

January 12, 2021

MEMORANDUM TO: The Board of Directors

FROM: Nicholas J. Podsiadly
General Counsel

SUBJECT: Notice of Proposed Rule: Rescission and Removal of Transferred
OTS Regulations, *Definitions for Regulations Affecting All State
Savings Associations* (Part 390 Subpart Q).

RECOMMENDATION:

Staff is presenting for approval of the FDIC Board of Directors (“Board”) and authorization for publication in the *Federal Register* the attached notice of proposed rulemaking to rescind and remove part 390, subpart Q, of title 12, Code of Federal Regulations (“part 390, subpart Q”), entitled “Definitions for Regulations Affecting All State Savings Associations.” Rescinding and removing part 390, subpart Q will serve to streamline the FDIC’s regulations.

Background

Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Dodd-Frank Act or the Act) provided for the functions, powers, and duties of the Office of Thrift Supervision (OTS) relating to State savings associations to transfer to the FDIC effective one year after July 21, 2010, the date that the Dodd-Frank Act was enacted.¹ In connection with this transfer, effective July 22, 2011, the FDIC caused to be published in the Federal Register the

¹ Section 311 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (codified at 12 U.S.C. 5411). The Act also amended section 3 of the Federal Deposit Insurance Act (FDI Act) to designate the FDIC as the “appropriate Federal banking agency” for State savings associations.

transferred OTS regulations related to State savings associations reissued as parts 390 and 391 of the FDIC's regulations.²

When the FDIC reissued OTS regulations as parts 390 and 391 of the FDIC's regulations, it specifically noted that its staff would evaluate the reissued regulations and may later recommend incorporating them into other FDIC regulations, amend them, or rescind them, as appropriate.³ The FDIC has since rescinded and removed all subparts of part 391.⁴ At present, the FDIC has rescinded and removed 24 of the 26 subparts of part 390. Additionally, a Notice of Proposed Rulemaking with respect to Subpart W (Securities Offerings) is expected to be considered at the January Board meeting.⁵ Subpart Q, the subject of this Notice, is the final of the 26 subparts, to be considered by the Board for rescission and removal.

² 76 FR 47652 (Aug. 5, 2011).

³ 76 FR at 47653.

⁴ The list below reflects the relevant Federal Register citations and effective dates for the rescission and removal of the subparts of part 391.

Subpart A—Security Procedures, final rule, 83 FR 13839 (Apr. 2, 2018)

<https://www.govinfo.gov/content/pkg/FR-2018-04-02/pdf/2018-06161.pdf>, effective May 2, 2018;

Subpart B—Safety and Soundness Guidelines and Compliance Procedures, final rule, 80 FR 65904 (Oct. 28, 2015) <https://www.govinfo.gov/content/pkg/FR-2015-10-28/pdf/2015-27293.pdf>, effective November 27, 2015;

Subpart C—Fair Credit Reporting, final rule, 80 FR 65913 (Oct. 28, 2015)

<https://www.govinfo.gov/content/pkg/FR-2015-10-28/pdf/2015-27291.pdf>, effective November 27, 2015;

Subpart D—Loans in Areas Having Special Flood Hazards, final rule, 79 FR 75742 (Dec. 19, 2014)

<https://www.govinfo.gov/content/pkg/FR-2014-12-19/pdf/2014-29761.pdf>, effective January 20, 2015; and

Subpart E—Acquisitions of Control of State Savings Associations, final rule, 80 FR 65889 (Oct. 28, 2015)

<https://www.govinfo.gov/content/pkg/FR-2015-10-28/pdf/2015-27289.pdf>, effective January 1, 2016.

⁵ The list below reflects the relevant Federal Register citations and effective dates for the 20 subparts of part 390 that have been rescinded and removed. The FDIC also is expected to propose rescinding and removing Subpart W at the same Board meeting on January 19, 2021.

Subpart A—Restrictions on Post-Employment Activities of Senior Examiners, final rule, 79 FR 42181 (July 21, 2014) <https://www.govinfo.gov/content/pkg/FR-2014-07-21/pdf/2014-16974.pdf>, effective August 20, 2014;

Subpart B—Removals, Suspensions, and Prohibitions Where a Crime is Charged or Proven, final rule, 80 FR 5009 (Jan. 30 2015) <https://www.govinfo.gov/content/pkg/FR-2015-01-30/pdf/2015-01327.pdf>, effective March 2, 2015;

Subpart C—Rules of Practice and Procedure in Adjudicatory Proceedings, final rule, 80 FR 5009 (Jan. 30 2015) <https://www.govinfo.gov/content/pkg/FR-2015-01-30/pdf/2015-01327.pdf>, effective March 2, 2015;

Subpart D—Rules for Investigations and Formal Examination Proceedings, final rule, 80 FR 5009 (Jan. 30 2015) <https://www.govinfo.gov/content/pkg/FR-2015-01-30/pdf/2015-01327.pdf>, effective March 2, 2015;

Subpart E—Rules of Practice Before the FDIC, final rule, 80 FR 5009 (Jan. 30 2015) <https://www.govinfo.gov/content/pkg/FR-2015-01-30/pdf/2015-01327.pdf> , effective March 2, 2015;

Subpart F – Application Process Procedures, final rule approved by the FDIC Board on December 15, 2020, <https://www.fdic.gov/news/board/2020/2020-12-15-notice-sum-e-fr.pdf>;

Subpart G—Nondiscrimination Requirements, final rule approved by the FDIC Board on December 15, 2020, <https://www.fdic.gov/news/board/2020/2020-12-15-notice-sum-f-mem.pdf>;

