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January 20, 2004

Federal Housing Finance Board
1777 F Street, NW
Washington, D.C. 20006

ATTN: Public Comments

Dear Sir or Madame:

The Independent Community Bankers of America¹ welcomes the opportunity to comment on the Federal Housing Finance Board's proposed rule that would require each Federal Home Loan Bank to register a class of its securities under the Securities Exchange Act of 1934. We thank the FHFBB for opening this issue up for full public comment. We appreciate that Chairman Korsmo and the other members of the FHFBB have reached out to the FHLBank system's stakeholders repeatedly on this very important issue. We also note that this important issue is playing out as the authorities and very existence of the FHFBB are under critical administration and Congressional review.

Proposal

The FHFBB proposes that each FHLBank prepare and make public certain disclosures relating to its business and financial condition by voluntarily registering a class of its securities with the Securities and Exchange Commission under 12(g) of the Securities Exchange Act of 1934. This would subject each FHLBank to the 1934 Act's periodic disclosure regime as interpreted and administered by the SEC.

Views Expressed in 2002 Testimony

We strongly support full, accurate, transparent and enhanced securities disclosures that are appropriate for the unique cooperative structure of the FHLBank system, carried out through the FHFBB with consultation with the SEC. This was the essence of written testimony we submitted

¹ *ICBA is the nation's leading voice for community banks and the only national trade association dedicated exclusively to protecting the interests of the community banking industry. ICBA has 4,600 members with branches in 17,000 locations nationwide. For more information, visit www.icba.org.*

in December, 2002, jointly with the American Bankers Association and America's Community Bankers to the FHFBS urging it to retain authority over FHLBank securities disclosures. We expressed concerns that if the unique FHLBank system with its cooperative structure and private ownership were to be subject to a disclosure regime designed for publicly owned corporations, an unintended consequence could result, confusing investors and others who try to compare the system's disclosures with those of other companies. We urged the FHFBS not to relinquish its responsibilities to the SEC. The FHFBS, unlike OFHEO, has the statutory authority to join the ranks of world class regulators.

This remains our position.

Authority to Require Registration

In the Supplemental Information accompanying the proposed rule, the FHFBS points out that FHLBank equity and debt securities are exempt from the registration requirements of the Securities Act of 1933 because the FHLBanks are persons "controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States." The FHFBS also notes that debt securities issued by the FHLBanks' Office of Finance are exempt from the registration requirements of the Securities Exchange Act of 1934 as "securities which are issued or guaranteed by corporations in which the United States has a direct or indirect interest and which are designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors." The consolidated obligations have been designated as exempt but the Treasury has not specifically designated FHLBank equity securities as exempt under the 1934 Act. Thus, we question the FHFBS's authority to "require" the FHLBanks to "voluntarily" register with the SEC.

The exemptions are tied in part to the existence of the FHFBS and its statutory duty to ensure that the FHLBanks remain adequately capitalized and able to raise funds in the capital markets. We do not see a compelling argument to register equity securities under the 1934 Act because the stock is not publicly held but rather the investors are members and users of the FHLBanks' services, as discussed further below.

We believe that the FHFBS can and should develop a regime of enhanced disclosures using Section 12(i) of the Exchange Act Amendments of 1964. When establishing this provision, Congress recognized the uniqueness of financial institutions and that it was appropriate for their primary regulator to regulate and oversee their securities disclosures. Our position is that while the FHFBS should look to SEC to set disclosure rules, the FHFBS should be responsible for applying and enforcing them as appropriate for the unique FHLBanks.

The FHFBS currently oversees FHLBank disclosures related to the issuance of FHLBank consolidated obligations and has regulations setting forth disclosure requirements, including the requirement that the disclosures be generally consistent with SEC regulations S-K and S-X. The FHFBS proposes that this continue. If the FHFBS plans to continue to oversee Combined Reports for the system, ICBA sees no reason why it should not oversee the reports of individual FHLBanks. Indeed, review of individual FHLBank reports would help the FHFBS in its review of combined statements. Given the FHFBS's extensive and unique knowledge of the FHLBank system and system Combined Reports, the FHFBS is both the appropriate regulator to continue to supervise the Combined Report disclosure, and the appropriate regulator to supervise individual

FHLBank disclosures on which the Combined Report disclosures depend. We urge the FHFBB to function in this capacity, with consultation with the SEC as necessary.

