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FEDERAL HOME LOAN BANK BOARD

A new method of classifying certain commercial loans and a revision of the regulation regarding the reevaluation of assets by examination staff is being proposed by the FHLBB (see the 7/2/85 Fed. Reg., pp. 27290-94). The proposed rule classifies "problem assets" as: Substandard, Doubtful or Loss and provides a definition for each of these categories. An example of characteristics exhibited by a "substandard" loan would be a loan in which the collateral is not subject to adequate inspection and verification, the primary source of repayment is gone and the lending institution is relying on the secondary source or obligors are unable to generate enough cash flow for debt reduction. The proposed change in the FHLBB's appraisal provision of the Examinations and Audits regulation for insured institutions would allow for evaluations that take into account economic factors that directly affect the immediate value of the assets from the insured institution's point of view, other than a direct appraisal of the property. Comments must be received by 8/30/85 and should be submitted in writing to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552. For further information contact Jane W. Katz at 202/377-6782.

SECURITIES AND EXCHANGE COMMISSION

Comments on the practice of registrants "who seek an auditor who is willing to support a proposed accounting treatment which is intended to accomplish the registrant's reporting objectives, but which is not necessarily in accordance with generally accepted accounting principles" are being requested by the SEC in a 7/1/85 Release. In this Release, made available on 7/5/85, the SEC is requesting comments on possible amendments to its disclosure requirements concerning changes in accountants, and disagreements which accompany or precede such changes, to elicit "more meaningful disclosure of opinion shopping situations". This request is in addition to the rule proposals in a companion Release, Securities Act Release No. 6592. In that Release, the Commission is proposing to amend Item 304 of Regulation S-K, 1/ Item 9 (c) of Schedule 14A 2/ and Form S-18 3/ to require disclosure of changes of accountants and disagreements with former accountants which may have arisen prior to the registrant becoming subject to the filing requirements of the Securities Exchange Act of 1934. Comments on both proposals should be submitted in triplicate to John Wheeler, Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Both Releases will be published in the Federal Register.

Applicability of Broker-Dealer Registration to Banks is the title of a final rule adopted by the SEC on 7/1/85 and which requires a bank to conduct certain securities activities through a broker-dealer registered under the Exchange Act. Rule 3b-9 of the Securities Exchange Act of 1934 defines the securities activities as public solicitation of brokerage business for transaction-related compensation; receipt of transaction-related compensation for providing brokerage services for trust, managing agency or other accounts to which the bank provides advice or dealing in or underwriting securities. The Rule also contains several exceptions for banks that conduct only limited securities activities. A major exception to Rule 3b-9, according to the SEC, will be for a bank which enters into arrangements with a registered broker-dealer pursuant to which the broker-dealer will provide brokerage services. The SEC stated that "Rule 3b-9 is necessary to assure investor protection and to satisfy other regulatory concerns raised by the recent expansion of bank securities activities." Effective date for the Rule is 1/1/86. For further information contact Mary Chamberlin at 202/272-2844.

TREASURY, DEPARTMENT OF

Proposed regulations have been issued pertaining to sections 1374-1375 of Internal Revenue Code concerning certain S Corporations (see the 7/3/85 Fed. Reg., pp. 27457-60). The proposed change in section 1374 applies to a tax imposed on certain S corporations and the proposed change in section 1375 applies to a tax imposed on the excess

net passive income of certain S corporations that have accumulated earnings and profits from subchapter C years. Written comments and requests to testify at a public hearing must be delivered or mailed by 9/3/85 to Commissioner of Internal Revenue, Attn: CC:LR:T (LR-267-82), Washington, D.C. 20224. For further information contact John G. Schmatz at 202/566-3516.

Temporary, as well as proposed regulations regarding tax-exempt entity leasing have been issued by the IRS (see the 7/2/85 Fed. Reg., pp. 27222-31 and 27297-98). The temporary regulations provide guidelines for handling specific questions relating to tax-exempt entity leasing. Comments for the proposed regulations are especially invited concerning the rules for determining whether partnership allocations are qualified under section 168(j)(9)(B) of the Internal Revenue Code. Comments must be mailed or delivered by 9/3/85 to Commissioner of Internal Revenue, Attention: CC:LR:T (LR-31-85), 1111 Constitution Avenue, N.W., Washington, D.C. 20224. For further information about either the temporary or proposed regulations contact Robert Beatson at 202/566-3590.

