jurisdiction to insider lending regulations modeled on the core principles of Regulation O. We will make a copy of this letter publicly available.

regulations if at all.[37] In addition, because Section 402 conditions the bank exemption on compliance with Regulation O, it is consistent to condition the foreign bank exemption on requirements comparable to those under Regulation O.

Comment Solicited

We solicit comment on proposed Rule 13k–1(b)(2). Should we require a foreign bank to be subject to at least one of the three prescribed insider lending restrictions in its home jurisdiction in addition to being from a jurisdiction that has enacted a deposit insurance requirement or has received a favorable CCS determination, as proposed? Should being subject to one of the three prescribed insider lending restrictions in its home jurisdiction be the sole criterion for determining whether a foreign bank is eligible for the insider lending exemption? Or should being from a jurisdiction that has received a favorable CCS determination suffice to qualify a foreign bank for the exemption?

If we should require a foreign bank to be subject to insider lending restrictions in its home jurisdiction, should we limit the alternatives to those set forth in the first two prongs of proposed Rule 13k–1(b)(2)? Should we require a foreign bank to be subject to insider lending restrictions that are substantially similar to other insider lending provisions of Regulation O in addition to the two proposed restrictions? Should we permit a foreign bank to make insider loans that comply with Regulation O requirements even if the foreign bank's home jurisdiction has not yet enacted these requirements as laws or rules?

Should we condition the Section 13(k) exemption for a foreign bank's loans to the executive officers or directors of its parent company, as proposed? If so, should we define a foreign bank's ''parent company'' as a corporation or other organization that directly or indirectly owns more than 50 percent of the voting securities or equity of the foreign bank, as proposed? Should the percentage of ownership be higher or lower and, if so, why? For example, should we base our definition on the definition of ''subsidiary'' under the Bank Holding Company Act,[38] which is referenced in Regulation O,[39] and which in part defines the subsidiary of a bank holding company as any company 25 percent or more of whose voting shares are directly or indirectly owned or controlled by such bank holding company? Are there other indices of ownership or control that the definition of a foreign bank's ''parent company'' should include?

Should we permit a foreign bank to qualify for the exemption if its insider loans are subject to prior approval by the bank supervisor in its home jurisdiction, as proposed? Should we subject a foreign bank only generally to insider lending restrictions in its home jurisdiction without specifying the content of the restrictions? Are there other criteria that should be used, either as alternatives to those that have been proposed or as sole criteria? For example, should we exempt from the proposed insider lending conditions insider loans of a foreign bank that are of a *de minimis* amount and that are exempt from insider lending restrictions in its home jurisdiction? Would this type of exemption be consistent with insider lending restrictions applicable to U.S. banks?

E. The Prior Board of Directors Approval Condition

Proposed Rule 13k–1(b)(3) would require prior approval by a majority of the foreign bank's board of directors of any insider loan in an amount that, when aggregated with all other outstanding loans to a particular executive officer or director, exceeds $500,000. The proposed rule would also require the intended loan recipient to abstain from the vote on the loan. Domestic banks are subject to a similar requirement under federal banking law.[40]

We understand that some foreign banks may have a two-tier board system, with one tier designated as the management board and the other tier designated as the supervisory or non-management board. We propose that, for these banks, majority approval of the insider loan by either board will suffice to satisfy the prior board approval requirement of proposed Rule 13k–1(b)(3) as long as the individual receiving the loan has abstained from participating in the board's voting.

We have not included some of the other detailed conditions required by Regulation O in the proposed foreign bank exemption. For example, Regulation O sets limits on the aggregate amount of credit that a subject bank may extend to any one insider as well as to all insiders. These limits are measured as a percentage of the bank's unimpaired capital and unimpaired surplus.[41] The primary purpose of these limitations appears to be to ensure the safety and structural soundness of the U.S. banking system rather than to address the investor protection and corporate governance concerns underlying the federal securities laws. Accordingly, and because foreign jurisdictions can legitimately reach different conclusions regarding the necessary features of a safe and sound banking system, we have not included similar limitations in our proposed rule.

