



## ADVISORY BULLETIN 2006-AB-03

July 18, 2006

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***Federal Housing Finance Board  
Office of Supervision***

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**To:** Federal Home Loan Bank Chairs, Federal Home Loan Bank Presidents, Managing Director of the Office of Finance

**From:** Stephen M. Cross  
Director, Office of Supervision

**Subject:** Disclosure in SEC Filings of “Unpublished Information” as Defined in Part 911 of the Finance Board Rules and Regulations

**Purpose**

In 2004, the Federal Housing Finance Board (Finance Board) adopted part 998 of its regulations requiring each Federal Home Loan Bank (Bank) to register a class of its equity securities with the Securities and Exchange Commission (SEC) under the provisions of Section 12(g) of the Securities Exchange Act of 1934 (1934 Act). Subsequently, the Finance Board has been asked whether a Bank may:

1. Disclose “unpublished information,” as defined in part 911 of the Finance Board Rules and Regulations, in its SEC filings; and
2. Review another Bank’s unpublished information in assessing the likelihood that it will have to honor its joint and several guarantee of Bank System consolidated obligations.

The principal purpose of this Advisory Bulletin is to provide written authorization for each Bank to use or disclose in its SEC filings unpublished information that is material to the Bank’s financial condition and business operations, provided that the disclosure is limited to a recital of the factual content of the unpublished information and does not include release of the report of examination or other unpublished information.

## **Background**

*Prohibition on Use or Disclosure of Unpublished Information.* Finance Board regulations provide that “except as authorized in writing by the Finance Board, no person, supervised entity, Bank member, government agency, or other entity in possession or control of unpublished information may disclose or permit the use or disclosure of such information in any manner or for any purpose.”<sup>1</sup> Unpublished information includes reports of examination, supervisory correspondence, any internal Finance Board memoranda in a Bank’s possession, and other information and documents created by the Finance Board in connection with the performance of official duties.<sup>2</sup>

*Satisfaction of SEC Disclosure Obligations.* SEC registration subjects the Banks to the 1934 Act’s periodic disclosure regime, as interpreted and administered by the SEC. Through the public filing of various disclosure documents, including annual reports on Form 10-K, quarterly reports on Form 10-Q, and current reports on Form 8-K (collectively, SEC Disclosure Documents), each Bank must disclose all material information concerning its financial condition and business operations. A Bank should review unpublished information pertaining to itself for material facts before preparing SEC Disclosure Documents.

*Office of Finance Preparation of Combined Financial Reports.* Finance Board regulations require the Office of Finance (OF) to prepare combined annual and quarterly financial reports (collectively Combined Financial Reports) for the Bank System in scope, form, and content generally consistent with the requirements of SEC Regulations S-K and S-X.<sup>3</sup> The OF relies on the Banks to provide the information it needs to make full and accurate disclosures in the Combined Financial Reports.<sup>4</sup> Finance Board rules require each Bank to provide any information the OF requests for this purpose.<sup>5</sup> The information the OF uses to prepare the Combined Financial Reports is drawn in part from the Finance Board’s Call Report System, which contains comprehensive information concerning the financial condition and performance of each Bank (collectively Call Report Information).<sup>6</sup>

*Disclosure Concerning Joint and Several Liability.* An Advisory Bulletin on SEC Registration issued in 2004 notes that U.S. generally accepted accounting principles require each Bank to assess the likelihood that it might have to make principal or interest payments on consolidated obligations on which another Bank was the primary obligor and to make appropriate financial statement disclosures.<sup>7</sup> The Advisory Bulletin states that each Bank has an “affirmative duty, as part of its assessment of its contingent liability for Bank System debt, to review the financial condition of the other Banks to evaluate the likelihood that its contingent joint-and-several guarantee might be called upon.”<sup>8</sup>

## **Guidance**

*Role of Unpublished Information in a Bank’s SEC Disclosure Documents.* A Bank’s management is responsible for preparing SEC Disclosure Documents for the Bank. The 1934 Act’s periodic disclosure regime, which comprises the best practices standard for disclosure by U.S. corporations, requires disclosure of all material business and financial information about a Bank. If a Bank fails to meet its disclosure obligations, both management and the Bank could be subject to various penalties under federal securities laws and Finance Board regulations, including, in extreme circumstances, criminal penalties.

A Bank, therefore, has the obligation to include in its SEC Disclosure documents any material information, including information contained in reports of examination or other unpublished information. To resolve the tension between the prohibition on the disclosure of unpublished information in part 911 and the SEC disclosure obligations of the Banks, section 911.3(c) (1) of the Finance Board regulations allows the Finance Board to authorize in writing the use or disclosure of unpublished information.