Necessary Expertise

In its proposal, the FHFBB states that the more complex FASB financial statement reporting requirements necessitate more comprehensive and detailed disclosure by individual FHLBanks and that the SEC has the extensive accounting expertise needed to review this disclosure. We agree that recent accounting changes have become more complex as financial institutions enter into more complex transactions including derivative and hedging transactions. We are confident that the FHFBB can take additional steps to strengthen its accounting expertise as it has taken steps to strengthen its oversight of FHLBank safety and soundness and capital adequacy.

We believe that the FHFBB can administer enhanced disclosures for the FHLBanks, recognizing that it would likely need additional staff expertise and increase costs for the FHLBanks. In our view it would be far more efficient and effective to increase the FHFBB's resources for disclosure oversight than to pass the responsibility to the SEC that has no expertise or experience related to the unique FHLBank system.

GSE Registration

The FHFBB points out that Fannie Mae has voluntarily registered their common stock with the SEC under Section 12(g) of the 1934 Act and Freddie Mac plans to do so. The FHFBB further states that there may be merit in having the core securities disclosure of all of the housing GSEs overseen by the same disclosure regulator. This move towards uniformity concerns us greatly. What is good for Fannie Mae and Freddie Mac may be poison for the FHLBanks.

The FHLBanks individually and as a system are very different from Fannie Mae and Freddie Mac. Unlike Fannie Mae and Freddie Mac, the equity capital of the system is created by statute and is 100 percent owned by its financial institution members. FHLBank stock is not publicly traded and does not fluctuate in value. The stock is issued and redeemed at par. Typically, when FHLBank members buy and sell FHLBank stock it is not a decision based on their perception of its appreciation potential, but rather it is linked to their usage of the FHLBank system and their stock balance can change daily.

Thousands of community banks are now owners of FHLBank stock and should their FHLBank experience serious financial difficulties, they stand, not only to lose that stock, but also potentially to face calls for additional capital. Due to joint and several liability on consolidated obligations, they also face this risk should one or more other FHLBanks face difficulties. Yet, these community banks have told ICBA that the type and amount of financial information that they receive from their FHLBank is adequate for them to make a decision to remain a FHLBank member, and therefore stockholder, in light of these risks.

We draw attention to the fact that Congress has had the opportunity to make the FHLBanks subject to the jurisdiction of the SEC, most recently when it passed the Gramm-Leach-Bliley Act, which among other things, changed the capitalization structure of the FHLBanks. Congress has left the responsibility to oversee SEC disclosure in the hands of the FHFBB. We believe this remains appropriate.

Capital Market Access

The FHFB indicates that its proposed regulation would not limit or restrict the FHFB's ability to carry out its responsibilities under the Act nor alter its responsibility to ensure the system's continued access to capital markets. We are concerned that if the FHFB requires SEC registration for the FHLBanks their ability to ensure capital access could be significantly diminished. Should the SEC raise questions about aspects of a particular FHLBank, the uncertainty raised will flow to other FHLBanks and to the system's ability to issue consolidated obligations because of their joint and several obligation ties.

Implementation Period

Should the FHFB decide to go forward with a final rule, we urge it to take sufficient time before implementing a final rule to make sure that all technical issues are satisfactorily resolved with the SEC regarding how the unique characteristics of the FHLBanks and the FHLBank system are treated within the SEC disclosure regime. Difficult-to-resolve problems that may arise during implementation when trying to put the square FHLBank peg in the round SEC disclosure hole could delay the first SEC signoff for months or years. This would not be in the best interests of the FHLBanks, their members and the communities they serve. Such uncertainty would send a negative message to the capital markets that would ultimately result in higher mortgage and other loan rates passed on to American consumers who are the customers of FHLBank members.

Summary

ICBA strongly supports full, accurate, transparent disclosures for the FHLBank system. These requirements should be administered by their safety and soundness regulator, the FHFB under section 12(i) of the Securities Acts Amendments of 1964, with consultation with the SEC. ICBA would support enhanced disclosures under this approach. The FHFB has in depth knowledge of the unique FHLBank system that the SEC does not.

Sincerely,



C.R. Cloutier