

use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control numbers OPP-00559 or OPP-00560. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection,
Administrative practice and procedure,
Agricultural commodities, pesticides
and pests.

Dated: December 21, 1998.

Lynn R. Goldman,

*Assistant Administrator for Prevention,
Pesticides and Toxic Substances.*

[FR Doc. 98-34429 Filed 12-29-98; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL DEPOSIT INSURANCE CORPORATION

Repudiation and Asset-backed Securitizations and Loan Participations

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed statement of policy.

SUMMARY: In response to inquiries from insured depository institutions, accountants, and other parties involved in asset-backed securitizations and loan participations, the Board of Directors of the FDIC (Board) is proposing to adopt a Statement of Policy Regarding Treatment of Securitizations and Loan Participations After Appointment of the Federal Deposit Insurance Corporation as Conservator or Receiver (Statement of Policy) to clarify how the FDIC will treat securitizations and loan participations in its role as conservator or receiver of insured depository institutions. The proposed Statement of Policy provides that subject to certain conditions, the FDIC will not attempt to reclaim, recover, or recharacterize as property of the institution or the receivership estate in the case of a securitization, the financial assets transferred by the insured depository institution to a special purpose entity in connection with the securitization, or in the case of a loan participation, the undivided interest transferred to a participant in connection with the loan participation. It is anticipated that the proposed Statement of Policy would provide helpful guidance to insured depository institutions, accountants, and other

parties involved in securitizations and loan participations.

DATES: Comments must be received by March 1, 1999.

ADDRESSES: Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. Comments may be hand delivered to the guard station located at the rear of the 17th Street building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. (FAX number (202) 898-3838; Internet address: comments@fdic.gov. Comments may be inspected and photocopied at the FDIC Public Information Center, Room 100, 801 17th Street NW, Washington, DC, on business days between 9:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Michael H. Krimminger, Senior Policy Analyst, Office of Policy Development, (202) 898-8950; Robert Storch, Chief, Accounting Section, Division of Supervision, (202) 898-8906; Thomas Bolt, Counsel, Legal Division, (202) 736-0168; Federal Deposit Insurance Corporation, Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: Under section 11(e)(1) of the Federal Deposit Insurance Act, 12 U.S.C. 1821(e)(1), the FDIC, as conservator or receiver of any insured depository institution, may repudiate any contract entered into by the institution before appointment of the conservator or receiver. Insured depository institutions, accountants, and other parties involved in asset-backed securitizations and loan participations have raised questions about whether the repudiation of a securitization or loan participation by the FDIC would result in the FDIC's recovery of the transferred financial assets, in the case of a securitization, or the undivided interest in a loan, in the case of a loan participation. If so, transfers of such assets or interest by insured depository institutions would likely not be accounted for as a sale under generally accepted accounting principles, which require that transferred assets be placed beyond the reach of the transferor, its creditors, or a receiver for the transferor, in order for the transfer to be accounted for as a sale.

The FDIC is considering whether to adopt the proposed Statement of Policy to provide guidance as to its treatment of securitizations and loan participations after its appointment as conservator or receiver of an insured depository institution. The proposed Statement of Policy provides that subject to certain conditions, the FDIC will not attempt to reclaim, recover, or

recharacterize as property of the institution or the receivership estate (i) in the case of a securitization, the financial assets transferred by the insured depository institution to a special purpose entity in connection with the securitization, or (ii) in the case of a loan participation, the undivided interest transferred to a participant in connection with the loan participation.

The proposed Statement of Policy applies only to securitizations and loan participations where (i) the criteria for sale accounting under generally accepted accounting principles have been satisfied (including the legal isolation test, as affected by the proposed Statement of Policy); (ii) the documentation effecting the transfer of financial assets, in the case of a securitization, or undivided interest in a loan, in the case of a loan participation, reflects the intent of the parties to treat the transaction as a sale, and not as a secured borrowing (without regard to the intended treatment of the transaction for tax purposes); and (iii) the institution received adequate consideration for the transfer at the time it was made.

The proposed Statement of Policy is set forth below. Comment is invited on all aspects of the proposal, including whether, after adoption of the Statement of Policy by the FDIC, the transfer of financial assets in connection with a securitization and the transfer of an undivided interest in a loan in the form of a loan participation by an insured depository institution would be accounted for as a sale under generally accepted accounting principles.

The Statement of Policy proposed by the Board reads as follows:

Statement of Policy Regarding Treatment of Securitizations and Loan Participations After Appointment of the Federal Deposit Insurance Corporation as Conservator or Receiver

This Statement of Policy is issued by the Federal Deposit Insurance Corporation (FDIC) to clarify the treatment of securitizations and loan participations after appointment of the FDIC as conservator or receiver of an insured depository institution.

