

Federal Deposit Insurance Corporation

§ 390.316

certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing, except that a *security* shall not include an account or deposit insured by the Federal Deposit Insurance Corporation.

§ 390.310 Service corporation.

The term *service corporation* means any corporation, the majority of the capital stock of which is owned by one or more savings associations and which engages, directly or indirectly, in any activities similar to activities which may be engaged in by a service corporation in which a Federal savings association may invest.

§ 390.311 State.

The term *State* means a State, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands of the United States.

§ 390.312 Subordinated debt security.

The term *subordinated debt security* means any unsecured note, debenture, or other debt security issued by a State savings association and subordinated on liquidation to all claims having the same priority as account holders or any higher priority.

§ 390.313 Tax and loan account.

The term *tax and loan account* means an account, the balance of which is subject to the right of immediate withdrawal, established for receipt of payments of Federal taxes and certain United States obligations. Such accounts are not savings accounts or savings deposits.

§ 390.314 United States Treasury General Account.

The term *United States Treasury General Account* means an account maintained in the name of the United States Treasury the balance of which is subject to the right of immediate withdrawal, except in the case of the closure of the member, and in which a zero balance may be maintained. Such accounts are not savings accounts or savings deposits.

§ 390.315 United States Treasury Time Deposit Open Account.

The term *United States Treasury Time Deposit Open Account* means a non-interest-bearing account maintained in the name of the United States Treasury which may not be withdrawn prior to the expiration of 30 days' written notice from the United States Treasury, or such other period of notice as the Treasury may require. Such accounts are not savings accounts or savings deposits.

§ 390.316 With recourse.

(a) The term *with recourse* means, in connection with the sale of a loan or a participation interest in a loan, an agreement or arrangement under which the purchaser is to be entitled to receive from the seller a sum of money or thing of value, whether tangible or intangible (including any substitution), upon default in payment of any loan involved or any part thereof or to withhold or to have withheld from the seller a sum of money or anything of value by way of security against default. The recourse liability resulting from a sale with recourse shall be the total book value of any loan sold with recourse less:

(1) The amount of any insurance or guarantee against loss in the event of default provided by a third party,

(2) The amount of any loss to be borne by the purchaser in the event of default, and

(3) The amount of any loss resulting from a recourse obligation entered on the books and records of the State savings association.

(b) The term *with recourse* does not include loans or interests therein where the agreement of sale provides for the State savings association directly or indirectly

(1) To hold or retain a subordinate interest in a specified percentage of the loans or interests; or

(2) To guarantee against loss up to a specified percentage of the loans or interests, which specified percentage shall not exceed ten percent of the outstanding balance of the loans or interests at the time of sale: *Provided*, that the State savings association designates adequate reserves for the subordinate interest or guarantee.

(c) This definition does not apply for purposes of determining the capital adequacy requirements under part 324 of this chapter.

[76 FR 47655, Aug. 5, 2011, as amended at 83 FR 17743, Apr. 24, 2018]

Subparts R–V [Reserved]

Subpart W—Securities Offerings

§ 390.410 Definitions.

(a) For purposes of this subpart, the following definitions apply:

(1) *Accredited investor* means the same as in Commission Rule 501(a) (17 CFR 230.501(a)) under the Securities Act, and includes any State savings association.

(2) *Commission* means the Securities and Exchange Commission.

(3) *Dividend or interest reinvestment plan* means a plan which is offered solely to existing security holders of the State savings association which allows such persons to reinvest dividends or interest paid to them on securities issued by the State savings association, and which also may allow additional cash amounts to be contributed by the participants in the plan, provided that the securities to be issued are newly issued, or are purchased for the account of plan participants, at prices not in excess of current market prices at the time of purchase, or at prices not in excess of an amount determined in accordance with a pricing formula specified in the plan and based upon average or current market prices at the time of purchase.

(4) *Employee benefit plan* means any purchase, savings, option, rights, bonus, ownership, appreciation, profit sharing, thrift, incentive, pension or similar plan solely for officers, directors or employees.

(5) *Exchange Act* means the Securities Exchange Act of 1934 (15 U.S.C. 78a–78jj).

(6) *Filing date* means the date on which a document is actually received during business hours, 9 a.m. to 5 p.m. Eastern Standard Time, by the FDIC, 550 17th Street, NW., Washington, DC 20429. However if the last date on which a document can be accepted falls on a Saturday, Sunday, or holiday, such

document may be filed on the next business day.

(7) *Issuer* means a State savings association which issues or proposes to issue any security.

(8) *Offer; Sale or sell*. For purposes of this subpart, the term *offer*, *offer to sell*, or *offer for sale* shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. However, these terms shall not include preliminary negotiations or agreements between an issuer and any underwriter or among underwriters who are or are to be in privity of contract with the issuer. *Sale* and *sell* includes every contract to sell or otherwise dispose of a security or interest in a security for value. Every offer or sale of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, includes an offer and sale of the other security only at the time of the offer or sale of the warrant or right or convertible security; but neither the exercise of the right to purchase or subscribe or to convert nor the issuance of securities pursuant thereto is an offer or sale.

(9) *Person* means the same as in 12 CFR 192.25, and includes a State savings association.

(10) *Purchase* and *buy* mean the same as in 12 CFR 192.25.

(11) *State savings association* means the same as in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)), and includes a state-chartered savings association in organization which is granted conditional approval of insurance of accounts by the Federal Deposit Insurance Corporation. In addition, for purposes of § 390.411, *State savings association* includes any underwriter participating in the distribution of securities of a State savings association.

(12) *Securities Act* means the Securities Act of 1933 (15 U.S.C. 77a–77aa).

(13) *Security* means any non-withdrawable account, note, stock,