



Federal Housing Finance Board

December 10, 1999

OPINION OF THE OFFICE OF GENERAL COUNSEL

ISSUES: How do the amendments to the Federal Home Loan Bank Act (Bank Act) establishing a 3-year term of office for the appointive and elective directors of the Federal Home Loan Banks (Banks) affect the terms of office of incumbent Bank directors?

In what manner may a 3-year term of office be adjusted to achieve the one-third staggering of the board of directors of each Bank, as required by the Gramm-Leach-Bliley Act (Gramm-Leach)<sup>1</sup>?

CONCLUSIONS :

By operation of law, Gramm-Leach converted the term of office of each existing directorship to 3 years, effective November 12, 1999. As a result, the term of each elective directorship was increased by one year and the term of each appointive directorship was decreased by one year.

Because certain appointed directors already had served more than 3 years as of November 12, 1999, Gramm-Leach caused the terms of those directors to expire on that date, although the Federal Housing Finance Board (Finance Board) has the authority to permit those appointed directors to hold over beyond the end of their 3-year term.

Gramm-Leach authorizes the Banks and the Finance Board to adjust the term of office for each director who is elected or appointed after November 12, 1999, as the preceding directorships expire in accordance with the Gramm-Leach amendments, but only as necessary to stagger the board of directors of each Bank.

The Bank Act neither compels nor prohibits the voiding of the 1999 election of directors. The Finance Board may set aside or uphold and defer the election results based on its determination of which course is the better policy, or it may authorize each Bank to make that determination.

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<sup>1</sup> Gramm-Leach-Bliley Act, Pub. L. No. 106-102, 113 Stat: 1338 (1999).

## I. BACKGROUND

Section 7(d) of the Bank Act, 12 U.S.C. § 1427(d) (1994), as in effect immediately prior to Gramm-Leach, provided that the "term of each elective directorship shall be two years and the term for each appointive directorship shall be four years." Section 606(a) of Gramm-Leach amended Section 7(d) of the Bank Act, striking the above provision and replacing it with the following:

The term of each director, whether elected or appointed, shall be 3 years. The board of directors of each Federal home loan bank and the Finance Board shall adjust the terms of members first elected or appointed after the date of the enactment of [Gramm-Leach] to ensure that the terms of the members of the board of directors are staggered with approximately 1/3 of the terms expiring each year.

The President signed Gramm-Leach on November 12, 1999 and, with certain exceptions, it took effect on that date.<sup>2</sup> Title VI of Gramm-Leach - the Federal Home Loan Bank reform provisions - includes specific effective dates for two amendments; one amendment abolishes mandatory membership for federal savings associations and the other revises the Resolution Funding Corporation (RefCorp) payment formula.<sup>3</sup> Gramm-Leach includes no provision for the transition of existing directorships from the current 2- and 4-year terms to the new 3-year terms, nor does it delay the effective date of the amendments made by Section 606(a). The absence of any such provisions distinguishes Gramm-Leach from all prior legislation in which Congress amended Section 7(d) to alter the terms of Bank directorships.

In 1932, Congress created the Federal Home Loan Bank System,, establishing a directorship structure under which each Bank had 2 appointed directors and 9 elected directors. Though the Bank Act provided generally that all directors were to serve for 3-year terms, it expressly stated that the initial Bank directors were to have shorter terms.<sup>4</sup> Each Bank's first 2 appointed directors were given 1 - and 2-year terms, respectively, which expired on December 31, 1933 and 1934; the first full 3-year terms began with the successor to each of the initial 2 appointed directors. The Bank Act further provided that the initial 9 elected directors were to be appointed to serve until December 31, 1932. After that date, their successors were to be elected to 1-, 2-, and 3-year terms, respectively, beginning on January 1, 1933.<sup>5</sup>

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<sup>2</sup> Sutherland Stat. Const. § 33.06 (5" Ed.) (a statute takes effect on the date of its passage, unless otherwise provided by the constitution, other laws, or the statute itself).

