

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 343

RIN 3064-AC04

Insured State Nonmember Banks Which are Municipal Securities Dealers

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed rescission of rule.

SUMMARY: As part of the FDIC's systematic review of its regulations and written policies under section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), the FDIC is proposing to rescind its regulation that requires insured state nonmember banks which are municipal securities dealers to file with the FDIC certain information about those persons who are or seek to be associated with these dealers as municipal securities principals or municipal securities representatives. The FDIC has determined for a number of reasons, including the fact that much of the same information is available in the Municipal Securities Rulemaking Board's (MSRB) regulation G-7, "Information Concerning Associated Persons", and that the FDIC is not required by law to issue its own regulations governing the professional qualification of these associated persons, to propose rescission of the regulation because it is unnecessary and duplicative.

DATES: Comments must be received on or before July 15, 1997.

ADDRESSES: Written comments are to be addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to Room F-402, 1776 F Street, NW., Washington, DC 20429, on business days between 8:30 a.m. and 5 p.m. (FAX number: (202) 898-3838; internet address: comments@FDIC.gov). Comments will be available for inspection in the FDIC Public

Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 5 p.m. on business days.

FOR FURTHER INFORMATION CONTACT:

Carol A. Mesheske, Chief, Special Activities Section, (202) 898-6750, Division of Supervision; or Karen L. Main, Senior Attorney, (202) 898-8838, Legal Division, Federal Deposit Insurance Corporation, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

The FDIC adopted part 343 as a final rule on August 8, 1977. 42 FR 40891 (August 12, 1977), and it became effective on October 31, 1977. 42 FR 46275 (September 15, 1977). Part 343 requires insured state nonmember banks and certain of their subsidiaries, departments and divisions, as specified in section 3(a)(34)(A)(iii) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (Act), which are municipal securities dealers, as defined in section 3(a)(30) of the Act, to file with the FDIC information about persons who are associated with them as municipal securities principals or municipal securities representatives.

The Securities Acts Amendments of 1975 (Pub. L. 95-29) amended the Act to provide for the creation of the MSRB and delegated responsibility to it to formulate rules regulating the activities of municipal securities dealers. However, the Act distributes authority to enforce MSRB rules among the Securities and Exchange Commission (SEC), the Office of the Comptroller of the Currency (OCC), the Federal Reserve Board (FRB) and the FDIC. As specified in section 3(a)(34)(A)(iii) of the Act, the FDIC is authorized to enforce compliance with MSRB rules by an insured state nonmember bank, a subsidiary or a department or a division thereof, which is a municipal securities dealer (hereinafter referred to as a "state nonmember bank municipal securities dealer").

One of the areas in which the Act directs the MSRB to promulgate rules is the qualification of persons associated with municipal securities dealers as municipal securities principals and municipal securities representatives as those positions are defined in MSRB Rule G-3. Paragraph (b) of MSRB Rule G-7 requires persons who are or seek to be associated with municipal securities

dealers as municipal securities principals or municipal securities representatives to provide certain background information and conversely, requires the municipal securities dealers to obtain the information from such persons. Generally, the information required to be disclosed relates to employment history and professional background including any disciplinary sanctions and any claimed bases for exemption from MSRB examination requirements. Paragraph (b) of MSRB Rule G-7 provides that a "completed Form U-4 or similar form prescribed * * * in the case of a bank dealer, by the appropriate regulatory agency, containing the foregoing information, shall satisfy the requirements of this paragraph." The FDIC has developed, in conjunction with the OCC and the FRB (collectively, the Banking Agencies), Form MSD-4 to satisfy the requirements of paragraph (b) of the MSRB's Rule G-7.

Under paragraph (c) of MSRB Rule G-7, a person who is or seeks to be associated with a municipal securities dealer is required to furnish the dealer with a statement correcting information furnished under paragraph (b) of MSRB Rule G-7 to the extent that such information becomes materially inaccurate or incomplete. To maintain the accuracy of the information which is filed on Form MSD-4, the FDIC requires state nonmember bank municipal securities dealers to file with the FDIC copies of statements such dealers receive pursuant to paragraph (c) of MSRB Rule G-7 and Form MSD-5s for municipal securities principals and municipal securities representatives whose association with such dealers terminates. Form MSD-5 is a notification by a municipal securities dealer that a municipal securities principal's or a municipal securities representative's association with the dealer has terminated and the reasons for such termination. The informational requirements discussed above, as set forth in part 343, track very closely the corresponding requirements described in MSRB Rule G-7, paragraphs (b) and (c).

