

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Ch. III**

**Semiannual Agenda of Regulations**

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** The Federal Deposit Insurance Corporation (“FDIC”) is hereby publishing items for the fall 2013 Unified Agenda of Federal Regulatory and Deregulatory Actions. The agenda contains information about FDIC’s current and projected rulemakings, existing regulations under review, and completed rulemakings.

**FOR FURTHER INFORMATION CONTACT:** Robert E. Feldman, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:** Twice each year, the FDIC publishes an agenda of regulations to inform the public of its regulatory actions and to enhance public participation in the rulemaking process. Publication of the agenda is in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The FDIC amends its regulations under the general rulemaking authority prescribed in section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819) and under specific authority granted by the Act and other statutes.

**Proposed Rules:**

*Regulatory Capital Rules: Regulatory Capital, Enhanced Supplementary Leverage Ratio Standards for Certain Bank Holding Companies and their Subsidiary Insured Depository Institutions (3064-AE01)*

The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System ("Board"), and the Federal Deposit Insurance Corporation ("FDIC") (collectively, "the agencies") are seeking comment on a notice of proposed rulemaking ("proposal") that would strengthen the agencies' leverage ratio standards for large, interconnected U.S. banking organizations. The proposal would apply to any U.S. top-tier bank holding company ("BHC") with at least \$700 billion in total consolidated assets or at least \$10 trillion in assets under custody ("covered BHC") and any insured depository institution subsidiary of these BHCs. In the revised capital regulations adopted by the agencies ("2013 rule"), the agencies established a minimum supplementary leverage ratio of 3 percent ("supplementary leverage ratio"), consistent with the minimum leverage ratio adopted by the Basel Committee on Banking Supervision, for banking organizations subject to the advanced approaches risk-based capital rules. In this proposal, the agencies are proposing to establish a "well capitalized" threshold of 6 percent for the supplementary leverage ratio for any insured depository institution that is a subsidiary of a covered BHC, under the agencies' prompt corrective action framework. The Board also proposes to establish a new leverage buffer for covered BHCs above the minimum supplementary leverage ratio requirement of 3 percent (leverage buffer). The leverage buffer would function like the capital conservation buffer for the risk-based capital ratios in the 2013 rule. A covered BHC that maintains a leverage buffer of tier 1 capital in an amount greater than 2 percent of its total leverage exposure would not be subject to limitations on distributions and discretionary bonus payments. The proposal would take effect beginning on January 1, 2018. The agencies are seeking comment on all aspects of this proposal.

*Removal of Transferred OTS Regulations Regarding Prompt Corrective Action and Modifications to Existing Federal Deposit Insurance Regulations (3064-AE02)*

The Federal Deposit Insurance Corporation ("FDIC") will be proposing to rescind and remove from the Code of Federal Regulations 12 CFR Part 390, Subpart Y, entitled Prompt Corrective Action ("PCA"). This subpart was included in the regulations that were transferred to the FDIC

from the Office of Thrift Supervision ("OTS") on July 21, 2011, in connection with the implementation of applicable provisions of Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Upon removal of 12 CFR Part 390, Subpart Y, the PCA regulations applicable for all insured depository institutions for which the FDIC has been designated the appropriate federal banking agency will be found at 12 CFR Part 325, Subpart B, entitled Prompt Corrective Action, 12 CFR 325.2, entitled Definitions, and 12 CFR Part 308, Subpart Q, entitled Issuance and Review of Orders Pursuant to the Prompt Corrective Action Provisions of the Federal Deposit Insurance Act Rules ("FDIC PCA Rules").

*Loans in Areas Having Special Flood Hazards (3064-AE03)*

The Office of the Comptroller of the Currency ("OCC"), Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation ("FDIC"), the Farm Credit Administration, and the National Credit Union Administration (collectively, "the Agencies") will be proposing to amend their regulations regarding loans in areas having special flood hazards to implement provisions of the Biggert-Waters Flood Insurance Reform Act of 2012. Specifically, the proposal would establish requirements with respect to the escrow of flood insurance payments, the acceptance of private flood insurance coverage, and the force-placement of flood insurance. The proposal also would clarify the Agencies' flood insurance regulations with respect to other amendments made by the Act and make technical corrections. Furthermore, the OCC and the FDIC are proposing to integrate their flood insurance regulations for national banks and Federal savings associations and for State non-member banks and State savings associations, respectively.

