

November 14, 2019

**MEMORANDUM TO:** The Board of Directors

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

Mark Pearce  
Director, Division of Depositor and Consumer Protection

**SUBJECT:** *Final Rule.* Rescission and Removal of Transferred OTS Regulation at Part 390, Subpart M—Deposits

**RECOMMENDATION:**

Staff is presenting for approval of the FDIC Board of Directors (“Board”) and authorization for publication in the *Federal Register*, the attached final rule to rescind part 390, subpart M, of title 12, Code of Federal Regulations (“part 390, subpart M”), entitled *Deposits*, relating to records of account transactions and deposit activities at State savings associations. Rescinding part 390, subpart M will serve to streamline the FDIC’s rules and eliminate unnecessary and duplicative regulations. The final rule rescinds part 390, subpart M and reserves the subpart for future use, effective 30 days after publication in the *Federal Register*.

Concur:

Nicholas J. Podsiadly  
General Counsel

## **Background**

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”),<sup>1</sup> signed into law on July 21, 2010, provided for a substantial reorganization of the regulation of State and Federal savings associations and their holding companies. Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act (12 U.S.C. § 5411), 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 the 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 Act (12 U.S.C. § 5414(b)) 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and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.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 Act (12 U.S.C. § 5414(c)) 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 FDIC’s Board approved a “List of OTS Regulations to be Enforced by the OCC and the FDIC Pursuant to the

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<sup>1</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, P. Law 111-203, 124 Stat. 1367 (2010).

Dodd-Frank Wall Street Reform and Consumer Protection Act.” This list was published by the FDIC and the OCC as a Joint Notice in the *Federal Register* on July 6, 2011.<sup>2</sup>

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act (12 U.S.C. § 5412(b)(2)(B)(i)(II)) 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 Act (“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 Act (12 U.S.C. § 1813(q)) 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, as it does here, the FDIC is authorized to issue, modify, and rescind regulations involving such associations.

On June 14, 2011, operating pursuant to its authority under the Dodd-Frank Act, the FDIC’s Board reissued and re-designated certain transferring regulations of the former OTS.<sup>3</sup> In the preamble to the interim rule, the FDIC specifically noted that its staff would evaluate the transferred OTS rules and may later recommend incorporation of the transferred OTS regulations into existing FDIC rules, amending them, or rescinding them, as appropriate. The final rule is part of that effort.

### **Part 390, Subpart M—Deposits**

Part 390, subpart M (formerly OTS section 12 CFR 557.20) was promulgated in 2011 as part of

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<sup>2</sup> 76 FR 39247 (July 6, 2011).

<sup>3</sup> 76 FR 47652 (Aug. 5, 2011).

the transfer of a number of regulations from the former OTS pursuant to the Dodd-Frank Act. Section 390.231, “What records should I maintain on deposit activities?” was transferred without substantive change from section 557.20 of the OTS regulations (12 CFR 557.20). The only revision was to limit the rule to State savings associations, reflecting the FDIC’s statutory authority after the Dodd-Frank Act.

### **NPR to Remove Part, 390, Subpart M**

Staff has conducted a careful review and has identified several provisions of statutes and regulations currently applicable to State savings associations that obviate the need for part 390, subpart M, without necessitating additional amendment to such existing provisions of law. They include provisions from the FDI Act (12 U.S.C. 1817(a)(9)), the Treasury Department Bank Secrecy Act regulations (31 CFR 1020.410(c)(2)), FDIC safety and soundness regulations (12 CFR part 364, Appendix A II), FDIC deposit insurance coverage regulations (12 CFR 330.1(e)), and Bureau of Consumer Financial Protection regulations (12 CFR part 1005). Taken together, these provisions of law presently require State savings associations to collect and maintain timely and accurate records of transactions on deposit accounts, which is the intended purpose of the regulation being rescinded.

On August 26, 2019, the FDIC published a notice of proposed rulemaking in the *Federal Register*,<sup>4</sup> with a 30-day comment period on the proposed rescission of part 390, subpart M. No comments were received.

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<sup>4</sup> 84 FR 44558 (Aug. 26, 2019).

## **Final Rule**

The final rule rescinds part 390, subpart M, and reserves the subpart for future use, effective 30 days after the date of publication in the *Federal Register*.

## **Conclusion**

Staff recommends that the Board approve the attached final rule and authorize its publication in the *Federal Register*, with an effective date of 30 days after the date of publication in the *Federal Register*.

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