FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–0998]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of adjustment of dollar amount.

SUMMARY: The Board is publishing an adjustment to the dollar amount that triggers certain requirements of Regulation Z (Truth in Lending) for mortgages bearing fees above a certain amount. The Home Ownership and Equity Protection Act of 1994 sets forth rules for home-secured loans in which the total points and fees payable by the consumer at or before loan consummation exceed the greater of $400 or 8 percent of the total loan amount. The Board is required to annually adjust the $400 amount based on the annual percentage change in the Consumer Price Index as reported on June 1. The Board adjusted the $400 amount to $412 for 1996 and to $424 for 1997. The Board has adjusted the dollar amount from $424 to $435 for 1998.

EFFECTIVE DATES: January 1, 1998 through December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Michael Hentrel, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667. For the users of Telecommunications Device for the Deaf only, please contact Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

Background

The Truth in Lending Act (TILA; 15 U.S.C. 1601–1666j) requires creditors to disclose credit terms and the cost of consumer credit as an annual percentage rate. The act requires additional disclosures for loans secured by a consumer's home, and permits consumers to cancel certain transactions that involve their principal dwelling. The TILA is implemented by the Board's Regulation Z (12 CFR part 226).

On March 24, 1995, the Board published amendments to Regulation Z implementing the Home Ownership and Equity Protection Act of 1994 (HOEPA), contained in the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325, 108 Stat. 2160 (60 FR 15463). These amendments, which became effective on October 1, 1995, are contained in § 226.32 of the regulation and impose additional disclosure requirements and substantive limitations on certain closed-end mortgage loans bearing rates or fees above a certain percentage or amount. As to fees, creditors are generally required to comply with the rules in § 226.32 if the total points and fees payable by the consumer at or before loan consummation exceed the greater of $400 or 8 percent of the total loan amount. The TILA (15 U.S.C. 1602(aa)(3)) and § 226.32(a)(1)(ii) of Regulation Z provide that the $400 figure shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index (CPI) that was reported on the preceding June 1.

The Bureau of Labor Statistics publishes consumer-based indices monthly, but does not ''report'' a CPI change on June 1; adjustments are reported in the middle of each month. The Board believes the CPI–U index, which is based on all urban consumers and represents approximately 80 percent of the U.S. population, is the appropriate index to use in the adjustment to the $400 dollar figure.

The adjustment to the $400 dollar figure reflects the adjustment reported on May 15, 1997, the rate ''in effect'' on June 1, which states the percentage increase from April 1996 to April 1997. In 1995, the Board adjusted the $400 amount to $412 for 1996. Last year, the Board adjusted the $400 amount from $412 to $424, reflecting a 2.9 percent increase in the CPI–U. During the period from April 1996 to April 1997, the CPI–U increased by 2.5 percent, bringing the adjusted amount to $434.60. The Board is rounding that number to whole dollars for ease of compliance.

Adjustment

For the reasons set forth in the preamble, for purposes of determining whether a mortgage transaction is covered by § 226.32 (based on the total points and fees payable by the consumer at or before loan consummation), a loan is covered if the points and fees exceed the greater of $435 or 8 percent of the total loan amount, effective January 1, 1998 through December 31, 1998.

By order of the Board of Governors of the Federal Reserve System, February 3, 1998.

William W. Wiles,

Secretary of the Board.

[FR Doc. 98–3108 Filed 2–6–98; 8:45 am]

BILLING CODE 6210–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB 98]

Staff Accounting Bulletin No. 98

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: This staff accounting bulletin revises the views of the staff contained in certain topics of the staff accounting bulletin series to be consistent with the provisions of certain accounting standards recently adopted by the Financial Accounting Standards Board. Topics include: Topic 1.B—Allocation of Expenses and Related Disclosure in Financial Statements of Subsidiaries, Divisions or Lesser Business Components of Another Entity; Topic 3.A—Convertible Securities; Topic 4.D—Earnings Per Share Computations in an Initial Public Offering; Topic 6.B.1—Income or Loss Applicable to Common Stock; and Topic 6.G.1—Selected Quarterly Financial Data (Item 302(a) of Regulation S–K).

