



Raymond R. Christman
President and Chief Executive Officer

January 14, 2004

Secretary to the Board
Federal Housing Finance Board
1777 F Street, N.W.
Washington, D.C. 20006

Re: September 17, 2003, Proposed Rule – Registration by Each Federal Home Loan Bank of a Class of its Securities Under the Securities Exchange Act of 1934

Dear Secretary:

The Federal Home Loan Bank of Atlanta ("Bank") appreciates the opportunity to provide its comments on the Federal Housing Finance Board's ("Finance Board's") proposed rule ("Proposal") regarding the registration by each Federal Home Loan Bank ("FHLBank") of a class of its securities under the Securities Exchange Act of 1934 ("Exchange Act").

The Bank Supports the Adoption of a Finance Board-Administered Securities Disclosure Regime for the Banks Similar to the Finance Board's Current Regulation for the FHLBank System

The Bank supports the Finance Board's objective of having each of the FHLBanks provide comprehensive, fully transparent securities disclosure. In support of this objective, the Bank along with the other FHLBanks, has made recommendations to the Finance Board for an enhanced Finance Board-administered securities disclosure regime that would ensure first class disclosure standards for the FHLBanks. While we still believe this to be the best approach to disclosure, if SEC registration is to be required of each FHLBank, significant analysis and accommodations are needed to ensure that the FHLBanks can continue to fulfill their statutory mission without unnecessary increased costs. In addition, the Finance Board must take a more active role in working to ensure that SEC registration does not alter the structure or operations of the FHLBank System.

The Bank believes that the Finance Board is in the best position to assure the timeliness, accuracy and completeness of FHLBank disclosures because it was established by Congress to exercise the full range of regulatory and examination authority over the activities and operations of the FHLBanks that provide it with intimate knowledge of each FHLBank's business and financial condition. It has unparalleled ability to scrutinize and oversee the securities disclosures made by the FHLBanks given that its single focus is on the twelve FHLBanks. At the very least, the Finance Board must apply this expertise to ensure that any new disclosure regime is consistent with the statutory design of the FHLBanks.

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The Finance Board currently administers a securities disclosure regulatory regime for the FHLBank System in connection with the consolidated obligations that are issued as joint and several obligations of the twelve FHLBanks. Under Part 985 of the Finance Board's regulations, the Finance Board has established a periodic disclosure regime that requires FHLBank System securities disclosure generally to be consistent with the Securities and Exchange Commission's ("SEC") Regulations S-K and S-X, subject to limited exceptions necessary to reflect the unique structure of the FHLBanks. Under the Proposal, the Finance Board would continue to be responsible for regulating the securities disclosures of the FHLBank System.

The Bank believes that rather than bifurcating responsibility for FHLBank-related securities disclosures between the Finance Board and the SEC, the Finance Board should adopt a regulation that would require the FHLBanks to file periodic securities disclosures with the Finance Board in a manner similar to the requirements imposed on the FHLBank System under Part 985. Extending Part 985 in this fashion would effectively implement a regime that looks much like the one established by Congress when it enacted Section 12(i) of the Exchange Act in 1964.¹ The FHLBanks previously have provided the Finance Board with a detailed proposal for a Finance Board-administered securities disclosure regime.

Regardless of whether the FHLBanks are required to register their equity securities with the SEC, beginning with its 2003 annual report, the Bank will describe its business, management, results of operations and financial condition in the manner required by the SEC, and with the same frequency. This will result in the distribution of periodic disclosures, which will be made in comparable form to that required of public companies under the Exchange Act: (i) Annual Reports (Form 10-K) including financial statements audited by a public accounting firm that meets the standards of independence required for auditing Exchange Act reporting companies; (ii) Quarterly Reports (Form 10-Q); and Current Reports (Form 8-K). In addition to distributing hard copies of its periodic reports, the Bank will post those reports on its public website.

The Proposal Does Not Demonstrate that the Finance Board has Conducted a Meaningful Analysis of the Business, Operational, Financial or Legal Costs, Benefits, Disadvantages, Uncertainties and Contingencies Associated with Requiring FHLBank Registration with the SEC

The Bank commends the Finance Board for adopting the Proposal. While the Bank would have preferred that the Proposal require the FHLBanks to file periodic securities disclosures with the Finance Board, rather than with the SEC, we nevertheless appreciate the Finance Board's effort to move this issue forward by promulgating the Proposal.

¹ Securities Acts Amendments of 1964, Pub. L. No. 88-467, § 3(e), 78 Stat. 565, 651 (1964).

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Unfortunately, however, the Proposal does not provide any evidence that the Finance Board has conducted a substantive analysis of the costs, risks, uncertainties and contingencies associated with its requirement that the FHLBanks register with the SEC. Our review indicates that these costs, risks, uncertainties and contingencies may be significant, and we believe that the Finance Board must consider these factors in determining how or whether requiring registration with the SEC of the FHLBanks' equity is or can be consistent with the Finance Board's responsibilities to ensure that the FHLBanks continue to carry out their housing finance mission and that the FHLBanks continue to be able to raise funds in the capital markets.