Comment Solicited

We solicit comment on proposed Rule 13k–1(b)(3). Should we require prior board approval for an insider loan that, when aggregated with all other loans to that insider, exceeds a certain amount? If so, should the amount be $500,000, as proposed? Should it be an amount less than or greater than $500,000 and, if so, why? Should we require that more than a majority of the board approve such a loan? For example, should we require a two-thirds vote or a unanimous vote of approval by the board?

For a foreign bank that has a two-tier board, should majority approval of the insider loan by either board suffice to satisfy the prior board approval requirement, as proposed? Should we instead require majority approval by the non-management, supervisory board?

Should proposed Rule 13k–1(b)(3) require the prior approval either of a foreign bank's board or its home jurisdiction bank supervisor? Are there other types of insider loans that should be the subject of a prior board or bank regulator approval requirement? For example, should we impose limitations on the amount that a foreign bank's directors and executive officers can borrow either on an individual basis or in the aggregate under proposed Rule 13k–1? Should we impose conditions based on specified net capital ratios?

F. Disclosure Considerations

Currently, domestic and foreign banks are subject to substantially similar disclosure requirements regarding insider loans under the federal securities laws. As long as a bank does not disclose the loans as nonaccrual, past due, restructured or potential

[37] While some of the Board's CCS determinations mention the presence of home country insider lending restrictions as one factor to be considered among others, others fail to discuss this factor at all.

[38] 12 U.S.C. 1841(d).

[39] *See* 12 C.F.R. 215.2(a) and (o).

[40] *See, for example*, 12 CFR 215.4(b) of Regulation O, which imposes similar board approval and insider abstention conditions for insider loans by member banks that exceed in the aggregate per insider the higher of $25,000 or 5 percent of the member bank's unimpaired capital and unimpaired surplus. This provision further provides that in no event may a member bank extend credit to an insider that in the aggregate exceeds $500,000 per insider without complying with the board approval and insider abstention requirements.

[41] *See* 12 CFR 215.4(c) and (d) of Regulation O.

problems under Industry Guide 3[42] (''problematic loans''), its disclosure may consist of a statement, if true, that the loans in question:

(A) Were made in the ordinary course of business;

(B) were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other persons; and

(C) did not involve more than the normal risk of collectibility or present other unfavorable features.[43]

This minimal disclosure requirement for ordinary, non-problematic insider bank loans is consistent with the exemption that domestic banks currently have under Exchange Act Section 13(k) and with the similar exemptive treatment that we propose for foreign banks. Accordingly, we do not recommend changing this requirement at this time.

For an insider loan failing to meet any of the above conditions, both a foreign and domestic bank must disclose the largest amount outstanding during the period covered, the amount outstanding as of the latest practicable date, the nature of the loan and the transaction in which it was incurred, and the interest rate on the loan.[44] However, unlike the comparable instructions for domestic issuers, the Form 20–F instructions do not explicitly require a foreign issuer to identify the insider that has received a problematic loan and the insider's relationship to the issuer. Accordingly, we propose to revise the Form 20–F instructions to require a foreign bank to disclose the identity of any director, executive officer or other related party otherwise required to be disclosed by the Form who has received a loan to which the non-problematic loan instruction does not apply, and to describe the nature of the relationship of the loan recipient with the foreign bank. As a result, the same disclosure standards regarding problematic loans to insiders would apply to both domestic banks and foreign banks other than the few Canadian banks that are subject to the Multijurisdictional Disclosure System (''MJDS'').

The proposed rules would not affect the disclosure requirements for Form 40–F, the MJDS form used by qualified Canadian issuers to file their Exchange Act annual reports and registration statements.[45] We are not proposing to amend Form 40–F since its content, like the content of all of the other MJDS forms, is determined primarily by the applicable Canadian securities administrator.