Subpart H—Disclosure and Reporting of CRA-Related Agreements, final rule, 79 FR 42183 (July 21, 2014) <https://www.govinfo.gov/content/pkg/FR-2014-07-21/pdf/2014-16973.pdf>, effective August 20, 2014; Correction 80 FR 23692 (Apr. 29, 2015); <https://www.govinfo.gov/content/pkg/FR-2015-04-29/pdf/2015-09894.pdf>, effective April 29, 2015;

Subpart I—Consumer Protection in Sales of Insurance, final rule, 83 FR 13843 (April 2, 2018) <https://www.govinfo.gov/content/pkg/FR-2018-04-02/pdf/2018-06163.pdf>, effective May 2, 2018;

Subpart J—Fiduciary Powers of State Savings Associations, final rule, 83 FR 60333 (Nov. 26, 2018) <https://www.govinfo.gov/content/pkg/FR-2018-11-26/pdf/2018-25659.pdf>, effective January 1, 2019;

Subpart K—Recordkeeping and Confirmation Requirements for Securities Transactions, final rule, 78 FR 76721 (Dec. 19, 2013) <https://www.govinfo.gov/content/pkg/FR-2013-12-19/pdf/2013-29786.pdf>, effective January 24, 2014;

Subpart L—Electronic Operations, final rule, 80 FR 65612 (Oct. 27, 2015) <https://www.govinfo.gov/content/pkg/FR-2015-10-27/pdf/2015-27292.pdf>, effective November 27, 2015;

Subpart M—Deposits, final rule, 84 FR 65276 (Nov. 27, 2019) <https://www.govinfo.gov/content/pkg/FR-2019-11-27/pdf/2019-25697.pdf>, effective December 27, 2019;

Subpart N—Possession by Conservators or Receivers of Federal and State Savings Associations, final rule, 80 FR 5015 (Jan. 30, 2015) <https://www.govinfo.gov/content/pkg/FR-2015-01-30/pdf/2015-01326.pdf>, effective March 2, 2015;

Subpart O—Subordinate Organizations, final rule approved on by the FDIC Board on December 15, 2020; <https://www.fdic.gov/news/board/2020/2020-12-15-notice-sum-g-fr.pdf>

Subpart P—Lending and Investment, final rule, 84 FR 31171 (July 1, 2019) <https://www.govinfo.gov/content/pkg/FR-2019-07-01/pdf/2019-13449.pdf>, effective July 31, 2019;

Subpart R—Regulatory Reporting Standards, final rule, 85 FR 3247 (Jan. 21, 2020) <https://www.govinfo.gov/content/pkg/FR-2020-01-21/pdf/2019-27577.pdf>, effective February 20, 2020;

Subpart S—State Savings Associations—Operations, final rule, 85 FR 3232 (Jan. 21, 2020) <https://www.govinfo.gov/content/pkg/FR-2020-01-21/pdf/2019-27580.pdf>, effective February 20, 2020;

Subpart T—Accounting Requirements, final rule, 85 FR 3250 (Jan. 21, 2020) <https://www.govinfo.gov/content/pkg/FR-2020-01-21/pdf/2019-27579.pdf>, effective February 20, 2020;

Subpart U—Securities of State Savings Associations, final rule, 79 FR 63498 (Oct. 24, 2014) <https://www.govinfo.gov/content/pkg/FR-2014-10-24/pdf/2014-25336.pdf>, effective November 24, 2014;

Subpart V—Management Officials Interlock, final rule, 80 FR 79250 (Dec. 21. 2015) <https://www.govinfo.gov/content/pkg/FR-2015-12-21/pdf/2015-31940.pdf>, effective January 20, 2016;

Subpart W—Securities Offerings, Subpart W is expected to be considered by the FDIC Board on December 15, 2020;

Subpart X—Appraisals, final rule, 80 FR 33658 (June 9, 2015) <https://www.govinfo.gov/content/pkg/FR-2015-06-09/pdf/2015-12719.pdf>, effective August 10, 2015;

Subpart Y—Prompt Corrective Action, final rule, sections 390.450 through 390.455 rescinded and removed, 83 FR 17737 (April 24, 2018) <https://www.govinfo.gov/content/pkg/FR-2018-04-24/pdf/2018-06881.pdf>, effective April 24, 2018; for rescinding and removing the remaining sections of subpart Y, sections 390.456 through 390.459, final rule approved by the FDIC Board on December 15, 2020, <https://www.fdic.gov/news/board/2020/2020-12-15-notice-sum-h-fr.pdf> <https://www.fdic.gov/news/board/2020/2020-12-15-notice-sum-h-fr.pdf>;

Subpart Z—Capital, final rule, 83 FR 17737 (Apr. 24, 2018) <https://www.govinfo.gov/content/pkg/FR-2018-04-24/pdf/2018-06881.pdf>, effective April 24, 2018).

Proposed Regulation Changes

Part 390, subpart Q, contains definitions of terms used in subparts 390 and 391,⁶ and is derived from definitions contained in part 561 of the OTS regulations. As noted above, all of part 391 has been rescinded and removed from the FDIC's regulations. For part 390, 24 of the 26 subparts have been rescinded and removed and, the other remaining subpart, subpart W, is expected to be considered at the January 19 2021 Board meeting. Once Subpart W is rescinded and removed, no regulations will remain to which the definitions in subpart Q will apply. For this reason, FDIC staff recommends that the Board adopt the attached notice of proposed rulemaking proposing to rescind and remove subpart Q, the last of the 26 subparts, and will coordinate the final rule's effective date with effective dates for the rescission and removal of the remaining other subparts of part 390.

⁶ Subpart Q is derived from Part 561 of the OTS regulations.

Conclusion

Staff recommends that the Board approve the attached notice of proposed rulemaking and authorize its publication in the *Federal Register* with a comment period open for 30 days after the date of publication in the *Federal Register*.

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