

# RESCINDED

Transmittal – See OCC 2020-11

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## Collateralized Debt Obligations Backed Primarily by Trust Preferred Securities: Interim Final Rule

### Summary

On January 14, 2014, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the U.S. Securities and Exchange Commission, and the U.S. Commodity Futures Trading Commission approved an interim final rule to permit banking entities to retain interests in certain collateralized debt obligations backed primarily by trust preferred securities (TruPS CDOs), notwithstanding the investment prohibitions of section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), known as the Volcker Rule.

The interim final rule was published in the *Federal Register* on January 31, 2014, and becomes effective on April 1, 2014. The OCC, together with the other rule-writing agencies, solicited comments on the interim final rule through March 3, 2014.

### Highlights

The interim final rule permits banking entities—including national banks, federal savings associations, and federal branches and agencies of foreign banks—to retain an interest in a TruPS CDO if the following qualifications are met:

- The TruPS CDO was established and the interest was issued before May 19, 2010.
- The banking entity reasonably believes that the offering proceeds received by the TruPS CDO were invested primarily in qualifying TruPS collateral.
- The banking entity's interest in the TruPS CDO was acquired on or before December 10, 2013, the date when the agencies issued final rules implementing section 619 of Dodd-Frank.

Qualified TruPS collateral includes any trust preferred security or subordinated debt instrument that was

- issued before May 19, 2010, by a depository institution holding company that, as of the end of any reporting period within 12 months immediately preceding the issuance of such trust preferred security or subordinated debt instrument, had total consolidated assets of less than \$15 billion; or
- issued before May 19, 2010, by a mutual holding company.

### To

Chief Executive Officers of All National Banks and Federal Savings Associations, Federal Branches and Agencies, Department and Division Heads, All Examining Personnel, and Other Interested Parties

**Note for Community Banks**

To help community banks identify which CDO issuances remain permissible, the OCC, the FDIC, and the FRB also have issued a nonexclusive list of TruPS CDOs that meet the requirements of the interim final rule.

## Additional Information

Section 171 of Dodd-Frank provides for the grandfathering of trust preferred securities issued before May 19, 2010, by certain depository institution holding companies with total assets of less than \$15 billion as of December 31, 2009, and by mutual holding companies established as of May 19, 2010. The TruPS CDO structure was the vehicle that gave effect to the use of trust preferred securities as a regulatory capital instrument for these holding companies before May 19, 2010. This CDO structure was part of the status quo that Congress preserved with the grandfathering provision of section 171.

The interim final rule also provides clarification that the relief relating to these TruPS CDOs extends to activities of the banking entity as a sponsor or trustee for these securitizations. The rule states that banking entities may continue to act as market makers in TruPS CDOs.

## Further Information

Please contact Kurt Wilhelm, Director for Financial Markets, or Stephanie Boccio, Technical Expert for Credit and Market Risk, at (202) 649-6360; or Jamey Basham, Assistant Director, Legislative and Regulatory Activities, at (202) 649-5490.

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## Related Links

- [Treatment of Certain Collateralized Debt Obligations Backed Primarily by Trust Preferred Securities With Regard to Prohibitions and Restrictions on Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds \(PDF\)](#)
- [Non-Exclusive List of Qualified Collateralized Debt Obligations Backed Primarily by Trust Preferred Securities \(PDF\)](#)