We further believe that the Proposal, if adopted in its current form without appropriate development, analysis and consideration of its impact on the FHLBanks, including the impacts discussed below, would be subject to invalidation by a court on the grounds that the Finance Board's actions were arbitrary and capricious, as discussed below.

First Manhattan Consulting Group Analysis of Potential Costs Related to SEC Registration

The FHLBanks retained First Manhattan Consulting Group ("First Manhattan"), a well-respected financial consulting firm to analyze the potential benefits or costs related to registration of the FHLBanks with the SEC. First Manhattan's analysis indicates that there could be substantial costs associated with such a registration requirement.

First Manhattan has identified several areas in which SEC registration could have a financial impact on the FHLBanks, the most critical of which is the FHLBank and System's liquidity needs and costs. A summary of First Manhattan's conclusions in this regard is set forth below.

FHLBank System Liquidity Costs

Moving the twelve FHLBanks from Finance Board oversight to SEC oversight and requiring each to file quarterly and annual reports creates, when combined with the periodic reports already issued by the Office of Finance, 52 reports that could lead to questions or comments. The increased possibility of delay in debt issuances² and/or a widening in the FHLBank System's debt spreads under an SEC registration regime creates

² The possibility of a delay in FHLBank System debt issuances following registration by the twelve FHLBanks with the SEC may increase, if for no reason other than the reviewers will not be familiar with the cooperative structure and nature of the FHLBank System and the joint and several liability that the FHLBanks share with respect to their consolidated obligations. Given the demands on SEC staff, with thousands of registrants to deal with, as compared to the Finance Board, with regulatory responsibility for only twelve FHLBanks, there can be no assurance that such issues, even if they prove not to be problematic, will be resolved as promptly with the SEC, or with the same degree of recognition of the unique statutory structure of the FHLBank System, as they have been under the Finance Board's exercise of its securities disclosure jurisdiction over FHLBank System disclosures. The Board of Directors of each FHLBank will, in the exercise of prudence, naturally evaluate whether this change requires an increase in the liquidity currently held to deal with delays or disruptions in the issuance process.

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potential cost, to the extent that it creates a need to hold a higher level of liquidity in the FHLBank System. The precise cost of this additional liquidity depends on the increased risk that each Board of Directors sees for a potential funding disruption, the source of the additional liquidity and reasonable estimates of liquidity needs under a new regime. At the extremes, the per annum costs range from \$109 million to \$727 million for 60 days of additional liquidity. A reasonable estimate of new costs to the System ranges between \$300 and \$500 million per annum. Those costs will be passed on to the members,³ which in turn, will pass them on to American homebuyers' in the form of higher mortgage rates. Increased costs also would reduce the amount of funds contributed to the Affordable Housing Program (AHP).

Member Liquidity Costs

If the FHLBank System became more exposed to funding delays or disruptions, prudent member institutions eventually would change their liquidity management strategies to lower their reliance on FHLBank System liquidity. Should members respond to a perceived need to diversify their sources of liquidity, by for example, substituting 20 percent of their current, unused borrowing capacity at the FHLBanks with low yielding Treasuries (to access the Fed discount window), member institutions could also see their own liquidity management costs increase by \$500 million per annum.

Legal Implications of the First Manhattan Analysis

The costs that may be associated with SEC registration may be significant both in the short-term and over the long-term. As a practical matter, these costs are likely to be passed through to homeowners, since the FHLBanks are unlikely to be able to absorb the costs of SEC registration.

We believe that the Finance Board has an obligation to engage in far greater and meaningful analysis, considering this information and its implications for the FHLBanks, member institutions, AHP stakeholders, and homebuyers in determining whether to adopt the Proposal in its current form as a final regulation. If the Finance Board adopts the Proposal as a final rule without such consideration and analysis of the possible financial consequences, its action likely would be set aside as arbitrary and capricious.

³ There are numerous ways in which these costs may be passed on to the members. Increased liquidity means a restructuring of the balance sheets of each FHLBank in one of several ways. A Bank could grow in size and add liquid assets. This could result in an FHLBank being subject to higher capital stock investment requirements. Alternatively, an FHLBank could sell longer term, higher yielding assets and replace them with lower yielding short-term assets. That could reduce the FHLBank's interest rate margin and potentially its net income. Reductions in income would likely lead to reduced dividends on FHLBank stock and/or higher advances rates being charged to members. In any event, the members' net cost of funds related to FHLBank membership increases, meaning that they increase the rates they charge their customers.

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It is well settled that, in order to avoid having its regulation set aside as "arbitrary and capricious," an agency "must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'"⁴ Additionally, "when an agency determines to change an existing regulatory regime, it must do so on the basis of 'reasoned analysis.'"⁵ Thus, "[n]ormally, an agency rule *would be* arbitrary and capricious if the agency . . . entirely failed to consider an important aspect of the problem . . ."⁶

Here, notwithstanding specific requests for Finance Board analyses pursuant to the Freedom of Information Act, the record offers no evidence that the Finance Board has examined any relevant data, and the Finance Board's articulated explanation for its actions is conclusory at best. No facts formally have been found to support the rationale behind the Proposal. Instead, the Finance Board gives the appearance of seeking to dramatically alter an entire regulatory regime without any meaningful analysis.

