

September 17, 2019

MEMORANDUM TO: Board of Directors

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

SUBJECT: Regulatory Capital Rule: Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996; Revised Effective Date

Summary: Staff are presenting for the approval of the Federal Deposit Insurance Corporation (“FDIC”) Board of Directors (“FDIC Board”) a request to publish the attached interagency final rule permitting insured depository institutions (“IDIs”) and depository institution holding companies not subject to the advanced approaches capital rule to implement the final rule titled Regulatory Capital: Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996, which was issued by the agencies in July 22, 2019 (“Capital Simplifications Final Rule”), on January 1, 2020, rather than April 1, 2020, as initially provided. Consistent with this approach, the transitions provisions of the regulatory capital rule are being amended to provide that banking organizations not subject to the advanced approaches capital rule will be permitted to implement the Capital Simplifications Final Rule as of its revised effective date in the quarter beginning January 1, 2020, or to wait until the quarter beginning April 1, 2020.

Concur:

Nicholas J. Podsiadly
General Counsel

Recommendation: FDIC staff are requesting the FDIC Board to approve this final rule and authorize its publication in the *Federal Register* with an effective date of January 1, 2020, and a compliance date of April 1, 2020.

Discussion:

I. Background

On July 22, 2019, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, the “agencies”) issued the Capital Simplifications Final Rule to simplify certain aspects of the capital rule.¹ The Capital Simplifications Final Rule is responsive to the agencies’ March 2017 report to Congress pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996, in which the agencies committed to meaningfully reduce regulatory burden, especially on community banking organizations. The key elements of the Capital Simplifications Final Rule apply solely to banking organizations that are not subject to the advanced approaches capital rule (non-advanced approaches banking organizations). Under the Capital Simplifications Final Rule, non-advanced approaches banking organizations will be subject to simpler regulatory capital requirements for mortgage servicing assets, certain deferred tax assets arising from temporary differences, and investments in the capital of unconsolidated financial institutions than those currently applied. The Capital Simplifications Final Rule also simplifies, for non-advanced approaches banking organizations, the calculation for the amount of capital issued by a consolidated subsidiary of a banking organization and held by third parties (sometimes referred to as a minority interest) that is includable in regulatory capital.

¹ See 84 FR 35234 (July 22, 2019).

II. Final Rule to Change the Effective Date of the Capital Simplifications Final Rule to January 1, 2020

The simpler capital requirements described above are implemented through the Capital Simplifications Final Rule via amendments to 12 CFR 3.21, 3.22, 3.300, 217.21, 217.22, 217.300(b) and (d), 324.21, 324.22, and 324.300 that were originally effective April 1, 2020. The agencies initially set an effective date of April 1, 2020, for those amendments to the capital rule, in part, to give non-advanced approaches institutions sufficient time to update their recordkeeping and reporting systems. Subsequent to the publication of the Capital Simplifications Final Rule, the agencies received letters from the banking industry groups seeking the ability to adopt the Capital Simplifications Final Rule earlier than April 1, 2020. After considering these requests, staff of the agencies have determined that allowing non-advanced approaches banking organizations to implement the Capital Simplifications Final Rule in the first quarter of 2020, would be appropriate. Allowing non-advanced approaches banking organizations to implement the Capital Simplifications Final Rule in the first quarter of 2020 would permit banking organizations that have updated their reporting systems to implement the simplifications and obtain regulatory burden relief one quarter earlier than initially provided in the Capital Simplifications Final Rule.

This direct final rule would permit non-advanced approaches banking organizations to implement the sections of the Capital Simplifications Final Rule that were originally effective on April 1, 2020, beginning on January 1, 2020. Specifically, the sections in the Capital Simplifications Final Rule that were issued with an effective date of April 1, 2020, would now be effective on January 1, 2020. Non-advanced approaches banking organizations could elect whether to implement the changes in the quarter beginning January 1, 2020, or to implement them in the quarter beginning April 1, 2020. The affected sections would be those related to

mortgage servicing assets, certain deferred tax assets arising from temporary differences, investments in the capital of unconsolidated financial institutions, and the calculation of minority interest and would become mandatory as of April 1, 2020. If a non-advanced approaches banking organization elects to adopt these revisions for the quarter beginning January 1, 2020, it must adopt all of these revisions for that quarter and thereafter. Consistent with the Capital Simplifications Final Rule, the transition provisions adopted by the agencies in November 2017, would cease to apply to non-advanced approaches banking organizations in the quarter in which the firm elects to adopt these portions of the Capital Simplifications Final Rule.²

III. Administrative Law Considerations

The agencies are issuing this direct final rule without prior notice and the opportunity for public comment and without the 30-day delayed effective date ordinarily prescribed by the Administrative Procedure Act (“APA”).³ Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an “agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”⁴

As discussed above, this direct final rule addresses requests from certain banking industry groups to be allowed to comply starting on January 1, 2020, with certain capital requirements of

² 82 FR 55309 (Nov. 21, 2017).

³ 5 U.S.C. 553.

⁴ 5 U.S.C. 553(b)(B).

the Capital Simplifications Final Rule. This direct final rule would retain April 1, 2020 as the compliance date.⁵

Staff of the agencies believe that there is good cause to issue this direct final rule without notice and public procedure because that process would be unnecessary as the agencies recently issued a final rule after providing notice and receiving comment from the public. Specifically, the original administrative record that supports the Capital Simplifications Final Rule is still pertinent and, as a result, a new round of notice and comment on the Capital Simplifications Final Rule would be unnecessary. In particular, the public feedback has indicated that many banking organizations would be prepared to implement the Capital Simplifications Final Rule for the quarter beginning January 1, 2020.

In addition, staff of the agencies believe that there is good cause consistent with the public interest to issue this direct final rule without notice and public procedure. This direct final rule benefits banking organizations subject to the Capital Simplifications Final Rule by allowing them to begin complying with the new requirements in the Capital Simplifications Final Rule one quarter before they become mandatory, thereby simplifying the reporting requirements for those banking organizations whose systems will be in place by January 1, 2020. Notably, this direct final rule does not impose any new requirements or mandatory burdens on any banking organization.

Staff of the agencies also believe that there is good cause to issue this direct final rule without notice and public procedure since it would be impracticable to request comment given the request for relief is to begin on January 1, 2020.

⁵ The agencies initially set an effective date of April 1, 2020, for those amendments to the capital rule, in part, to give institutions sufficient time to update their systems and reporting systems.

Conclusion: FDIC staff are requesting the FDIC Board to approve the attached interagency final rule and authorize its publication in the *Federal Register* with an effective date of January 1, 2020, and a compliance date of April 1, 2020.

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