There are also record retention requirements contained in paragraphs (e) and (f) of the MSRB's Rule G-7. The FDIC has imposed a virtually identical requirement on state nonmember bank

municipal securities dealers in section 343.3(d).

Paragraph (g) of the MSRB's Rule G-7 requires every bank municipal securities dealer to file with the appropriate regulatory agency for such bank dealer "such of the information prescribed by this rule as such * * * agency * * * shall by rule or regulation require". The FDIC requires that each such state nonmember municipal securities dealer file Form MSD-4s, the statements described in paragraph (c) of MSRB Rule G-7 and Form MSD-5s with the FDIC for each person associated with the dealer as a municipal securities principal or municipal securities representative. The filing of Form MSD-4s, MSRB Rule G-7(c) statements and Form MSD-5s with the FDIC constitute "reports", "applications" or "documents" within the meaning of section 32(a) of the Act and constitute filings with the SEC for purposes of section 17(c)(1) of the Act. Section 17(c)(1) of the Act requires every municipal securities dealer which files an application, notice, report or document with the FDIC to file a copy of such application, notice, report or document with the SEC.

The FDIC's part 343 is identical in all significant respects to the comparable regulations adopted by the FRB (§ 208.8j) and the OCC (part 10). The Banking Agencies also cooperated in drafting the forms. Part 343 has not been amended by the FDIC in any significant manner since its adoption in August 1977.

II. Basis for Rescission

A. Implementing Regulations Are Not Required by the Act

Section 23(a)(1) of the Act states that the FDIC shall have power "to make such rules and regulations as may be necessary or appropriate to implement the provisions of this title for which (it is) responsible". (Emphasis supplied.) Therefore, although section 15B(b)(2)(A) requires the MSRB to promulgate regulations addressing the qualification of persons who are or seek to be associated with bank municipal securities dealers, there is no corresponding statutory requirement imposed upon the Banking Agencies, including the FDIC. The FDIC may exercise its discretion to determine whether it is necessary or appropriate to adopt regulations such as part 343 or, in this case, to decide that such a regulation is no longer necessary or appropriate. The FDIC has determined that part 343 is no longer necessary to ensure that the requisite qualification information is provided to the state

nonmember bank municipal securities dealers by persons who are or seek to be associated with the subject bank municipal securities dealers, and therefore, is proposing to rescind part 343 for the reasons discussed herein.

B. MSRB's Rule G-7 Requires the Provision of Much of the Same Information as Section 343.3

As described in Section I. Background, paragraph (b) of the MSRB's Rule G-7 requires bank municipal securities dealers to obtain certain information from persons who are or seek to be associated with them as municipal securities principals or municipal securities representatives. The MSRB's Rule G-7 provides that a form prescribed by the appropriate regulatory agency, containing the information set forth in paragraph (b), will satisfy the requirements of that paragraph. The FDIC, in cooperation with the other Banking Agencies, has created Form MSD-4s and Form MSD-5s to satisfy the requirements of paragraph (b) of MSRB Rule G-7. Although the FDIC proposes to rescind part 343, the Form MSD-4s and MSD-5s will continue to be provided to state nonmember bank municipal securities dealers to satisfy the requirements of the MSRB Rule G-7, paragraph (b) by the FDIC. The forms have detailed instructions and provide guidance regarding their completion and filing information. Additionally, the statements mandated in § 343.3 to correct information which has been previously submitted on a Form MSD-4 are required by MSRB Rule G-7, paragraph (c). Therefore, there is no need to retain this redundant regulatory requirement. Moreover, a separate recordkeeping requirement in § 343.3(d) is unnecessary because substantially similar requirements are found in MSRB Rule G-7, paragraphs (e) and (f).