Comment Solicited

We solicit comment on the adequacy of the disclosure requirements for insider loans by domestic and foreign banks. Should we require more detailed disclosure regarding non-problematic bank loans to insiders as a condition of eligibility for the Section 13(k) bank exemption for domestic and foreign banks? For example, should we require domestic and foreign banks to disclose the aggregate amount and average interest rate of their non-problematic loans to each insider? If not, should we at least require foreign banks to disclose the identity of an insider that has received a problematic loan and the insider's relationship to the foreign issuer, as proposed? Should we require Canadian banks that file on Form 40–F to provide this information about problematic loans to insiders as well?

G. Proposed Effective Date

We propose that the effective date for proposed Rule 13k–1, if adopted, will be the date of its publication in the **Federal Register**. Because of the exemptive nature of the proposed rule, we do not believe that a transition period is necessary to enable foreign issuers and other interested parties to prepare for the new rule. We further propose that the proposed Form 20–F amendment, if adopted, will be 30 days from the date of its publication in the **Federal Register**. Because of the expected minimal revised disclosure resulting from the proposed Form 20–F amendment, we believe that a one month transition period is ample time to enable foreign issuers and others to prepare for the revised form.

Comment Solicited

Are there practical difficulties if the proposed Rule 13k–1 does not become effective on the date that the adopted rule is published in the **Federal Register**? Similarly, are there practical difficulties if the proposed Form 20–F amendment become effective on a date that is later than 30 days after its publication in the **Federal Register**? If you disagree with the proposed effective dates, when should the proposed rule and form amendment become effective, and why?

III. Paperwork Reduction Act Analysis

This rule proposal contains ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[46] We are submitting our proposal to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[47] The title of the affected collection of information is Form 20–F (OMB Control No. 3235–0288). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information such as Form 20–F unless it displays a currently valid OMB control number. The disclosure will be mandatory.

Form 20–F sets forth the disclosure requirements for a foreign private issuer's annual report and registration statement under the Exchange Act as well as many of the disclosure requirements for a foreign private issuer's registration statements under the Securities Act. The Commission adopted Form 20–F pursuant to the Exchange Act and the Securities Act in order to ensure that investors are informed about foreign private issuers that have registered securities with the Commission. The hours and costs associated with preparing, filing and sending Form 20–F constitute reporting and cost burdens imposed by this collection of information. We have based our estimate of the effect that the proposed Form 20–F amendment would have on this collection of information primarily on our review of the most recently completed PRA submission for Form 20–F, on the form's requirements, and on actual filings of Form 20–F.

We estimate that currently foreign private issuers file 1,194 Form 20–Fs each year. We also estimate that foreign private issuers incur 25% of the burden required to produce the Form 20–Fs resulting in 769,825 annual burden hours incurred by foreign private issuers out of a total of 3,079,300 annual burden hours. Thus, we estimate that 2579 total burden hours per response are currently required to prepare the Form 20–F. We further estimate that outside firms, including legal counsel, accountants and other advisors, account for 75% of the burden required to produce the Form 20–Fs at an average cost of $300 per hour for a total annual cost of $690,500,680.

We estimate that currently 41 foreign banks file annual reports on Form 20–F.[48] We further estimate that

[42] Industry Guide 3 provides statistical disclosure requirements for bank holding companies.

[43] Instruction 2 to Form 20–F Item 7.B (for foreign banks) and Instruction 3 to Regulation S–K Item 404(c) (for domestic banks).

[44] Form 20–F Item 7.B.2 and Regulation S–K Item 404(c).

[45] 17 CFR 249.240f.

