

September 5, 2019

TO: The Board of Directors

FROM: Doreen R. Eberley
Director, Division of Risk Management Supervision

SUBJECT: Notice of Proposed Rulemaking to Rescind Regulations Transferred from the Former Office of Thrift Supervision, Part 390, Subpart R – Regulatory Reporting Standards.

Summary of Recommendation

Staff recommends that the FDIC Board of Directors (“Board”) approve and authorize for publication in the *Federal Register* with a 30-day public comment period, a notice of proposed rulemaking (“NPR”) to rescind and remove 12 CFR part 390, subpart R, entitled *Regulatory Reporting Standards*, relating to regulatory reporting requirements, regulatory reports and audits of State savings associations. Rescinding part 390, subpart R, will serve to streamline the FDIC’s rules and eliminate redundant or otherwise unnecessary regulations. The NPR would rescind part 390, subpart R and reserve the subpart for future use.

Concur:
Nicholas J. Podsiadly, General Counsel

Background – OTS Rule Transfer to FDIC

Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act,¹ the powers, duties, and functions formerly performed by the Office of Thrift Supervision (“OTS”) were divided among the FDIC, as to State savings associations, the Office of Comptroller of the Currency (“OCC”), as to Federal savings associations, and the Board of Governors of the Federal Reserve System (“FRB”), as to savings and loan holding companies. Section 316(b) of the Dodd-Frank Act² provides the manner of treatment for all orders, resolutions, determinations, regulations, and other advisory materials that were issued, made, prescribed, or allowed to become effective by the OTS. The section provides that if such regulatory materials were in effect on the day before the transfer date, they continue in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

Section 316(c) of the Dodd-Frank Act³ further directed the FDIC and the OCC to consult with one another and to publish a list of the continued OTS regulations that would be enforced by the FDIC and the OCC, respectively. On June 14, 2011, the Board approved for issuance in the *Federal Register* a “List of OTS Regulations to be Enforced by the OCC and the FDIC Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.”⁴

¹ 12 U.S.C. § 5411.

² 12 U.S.C. § 5414(b).

³ 12 U.S.C. § 5414(c).

⁴ 76 FR 39246 (July 6, 2011).

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act⁵ granted the OCC rulemaking authority relating to both State and Federal savings associations, nothing in the Dodd-Frank Act affected the FDIC's existing authority to issue regulations under the Federal Deposit Insurance Act⁶ ("FDI Act") and other laws as the "appropriate Federal banking agency" or under similar statutory authority. Section 312(c) of the Dodd-Frank Act amended section 3(q) of the FDI Act⁷ and designated the FDIC as the "appropriate Federal banking agency" for State savings associations. As a result, when the FDIC acts as the designated "appropriate Federal banking agency" (or under similar authority) for State savings associations, the FDIC is authorized to issue, modify, and rescind regulations involving such institutions.

On June 14, 2011, operating pursuant to this authority, the Board reissued and re-designated certain transferred regulations of the former OTS as new FDIC regulations.⁸ In the preamble to this interim rule, the FDIC specifically noted that its staff would evaluate the transferred OTS regulations and might later recommend incorporating the transferred OTS regulations into existing FDIC regulations, amending them, or rescinding them, as appropriate.

Section by Section Analysis

A. Part 390, Subpart R – Regulatory Reporting Standards

A subset of the OTS regulations that addressed regulatory reporting standards applicable to State savings associations⁹ was transferred to the FDIC and currently appears in part 390, subpart R of

⁵ 12 U.S.C. § 5412(b)(2)(B)(i)(II).

⁶ 12 U.S.C. § 1811 *et seq.*

⁷ 12 U.S.C. § 1813(q).

⁸ 76 FR 47652 (Aug. 5, 2011).

⁹ Subpart R comprises the OTS regulations formerly found at 12 CFR part 562.

the FDIC's regulations. Substantive provisions of part 390, subpart R are addressed below along with staff's basis for rescission.

B. Section 390.320 – Regulatory Reporting Requirements

Section 390.320(a) requires each State savings association to maintain accurate and complete records of its business transactions that support and are readily reconcilable to the association's regulatory reports and to financial reports prepared in accordance with generally accepted accounting principles ("GAAP"). Section 390.320(b) instructs each State savings association to prepare its regulatory reports using such forms and following such regulatory reporting requirements as the FDIC may require by regulation or otherwise.

After a careful review and comparison of section 390.320 with 12 CFR section 304.3 and 12 CFR part 364 (including its Appendix A), staff proposes to rescind section 390.320 because its purposes and requirements are achieved by these other FDIC rules and related provisions of the FDI Act and the Home Owners Loan Act ("HOLA").

C. Section 390.321 - Regulatory Reports

Section 390.321 provides a framework of "regulatory reporting requirements" governing the preparation of regulatory reports by State savings association. Such requirements must, at a minimum, incorporate GAAP whenever called for; incorporate applicable safe and sound practices specified in the report instructions and other FDIC publications; and incorporate such additional safety and soundness requirements more stringent than GAAP as the FDIC may prescribe.

After a careful review and comparison of section 390.321 with 12 CFR part 304 and the instructions governing the preparation of Consolidated Reports of Condition and Income (“Call Reports”) to be followed by all insured depository institutions, staff proposes to rescind section 390.321 because its purposes and requirements are achieved by these other FDIC rules and related provisions of the FDI Act and HOLA.

D. Section 390.322 - Audits

Section 390.322 authorizes the FDIC, whenever needed for safety or soundness purposes, to require a State savings association to retain a qualified independent public accountant to conduct an independent audit of the association’s financial statements.

After a careful review and comparison of section 390.322 with 12 CFR part 364 and its Appendix A relating to safety and soundness standards as well as 12 CFR part 363 and its Appendices A and B relating to annual independent audits and reporting requirements, staff proposes to rescind section 390.322 because its purposes and requirements are achieved by these other FDIC rules and related provisions of the FDI Act and HOLA.

E. Summary

Upon removal of part 390, subpart R, insured depository institutions or FDIC-supervised institutions, including in each instance State savings associations, would remain subject to other FDIC authority and regulations promulgated under the FDI Act and HOLA, such as regulations pertaining to regulatory reporting requirements (12 CFR parts 304, 363 (and its Appendices A and B) and 364 (and its Appendix A)), regulatory reports (12 CFR parts 304 and 308), and audits of insured depository institutions (12 CFR part 363 (and its Appendices A and B) and 12 CFR part 364 (and its Appendix A)). The purposes and requirements of part 390, subpart R are

substantially achieved by these other FDIC rules and related provisions of the FDI Act and HOLA.

The Proposal

Staff recommends that the Board adopt the attached proposal to rescind and reserve part 390, subpart R, without further amendment to the FDIC's existing regulations. The proposal seeks comment on all aspects of the proposed rule, including (1) whether other existing provisions of statutes and FDIC rules and regulations are sufficient to provide consistent and effective requirements related to regulatory reporting requirements, regulatory reports, and audits of State savings associations for which the FDIC is the appropriate Federal banking agency; and (2) what negative impacts, if any, could result from the rescission of part 390, subpart R.

Conclusion

Based on the foregoing, staff recommends that the Board approve the attached NPR for publication in the *Federal Register*.

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