C. Rescission Promotes the Long-Term Goal of Adopting the NASD's Form U and Consolidating Data Bases at the NASD

The FDIC announced in the preamble to the proposed part 343 when it was published in the **Federal Register** on March 30, 1977 (42 FR 16823) that the Banking Agencies were planning to forward the Form MSD-4s, the MSRB Rule G-7(c) statements and the Form MSD-5s that they would receive to the National Association of Securities Dealers (NASD) for computer processing. The NASD has maintained data for many years on personnel in the securities industry similar to the information disclosed about municipal securities principals and municipal

securities representatives. It was expected that disciplinary and qualification data disclosed on Form MSD-4s, MSRB Rule G-7(c) statements and Form MSD-5s would be interfaced with the securities personnel data bank already maintained by the NASD. Although this integration of the two data bases has not yet been realized, the Banking Agencies' working group has again recognized this objective as a long-term goal and are working to achieve this data base integration. One of the first steps is the adoption of the NASD's Form U-4 to replace the Form MSD-4s and Form MSD-5s which the Banking Agencies currently provide to their respective constituent bank municipal securities dealers. This is an objective that the Banking Agencies' working group is continuing to pursue. Representatives, whether associated with a securities broker or dealer or a bank municipal securities dealer, are subject to the same general MSRB qualification requirements. Developing a more nearly uniform process for all municipal securities associated persons would reduce overall regulatory costs by eliminating the use of duplicative forms for individuals with dual registrations (e.g., for dual employees in bank municipal securities dealers and non-bank municipal securities dealers) and by promoting industry-wide qualification standards.

Moreover, the state nonmember bank municipal securities dealers must already be knowledgeable of and familiar with the SEC's, the MSRB's and the NASD's rules and regulations in order to comply with the bank municipal securities dealer registration requirements (section 15B(a) of the Act) and other requirements imposed upon bank and non-bank participants in the municipal securities market. The Banking Agencies' long-term goal is to have all participants in the municipal securities markets register and file required forms and information with the NASD; therefore, the FDIC believes that it is no longer necessary to maintain a separate regulation which governs a small segment of the municipal securities market participants (persons who are or seek to be associated with bank municipal securities dealers) when the informational requirements and recordkeeping requirements are already provided in the MSRB's Rule G-7. The state nonmember bank municipal securities dealers are generally familiar with Rule G-7, and look to the MSRB, the NASD and the SEC for the information filing, recordkeeping and other regulatory requirements in the municipal securities area.

D. The Number of Covered Entities is Declining

The FDIC has jurisdiction over the state nonmember bank municipal securities dealers. The FDIC has noted a steady decline in the number of state nonmember bank municipal securities dealers over the last several years. As a result of consolidation in the industry as well as the inactivity of some banks previously registered as bank municipal securities dealers (who are then requested to de-register), the number of state nonmember bank municipal securities dealers has declined to approximately 28. In the interests of efficiency and reducing duplicative regulatory requirements for this small number of covered entities, the FDIC would propose to rescind its part 343 and to have the covered bank municipal securities dealers rely upon the MSRB's Rule G-7. As discussed hereinabove, the informational requirements and recordkeeping requirements of § 343.3 of the FDIC's regulations are also found in the MSRB's Rule G-7, paragraphs (b), (c), (e) and (f).

However, the filing requirement found in paragraph (g) of Rule G-7 is dependent upon the FDIC's having a filing requirement in place. If the proposed rescission of part 343 is effected, then the requirement to file the Form MSD-4s, the MSRB Rule G-7(c) statements and the Form MSD-5s with the FDIC, as the "appropriate regulatory agency", will no longer exist. The corresponding filing requirement in section 17(c)(1) of the Act will also be eliminated. Section 17(c)(1) states that, "(e)very * * * municipal securities dealer for which the (SEC) is not the appropriate regulatory agency shall * * * file with the (SEC) a copy of any application, notice, proposal, report, or document filed with such appropriate regulatory agency by reason of its being a * * * municipal securities dealer. The elimination of the filing requirement vis-a-vis the FDIC will, therefore, no longer trigger the corresponding filing of these forms with the SEC. The filing of these forms with the FDIC are for informational purposes only, the number of covered entities is very small and it is expected that in the future these informational filings will be provided to the NASD to be added to a master data base. Therefore, the FDIC believes that the deletion of this regulatory requirement will not have adverse consequences.

The forms are still required to be completed and maintained by the individual state nonmember bank municipal securities dealers and are reviewed by the FDIC during the regular

examination process. The instructions to the forms provide the name and address of the appropriate regulatory agency, and direct the bank municipal securities dealer to file the requisite information with the appropriate regulatory agency. It is expected that covered entities will continue to forward the completed forms and statements to the FDIC.