*Liquidity Coverage Ratio: Liquidity Risk Standards, Minimums, Monitoring, and Transition Provisions (3064-AE04)*

The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation will be requesting comment on proposed rules that would implement a quantitative liquidity requirement consistent with the liquidity coverage ratio standard established by the Basel Committee on Banking Supervision. The proposed rule would apply to all banking organizations that are subject to, or have elected to use, the agencies' advanced approaches risk-based capital rules (advanced approaches banking organizations) and subsidiary depository institutions of advanced approaches banking organizations with \$10 billion or more in total consolidated assets. The requirement is designed to promote improvements in the measurement and management of asset- and funding-liquidity risk.

*Restrictions on Sales of Assets by the Federal Deposit Insurance Corporation as Receiver for a Covered Financial Company (3064-AE05)*

The Federal Deposit Insurance Corporation ("FDIC" or the "Corporation") is proposing to issue a rule ("proposed rule") implementing section 210(r) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Section 210(r)" of the "Dodd-Frank Act"), 12 U.S.C 5390(r). Under Section 210(r), individuals or entities that have, or may have contributed to the failure of a "covered financial company" (as defined in section 201(a)(8) of the Dodd-Frank Act, 12 U.S.C. 5381(a)(8) and in 12 CFR 380.1) cannot buy a covered financial company's assets from the FDIC. This proposed rule establishes a self-certification process that is a prerequisite to the purchase of assets from the FDIC as receiver for a covered financial company.

**Final Rules:**

*Margin and Capital Requirements for Covered Swap Entities (3064-AD79)*

The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Farm Credit Administration and the Federal Housing Finance Agency (collectively the "agencies") reopened the comment period on the proposed rule published in the Federal Register on May 11, 2011, (76 FR 27564), to establish minimum margin and capital requirements for uncleared swaps and security-based swaps entered into by swap dealers, major swap participants, security based swap dealers, and major security-based swap participants for which one of the Agencies is the prudential regulator (Proposed Margin Rule). Reopening the comment period that expired on July 11, 2011, allowed interested persons additional time to analyze and comment on the Proposed Margin Rule in light of the consultative document on margin requirements for non-centrally-cleared derivatives recently published for comment by the Basel Committee on Banking Supervision and the International Organization of Securities Commissions.

*Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds (3064-AD85)*

On November 7, 2011, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and U.S. Securities and Exchange Commission (collectively, the "Agencies") published in the Federal Register a joint notice of proposed rulemaking for public comment to implement section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") which contains certain prohibitions and restrictions on the ability of a banking entity and nonbank financial company supervised by the Board to engage in proprietary trading and have certain interests in, or relationships with, a hedge fund or private equity fund. Due to the complexity of the issues involved and to facilitate coordination of the rulemaking among the responsible agencies as provided in section 619 of the Dodd-Frank Act, the Agencies have determined that an extension of the comment period was appropriate. This action allowed interested persons additional time to analyze the proposed rules and prepare their comments.

*Incentive-Based Compensation Arrangements (3064-AD86)*

The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the U.S. Securities Exchange Commission, and the Fair Housing Finance Agency proposed a rule to implement section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The rule would require the reporting of incentive-based compensation arrangements by a covered financial institution and prohibit incentive-based compensation arrangements at a covered financial institution that provide excessive compensation or that could expose the institution to inappropriate risks that could lead to material financial loss.

*Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III*

*Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardize*

*Approach for Risk-Weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule (3064-AD95)*

The Federal Deposit Insurance Corporation ("FDIC") is adopting an interim final rule that revises its risk-based and leverage capital requirements for FDIC-supervised institutions. This interim final rule is substantially identical to a joint final rule issued by the Office of the Comptroller of the Currency and the Board of Governors of the Federal Reserve System (together, with the FDIC, "the agencies"). The interim final rule consolidates three separate notices of proposed rulemaking that the agencies jointly published in the Federal Register on August 30, 2012, with selected changes. The interim final rule implements a revised definition of regulatory capital, a new common equity tier 1 minimum capital requirement, higher minimum tier 1 capital requirement, and, for FDIC-supervised institutions subject to the advanced approaches risk-based capital rules, a supplementary leverage ratio that incorporates a broader set of exposures in the denominator. The interim final rule incorporates these new requirements into the FDIC's

prompt corrective action framework. In addition, the interim final rule establishes limits on FDIC-supervised institutions' capital distributions and certain discretionary bonus payments if the FDIC-supervised institution does not hold a specified amount of common equity tier 1 capital in addition to the amount necessary to meet its minimum risk-based capital requirements. The interim final rule amends the methodologies for determining risk-weighted assets for all FDIC-supervised institutions. The interim final rule also adopts changes to the FDIC's regulatory capital requirements that meet the requirements of section 171 and section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The interim final rule also codifies the FDIC's regulatory capital rules, which have previously resided in various appendices to their respective regulations, into a harmonized integrated regulatory framework.

*Restrictions on Post-Employment Activities of Senior Examiners (3064-AD98)*

The Federal Deposit Insurance Corporation ("FDIC") proposed to rescind and remove from the Code of Federal Regulations 12 CFR Part 390, Subpart A, entitled Restrictions on Post-Employment Activities of Senior Examiners. This subpart was included in the regulations that were transferred to the FDIC from the Office of Thrift Supervision on July 21, 2011, in connection with the implementation of applicable provisions of Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Upon removal of 12 CFR Part 390 Subpart A, the restrictions for post-employment activities of senior examiners of all insured depository institutions for which the FDIC has been designated the appropriate federal banking agency will be found at 12 CFR Part 336, Subpart C, entitled One-Year Restriction on Post-Employment Activities of Senior Examiners. The rule would not change 12 CFR Part 336, Subpart C. This rule also proposed to revise 12 CFR Part 336, Subpart B by deleting a reference to the "Office of Thrift Supervision" in the definition of "Federal banking agency" described in Part 336.3(e) and adding the words "predecessors or" in front of the word "successors".

*Removal of Transferred OTS Regulations Regarding Recordkeeping and Confirmation Requirements for Securities Transactions Effected by State Savings Associations (3064-AE06)*

The Federal Deposit Insurance Corporation ("FDIC") is proposing to rescind and remove from the Code of Federal Regulations 12 CFR part 390, subpart K ("Part 390, Subpart K"), entitled "Recordkeeping and Confirmation Requirements for Securities Transactions." This subpart was included in the regulations that were transferred to the FDIC from the Office of Thrift Supervision on July 21, 2011, in connection with the implementation of applicable provisions of Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act. With few exceptions, the requirements for State savings associations in Part 390, Subpart K are substantively similar to those in FDIC's 12 CFR part 344 ("Part 344"), which also is entitled "Recordkeeping and Confirmation Requirements for Securities Transactions" and is applicable to State nonmember insured banks and foreign banks having an insured branch. The FDIC proposed to amend section 344.3 of Part 344 to remove the definition of "bank," and add the definition of "FDIC-supervised institution" for purposes of clarifying that Part 344 applies to all insured depository institutions, including State savings associations, for which the FDIC is the appropriate Federal banking agency. This defined word and its plural form would replace "bank," "banks," "state nonmember insured bank (except a District bank)," and "foreign bank having an insured branch" throughout Part 344. The FDIC also proposed to amend section 344.2(a)(1) of Part 344 to increase the number of transactions, from 200 to 500, that all FDIC-supervised institutions may effect on behalf of customers under the small transaction exception from certain of the recordkeeping requirements ("Small Transaction Exception").

**Long Term Actions:**

*Credit Risk Retention (3064-AD74)*

The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency and the Department of Housing and Urban Development (collectively the "agencies") are seeking comment on a joint proposed rule to revise the proposed rule the agencies published in the Federal Register on April 29, 2011, and to implement the credit risk retention requirements of section 15G of the Securities Exchange Act of 1934 (15 U.S.C. 78o-11), as added by section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Section 15G generally requires the securitizer of asset-backed securities to retain not less than 5 percent of the credit risk of the assets collateralizing the asset-backed securities. Section 15G includes a variety of exemptions from these requirements, including an exemption for asset-backed securities that are collateralized exclusively by residential mortgages that qualify as "qualified residential mortgages," as such term is defined by the agencies by rule.

