

RESCINDED

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Transmittal – See OCC 2020-11

Basel III Conforming Amendments: Interim Final Rule

Summary

The Office of the Comptroller of the Currency (OCC) has issued an interim final rule with request for comments (final rule) that makes technical and conforming amendments to its regulations governing national banks and federal savings associations. The final rule, which is effective March 31, 2014, amends various regulations in order to make those regulations consistent with the recently adopted Basel III Capital Framework. The Basel III final rule revised the OCC's regulatory capital rules, adding a new common equity tier 1 requirement, revising the definitions of tier 1 and tier 2 capital, and integrating federal savings associations into 12 CFR part 3 and 12 CFR part 6 (Prompt Corrective Action). The final rule makes technical, clarifying, and conforming amendments to the OCC's rules, by providing cross-references to new capital rules, where necessary, and deleting obsolete references. The final rule also makes changes to subordinated debt rules to clarify the requirements subordinated debt must meet and the procedures required to issue and redeem subordinated debt.

The Licensing Activities Division of the Office of the Chief Counsel is currently updating related sections of the Licensing Manuals, appendixes, and forms to reflect the Basel III final rule requirements.

Highlights

Technical and Conforming Amendments

- Historically, regulatory capital requirements have served as a measure for numerous statutory and regulatory limits used as supervisory tools for safety and soundness purposes, including lending limits and investment securities. The final rule amends the OCC's rules to replace cross-references to the current regulatory capital rules with cross-references to the Basel III final rule, where appropriate.
- The Basel III Capital Framework provides different mandatory compliance dates for advanced approaches national banks and federal savings associations and non-advanced approaches national banks and federal savings associations.¹ Advanced approaches institutions must comply with the Basel III Capital Framework beginning on January 1, 2014, while non-advanced approaches institutions must comply with the framework beginning on January 1, 2015. In order to accommodate these different compliance dates, the OCC has retained the existing regulatory capital rules for calendar year 2014 for non-advanced approaches national banks and federal savings associations. The amendments in the final rule reflect this difference, and cross-references to the pre-Basel III regulatory capital rules will be retained until January 1, 2015.

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

- The Basel III Capital Framework integrated federal savings associations into 12 CFR part 6, "Prompt Corrective Action." This final rule replaces cross-references in various rules to 12 CFR part 165, the Prompt Corrective Action rule formerly applicable to federal savings associations, with cross-references to 12 CFR part 6, which applies to both national banks and federal savings associations effective January 1, 2014.

Subordinated Debt – 12 CFR 5.47 and 12 CFR 163.81

- The final rule clarifies and revises the OCC's rules governing subordinated debt issued by national banks to make those rules consistent with the Basel III Capital Framework. Unlike the current regulatory capital rules, the Basel III Capital Framework does not identify specific types of instruments that are included in regulatory capital. Instead, the Basel III Capital Framework lists criteria that an instrument must satisfy to be included in regulatory capital. In order to accommodate the different compliance dates for advanced approaches institutions and non-advanced approaches institutions, the final rule retains the current provisions of 12 CFR 5.47 but adds new paragraphs (j) through (p) and provides that those new paragraphs will be applicable to an advanced approaches bank beginning March 31, 2014.
- The final rule clarifies for national banks what requirements apply to subordinated debt that is not included in tier 2 capital. Because the OCC believes it is important to apply certain basic requirements to all subordinated debt, regardless of whether it is included in regulatory capital, the final rule clarifies the list of requirements applicable to all subordinated debt issued by national banks.
- The final rule largely maintains the current procedural requirements in 12 CFR 5.47 that an institution must follow in order to issue or prepay subordinated debt. The Basel III Capital Framework requires prior OCC approval for the exercise of a call option, redemption prior to the maturity, and repurchase of subordinated debt. Under the current subordinated debt rules applicable to national banks, a bank that is not an eligible bank is required to obtain prior OCC approval for the issuance and prepayment of all subordinated debt, and an eligible bank generally is not required to obtain such approval. The final rule attempts to reconcile these varying approval requirements while continuing some exceptions for eligible banks.
- The final rule does **not** integrate the subordinated debt rules for national banks and federal savings associations but rather maintains separate rules for both national banks and federal savings associations. The final rule makes structural changes to the subordinated debt rule applicable to federal savings associations, 12 CFR 163.81, that mirror the structural changes to the national bank rules for subordinated debt in 12 CFR 5.47. For a non-advanced approaches federal savings association prior to January 1, 2015, the final rule retains the current rule with no substantive changes. The final rule provides that an advanced approaches federal savings association would be required to comply with new requirements beginning March 31, 2014.

Note for Community Banks

The amendments made by this rulemaking apply to all banks, including community banks. Community banks must comply with the Basel III Capital Framework (and statutory limitations that cross-reference the regulatory capital rules) beginning January 1, 2015, while advanced approaches national banks and federal savings associations must comply with the Basel III Capital Framework beginning January 1, 2014.

Background

On October 21, 2013, the OCC published in the *Federal Register* the Basel III final rule (78 Fed. Reg. 62018, Oct. 11, 2013), which completely revised the OCC's regulatory capital rules for national banks and federal savings associations. The final rule, in part, reflected agreements reached by the Basel Committee on Banking Supervision (BCBS) in "Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems."² The Basel III agreements are intended to improve both the quality and quantity of banking organizations' capital, as well as to strengthen various aspects of the international capital standards for calculating regulatory capital. The OCC issued the Basel III final rule in conjunction with the Federal Deposit Insurance Corporation and the Board of the Governors of the Federal Reserve System.

Further Information

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Related Link

- [Federal Register, "Basel III Conforming Amendments Related to Cross-References, Subordinated Debt and Limits Based on Regulatory Capital"](#) (PDF)

¹ The timing requirements are located at 12 CFR 3.1(f) and the description of national banks and federal savings associations that must comply with the advanced approaches rules is located at 12 CFR 3.100(b)(1).

² Basel III was published in December 2010 and revised in June 2011. The text is available at www.bis.org/publ/bcbs189.htm. The BCBS is a committee of banking supervisory authorities, which was established by the central bank governors of the G-10 countries in 1975. More information regarding the BCBS and its membership is available at www.bis.org/bcbs/about.htm. Documents issued by the BCBS are available through the Bank for International Settlements Website at www.bis.org.