EFFECTIVE DATE: February 3, 1998.

FOR FURTHER INFORMATION CONTACT: Cody L. Smith, Office of the Chief Accountant (202–942–4400), Kenneth T. Marceron, Division of Corporation Finance (202–942–2960), Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The statements in staff accounting bulletins are not rules or interpretations of the Commission, nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Dated: February 3, 1998.

Margaret H. McFarland,

Deputy Secretary.

PART 211—[AMENDED]

Accordingly, Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 98 to the table found in Subpart B.

Staff Accounting Bulletin No. 98

The staff hereby amends the following in the Staff Accounting Bulletin Series:

(a) Topics 1.B.2 and 1.B.3, regarding the allocation of expenses and related disclosure in financial statements of subsidiaries, divisions or lesser business components of another entity to eliminate instructions to delete historical EPS in the entity's financial statements;

(b) Topic 3.A, regarding the presentation of supplemental earnings per share in a convertible security registration to remove the reference to APB Opinion No. 15, *Earnings Per Share,* and remind registrants of the pro forma requirements of Regulation S–X;

(c) Topic 4.D, regarding the computation of earnings per share in an initial public offering (IPO) to revise instructions regarding the dilutive effects of stock issued for consideration below the IPO price or options and warrants to purchase common stock with exercise prices below the IPO price. New guidance highlights the treatment that should be given to the dilutive effect of common stock or options and warrants to purchase common stock issued for nominal consideration (referred to as nominal issuances);

(d) Topic 6.B.1, regarding the presentation of income or loss applicable to common stock to clarify the Topic's continuing applicability to all registrants and to suggest a presentation format for registrants that elect to present a single statement of income and comprehensive income; and

(e) Topic 6.G.1, regarding selected quarterly financial data to replace the terms ''primary'' and ''fully diluted'' with ''basic'' and ''diluted.''

TOPIC 1: FINANCIAL STATEMENTS

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B. Allocation of expenses and related disclosure in financial statements of subsidiaries, divisions or lesser business components of another entity

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2. *Pro forma financial statements and earnings per share*

Question: What disclosure should be made if the registrant's historical financial statements are not indicative of the ongoing entity (*e.g.*, tax or other cost sharing agreements will be terminated or revised)?

Interpretive Response: The registration statement should include pro forma financial information that is in accordance with Article 11 of Regulation S–X and reflects the impact of terminated or revised cost sharing agreements and other significant changes.

3. *Other matters*

Question: What is the staff's position with respect to dividends declared by the subsidiary subsequent to the balance sheet date?

Interpretive Response: The staff believes that such dividends either be given retroactive effect in the balance sheet with appropriate footnote disclosure, or reflected in a pro forma balance sheet. In addition, when the dividends are to be paid from the proceeds of the offering, the staff believes it is appropriate to include pro forma per share data (for the latest year and interim period only) giving effect to the number of shares whose proceeds will be used to pay the dividend. A similar presentation is appropriate when dividends exceed earnings in the current year, even though the stated use of proceeds is other than for the payment of dividends. In these situations, pro forma per share data should give effect to the increase in the number of shares which, when multiplied by the offering price, would be sufficient to replace the capital in excess of earnings being withdrawn.

TOPIC 3: SENIOR SECURITIES

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A. Convertible Securities

Facts: Company B proposes to file a registration statement covering convertible securities.

Question: In registration, what consideration should be given to the dilutive effects of convertible securities?

Interpretive Response: In a registration statement of convertible preferred stock or debentures, the staff believes that disclosure of pro forma earnings per share (EPS) is important to investors when the proceeds will be used to extinguish existing preferred stock or debt and such extinguishments will have a material effect on EPS. That disclosure is required by Article 11, Rule 11–01(a)(8) and Rule 11–02(a)(7) of Regulation S–X, if material.

