

(2) *Status of debt obligations purchased by the Bank.* Any debt obligation or debt security (other than mortgage-backed securities or acquired member assets that are identified in §§ 955.2(a)(1) and (2) of this chapter) purchased by a Bank shall be considered an unsecured extension of credit for the purposes of this section, except:

(i) Any amount owed the Bank against which the Bank holds collateral in accordance with § 932.4(e)(2)(ii)(B) of this part; or

(ii) Any amount which the Finance Board has determined on a case-by-case basis shall not be considered an unsecured extension of credit.

(g) *Obligations of the United States.* Obligations of, or guaranteed by, the United States are not subject to the requirements of this section.

[66728, Dec. 27, 2002]

PART 933—BANK CAPITAL STRUCTURE PLANS

Sec.

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AUTHORITY: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1440, 1443, 1446.

SOURCE: 66 FR 8310, Jan. 30, 2001, unless otherwise noted.

§ 933.1 Submission of plan.

(a) *In general.* By no later than October 29, 2001, the board of directors of each Bank shall submit to the Finance Board a plan to establish and implement a new capital structure for that Bank, which plan shall comply with part 931 of this chapter and under which, when implemented, the Bank shall have sufficient total and permanent capital to comply with the regulatory capital requirements established by part 932 of this chapter. The Finance Board, upon a demonstration of good cause submitted by the board of directors of a Bank, may approve a reasonable extension of the 270-day period for submission of the capital plan. A Bank shall not implement its capital

plan, or any amendment to the plan, without Finance Board approval.

(b) *Failure to submit a capital plan.* If a Bank fails to submit a capital plan to the Finance Board by October 29, 2001, including any approved extension, the Finance Board may establish a capital plan for that Bank, take any enforcement action against the Bank, its directors, or its executive officers authorized by section 2B(a) of the Act (12 U.S.C. 1422b(a)), or merge the Bank pursuant to section 26 of the Act (12 U.S.C. 1446) into any other Bank that has submitted a capital plan.

(c) *Consideration of the plan.* After receipt of a Bank's capital plan, the Finance Board may return the plan to the Bank if it does not comply with section 6 of the Act (12 U.S.C. 1426) or any regulatory requirement or is otherwise incomplete or materially deficient. If the Finance Board accepts a capital plan for review, it may require the Bank to submit additional information regarding its plan or to amend the plan, prior to determining whether to approve the plan. The Finance Board may approve a capital plan as submitted or as amended, or may condition its approval on the Bank's compliance with certain stated conditions, and may require that the capital plans of all Banks take effect on the same date.

§ 933.2 Contents of plan.

The capital plan for each Bank shall include, at a minimum, provisions addressing the following matters:

(a) *Minimum investment.* (1) The capital plan shall require each member to purchase and maintain a minimum investment in the capital stock of the Bank, in accordance with § 931.3, of this chapter and shall prescribe the manner in which the minimum investment is to be calculated. The plan shall require each member to maintain its minimum investment in the Bank's stock for as long as it remains a member and, with regard to Bank stock purchased to support an advance or other business activity, for as long as the advance or business activity remains outstanding.

(2) The capital plan shall specify the amount and class (or classes) of Bank stock that an institution is required to own in order to become and remain a

member of the Bank, and shall specify the amount and class (or classes) of Bank stock that a member is required to own in order to obtain advances from, or to engage in other business transactions with, the Bank. If a Bank requires its members to satisfy its minimum investment through the purchase of one or more combinations of Class A and Class B stock, the authorized combinations of stock shall be specified in the capital plan, which shall afford the members the option of satisfying the minimum investment through the purchase of any such combination of stock.

(3) The capital plan may establish a minimum investment that is calculated as a percentage of the total assets of the member, as a percentage of the advances outstanding to the member, as a percentage of the other business activities conducted with the member, on any other basis approved by the Finance Board, or on any combination of the above.

(4) The minimum investment established by the capital plan shall be set at a level that, when applied to all members, provides sufficient capital for the Bank to comply with its minimum capital requirements, as specified in part 932 of this chapter. The capital plan shall require the board of directors of the Bank to monitor and, as necessary, to adjust, the minimum investment to ensure that the stock required to be purchased and maintained by the members is sufficient to allow the Bank to comply with its minimum capital requirements. The plan shall require each member to comply promptly with any adjusted minimum investment established by the board of directors of the Bank, but may allow a member a reasonable time to do so and may allow a member to reduce its outstanding business with the Bank as an alternative to purchasing additional stock.