Section 603 provides for a 6-month delayed effective date for the end of mandatory membership, and Section 607(b) provides that the RefCorp amendments are to take effect on January 1, 2000. Gramm-Leach also specifies the effective date for a number of other provisions. See § 161 (amendments effective 120 days post-enactment); § 209 (subtitle effective 18 months post-enactment); § 225 (subtitle effective 18 months post-enactment); § 316 (subtitle takes effect on enactment); § 510 (subtitle effective 6 months after rules are prescribed); and § 736 (section effective on enactment).

<sup>4</sup> Federal Home Loan Bank Act, ch. 522, § 7, 47 Stat. 725 (1932).

<sup>5</sup> The elected directors were divided into three classes of three directors each, based on the asset size of the member institution. One member from each class was to serve a 1-year term, another from each class was to serve a 2-year term, and the other from each class was to serve a 3-year term, all beginning on January 1, 1933.

In 1935, Congress first amended the directorship structure of the Banks. Those amendments increased the total number of directorships from 11 to 12 and revised the composition of each board. The amendments increased the number of appointed directors from 2 to 4, decreased the number of elected directors in each class from 3 to 2 (i.e., decreased the total number of "class" directors from 9 to 6), and added 2 new "at large" elective directorships. Congress also amended the term of office, eliminating the 3-year term for all directorships and providing instead that each appointed directorship was to have a 4-year term and each elected directorship was to have a 2-year term<sup>6</sup>

Congress did not make these provisions effective immediately, but provided instead that the effective date for the amendments would be delayed until January 1, 1936. Congress also included express transition provisions governing how the restructured directorships and the new terms of office were to be applied. Thus, with respect to the then-existing 2 appointive directorships, the amendments provided that their terms would expire on December 31, 1936 and 1937, respectively. That proviso effectively continued those 2 directorships until the dates on which their 3-year terms authorized under prior law would have expired. The amendments also provided expressly that the 2 newly-created appointed directorships were to have initial terms expiring on December 31, 1938 and 1939, respectively, meaning that the initial terms for those seats would be for 2 and 3 years.

With regard to the 9 then-existing elective directors, Congress provided that the term of office of any director elected prior to May 28, 1935 (the date the bill became law) "shall expire at the end of the terms for which they were elected or appointed" (i.e., the end of the 3-year term established under the prior law).<sup>7</sup> As to the 2 newly-created "at large" elected directorships, Congress provided that only one was to run for a full 2-year term; the initial term of the other directorship was to expire on December 31, 1936 (i.e., a 1 -year term).

Thus, not only did Congress delay the effective date of the amendments until the beginning of the following calendar year (the established commencement date for at least some of the then-existing directorships), it also provided specifically the dates on which the terms of office of the existing directorships were to terminate, and the dates on which the directorships subject to the new terms of office were to commence.

Congress followed a similar practice in 1961, when it last revised the directorship structure of the Banks. With those amendments, Congress eliminated the at-large and the class-based elective directorships and established a new "state-based" directorship structure, which remained in place with only minor changes until the enactment of Gramm-Leach. Under that structure each elective directorship was designated as representing the members located in each state, based on the relative amounts of Bank stock held by members in that state, but subject to certain provisions guaranteeing a minimum number of directorships for each state. Though the 1961

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<sup>6</sup> Act of May 28, 1935, ch. 150, § 3(a), (b), 49 Stat. 294.