[46] 44 U.S.C. 3501 *et seq.*

[47] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[48] Only 41 of the 46 foreign bank reporting companies filed their most recent annual report on

Continued

approximately 10% of reporting foreign banks have problematic insider loans that must be disclosed under Item 7.B. of Form
20–F. We expect that, if adopted, the proposed amendment would cause 4 foreign private issuers to incur additional burden hours and costs related to providing expanded disclosure concerning problematic loans to insiders. We estimate that for each of the Form 20–Fs affected, there would occur one additional burden hour pertaining to these expanded disclosure requirements for a total of 4 additional burden hours. We expect that foreign private issuers would incur 25% of these additional burden hours (1 hour). We further expect that outside firms would incur 75% of the additional burden hours (3 hours) at an average cost of $300 per hour for a total of $900 in additional annual costs.

Thus, we estimate that the proposed amendment would increase the annual burden incurred by foreign private issuers in the preparation of Form 20–F to 769,826 burden hours. We further estimate that the proposed amendment would increase the total annual burden associated with Form 20–F preparation to 3,079,304 burden hours, but would leave the average number of burden hours per response unaffected at 2579 hours. We further estimate that the proposed amendment would increase the total annual costs attributed to the preparation of Form 20–F by outside firms to $690,501,580.

Comment Solicited

We solicit comment on the expected effects of the proposed Form 20–F amendment under the PRA. In particular, we solicit comment on the accuracy of our additional burden hour and cost estimates expected to result from the proposed amendment. We further solicit comment in order to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;
- Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected;
- Evaluate whether there are ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and
- Evaluate whether the proposed amendment will have any effects on any other collections of information not previously identified in this section.

Any member of the public may direct to us any comments concerning these burden and cost estimates and any suggestions for reducing the burdens and costs. Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. S7–15–03. Requests for materials submitted to the OMB by us with regard to these collections of information should be in writing, refer to File No. S7–15–03, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

IV. Cost-Benefit Analysis

For several years, U.S. investors have sought to diversify their holdings by investing in the securities of foreign issuers, including foreign banks. At the same time, foreign issuers, including foreign banks, have sought opportunities to raise capital and effect other securities-related transactions in the United States. Proposed Rule 13k–1 would benefit both U.S. investors and foreign bank issuers by removing a regulatory impediment that, if left unchecked, could discourage foreign banks from entering or remaining in U.S. capital markets.

U.S. investors would benefit from proposed Rule 13k–1 to the extent that the proposed rule encourages a foreign bank to maintain or achieve its Exchange Act reporting status. A foreign bank would benefit from proposed Rule 13k–1 by being able, like its domestic counterpart, to provide qualified personal loans to its executive officers and directors while an Exchange Act reporting company.

More particularly, if a foreign bank's home jurisdiction has enacted insider lending restrictions similar to those under Regulation O, the foreign bank would benefit from proposed Rule 13k–1 by not having to fulfill two sets of insider lending rules. If a foreign bank's home jurisdiction has enacted insider lending rules that are less restrictive than those imposed under Regulation O but that nevertheless qualify under proposed Rule 13k–1(b)(2) because they require the prior approval of the home jurisdiction bank supervisor for specified insider loans, the foreign bank would benefit to the extent that the cost savings resulting from being subject to the less restrictive home jurisdiction insider lending rules exceed the cost of obtaining the approval of its home jurisdiction bank supervisor for the specified insider loan.

We expect that some foreign bank issuers will incur additional costs attempting to meet proposed Rule 13k–1(b)(3)'s condition requiring the prior approval by a majority of a foreign bank's board of directors of a loan to an executive officer or director that, in the aggregate, would exceed $500,000 for that particular insider. We also expect that some foreign issuers will incur additional costs from our proposed amendment of Form 20–F that would require a foreign issuer to disclose the identity of a director, executive officer or other related party who has received a problematic loan and to describe the nature of the loan recipient's relationship to the lending issuer. However, because currently only 10% of the 41 foreign depository institutions that file Form 20–F annual reports disclose problematic loans with insiders, and because of the brevity of disclosure required to meet the proposed requirement, we do not expect the resulting costs to be unduly burdensome. In any event, we believe that any ensuing costs would be justified by the benefits of foreign banks being able to make loans to their directors and executive officers on conditions comparable to those afforded to domestic banks subject to Regulation O.