TOPIC 4: EQUITY ACCOUNTS

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D. Earnings Per Share Computations in an Initial Public Offering

Facts: A registration statement is filed in connection with an initial public offering (IPO) of common stock. During the periods covered by income statements that are included in the registration statement or in the subsequent period prior to the effective date of the IPO, the registrant issued for nominal consideration [1] common stock, options or warrants to purchase common stock or other potentially dilutive instruments (collectively, referred to hereafter as ''nominal issuances'').

Prior to the effective date of Statement of Financial Accounting Standards No. 128 (SFAS 128), *Earnings per Share,* the staff believed that certain stock and warrants [2] should be treated as outstanding for all reporting periods in the same manner as shares issued in a stock split or a recapitalization effected contemporaneously with the IPO. The dilutive effect of such stock and warrants could be measured using the treasury stock method.

Question 1: Does the staff continue to believe that such treatment for stock and warrants would be appropriate upon adoption of SFAS 128?

Interpretive Response: Generally, no. Historical EPS should be prepared and presented in conformity with SFAS 128.

In applying the requirements of SFAS 128, the staff believes that nominal issuances are recapitalizations in substance. In computing basic EPS for the periods covered by income statements included in the registration statement and in subsequent filings with the SEC, nominal issuances of common stock should be reflected in a manner similar to a stock split or stock dividend for which retroactive treatment is required by paragraph 54 of SFAS 128. In computing diluted EPS for such periods, nominal issuances of common stock and potential common stock [3] should be reflected in a manner similar to a stock split or stock dividend.

Registrants are reminded that disclosure about materially dilutive issuances is required outside the financial statements. Item 506 of Regulation S–K requires tabular presentation of the dilutive effects of those issuances on net tangible book value. The effects of dilutive issuances on the registrant's liquidity, capital resources and results of operations should be addressed in Management's Discussion and Analysis.

Question 2: Does reflecting nominal issuances as outstanding for all historical periods in the computation of earnings per share alter the registrant's responsibility to determine whether compensation expense must be recognized for such issuances to employees?

[1] Whether a security was issued for nominal consideration should be determined based on facts and circumstances. The consideration the entity receives for the issuance should be compared to the security's fair value to determine whether the consideration is nominal.

[2] The stock and warrants encompassed by the prior guidance were those issuances of common stock at prices below the IPO price and options or warrants with exercise prices below the IPO price that were issued within a one-year period prior to the initial filing of the registration statement relating to the IPO through the registration statement's effective date.

[3] SFAS 128 defines potential common stock as ''a security or other contract that may entitle its holder to obtain common stock during the reporting period or after the end of the reporting period.''

Interpretive Response: No. Registrants must follow generally accepted accounting principles in determining whether the recognition of compensation expense for any issuances of equity instruments to employees is necessary.[4] Reflecting nominal issuances as outstanding for all historical periods in the computation of earnings per share does not alter that existing responsibility under GAAP.

TOPIC 6: INTERPRETATIONS OF ACCOUNTING SERIES RELEASES

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B. Accounting Series Release No. 280—General Revision of Regulation S–X

1. INCOME OR LOSS APPLICABLE TO COMMON STOCK

Facts: A registrant has various classes of preferred stock. Dividends on those preferred stocks and accretions of their carrying amounts cause income applicable to common stock to be less than reported net income.

Question: In ASR No. 280, the Commission stated that although it had determined not to mandate presentation of income or loss applicable to common stock in all cases, it believes that disclosure of that amount is of value in certain situations. In what situations should the amount be reported, where should it be reported, and how should it be computed?

Interpretive Response: Income or loss applicable to common stock should be reported on the face of the income statement[1] when it is materially different in quantitative terms from reported net income or loss[2] or when it is indicative of significant trends or other qualitative considerations. The amount to be reported should be computed for each period as net income or loss less: (a) dividends on preferred stock, including undeclared or unpaid dividends if cumulative; and (b) periodic increases in the carrying amounts of instruments reported as redeemable preferred stock (as discussed in Topic 3.C) or increasing rate preferred stock (as discussed in Topic 5.Q).