<sup>7</sup> It is unclear when during 1935 each Bank would have held its election for directors. If any elections occurred prior to May 28, 1935, the persons elected would be entitled under the amendment to serve for the full 3-year term authorized under prior law. If any election occurred after that date, the term of office for the persons elected would not have been authorized to continue for the full 3 years, and thus presumably would have been shortened to 2 years as a consequence of the amendment.

amendments abolished the class-based directorships, they retained the 4-year term of office for the appointive directorships and established 2-year terms for the new categories of elected directorship created by the amendments.<sup>8</sup>

In this case as well, Congress delayed the effective date for the amendments, providing that they were to take effect on January 2, 1962, and expressly provided how the existing directorships were to be affected during the transition to the new structure. The language used by Congress was codified into Section 7(e) of the Bank Act and provided as follows:

Each term, outstanding on the effective date of the amendment to this section abolishing the division of elective directors into classes, of an elective or appointive directorship then existing shall continue until its original date of expiration, and any elective or appointive directorship in existence on said date shall continue to exist to the same extent as if it had been established by or under this section on or after said date. The Board in its discretion may shorten the next succeeding term of any such elective directorship to one year, and may fill such term by appointment.' (emphasis added)

Thus, in these amendments Congress expressly continued the term of office of each existing directorship until the date on which it would have expired under prior law, expressly provided that each existing elected directorship was deemed to comply with the amended statute, and authorized the Federal Home Loan Bank Board to shorten the initial term of each directorship occurring post-enactment, and to fill the positions by appointment.

## II. ANALYSIS

### Term of Office

Unlike each of Congress' prior amendments to Section 7(d) that affected the terms of directors, Gramm-Leach does not address how the amendments are to be applied to the existing Bank directorships. Consequently, the Finance Board must make that determination, consistent with the Bank Act.

As amended, Section 7(d) of the Bank Act now provides that "[t]he term of each director, whether elected or appointed, shall be 3 years." There is little, if any, ambiguity in that language, nor is there any question that the amendment took effect upon enactment, on November 12, 1999. There also is no question that Gramm-Leach does not expressly continue the existing Bank directorships until the end of their current terms, as Congress has done each other time it has amended the directorship structure of the Banks. Moreover, Congress conferred only limited authority for the Finance Board and the Banks to alter the term of office for any directorship, providing such authority only with regard to the terms "of [board] members first elected or appointed after" November 12, 1999, and then only as necessary to ensure the appropriate staggering of directorships.

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<sup>8</sup> Pub. Law No. 87-211, § 1,75 Stat. 486 (1961).

<sup>9</sup> 12 U.S.C. § 1427(e) (1994).

Congress has given no indication why it chose to establish a 3-year term of office for all Bank directorships without providing either a delayed effective date or a method for transitioning from the existing terms of office. Neither S. 900 nor H.R. 10, as passed by the Senate and the House of Representatives, respectively, would have amended Section 7(d) of the Bank Act in this manner. The amendments establishing the 3-year terms first appeared in the so-called "Chairmen's Mark" prepared by Senator Gramm, Congressman Leach, and Congressman Bliley during the House-Senate conference on S. 900. The amendments were enacted without further change and without any explanation from the Conference Committee."

In the absence of any conflict or ambiguity, regulatory agencies and courts are required to give effect to the language used by Congress. & *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837 (1984). In this case, the language used by Congress in Gramm-Leach mandates that the term of office of all directorships "shall be 3 years" and does not provide for any date, other than the date of enactment, on which that language is to take effect. Moreover, the only other times that Congress has either established or altered the terms of Bank directors it has expressly provided the date on which terms were to begin and end and has expressly authorized terms existing on the date of enactment of any amendments to continue until the end of the term established under prior law. That Congress has always found it necessary to provide expressly for the continuation of terms beyond the effective date of all other such amendments to Section 7(d) suggests very strongly that in the absence of such a continuation provision - as is the case with Gramm-Leach - the existing directorships may not continue under prior law but must instead comply immediately with the newly-established terms.

Accordingly, it is our opinion that the Gramm-Leach amendments to Section 7(d) of the Bank Act took effect on November 12, 1999, and that in doing so without any continuation provision converted the term of each existing directorship to 3 years as of that date, by operation of law.