This Advisory Bulletin constitutes written authorization pursuant to section 911.3 (c) (1) of the Finance Board regulation for the Banks to use and disclose information contained in a report of examination or other unpublished information in the Banks' SEC Disclosure Documents, provided that the disclosure is limited to a recital of the factual content of the unpublished information. For example, if a Bank's report of examination expresses a supervisory concern and calls for changes, for example, to a Bank's duration of equity, its capital composition, or its investment and funding strategies, the Bank may in its SEC Disclosure Documents discuss the fact that the Finance Board raised the supervisory concern, describe its response to the concern, and explain the implications for its financial performance and business operations. The Bank may not, however, release the report of examination or any portion of it. Other financial regulators also mandate strict confidentiality of reports of examination.<sup>9</sup>

*Role of Unpublished Information in Joint and Several Liability Disclosures.* Since the Banks have similar business models and participate in the same or similar markets, each Bank should be able to assess another Bank's general condition and prospects and monitor and analyze its financial disclosures. In preparing its SEC disclosure concerning the likelihood of having to make a payment on consolidated obligations for which another Bank is the primary obligor, a Bank may use the other Banks' SEC Disclosure Documents, Call Report Information, each Bank's quarterly certification that it "will remain capable of making full and timely payment of all its current obligations, including direct obligations, coming due during the next quarter,"<sup>10</sup> and any other relevant information in the public domain. Safety and soundness considerations grounded in the need to maintain a full, frank, and forthcoming confidential working relationship between Finance Board examiners and management of individual Banks preclude the direct review of reports of examination by other Banks.

The Finance Board has a right to control the use and disclosure of its reports of examination and other unpublished information. These reports of examination and other unpublished information remain under the Finance Board's ownership and control, and are subject to the applicable parts of Finance Board regulations, including parts 911 and 913, even if the factual content of the unpublished information has been disclosed in a Bank's SEC Disclosure Documents.

### **Principal Finance Board Contacts:**

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An Advisory Bulletin is an Office of Supervision (OS) staff document that provides guidance to the Banks and the Office of Finance regarding particular supervisory issues. Although an Advisory Bulletin does not have the force of a regulation or an order, it does reflect the OS position on the particular issue and will be followed by examination staff. If non-compliance with an Advisory Bulletin is cited as the basis for a supervisory determination, the determination is subject to review by the Board of Directors pursuant to the procedures of 12 C.F.R. § 907.9. Advisory Bulletins are effective upon issuance.

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<sup>1</sup> See 12 C.F.R. § 911.3(c)(1).

<sup>2</sup> See 12 C.F.R. § 911.1.

<sup>3</sup> See 12 C.F.R. § 985.6(b) and 17 CFR parts 229 and 210, respectively. SEC Regulation S-K specifies disclosure requirements with respect to non-financial matters to be included in registration statements, annual reports, and proxy statements. Disclosure items include a description of the registrant's business, management's discussion and analysis, and any disagreements with the registrant's independent auditors. SEC Regulation S-X sets forth the financial statement requirements for these SEC filings.

<sup>4</sup> While the OF has not been able to publish Combined Financial Reports since the second quarter of 2004, all Bank SEC registrations are now either effective or pending. The OF will recommence publication of Combined Financial Reports sometime following the effectiveness of the last Bank's Form 10 Registration Statement, which is expected to occur in early August 2006.

<sup>5</sup> See 12 C.F.R. § 989.3.

<sup>6</sup> Call Report Information is available approximately 15 days following the end of the previous calendar month or quarter, and all Banks have ready access to this Information. This provides each Bank with a significant amount of current financial information about the other Banks.

<sup>7</sup> Advisory Bulletin 2004-AB-06, SEC Registration (Oct. 29, 2004)

<sup>8</sup> Advisory Bulletin 2004-AB-06, at page 3.

<sup>9</sup> See, e.g., 12 C.F.R. §§ 4.31 *et seq.* (Office of the Comptroller of the Currency rule entitled *Release of Non-Public OCC Information*).

<sup>10</sup> See 12 C.F.R. § 966.9(b)(1) and 12 C.F.R. § 966.9(b)(2). Finance Board regulations require each Bank to notify the agency in writing if it is unable to make this certification, projects that it will be unable to meet its current obligations, fails to meet its current obligations, or negotiates an agreement with one or more Banks for financial assistance to meet its current obligations. If a Bank triggered any of these provisions, it would almost certainly also have to file a current report on Form 8-K with the SEC.