I. Definitions

As used in this Statement of Policy, the following terms have the following meanings:

A. "Beneficial interest" means debt or equity (or mixed) interests or obligations issued by a special purpose entity that entitle their holders to receive payments that depend primarily on the cash flow from financial assets owned by the special purpose entity.

B. "Financial asset" means cash or a contract or instrument that conveys to one entity a contractual right to receive cash or another financial instrument from another entity. Financial assets may include, but are not limited to, residential and commercial mortgage loans, commercial and industrial loans, consumer receivables, trade receivables, lease receivables, securities, and obligations satisfying the definition of "permitted assets" for purposes of Section 860L(c) of the Internal Revenue Code of 1986, as amended.

C. "Loan participation" means the transfer of an undivided interest in all or part of the principal amount of a loan from a seller, known as the "lead", to a buyer, known as the "participant", without recourse to the lead, pursuant to an agreement between the lead and the participant. "Without recourse" means that the loan participation is not subject to any agreement that requires the lead to repurchase the participant's interest or to otherwise compensate the participant upon the borrower's default on the underlying loan. Use of the singular in this definition is intended to refer also to loan participations that involve more than one loan or more than one buyer.

D. "Securitization" means the issuance by a special purpose entity of beneficial interests, the most senior class of which at time of issuance is rated investment grade by one or more nationally recognized statistical rating organizations, or which are sold in transactions by an issuer not involving any public offering for purposes of Section 4 of the Securities Act of 1933.

E. "Special purpose entity" means a trust, corporation, or other entity with distinct standing at law from the insured depository institution that is primarily engaged in acquiring and holding (or transferring to another special purpose entity) financial assets (or participations or other interests therein), and in activities related or incidental thereto, in connection with the issuance by such special purpose entity (or by another special purpose entity that acquires financial assets directly or indirectly from such special purpose entity) of beneficial interests.

II. Background

Under generally accepted accounting principles, one of the criteria for a transfer of financial assets to be accounted for as a sale is the "legal isolation" of the transferred assets. Assets are deemed to be legally isolated when they have been placed beyond the reach of the transferor and its creditors, even in the case of a bankruptcy or appointment of a receiver for the

transferor. Accountants, auditors, and other parties have raised concerns whether the legal isolation test would be satisfied in the case of a transfer of financial assets by an insured depository institution in connection with a securitization, or the transfer of an interest in a loan by such institution in the form of a loan participation, in light of the statutory power of the FDIC as conservator or receiver to repudiate contracts entered into by such institution. Specifically, questions have been raised about whether the repudiation of a securitization or loan participation by the FDIC would result in the FDIC's recovery of the transferred financial assets, in the case of a securitization, or the undivided interest in a loan, in the case of a loan participation. As guidance for parties who may encounter this issue, the FDIC has resolved to issue this statement of policy to clarify the effect of its statutory repudiation power on securitizations and loan participations.

Pursuant to Section 11(e)(1) of the Federal Deposit Insurance Act, 12 U.S.C. 1821(e)(1), the FDIC, when acting as conservator or receiver of any insured depository institution, has the power to disaffirm or repudiate any contract or lease (i) to which the institution is a party, (ii) the performance of which the conservator or receiver, in the conservator's or receiver's discretion, determines to be burdensome, and (iii) the disaffirmance or repudiation of which the conservator or receiver determines, in the conservator's or receiver's discretion, will promote the orderly administration of the institution's affairs. Repudiation of a contract relieves the FDIC from performing any unperformed obligations remaining under the contract and entitles the other party to the contract to a claim for damages. Such damages are limited by statute to actual direct compensatory damages determined as of the date of the appointment of the conservator or receiver.

The FDIC may exercise its statutory power to repudiate any contract entered into by the institution, including agreements entered into in connection with securitizations or loan participations. In order to resolve issues raised about the effect of this statutory power on such transactions, the FDIC has determined that, if certain conditions are met, it will not seek to reclaim, recover, or recharacterize as property of the institution or the receivership estate the financial assets or undivided interest in a loan transferred by the institution in connection with a securitization or loan participation, respectively. Accordingly,

the FDIC makes the following Statement of Policy, which is intended to be of binding effect upon the FDIC in all instances in which it is appointed as conservator or receiver of an insured depository institution.

III. Statement of Policy

Subject to the following conditions, the FDIC will not attempt to reclaim, recover, or recharacterize as property of the institution or the receivership estate (i) in the case of a securitization, the financial assets transferred by the insured depository institution to a special purpose entity in connection with the securitization, or (ii) in the case of a loan participation, the undivided interest transferred to a participant in connection with the loan participation.

IV. Conditions

A. This Statement of Policy addresses only the exercise of the FDIC's statutory repudiation power with respect to securitizations and loan participations.