As a result, Gramm-Leach has extended the term of each elected directorship by one year and shortened the term of each appointed directorships by one year. Measuring the 3-year term of office from the date on which the current term of each directorship began, the consequences of Gramm-Leach to the existing directorships are as follows:

- \* The elected directorships that would have expired on December 31, 1999 under prior law will expire instead on December 31, 2000. Consequently, there are no elected directorship vacancies occurring in January 2000, and the persons elected in 1999 to assume directorships the terms of which were to have commenced on January 1, 2000 under prior law may not assume office in January 2000.

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<sup>10</sup> Both S. 900 and H.R. 10 would have amended Section 7(d) to extend the term of office of each elected directorship to 4 years, but would not have changed the term for appointed directorships.

<sup>11</sup> See Draft of October 12, 1999, § 606(a)(1). The Manager's Statement that accompanied Gramm-Leach offers little guidance as to the effect of the amendments, stating simply that "[t]he Conference set the terms for both elected and appointed directors at 3 years (staggered with approximately one-third of the terms expiring each year)." Cong. Rec. H11300 (Nov. 2, 1999).

- \* The elected directorships that would have expired on December 31, 2000 under prior law will expire instead on December 31, 2001.
- \* The appointed directorships that would have expired on December 31, 2000, 2001, and 2002; respectively, under prior law will expire instead on December 31, 1999, 2000, and 2001.
- \* The appointed directorships that would have expired on December 31, 1999 under prior law expired by operation of law on November 12, 1999, as a consequence of Gramm-Leach.

Although Congress could have continued the existing directorships until their scheduled expiration under prior law, as it did in 1935 and 1961, Congress chose not to do so in adopting Gramm-Leach. Instead, Congress used language that caused the amendments to Section 7(d) to take effect immediately upon enactment and authorized adjustments only with respect to terms of office commencing after enactment. In these circumstances, it would be difficult for the Finance Board to articulate a basis for adopting a regulatory transition provision under which the existing directors could remain in office until the end of their existing 2- or 4-year terms.

To allow the existing directors to continue to serve until the end of the terms established under prior law, the Finance Board would have to preserve the current directorship structure, at least in part, until December 31, 2002 when the last of the existing 0-year terms for the appointed directorships would expire. That approach would delay the date on which the Gramm-Leach amendments to Section 7(d) would take full effect for more than 3 years after enactment, which likely would conflict with Congress' decision make these amendments effective upon enactment.

More importantly, the Finance Board would have to read into Gramm-Leach an implied continuation provision, even though such a concept is neither mentioned expressly in the statute nor is at all evident from the language used by Congress. In this case, Congress opted not to preserve the existing terms of office beyond the date of enactment, which it easily could have done had it so intended. The fact that every prior amendment to Section 7(d) that altered the terms of Bank directors included such a provision demonstrates that Congress well understands how to allow existing directorships to continue in accordance with prior law when it intends to do so, and how to delay the effective date of such amendments. In light of this history of the prior amendments to the very provision amended by Gramm-Leach, it is unlikely that Congress could be said to have intended to preserve the existing 2- and 4-year terms beyond the date of enactment.

#### Vacancies

As a consequence of Gramm-Leach taking effect upon enactment, the term of office of any appointed director who already had served more than 3 years expired by operation of law on November 12, 1999. It is our understanding that there is one such directorship at each Bank. Although Gramm-Leach effectively vacated those directorships, it did not abolish them and they remain as authorized but unfilled directorships.

Neither Gramm-Leach nor the Bank Act addresses how those directorships (which would have expired on December 31, 1999) are to be filled. Ordinarily, Section 7(f) of the Bank Act would authorize the Finance Board to fill any vacant appointed directorship by an appointment for the remainder of the unexpired term of office. 12 U.S.C. 1427(f)(2) (1994). Section 7(f)(2) further provides, in the case of a vacancy caused by a loss of the qualifications required by Section 7(a) (citizenship and residency requirements), that the person may continue to act as a director until a successor assumes the office or the term of office expires, whichever occurs first. Because there is no "unexpired term" with regard to these directorships (i.e., Gramm-Leach caused the term to expire on November 12, 1999), the vacancy provisions of the Bank Act do not apply.