**Completed Actions:**

*Regulatory Capital Rules (Part III): Standardized Approach for Risk-Weighted Assets; Market Discipline and Disclosure Requirements (3064-AD96)*

On August 30, 2012, the FDIC, together with the Board of Governors of the Federal Reserve System and Office of the Comptroller of the Currency (together, "the agencies") published in the Federal Register a joint notice of proposed rulemaking, titled, Regulatory Capital Rules: Standardized Approach for Risk-Weighted Assets; Market Discipline and Disclosure Requirements" (Standardized Approach NPR or Proposed Rule). The Rule revised and harmonized the agencies' rules for calculating risk weighted assets to enhance risk sensitivity and address weaknesses identified over recent years, including by incorporating certain international capital standards of the Basel Committee on Banking Supervision ("BCBS") set forth in the standardized approach of the international accord titled, "International Convergence of Capital Measurement and Capital Standards: A Revised Framework", as revised by the BCBS in 2006

and 2009, as well as other proposals set forth in consultative papers of the BCBS. Section 3(a) of the Regulatory Flexibility Act directs all federal agencies to publish an initial regulatory flexibility analysis, or a summary thereof, describing the impact of a proposed rule on small entities anytime an agency is required to publish a notice of proposed rulemaking in the Federal Register. This Rule has now been merged into 3064-AD95: Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardize Approach for Risk-Weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule.

*Regulatory Capital Rules: Advanced Approaches Risk-Based Capital Rules; Market Risk Capital Rule (3064-AD97)*

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") are seeking comment on three notices of proposed rulemaking ("NPRMs") that would revise and replace the Agencies' current capital rules. In the NPRM (Advanced Approaches and Market Risk NPR) the Agencies are proposing to revise the advanced approaches risk-based capital rule to incorporate certain aspects of "Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems" that the agencies would apply only to advanced approach banking organizations. The NPRM also proposes other changes to the advanced approaches rule that the agencies believe are consistent with changes by the Basel Committee on Banking Supervision ("BCBS") to its "International Convergence of Capital Measurement and Capital Standards: A Revised Framework" (Basel II), as revised by the BCBS between 2006 and 2009, and recent consultative papers published by the BCBS. The Agencies also propose to revise the advanced approaches risk-based capital rule to be consistent with Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"). These revisions include replacing reference to credit ratings with alternative standards of creditworthiness consistent with section 939A of the Dodd-Frank Act. This Rule has now been merged into 3064-AD95:

Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardize Approach for Risk-Weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule.

*Records of Failed Insured Depository Institutions (3064-AD99)*

The Federal Deposit Insurance Corporation adopted a final rule that implements section 11(d)(15)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d)(15)(D)). This statutory provision provides time frames for the retention of records of a failed insured depository institution. The final rule incorporates the statutory time frames and defines the term "records."

*Deposit Insurance Regulations; Definition of Insured Deposit (3064-AE00)*

The Federal Deposit Insurance Corporation ("FDIC") adopted a final rule that amends its deposit insurance regulations, with respect to deposits in foreign branches of United States insured depository institutions ("United States bank" or "bank") outside of the United States. The final rule clarifies that deposits in branches of U.S. banks located outside the United States banks are not FDIC insured deposits. This would be the case even if they are also payable at an office within the United States ("dual payability"). As discussed further, a pending proposal by the United Kingdom's Prudential Regulation Authority ("U.K. PRA"), formerly known as the Financial Services Authority, has made it more likely that large United States will change their United Kingdom foreign branch deposit agreements to make their U.K. deposits payable both in the United Kingdom and the United States. This action has the potential to expose the Deposit Insurance Fund ("DIF") to expanded deposit insurance liability and create operational complexities if these types of deposits were treated as insured. The purpose of the final rule is to protect the DIF against the liability that it would otherwise face as a potential global deposit

insurer, preserve confidence in the FDIC deposit insurance system, and ensure that the FDIC can effectively carry out its critical deposit insurance functions.

Federal Deposit Insurance Corporation.

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