Comment Solicited

We solicit comment on the costs and benefits for foreign and domestic issuers of proposed Rule 13k–1 and the proposed amendment of Form 20–F. We request your views on the costs and benefits described above as well as on any other costs and benefits that could result from adoption of the proposed rule and form amendment for foreign and domestic issuers. We also request

Form 20–F. Each of the other five filed their annual report on Form 40–F, the MJDS form for qualified Canadian issuers. As previously discussed, we are not proposing to amend Form 40–F. Accordingly, the estimated burden hour and cost estimates for Form 40–F under the PRA remain unaffected by this proposed rulemaking.

data to quantify the costs and value of the benefits identified.

V. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation Analysis

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[49] we solicit data to determine whether the proposals constitute a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- a major increase in costs or prices for consumers or individual industries; or
- significant adverse effects on competition, investment or innovation.

We request comment on the potential impact of the proposals on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views if possible.

When adopting rules under the Exchange Act, Section 23(a)(2) of the Exchange Act[50] requires us to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, when engaging in rulemaking that requires the Commission to consider or determine whether an action is necessary or appropriate in the public interest, Section 3(f) of the Exchange Act[51] requires the Commission to consider whether the action will promote efficiency, competition and capital formation.

We expect that proposed Rule 13k–1 will have a beneficial effect on competition in U.S. capital markets by eliminating or significantly reducing the burden imposed by Sarbanes-Oxley Section 402's insider lending prohibition on most foreign bank issuers. In so doing, proposed Rule 13k–1 should encourage foreign banks to continue or achieve their status as Exchange Act reporting companies. Such encouragement could facilitate increased competition among U.S. capital market participants for the securities of foreign and domestic bank reporting companies to the ultimate benefit of investors.

We request comment on whether proposed Rule 13k–1 and the proposed amendment to Form 20–F, if adopted, would impose a burden on competition or promote efficiency, competition, and capital formation as discussed above or in any other way. Commenters are requested to provide empirical data and other factual support for their views if possible.

VI. Regulatory Flexibility Act Certification

The Securities and Exchange Commission hereby certifies, pursuant to 5 U.S.C. 605(b), that proposed Rule 13k–1 under the Securities Exchange Act of 1934 (''Exchange Act'') and the proposed amendment to Form 20–F under the Exchange Act, if adopted, would not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act. The reason for this certification is as follows.

Proposed Rule 13k–1 would exempt from the insider lending prohibition of Exchange Act Section 13(k) a foreign bank that meets specified criteria similar to the criteria that a domestic bank must meet in order to qualify for the exemption from the insider lending prohibition under Exchange Act Section 13(k)(3). This proposed rule would, thus, directly affect only foreign issuers and not domestic companies since Exchange Act Section 13(k) already exempts qualified domestic banks from the insider lending prohibition. Similarly, the proposed amendment to Form 20–F would only affect foreign issuers since only foreign issuers are permitted to use this form.

Based on an analysis of the language and legislative history of the Regulatory Flexibility Act, Congress did not intend that the Act apply to foreign issuers. Accordingly, the entities directly affected by the proposed rule and form amendment will fall outside the scope of the Act. For this reason, proposed Exchange Act Rule 13k–1 and the proposed amendment to Form 20–F should not have a significant economic impact on a substantial number of small entities.

We encourage written comments regarding this certification. We request in particular that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

VII. Statutory Basis of Proposed Amendment

We are proposing Exchange Act Rule 13k–1 and the proposed amendment to Form 20–F under the authority in Sections 6, 7, 10 and 19 of the Securities Act, Sections 3(b), 12, 13, 23 and 36 of the Exchange Act, and Section 3(a) of the Sarbanes-Oxley Act of 2002.

Text of the Proposed Amendment

List of Subjects in 17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, we propose to amend Title 17, Chapter II of the Code of Federal Regulations as follows.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7202, 7241, 7262, and 7263; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

2. Add § 240.13k–1 to read as follows:

§ 240.13k–1 Foreign bank exemption from the insider lending prohibition under section 13(k).

