

January 14, 2004

E-mailed to comments@fhfb.gov and regular mail

Federal Housing Finance Board
1777 F Street, NW
Washington, DC 20006

Attn: Public Comments

Re: Proposed Regulation No. 2003-19 Requiring Registration by Each Federal Home Loan Bank of a Class of its Securities under the Securities Exchange Act of 1934, published in the *Federal Register* September 17, 2003

Ladies and Gentlemen:

On behalf of the Federal Home Loan Bank of Topeka (FHLBank Topeka), I am providing comments to the proposed regulation referenced above.

FHLBank Topeka formally expressed its intent to voluntarily register a class of its securities with the Securities and Exchange Commission (SEC) through the adoption of the following position statement in September of 2003:

Corporate Governance: Commitment to Disclosure and Regulation

FHLBank Topeka is committed to the highest standards of corporate governance and behavior. We believe that this commitment extends beyond our pursuit of best practices in our internal governance, management and operations, but includes our active support for a regulatory regime of the highest caliber for our public disclosures and our business practices.

We believe that the highest caliber regulatory regime for public disclosures is one administered by the SEC. Therefore it is our intent to voluntarily register with the SEC once all outstanding disclosure questions are appropriately resolved. We pledge to work cooperatively with the SEC to resolve those questions.

With respect to safety and soundness regulation, we believe that the Federal Housing Finance Board is a competent regulator with the qualified staff, practices and systems appropriate to effectively regulate the FHLBanks. However, we also believe that there may be alternative regulatory structures such as an independent government-sponsored enterprise (GSE) regulator that

would better facilitate safety and soundness regulation of the FHLBanks in the future. We pledge to work cooperatively with the Congress and the Administration in exploring alternative regulatory structures with the objective of identifying the structure that will best facilitate the future safety and soundness regulation of the FHLBanks.

However, notwithstanding our intent to register with the SEC, we have strong reservations about the Federal Housing Finance Board (Finance Board) mandating "voluntary" registration. The preamble quotes the Federal Home Loan Bank Act's provision stating that the Finance Board has a statutory duty to ensure that the FHLBanks remain adequately capitalized and able to raise funds in the capital markets. But having the duty to accomplish an objective doesn't automatically confer the authority to take *any* action that arguably supports that objective. We cannot understate the magnitude of what the Finance Board proposes to do through this regulation. By requiring voluntary registration, the Finance Board would effect a fundamental structural change in the regulatory oversight of the FHLBanks by subjecting them to a completely separate, additional regulatory body and an additional, complex regulatory regime. Clearly the Finance Board has the authority to regulate what disclosures are required for the FHLBanks. Whether that authority allows the Finance Board to mandate that the FHLBanks be forever subject to the jurisdiction of another regulator is a much different question.

We believe that a fundamental structural change in regulatory oversight of this magnitude is more properly a subject for Congress to decide. In fact, we understand that current legislative proposals being developed in Congress on the question of regulatory oversight of the housing government-sponsored enterprises include provisions addressing the question of the FHLBanks registering with the SEC. Because we believe that the proposed rule is arguably beyond the authority of the Finance Board and that the question of who regulates the FHLBanks' financial disclosures is more appropriately addressed by Congress, we urge the Finance Board to not adopt the proposed rule.

We also note that the Finance Board clearly does have the authority to effectuate SEC-compliant disclosures through the adoption of a disclosure regime that parallels the one provided for banks and thrifts under Section 12(i) of the Securities Exchange Act of 1934. By mandating that the FHLBanks file all periodic disclosure statements as required by the SEC with the Finance Board, with such modifications as are appropriate in the judgment of the Finance Board to reflect the unique structure and characteristics of the FHLBanks, the FHLBanks would be required to issue the same disclosures as they would through voluntary registration with the SEC. This approach has been widely supported by the FHLBanks, FHLBank members and FHLBank member trade associations. In contrast with the proposed rule, this approach would not be susceptible to legal challenge.

If the Finance Board chooses to finalize a rule requiring SEC registration, however, we believe the Finance Board has a responsibility to continue to be actively involved in the process. The same statutory duties referenced in the preamble to suggest the

appropriateness of the Finance Board mandating voluntary registration also indicate that the Finance Board needs to be part of the overall registration process. We believe this involvement should be significant and ongoing so that the Finance Board will continue to carry out its statutory duties to ensure that the FHLBanks operate in a financially safe and sound manner, carry out their housing finance mission, remain adequately capitalized and are able to raise funds in the capital markets. To ensure that this is the case, we recommend that the Finance Board formally address its continuing involvement in the registration process. This involvement should be formalized by stating that registration is dependent on the Finance Board making a formal determination that appropriate accommodations have been made by the SEC such that the FHLBanks can prudently register.

Subsections 998.2 (b) and (c) of the proposed rule would require each FHLBank to subject itself to "the 1934 Act's periodic disclosure regime." Registration under the 1934 Act, however, would subject the FHLBanks to numerous requirements that go beyond periodic disclosure and are not applicable to the unique legal and organizational structure and characteristics of the FHLBanks, such as proxy rules, insider trading rules, reports on beneficial ownership of registrant's stock, related party transaction reports, and reports of sales of unregistered equity. Consequently, we recommend that Subsections 998.2 (b) and (c) of the rule, if adopted, be worded more precisely by specifying that each FHLBank shall subject itself to the 1934 Act's periodic disclosure requirements contained in Section 13(a) of the 1934 Act, with such modifications to those requirements as are appropriate in the judgment of the Finance Board and the SEC to reflect the unique structure and characteristics of the FHLBanks.