E. Rescission Furthers the Goals of the CDRI Initiative

The FDIC is conducting a systematic review of its regulations and written policies. Section 303(a) of the CDRI (12 U.S.C. 4803(a)) requires the Banking Agencies each to streamline and modify its regulations and written policies in order to improve efficiency, reduce unnecessary costs and eliminate unwarranted constraints on credit availability. Section 303(a) also requires each of the Banking Agencies to remove inconsistencies and outmoded and duplicative requirements from its regulations and written policies. As part of this review, and in consultation with the OCC and the FRB, the FDIC has determined that part 343 is duplicative of many of the requirements of the MSRB's Rule G-7 and that certain efficiencies will be realized by having its state nonmember bank municipal securities dealers rely upon the MSRB's Rule G-7 rather than refer to and comply with part 343. The FDIC's written policies and regulations would be streamlined by its elimination.

Section 303(a)(2) of the CDRI requires the FDIC "to work jointly with the other federal banking agencies to make uniform all regulations * * * implementing common statutory or supervisory policies." The FDIC and the FRB both intend to rescind their respective regulations governing the qualification requirements of the persons who are or seeking to be associated with the bank municipal securities dealers; part 343 and § 208.8(j), respectively. However, the OCC intends to retain its comparable regulation, part 10, but to add a cross-reference to the MSRB's rules. Therefore, the Banking Agencies have succeeded in moving toward the objective stated in section 303(a)(2) of the CDRI as well as accomplishing the overall goal of eliminating duplicative and unnecessary regulations.

III. Request for Public Comment

The FDIC is hereby requesting comment during a 60-day comment period on all aspects of this proposed rescission of part 343. As discussed above, the rescission of part 343 will eliminate the regulatory requirement

that state nonmember bank municipal securities dealers file the Form MSD-4s, the MSRB Rule G-7(c) statements and the Form MSD-5s with the FDIC. Thus, comment is sought on whether the rescission of this filing requirement would create a regulatory gap that would have harmful effects on banking. Additionally, some have voiced concern that the state nonmember bank municipal securities dealers are accustomed to referring to the FDIC's part 343 for guidance in the municipal securities area for these informational filing and recordkeeping requirements. Will the elimination of part 343 actually result in imposing a hardship on the covered entities by deleting a handy reference source for them?

IV. Paperwork Reduction Act

The collection of information requirements (embodied in the Form MSD-4, the MSRB Rule G-7(c) statements and the Form MSD-5) contained in part 343 have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The proposed rescission of part 343 would not, however, alter the requirement under the MSRB's Rule G-7 that bank municipal securities dealers collect the prescribed information from the persons who are or seek to be associated with them as municipal securities principals or municipal securities representatives.

V. Regulatory Flexibility Act

Under section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), the regulatory flexibility analysis otherwise required under section 603 of the RFA (5 U.S.C. 603) is not required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and the agency publishes such certification and a statement providing the factual basis for such certification in the **Federal Register** along with the proposed rule.

The FDIC estimates that, currently, there are 28 state nonmember bank municipal securities dealers under its jurisdiction, none of which are under \$100 million in assets. The proposed rescission of part 343 would result in the elimination of duplicative and unnecessary informational requirements found in the FDIC's regulation, and allow the covered entities to refer to the MSRB's Rule G-7 requirements instead. The proposed rescission would have the effect of reducing costs and burden for the state nonmember bank municipal securities dealers. Thus, the FDIC Board

of Directors (Board) hereby certifies that the proposed rescission would not have a significant economic impact on a substantial number of small entities¹ within the meaning of the RFA. Therefore, the provisions of the RFA regarding an initial and final regulatory flexibility analysis (Id. at 603 and 604) do not apply here.

List of Subjects in 12 CFR Part 343

Banks, banking, Reporting and recordkeeping requirements, Securities.

The Board of Directors of the Federal Deposit Insurance Corporation hereby proposes to remove part 343 of title 12 of the Code of Federal Regulations.

PART 343—[REMOVED AND RESERVED]

1. Part 343 is removed and reserved.

Dated at Washington, DC this 29th day of April, 1997.