Moreover, the Finance Board has wholly failed to consider, at least formally, the potentially negative financial impact of the Proposal -- certainly, an "important aspect" of the proposed rule. If the Finance Board proceeds to finalize the Proposal on this sparse record, its actions will be subject to being set aside as arbitrary and capricious.⁷ The increased financial costs and uncertainties associated with SEC registration provide strong additional support for our recommendation that the Finance Board withdraw the Proposal and either adopt and administer its own securities disclosure regime for the individual FHLBanks or engage in a far more meaningful analysis and consultation with the SEC to determine how registration can be accomplished without increased costs to the FHLBanks.

Registration Should Not Occur Until the FHLBanks have Adequate Time to Evaluate How Their Unique Structure, Operation, Joint and Several Liability and Housing Mission Can Best Be Accommodated by the Exchange Act

We urge the Finance Board to reconsider its proposal. However, if the Finance Board decides to adopt the Proposal in its current form, it will be essential that the FHLBanks be given adequate time to fully address and resolve the issues raised by their unique structure, operation, and joint and several liability.

⁴ *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (citation omitted).

⁵ *AT&T Corp. v. FCC*, 236 F.3d 729, 735 (D.C. Cir. 2001) (citation omitted).

⁶ *State Farm*, 463 U.S. at 43 (emphasis added).

⁷ *See id.* at 48 ("There are no findings and no analysis here to justify the choice made, no indication of the basis on which the [agency] exercised its expert discretion. We are not prepared to and the Administrative Procedure Act will not permit us to accept such . . . practice . . .") (citation omitted); *see also AT&T*, 236 F.3d at 737 ("No matter how reasonable the FCC's position . . . the FCC's 'conclusory statements cannot substitute for the reasoned explanation that is wanting in this decision.") (citation omitted); *Dickson v. Secretary of Defense*, 68 F.3d 1396, 1407 (D.C. Cir. 1995) (holding that an agency's "conclusory statements . . . do not meet the requirement that 'the agency adequately explain its result'" (citation omitted); *Puerto Rico Higher Educ. Assistance Corp. v. Riley*, 10 F.3d 847, 853 (D.C. Cir. 1993) ("One of the fundamental principles of administrative law is that an agency's actions must be supported by reasoned decisionmaking. . . . We simply insist that the Department fulfill its legal obligations to justify and explain the basis for its actions.").

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It is likely that the FHLBanks will have to request various forms of exemptive or other relief from the SEC in connection with registration of their equity securities. In addition, the FHLBanks may have to request certain regulatory or other actions by the Finance Board in order to be in a position to accommodate SEC requirements that are not consistent with the current operations of the FHLBank System. We believe that the Finance Board should assist the FHLBanks in obtaining the necessary assurances from the SEC (whether in the form of a memorandum of understanding, a no-action letter, etc.) in connection with those issues that may require such exemptive relief. Certain of these issues are described in Exhibit A to this comment letter.

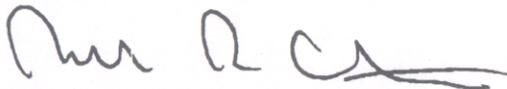
Similarly, the FHLBanks individually and collectively may be required to develop and implement new procedures and controls to address SEC requirements, particularly to the extent that the SEC may seek to impose some degree of responsibility on an individual FHLBank with respect to the financial statements, condition, or business operations of the other FHLBanks. Any such requirement would represent a major change in the current governance and information-sharing principles under which the FHLBanks currently operate; this, in turn, would require careful consideration by the FHLBanks and the Finance Board.

In order to ensure that the FHLBanks can continue to fulfill their mission and operate in a safe and sound manner in the event of mandatory SEC registration, any final version of the Proposal should include an eighteen-month period from its effective date before the individual FHLBanks would be required to register a class of equity securities with the SEC under the Exchange Act.

The Bank commends the Finance Board for its commitment to the objective of having each of the FHLBanks provide comprehensive, fully transparent securities disclosure.

Thank you again for the opportunity to comment on the Proposal.

Sincerely,



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Exhibit A

Outstanding Issues to be Resolved Regarding SEC Registration

1. The proposed "putable" legend on capital stock;
2. The equity to debt transformation that could occur upon a redemption/termination notice;
3. The application/treatment of FIN 45;
4. Accommodation issues concerning Reg FD, joint and several liability, and Sarbanes-Oxley section 302 certifications;
5. A number of critical accounting determinations, including the use of short-cut accounting on deferred swap fees; and
6. Whether there will be an MOU between the SEC and the Finance Board regarding the FHLBank's combined financial statements, and what role the FHLBanks will play in creating that document.