B. This Statement of Policy applies only to those securitizations or loan participations where the criteria for sale accounting under generally accepted accounting principles have been satisfied (including the legal isolation test, as affected by this Statement of Policy); the documentation effecting the transfer of financial assets, in the case of a securitization, or undivided interest in a loan, in the case of a loan participation, reflects the intent of the parties to treat the transaction as a sale, and not as a secured borrowing (without regard to the intended treatment of the transaction for tax purposes); and the institution received adequate consideration for the transfer at the time it was made.

C. This Statement of Policy shall not be construed as waiving, limiting, or otherwise affecting the power of the FDIC as conservator or receiver to disaffirm or repudiate any agreement or contract that imposes continuing obligations and duties upon the insured depository institution in conservatorship or receivership, which the conservator or receiver, in its discretion, determines would be burdensome and the disaffirmance or repudiation of which will promote the orderly administration of the institution's affairs. As stated above, however, should the FDIC, in order to terminate such continuing obligations or duties, seek to disaffirm or repudiate an agreement or contract under which an insured depository institution has transferred financial assets in connection with a securitization or undivided interests in a loan in the form of a loan participation, the FDIC will not

attempt to reclaim, recover, or recharacterize as property of the institution or the receivership estate such financial assets or undivided interests.

D. Nothing in this Statement of Policy shall be construed as waiving, limiting, or otherwise affecting:

(1) The power of the FDIC to take any action or to exercise any power not specifically addressed by this Statement of Policy;

(2) The power of the FDIC to take any action or pursue any legal powers, rights, or remedies regarding any transfer that was made with the intent to hinder, delay, or defraud the institution or its creditors, or in contemplation of insolvency, or that is a fraudulent transfer under applicable law; or

(3) Any causes of action, rights, or remedies, at law or in equity, not specifically addressed by this Statement of Policy, that the FDIC may have with respect to any contract entered into by any insured depository institution.

By order of the Board of Directors.

Dated at Washington, D.C., this 18th day of December 1998.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98-34518 Filed 12-29-98; 8:45 am]

BILLING CODE 6714-01-P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 232-011644.

Title: Sol y Mar/Frontier Services Space Charter and Sailing Agreement.

Parties: Sol y Mar, Frontier Liner Services.

Synopsis: Under the proposed agreement, Sol y Mar will charter space to Frontier Liner Services in the trade between ports in south Florida and ports in Guatemala and Honduras and via those ports to Nicaragua and El Salvador.

Agreement No.: 232-011645.

Title: Ro/Ro Vessel Chartering Agreement.

Parties: Companhia de Navegacao Norsul, NYKNOS Joint Service.

Synopsis: Under the proposed agreement, the parties are authorized to charter ro/ro vessels to each other, cross charter space, and coordinate sailings and port calls in the trade between U.S. Atlantic and Gulf ports and inland points and ports and points in Brazil, Argentina, Paraguay, and Uruguay.

By Order of the Federal Maritime Commission.

Dated: December 23, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98-34512 Filed 12-29-98; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL MARITIME COMMISSION

Meetings; Sunshine Act

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: 2:00 P.M.—January 13, 1999.

PLACE: 800 North Capitol Street, N.W., First Floor Hearing Room, Washington, D.C.

STATUS: CLOSED.

MATTER(S) TO BE CONSIDERED:

1. Docket No. 98-14—Shipping Restrictions, Requirements and Practices of the People's Republic of China.
2. Brazilian Maritime Policies Affecting U.S.-Brazil Trades.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,

Secretary.

[FR Doc. 98-34670 Filed 12-28-98; 11:11 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: *Background.* Notice is hereby given of the final approval of proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved

collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Chief, Financial Reports Section—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829).

OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7860).

Final approval under OMB delegated authority of the extension for three years, with major revision, of the following report:

Report title: Interagency Bank Merger Act Application.

Agency form number: FR 2070

OMB control number: 7100-0171

Frequency: On occasion

Reporters: Individuals or households; Businesses or other for-profit.

Annual reporting hours:

Nonaffiliate—1,710; Affiliate—1,422.

Total: 3,132 burden hours

Estimated average hours per response:

Nonaffiliate--30; Affiliate--18

Number of respondents: Nonaffiliate--57; Affiliate--79.

Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 321, 1828(c), and 4804). Except for select sensitive items, this information collection is not given confidential treatment.

Abstract: State member banks are required to file this application prior to merging with any other insured depository institution, consolidating with an insured depository institution, acquiring assets from an insured depository institution (either directly or indirectly), or assuming the liability to pay any of an insured depository institution's deposits (either directly or indirectly).

This extension proposal includes a revision to make uniform the merger application forms currently submitted to the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the Federal Deposit Insurance Corporation (FDIC), and the Board of Governors (Board)