UNITED STATES SUPREME COURT

"There is no requirement that a private action under Section 1964(c) can proceed only against a defendant who has already been convicted of a predicate act or of a RICO violation", according to a 5-4 decision handed down by the U.S. Supreme Court on 7/1/85. This decision reversed recent decisions by lower courts which have restricted the use of RICO's (Racketeer Influenced Corrupt Organizations Act) civil provisions. The majority opinion, delivered by Justice Byron White also stated that "a prior conviction requirement is not supported by RICO's history, its language, or considerations of policy." Justice Thurgood Marshall delivered the dissenting opinion and was joined by Justices Brennan, Blackmun & Powell. In his dissent, Justice Marshall stated "I believe that the statutory language and history disclose a narrower interpretation of the statute that fully effectuates Congress' purposes, and that does not make compensable under civil RICO a host of claims that Congress never intended to bring within RICO's purview." He continues, "the Court's interpretation of the civil RICO statute quite simply revolutionizes private litigation; it validates the federalization of broad areas of state common law of frauds, and it approves the displacement of well-established federal remedial provisions. We do not lightly infer a congressional intent to effect such fundamental changes. To infer such intent here would be untenable, for there is no indication that Congress ever considered, must less approved, the scheme that the Court today defines."

On 6/12/85, the AICPA testified on the need to amend RICO's civil provisions (see the 6/17/85 Wash. Rpt.). AICPA Chairman Ray J. Groves, accompanied by President Philip B. Chenok and Vice President in Charge of the Washington Office, Theodore C. Barreaux, urged Congress to consider and adopt amendments to RICO's civil provisions which would preclude the law's use against legitimate business people, corporations, and licensed professional partnerships. Mr. Groves also stated a need to prevent civil RICO's use in commercial disputes having nothing to do with organized criminal activities. The AICPA also filed an amicus curiae brief with the U.S. Supreme Court requesting the Court to limit civil cases under RICO to suits against individuals who have been criminally convicted of the predicate offenses under the Act. The Court rejected this and other similar arguments in their 5-4 decision on 7/1/85. Also, in the majority opinion, Justice White cited the amicus curiae brief filed by the AICPA. He stated that private civil actions under the RICO statute are being brought almost solely against respected and legitimate businesses, "rather than against the archetypal, intimidating mobster. Yet this defect--if defect it is--is inherent in the statute as written, and its correction must lie with Congress." Hearings to amend civil provisions of RICO have been held by the Senate Judiciary Committee and by the House Criminal Justice Subcommittee. Rep. John Conyers' (D-MI) Criminal Justice Subcommittee will hold a RICO hearing on 7/24/85. Sen. Strom Thurmond's (R-SC) Judiciary Committee will hold a RICO hearing on 7/30/85.

SPECIAL: ISSUES PAPER ON HMO'S ACCOUNTING NOW AVAILABLE

"Accounting by Health Maintenance Organizations (HMOs) and Associated Entities" is the title of an issues paper recently approved by the AICPA Accounting Standards Executive Committee (AcSEC) and forwarded to the Financial Accounting Standards Board (FASB). It is expected that the issues paper will be exposed for public comment by FASB as a proposed Statement of Position. The four issues addressed in the paper, which include AcSEC's advisory conclusions, are: Accounting for Health Care Costs, Loss Recognition, Accounting for Reinsurance and Accounting for Acquisition Costs. Copies of the issues paper may be obtained from the AICPA Order Department, 212/575-6426.

SPECIAL: REP. STARK'S BILL ON DEFENSE CONTRACTOR ACCOUNTING GAINS SUPPORT

"The accounting rule that allows defense contractors to perpetually defer payment of taxes does nothing to build a strong America", according to a recent statement by Rep. Fortney H. (Pete) Stark (D-CA), Chairman, Select Revenue Measures Subcommittee, House Ways and Means Committee. Citing recent support by Secretary of Defense Caspar Weinberger, Rep. Stark said, "The completed contract method of accounting allows companies with long-term contracts to postpone taxes on the profits of a project until the project is completed, even if the company receives income from partial payments and writes off many expenses each year. This accounting method was used so effectively to defer taxes by the General Electric Company, the General Dynamics Corp., the Boeing Company, the Grumman Corp. and the Lockheed Corp. that these major military contractors paid no federal income taxes at all from 1981 through 1983." Stark introduced a bill, H.R. 2214, on 4/24/85, to disallow use of the completed contract method of accounting for computing income on federal long-term contracts. Stark's bill will require that the taxpayers pay federal taxes by a method which reflects the progress and payment schedule of the contract.

For additional information please call Gina Rosasco, Shirley Hodgson, or Nick Nichols at 202/872-8190.

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