By order of the Board of Directors.
Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 97-12807 Filed 5-15-97; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations No. 4 and 16]

RIN 0960-AE58

Administrative Review Process, Testing Elimination of the Fourth Step of Administrative Review in the Disability Claim Process (Request for Review by the Appeals Council)

AGENCY: Social Security Administration.
ACTION: Proposed rules.

SUMMARY: We propose to amend our rules to establish authority to test elimination of the final step in the administrative review process used in determining claims for Social Security and Supplemental Security Income (SSI) benefits based on disability. If these proposed rules are published in final, the right of appeal for a claimant who is included in the test procedures and is dissatisfied with the decision of an administrative law judge (ALJ) would be to file a civil action in Federal

district court, rather than to request the Appeals Council to review the decision. We are proposing to test procedures that eliminate the request for Appeals Council review in furtherance of the Plan for a New Disability Claim Process that former Commissioner of Social Security Chater approved in September 1994. Unless specified, all other regulations relating to the disability determination process and the administrative review process remain unchanged.

DATES: To be sure that your comments are considered, we must receive them no later than June 16, 1997.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235; sent by telefax to (410) 966-2830; sent by E-mail to "regulations@ssa.gov"; or, delivered to the Division of Regulations and Rulings, Social Security Administration, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT:

Harry J. Short, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-6243 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free number, 1-800-772-1213.

SUPPLEMENTARY INFORMATION:

Background

The Social Security Administration (SSA) currently uses a four-step process in deciding claims for Social Security benefits under title II of the Social Security Act (the Act) and for SSI benefits under title XVI of the Act. Claimants who are not satisfied with the initial determination on their claims may request reconsideration. Claimants who are not satisfied with the reconsidered determination may request a hearing before an ALJ, and claimants who are dissatisfied with an ALJ's decision may request review by the Appeals Council. Claimants who have completed these four steps, and who are dissatisfied with the final decision, may request judicial review of the decision by filing a civil action in Federal district court. 20 CFR §§ 404.900 and 416.1400.

SSA's Plan for a New Disability Claim Process (59 FR 47887, September 19, 1994) anticipates establishment of a redesigned, two-step process for deciding Social Security and SSI claims

based on disability. The redesign plan anticipates that the process for determining disability can be significantly improved by strengthening the steps of the process in which we make initial determinations and provide dissatisfied claimants an opportunity for a hearing before an ALJ, and by eliminating the reconsideration step and the step in which claimants request the Appeals Council to review the decisions of ALJs.

In 20 CFR 404.906 and 416.1406 (60 FR 20023, April 24, 1995), we have established authority to test, singly and in combination, several model procedures for modifying the disability claims process. Under that authority, we are currently testing, in isolation from other possible changes, a modification of the initial determination step in which a single decisionmaker, rather than a team composed of a disability examiner and a medical consultant, makes the initial determination of disability. In addition, under authority established in 20 CFR 404.943 and 416.1443 (60 FR 47469, September 13, 1995), we are also testing, in another model for evaluating a possible change in isolation from other changes, use of an adjudication officer as the focal point for all prehearing activities in disability cases in which a claimant requests a hearing before an ALJ.

To assess how the above changes and other elements of the disability redesign plan would work together in different combinations, we initiated an integrated test on April 7, 1997, that combines model procedures for major elements of the redesign plan. As presently structured under existing testing authority (established in §§ 404.906, 404.943, 416.1406, and 416.1443 in combination), this integrated model includes, in addition to models for the single decisionmaker and the adjudication officer, a model for procedures to provide a predecision interview conducted by the single decisionmaker (at which a claimant for benefits based on disability will have an opportunity to submit further evidence and have an interview with the initial decisionmaker if the evidence does not support a fully favorable initial disability determination), and a model to test eliminating the reconsideration step in disability claims.

In order to increase our ability to assess the effects of possible modifications of the disability claim process in combination, we are proposing in these rules to amend our regulations to authorize testing of an additional modification in our integrated model. We are proposing to incorporate in this model additional

¹ The definition of "small business entity" derives from the definition of a "small business concern." Part 121 of the Small Business Administration's rules and regulations (13 CFR part 121) provides that any national bank or commercial bank, savings association, or credit union with assets of \$100 million or less qualifies as a small business concern.