SEC registration for the FHLBanks is a complex process, in significant part because of the unique attributes of the FHLBanks compared to the typical SEC registrant. While these issues don't constitute an absolute barrier to registration, working through all of the issues is a laborious process of first identifying all of the issues and then working with the SEC to determine an acceptable resolution to each. While some of the significant issues have been addressed, many others remain.

The complexity of SEC registration and the resulting obligations imposed thereby underscore the need for the Finance Board to remain engaged in the registration process. They also substantiate the importance of allowing adequate time for these issues to be resolved. These concerns are not based on any belief that the SEC will be capricious or unreasonable. The FHLBanks play a significant role in the American economy. The FHLBanks, the Finance Board and the SEC must all recognize the necessity of applying SEC rules in a rational and sensible way. The rules applicable to SEC registrants cover a wide range of subjects, including disclosure reports, accounting practices, corporate governance, proxy solicitation, insider trading, beneficial ownership of registrant's stock, related party transactions, sales of unregistered equity, etc. Each must be appropriately

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evaluated and, if necessary, a workable accommodation identified. In addition, time will be needed for the FHLBanks to develop systems and procedures to comply with a host of SEC requirements for the first time. All of these factors indicate that registration should not be rushed, but done on a deliberate and methodical basis.

Given these concerns, we believe that the earliest disclosure report the FHLBanks would be in a position to prudently file with the SEC is a Form 10-K for the 2004 calendar year. We urge the Finance Board to allow sufficient time for the FHLBanks to reasonably work through the SEC registration process.

Consistent with the foregoing comments, we are also providing a black-lined version of the proposed rule with the changes we would suggest.

Thank you for the opportunity to comment on the proposed rule. If you would like to discuss any of our comments, please contact me at (785) 438-6001 or our Assistant General Counsel, Tad Kramar, at (785) 438-6013.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew J. Jetter", written in a cursive style.

Andrew J. Jetter
President and CEO

Enclosure

Subchapter M—Bank System Securities Disclosure

PART 998--VOLUNTARY REGISTRATION OF A CLASS OF SECURITIES OF EACH BANK UNDER SECTION 12(g) OF THE 1934 ACT

§ 998.1 General.

(a) Purpose. The purpose of this part is to require each Bank to ~~prepare and publicly distribute~~ *make publicly available* certain financial and other disclosures. The required disclosures are those that would be provided by 1934 Act registrants subject to *certain of the 1934 Act's periodic disclosure regime requirements*, as interpreted and administered by the SEC, *consistent with the requirements of this part.*

(b) No limitation on safety and soundness authority or access to capital markets responsibility. This part does not limit or restrict the Finance Board's ability *to* carry out its responsibilities under the Federal Home Loan Bank Act including its responsibility to act under its safety and soundness authority to regulate the Banks, including conducting examinations, requiring reports and disclosures, and enforcing compliance with applicable laws, rules and regulations. This part shall not alter the Finance Board's responsibility to ensure the Bank System's continued access to the capital markets.

§ 998.2 Bank periodic disclosures.

(a) Periodic disclosures. Each Bank shall prepare and make public disclosures relating to its financial condition, results of operations, trends or uncertainties affecting its business, and its management's assessment of its business and financial condition that includes supporting financial information and certifications.

(b) Satisfaction of Bank periodic disclosure requirement. Each Bank shall satisfy the disclosure requirements of paragraph (a) of this section by subjecting itself to the 1934 Act's periodic disclosure ~~regime requirements contained in Section 13(a) of the 1934 Act~~, *with such modifications to those requirements as are appropriate in the judgment of the Finance Board and the SEC to reflect the unique structure and characteristics of the Banks*, and preparing an annual report, quarterly reports *and* current reports *in accordance with the SEC's rules and regulations relating thereto*, including SEC and SEC staff interpretations and rules governing audited financial statements, *consistent in each case with the determination of the Finance Board referred to in §998.2(c).*

(c) Requirement to voluntarily register a class of securities. Each Bank shall subject itself to the 1934 Act's periodic disclosure ~~regime requirements contained in Section 13(a) of the 1934 Act~~, *with such modifications to those requirements as are appropriate in the judgment of the Finance Board and the SEC to reflect the unique structure and characteristics of the Banks*, by ~~agreeing to voluntarily registering a class of its securities with the SEC under Section 12(g) (15 U.S.C. 781(g)) of the 1934 Act within 120 days of after the adoption of this proposed regulation as a final regulation~~ *Finance Board has made a determination that appropriate accommodations have been made, by law, regulation or other administrative action, to relieve each Bank from complying with those provisions of the 1934 Act that the Finance Board finds are incompatible with the proper discharge of the responsibilities of the Finance Board and the*

Banks under the Federal Home Loan Bank Act and the regulations of the Finance Board, but in no event shall a registration be required that would result in any required disclosure filing under the 1934 Act prior to the filing of a Form 10-K for the 2004 calendar year.

(d) Submission of disclosures to Finance Board. Unless otherwise required by the Finance Board, each Bank shall provide to the Finance Board on a concurrent basis copies of all disclosure documents filed with the SEC.