[4] As prescribed by Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to Employees,* and Statement of Financial Accounting Standards No. 123, *Accounting for Stock-Based Compensation,* and related interpretations.

[1] If a registrant elects to follow the encouraged disclosure discussed in paragraph 23 of Statement of Financial Accounting Standards No. 130, *Reporting Comprehensive Income,* and displays the components of other comprehensive income and the total for comprehensive income using a one-statement approach, the registrant must continue to follow the guidance set forth in Topic 6.B.1. One approach may be to provide a separate reconciliation of net income to income available to common stock below comprehensive income reported on a statement of income and comprehensive income.

[2] The assessment of materiality is the responsibility of each registrant. However, absent concerns about trends or other qualitative considerations, the staff generally will not insist on the reporting of income or loss applicable to common stock if the amount differs from net income or loss by less than ten percent.

TOPIC 6: INTERPRETATION OF ACCOUNTING SERIES RELEASES

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G. ACCOUNTING SERIES RELEASE Nos. 177 and 286—Relating to Amendments to Form 10–Q, Regulation S–K, and Regulation S–X Regarding Interim Financial Reporting

* * ** *

1. SELECTED QUARTERLY FINANCIAL DATA (ITEM 302(a) OF REGULATION S–K)

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a. *Disclosure of Selected Quarterly Financial Data*

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Question 4: What is meant by ‘‘per-share data based upon such income’’ as used in Item 302(a)(1)?

Interpretive Response: Item 302(a)(1) only requires disclosure of per share amounts for income before extraordinary items and cumulative effect of a change in accounting. It is expected that when per share data is calculated for each full quarter based upon such income, the per share amounts would be both basic and diluted. Although it is not required by the rule, there are many instances where it would be desirable to disclose other per share figures such as net earnings per share and the per share effect of extraordinary items also. Where such disclosure is made, per share data should be both basic and diluted.

[FR Doc. 98–3121 Filed 2–6–98; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM81–19–000]

Project Cost and Annual Limits

Issued February 3, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: Pursuant to the authority delegated by 18 CFR 375.307(e)(1), the Director of the Office of Pipeline Regulation computes and publishes the project cost and annual limits specified in Table I of § 157.208(d) and Table II of § 157.215(a) for each calendar year.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT:

Michael J. McGehee, Division of Pipeline Certificates, OPR (202) 208–2257.

Publication of Project Cost Limits Under Blanket Certificates; Order of The Director, OPR

Section 157.208(d) of the Commission’s Regulations provides for project cost limits applicable to construction, acquisition, operation and miscellaneous rearrangement of facilities (Table I) authorized under the blanket certificate procedure (Order No. 234, 19 FERC ¶ 61,216). Section 157.215(a) specifies the calendar year dollar limit which may be expended on underground storage testing and development (Table II) authorized under the blanket certificate. Section 157.208(d) requires that the ‘‘limits specified in Tables I and II shall be adjusted each calendar year to reflect the ‘GNP implicit price deflator’ published by the Department of Commerce for the previous calendar year.’’

Pursuant to § 375.307(e)(1) of the Commission’s Regulations, the authority for the publication of such cost limits, as adjusted for inflation, is delegated to the Director of the Office of Pipeline Regulation. The cost limits for calendar year 1998, as published in Table I of § 157.208(d) and Table II of § 157.215(a), are hereby issued.

Note that these inflation adjustments are based on the Gross Domestic Product (GDP) Implicit Price Deflator, rather than the Gross National Product (GNP) Implicit Price Deflator which is not yet available for 1997. The Commerce Department advises that in recent years the annual change has been virtually the same for both indices. Further adjustments will be made, if necessary.

List of Subjects in 18 CFR Part 157

Natural gas.

Kevin P. Madden,

Director Office of Pipeline Regulation.

Accordingly, 18 CFR Part 157 is amended as follows:

PART 157—[AMENDED]

1. The authority citation for Part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.