(a) For the purpose of this section:

(1) *Foreign bank* means an institution:

(i) The home jurisdiction of which is other than the United States;

(ii) That is regulated as a bank in its home jurisdiction; and

(iii) That is engaged substantially in the business of banking.

(2) *Home jurisdiction* means the country, political subdivision or other place in which a foreign bank is incorporated or organized.

(3) *Engaged substantially in the business of banking* means engaged in:

(i) Receiving deposits to a substantial extent in the regular course of business;

(ii) Having the power to accept demand deposits; and

(iii) Extending commercial or other types of credit.

(4) *Parent company of a foreign bank* means a corporation or other organization that directly or indirectly owns more than 50 percent of the voting securities or the equity of the foreign bank.

(b) An issuer that is a foreign bank or the parent company of a foreign bank is exempt from the prohibition of

[49] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[50] 15 U.S.C. 78w(a)(2).

[51] 15 U.S.C. 78c(f).

extending, maintaining, arranging for, or renewing credit in the form of a personal loan to or for any of its directors or executive officers under section 13(k) of the Act (15 U.S.C. 78m(k)) with respect to any such loan made by the foreign bank as long as:

(1) Either:

(i) The laws or regulations of the foreign bank's home jurisdiction require the bank to insure its deposits; or

(ii) The Board of Governors of the Federal Reserve System has determined that the foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by the bank supervisor in the foreign bank's home jurisdiction under 12 CFR 211.24(c); and

(2) The laws or regulations of the foreign bank's home jurisdiction restrict the foreign bank from making loans to its executive officers and directors or those of its parent company unless the foreign bank is permitted to and does extend the loan:

(i) On substantially the same terms as those prevailing at the time for comparable transactions by the foreign bank with other persons who are not executive officers, directors or employees of the foreign bank or its parent company; or

(ii) Pursuant to a benefit or compensation program that is widely available to the employees of the foreign bank or its parent company and does not give preference to any of the executive officers or directors of the foreign bank or its parent company over any other employees of the foreign bank or its parent company; or

(iii) Following the express approval of the loan by the bank supervisor in the foreign bank's home jurisdiction; and

(3) For any loan that, when aggregated with the amount of all other outstanding loans to a particular executive officer or director, exceeds $500,000:

(i) A majority of the foreign bank's board of directors has approved the loan in advance; and

(ii) The loan's intended recipient has abstained from participating in the vote regarding the loan.

3. Amend Form 20–F (referenced in § 249.220f) by revising paragraph 2 of Item 7.B of Part 1 to read as follows:

Note: The text of Form 20–F does not, and the amendment will not, appear in the Code of Federal Regulations.

OMB APPROVAL:
OMB Number: 3235–0288.
Expires: March 31, 2006.
Estimated average burden hours per response 2,579.

United States Securities and Exchange Commission, Washington, DC 20549

FORM 20–F

* * * * *

PART 1

* * * * *

Item 7. Major Shareholders and Related Party Transactions

* * * * *

B. Related party transactions.

* * * * *

2. The amount of outstanding loans (including guarantees of any kind) made by the company or any of its parent or subsidiaries to or for the benefit of any of the persons listed above. The information given should include the largest amount outstanding during the period covered, the amount outstanding as of the latest practicable date, the nature of the loan and the transaction in which it was incurred, and the interest rate on the loan. In addition, if the company, its parent or any of its subsidiaries is a foreign bank (as defined in 17 CFR 240.13k–1) that has made a loan to which Instruction 2 of this Item does not apply, identify the director, executive officer or other related party required to be described by this Item who received the loan, and describe the nature of the loan recipient's relationship to the foreign bank.

* * * * *

Dated: September 11, 2003.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–23655 Filed 9–16–03; 8:45 am]

BILLING CODE 8010–01–P