Consequently, there is no statutory provision that expressly addresses how the Finance Board is to act with regard to these expired appointed directorships. Arguably, the Finance Board could leave the directorships vacant until appointing new directors to terms commencing on January 1, 2000. That approach, however, is undesirable because it would deprive the Banks of the number of appointed directorships to which each Bank is entitled. Moreover, nearly all of the Banks have held board meetings in November subsequent enactment and have scheduled meetings to occur in December 1999. In both cases, it would be important, both from corporate governance and safety and soundness perspectives, for each Bank to have the full board of directors available to conduct the business of the Bank.

In order to maintain the authorized number of appointed directors at each Bank post-enactment, the Finance Board could look to other provisions of the Bank Act for the authority to fill those directorships immediately, provided it were to do so in a manner that is consistent with the Bank Act and is not arbitrary or capricious. Section 2A(a)(3) of the Bank Act provides that the primary duty of the Finance Board is to ensure that the Banks operate in a safe and sound manner, and Section 2B(a)(1) authorizes the Finance Board to adopt orders necessary to carry out the provisions of the Bank Act. In our view, those provisions would provide the Finance Board with the authority to address this issue.<sup>12</sup>

Although the "holdover" provisions of Section 7(f)(2) do not technically apply here, either because the individuals have not become ineligible under Section 7(a) or because there is no unexpired term to fill, they do offer some guidance as to what might be a reasonable course of action. Clearly, the holdover provisions reflect a determination by Congress that an appointed director's loss of eligibility does not preclude him or her from continuing in office for a limited period of time thereafter.

In our opinion, the Finance Board could rely on Section 2A(a)(3) and Section 2B(a)(1) of the Bank Act for authority to issue an order authorizing the appointed directors whose terms have expired as a consequence of Gramm-Leach to "hold over" beyond their term and continue to act as appointed directors for a limited period of time. Such an order would ensure the continued safe and sound operation of the Banks by avoiding any potential disruption in the operations of

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<sup>12</sup> Section 2A(a)(3) provides that the Finance Board shall "ensure that the [Banks] operate in a financially safe and sound manner," and Section 2B(a)(1) authorizes the Finance Board to "promulgate and enforce such regulations and orders as are necessary from time to time to carry out the provisions of" the Bank Act. 12 U.S.C. §§ 1422a(a)(3), 1422b(a)(1) (1994).

the Banks that might otherwise occur as a result of the abrupt and unanticipated curtailment of their terms by Gramm-Leach, as well as any questions about the participation of such directors in the board meetings occurring immediately after enactment. As the terms of these directorships would have expired under prior law on December 31, 1999, it would be reasonable for the Finance Board to extend the holdover status to that date.

#### Term Adjustments

Gramm-Leach provides that the board of directors of each Bank and the Finance Board "shall adjust the terms of members first elected or appointed after" November 12, 1999 to ensure that approximately 1/3 of the terms expire each year.<sup>13</sup> In 1961, when Congress last restructured the directorships of the Banks, it authorized the Bank Board only to "shorten" the next succeeding term of any elective director. Congress could have used such language in Gramm-Leach had it intended to restrict adjustments to lesser terms, but it chose instead to use the term "adjust". In our opinion, the use of "adjust" indicates that Gramm-Leach permits an "adjusted term" that is either greater than or less than 3 years, provided such term is established to ensure that the board of directors is appropriately staggered.