(b) *Classes of capital stock.* The capital plan shall specify the class or classes of stock (including subclasses, if any) that the Bank will issue, and shall establish the par value, rights, terms, and preferences associated with each class (or subclass) of stock. A Bank may establish preferences relating to, but not limited to, the dividend, vot-

ing, or liquidation rights for each class or subclass of Bank stock. Any voting preferences established by the Bank pursuant to §915.5 of this chapter shall expressly state the voting rights of each class of stock with regard to the election of Bank directors. The capital plan shall provide that the owners of the Class B stock own the retained earnings, surplus, undivided profits, and equity reserves of the Bank, but shall have no right to receive any portion of those items, except through declaration of a dividend or capital distribution approved by the board of directors or through the liquidation of the Bank.

(c) *Dividends.* The capital plan shall establish the manner in which the Bank will pay dividends, if any, on each class or subclass of stock, and shall provide that the Bank may not declare or pay any dividends if it is not in compliance with any capital requirement or if after paying the dividend it would not be in compliance with any capital requirement.

(d) *Initial issuance.* The capital plan shall specify the date on which the Bank will implement the new capital structure, and shall establish the manner in which the Bank will issue Class A and/or Class B stock to its existing members, as well as to eligible institutions that subsequently become members. The capital plan shall address how the Bank will retire the stock that is outstanding as of the effective date, including stock held by a member that does not affirmatively elect to convert or exchange its existing stock to either Class A or Class B stock, or some combination thereof.

(e) *Members wishing not to convert existing stock.* The capital plan shall establish an opt-out date on or before which a member that does not wish to convert its existing stock into Class A and/or Class B stock must file a written notice to withdraw from membership with the Finance Board. This opt-out date shall not be more than six months before the effective date of the capital plan. (For purposes of applying this provision, the membership of an institution that files its notice to withdraw with the Finance Board on or before the opt-out date established in a capital plan shall terminate six months

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from the date that the notice of withdrawal was filed with the Finance Board or on the effective date of the Bank's capital plan, whichever date is earlier.) The capital plan shall further provide that any member that is in the process of withdrawing on the effective date of the capital plan but did not file its written notice to withdraw from membership with the Finance Board on or before this opt-out date, shall have its existing stock converted into Class A and/or Class B stock as required by the capital plan, and that the effective date of withdrawal for such member shall be established in accordance with §§ 925.26(b) and (c) of this chapter, provided, however, that the applicable stock redemption periods calculated under § 925.26(c) of this chapter shall commence on date the member first submitted its written notice to withdraw to the Finance Board.

(f) *Stock transactions.* The capital plan shall establish the criteria for the issuance, redemption, repurchase, transfer, and retirement of stock issued by the Bank. The capital plan also:

(1) Shall provide that the Bank may not issue stock other than in accordance with § 931.2 of this chapter;

(2) Shall provide that the stock of the Bank may be issued only to and held only by the members of that Bank;

(3) Shall specify whether the stock of the Bank may be transferred among members, and, if such transfer is allowed, shall specify the procedures that a member should follow to effect such transfer, and that the transfer shall be undertaken only in accordance with § 931.6 of this chapter;

(4) Shall specify that the stock of the Bank may be traded only between the Bank and its members;

(5) May provide for a minimum investment for members that purchase Class B stock that is lower than the minimum investment for members that purchase Class A stock, provided that the level of investment is sufficient for the Bank to comply with its regulatory capital requirements;

(6) Shall specify the fee, if any, to be imposed on a member that cancels a request to redeem Bank stock; and

(7) Shall specify the period of notice that the Bank will provide to a mem-

ber before the Bank, on its own initiative, determines to repurchase any excess Bank stock from a member.

(g) *Termination of membership.* The capital plan shall address the manner in which the Bank will provide for the disposition of its capital stock that is held by institutions that terminate their membership, and the manner in which the Bank will liquidate claims against its members, including claims resulting from prepayment of advances prior to their stated maturity.

(h) *Implementation.* The capital plan shall demonstrate that the Bank has made a good faith determination that the Bank will be able to implement the plan as submitted and that the Bank will be in compliance with its regulatory total capital requirement and its regulatory risk-based capital requirement after the plan is implemented.

[66 FR 8310, Jan. 30, 2001, as amended at 66 FR 54108, Oct. 26, 2001; 70 FR 9510, Feb. 28, 2005]

§ 933.3 Independent review of capital plan.

Prior to submitting its capital plan, each Bank shall conduct a review of the plan by an independent certified public accountant to ensure, to the extent possible, that the implementation of the plan would not result in any write-down of the redeemable stock owned by its members, and shall conduct a separate review by at least one NRSRO to determine, to the extent possible, whether the implementation of the plan would have a material effect on the credit rating of the Bank. The Bank shall submit a copy of each report to the Finance Board as part of its proposed capital plan.

§ 933.4 Transition provisions.

(a) The capital plan of a Bank may include a transition provision that would allow a period of time, not to exceed three years, during which the Bank shall increase its total and permanent capital to levels that are sufficient to comply with its minimum leverage capital requirement and its minimum risk-based capital requirement. The capital plan of a Bank may also include a transition provision that