Under the 2-year/4-year structure of directorships, the terms of office of the directors at each Bank have not been staggered. Gramm-Leach requires that each Bank's board ultimately must be staggered, with approximately 1/3 of the directorships expiring each year, but does not mandate that the staggering occur immediately. In our view, the use of the phrase "first elected or appointed after . . . enactment" means that the adjustments are to be made to the terms of the persons who first succeed the existing directorships, as those directorships expire in accordance with Gramm-Leach.

As applied to the directorships that are to commence on January 1, 2000, i.e., the successors to both the "holdover" group of appointed directors and to the appointed directors whose terms Gramm-Leach shortened to December 31, 1999, some or all of the 3-year terms may be adjusted as necessary to achieve an appropriately staggered board.

As applied to the directorships that are to commence on January 1, 2001, i.e., the successors to the appointed directors and elected directors whose terms Gramm-Leach shortened and extended, respectively, to December 31, 2000, some or all of the terms may be adjusted as necessary to achieve an appropriately staggered board.

As applied to the directorships that are to commence on January 1, 2002, i.e., the successors to the appointed directors and elected directors whose terms Gramm-Leach shortened and extended, respectively, to December 31, 2001, some or all of the terms may be adjusted as necessary to achieve an appropriately staggered board.

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<sup>13</sup> This opinion does not address how the adjustments necessary to stagger the boards are to be made.

## 1999 Election

While Gramm-Leach was being considered by Congress, the Banks were conducting elections to fill directorships that were to commence on January 1, 2000. As of the date of enactment most Banks had closed their balloting and were in the final stages of the election process. Had the law not changed, the persons elected in this process would have replaced the elected directors whose terms were to have expired on December 31, 1999. Because Gramm-Leach extended the terms of all elected directorships for an additional year, there are no elective directorships to fill as of January 1, 2000.

It is unclear whether the persons elected in 1999 may assume office in January 2001, when the terms for new elected directorships will begin, or whether the Banks must hold a new election to fill those directorships. If the Finance Board were to allow those individuals to assume the seats opening in January 2001, it is not clear whether those persons would be deemed to have been "elected" subsequent to November 12, 1999, which would allow the terms to be adjusted for staggering purposes.

In our view, each of those matters presents a question of policy for the board of directors of the Finance Board to resolve. The Bank Act neither requires nor bars a new election, and the applicable regulations, to the extent that they might indicate a particular result, could be waived or amended by the Finance Board, as necessary. Similarly, the term "election" is not defined and the Finance Board could determine a particular date or event on which the election would be deemed to have been completed.

The Bank Act does not require the term of a director-elect to commence at the beginning of the calendar year immediately following the election. Rather, the principal statutory requirements for the election process are keyed to a specified record date, which is December 31<sup>st</sup> of the year immediately preceding the year in which the election is held.<sup>14</sup> So long as the designation of directorships for each state and the determination of the number of votes each member may cast in the election are determined based on the amount of stock required to be held by members as of December 31<sup>st</sup> of the year immediately preceding the election, which has occurred here, the election would satisfy the technical requirements of the Bank Act. In our view, allowing the election results to stand, albeit with a deferred date for the commencement of the new term of office, would be consistent with the Bank Act.

The Bank Act, however, also would not preclude the Finance Board from setting aside the 1999 election for other reasons. For example, if the directors-elect must wait another year before they may assume their seats, it is probable that intervening circumstances, such as death, resignation, merger or acquisition, relocation of principal place of business, or noncompliance

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<sup>14</sup> Section 7(b) and (c) require the Finance Board to designate each elected directorship as representing the members located in a particular state, based on the ratio of stockholdings by members in that state to stockholdings district-wide as of the end of the calendar year next preceding the date of the election. 12 U.S.C. § 1427(b), (c) (1994). The designations are subject to change by the Finance Board based on other provisions that guaranty certain states a particular number of elected directors. In the election, each member may cast a number of votes equal to the number of shares of stock it was required to hold as of the end of the calendar year next preceding the election, subject to a cap based on the average stockholdings throughout the district. *Id.* § 1427(c). Those are the only provisions of Section 7 that link aspects of the election process to a particular date.

with capital rules, would cause some number of them not to serve. Similarly, the 1999 election is based on the amount of Bank stock held by members as of December 31, 1998, which amounts determine both the designation of directorships among the states and the amount of votes that each member may cast. The Finance Board reasonably could determine that it would be better policy to use more current stockholdings for both purposes and thus require the Banks to hold another election.

The regulations provide, in part, that each Bank must annually conduct an election, the purpose of which election is to fill elective directorships designated by the Finance Board as commencing on January 1<sup>st</sup> of the immediately following calendar year. They further provide that the term of office of each elected directorship shall commence on January 1<sup>st</sup> of the year immediately following the election, and that the Banks must complete their election in time for the directors-elect to assume office on January 1<sup>st</sup> immediately following the election. 12 C.F.R. § 932.3(a) (1999).

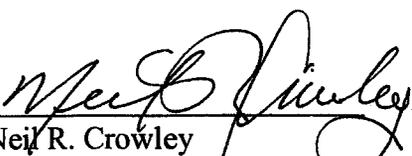
Each of these provisions was adopted in connection with the devolution of the election process from the Finance Board to the Banks in 1998, and is premised on the assumption that each Bank must conduct an annual election in order to fill seats expiring at the end of that calendar year. Indeed, each Bank always would have some number of elected directorships expiring every year. Based on those facts, the Finance Board could not have contemplated the scenario created by Gramm-Leach in which no elected directorships are expiring at the end of the calendar year, as is the case for 1999. Moreover, it is likely that the requirement for a term to commence in January of the immediately following year was intended simply as guidance for the Banks, which had not previously conducted director elections.

In our view, and in light of the unique and unanticipated changes caused by Gramm-Leach, the regulations neither compel nor prohibit a new election. Even if the regulations did directly address the issue, their provisions are not required by the Bank Act and thus could be waived or amended by the Finance Board, as necessary to conform them to the changed circumstances caused by Gramm-Leach.

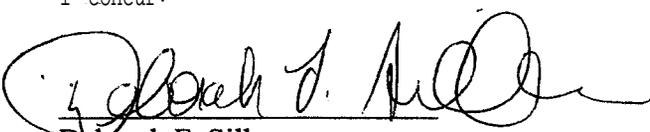
The Finance Board has expressly reserved the right, in its discretion, to waive any regulation that is not required by law, so long as a waiver would not affect any substantial existing rights and if adherence to the regulation would adversely affect the purposes of the Bank Act, or for good cause. 12 C.F.R. § 902.3 (1999). As there is no statutory requirement that a term of office must commence immediately after the year of the election, the Finance Board could waive these provisions upon making the other determinations. Alternatively, the Finance Board could amend its regulations so that they clearly articulate what effect is to be given to the 1999 elections.

In our opinion, the Finance Board has the authority either to set aside the results of the 1999 elections or to order that the 1999 election results be used for filling the directorships expiring on December 31, 2000. We also believe that the Finance Board may authorize the individual Banks to make that determination.

Because of the possibility that the Finance Board (or the Banks) may set them aside, the 1999 elections (assuming they are to be given effect) cannot be deemed to have been "completed" until it is known whether the Finance Board (or the Banks) will allow them to stand. Regardless of who makes that determination, it necessarily will occur subsequent to November 12, 1999. Thus, if the 1999 elections are to stand, the 3-year terms of office that will commence on January 1, 2001 must be adjusted, to the degree necessary to achieve the staggering required by Gramm-Leach. The same would be true if the Finance Board were to order the Banks to conduct new elections, as the persons winning seats in those elections would be the "first elected" after enactment of Gramm-Leach.

  
**Neil R. Crowley**  
Deputy General Counsel

I concur:

  
**Deborah F. Silberman**  
General Counsel