FDIC
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C. 20429-9990
Division of Insurance and Research

March 5, 2018

MEMORANDUM TO: The Board of Directors

FROM: Diane Ellis
Director, Division of Insurance and Research

SUBJECT: Technical Amendments to Assessment Rules

Staff recommends that the Board approve technical amendments to the FDIC's deposit insurance assessment rules.

Staff recommends that the amendments be effectuated through a final rule without notice and comment because this rule consists only of technical amendments that are minor and will have no substantive effect on the public. Also, staff recommends that the amendments become effective on the date of publication because delaying the effective date of the amendments would serve no purpose.

First, staff proposes that the FDIC correct a drafting error regarding when small banks (generally, those with less than $10 billion in assets) will be able to use the assessment credits that they are currently accruing for the portion of their deposit insurance assessments that contribute to the increase in the DIF reserve ratio from 1.15 to 1.35 percent. Small banks are accruing these credits pursuant to a final rule implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) requirement that the FDIC offset the effect of increasing the minimum reserve ratio from 1.15 percent to 1.35 percent on banks with less than $10 billion in assets. The credits recognize that a portion of the assessments paid by small banks when the reserve ratio is between 1.15 percent and 1.35 percent, as it is now, help increase the reserve ratio. The preamble to the rule implementing this Dodd-Frank Act provision provided that credits will be applied to a small bank's assessments for assessment periods in which the DIF reserve ratio is *at least* 1.38 percent—that is, at or above 1.38 percent. The regulatory text that was adopted, however, incorrectly states that the FDIC will apply the assessment credits to a small bank's deposit insurance assessments for assessment periods in which the reserve ratio of the DIF *exceeds* 1.38 percent.

The change implements the FDIC's original intent. The effect of the change will be to clarify that the FDIC will apply credits if the reserve ratio is either 1.38 percent or higher than 1.38 percent, consistent with the preamble to the final rule that provided for credits.

Second, staff proposes to remove Loans to Foreign Governments from the calculation of the deposit insurance assessment rate for established small banks. (Generally, an established small bank is one that has been federally insured for at least five years.) Loans to foreign

Concur:

Charles Yi
General Counsel

governments are currently included in the loan mix index (LMI), one of the measures used to calculate an established small bank's assessment rate. The LMI measures the relative riskiness of a bank's loan portfolio. Since 2017, as part of an initiative to reduce Call Report burden for community banks, only one of the three Call Report forms (the form for banks that have both domestic and foreign offices) allows a bank to report loans to foreign governments separately. The other two forms (the general form for banks with no foreign offices and the short form for banks that have less than $1 billion in total assets and no foreign offices) do not allow these loans to be reported separately.

Staff estimates that the removal of "loans to foreign governments" from the LMI will have virtually no economic effect. From 2011 through 2016, when all banks could report the item, fewer than 10 small banks reported a balance for these loans in a given year. During 2017, only one bank reported a balance for "loans to foreign governments," and the resulting effect on the bank's assessment rate was immaterial. Since most small banks can no longer report these loans as a separate item on the Call Report, inclusion of "loans to foreign governments" in the LMI no longer helps to differentiate the relative riskiness of a bank's loan portfolio for purposes of calculating its risk-based assessment rate. No bank could pay a higher assessment as a result of this amendment.

Third, staff recommends that the FDIC clarify capital category definitions by reinserting into the deposit insurance assessment regulations the PCA capital ratios and ratio thresholds that were inadvertently deleted in a 2016 rulemaking.[1] Since the implementation of the risk-based deposit insurance assessment system in 1993, the FDIC has used the same capital ratios and ratio thresholds to define capital categories for deposit insurance assessment purposes as those used for PCA purposes, except that capital categories defined for assessment purposes rely solely on capital ratios. When the FDIC first implemented the risk-based assessment system, it chose not to incorporate other supervisory information, such as enforcement orders, used to define capital categories for PCA purposes because this information was more appropriately considered with regard to supervisory evaluations, which were (and continue to be) a separate component of assessment pricing.[2] Thus, while the current PCA standards in the capital rules[3] permit a bank to be reclassified to a lower capital category if the bank is subject to certain enforcement orders or other specific supervisory findings (even if the bank meets the PCA capital ratio requirements for

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[1] In 2016, the FDIC adopted a final rule (the Small Bank Pricing final rule) that refined the deposit insurance pricing methodology for established small banks. See 81 FR 32180 (May 20, 2016). The deposit insurance assessment system uses capital categories for two ratios that affect assessment rates: the brokered deposit ratio (which affects assessment rates for established small banks) and the brokered deposit adjustment (which affects assessment rates for large banks and highly complex institutions).

[2] See 57 FR 45263, 45279 (Oct. 1, 1992). "These assessment definitions reflect only the capital ratio standards from the proposed PCA definitions, which include other elements as well... These elements are not incorporated in the definitions of the capital groups for risk-based assessment purposes. In the risk-based assessment context, these elements are more appropriately considered with regard to supervisory subgroup determinations."

[3] See 12 CFR § 6.4, 12 CFR 208.43, and 12 CFR 324.403.

a higher capital category),[4] such a reclassification would be inconsistent with the FDIC's longstanding practice of relying solely on capital ratios to define capital categories for deposit insurance assessment purposes.[5]

Staff expects that these clarifications will not have any economic effect. In practice and consistent with the FDIC's intent when it adopted assessment final rules in 2014 and 2016, the FDIC has used only capital ratios to determine a bank's capital category for assessment purposes.[6] The clarifications are consistent with this practice and, thus, would not affect any bank's deposit insurance assessment.

Staff recommends that the corrections become effective on the date of publication.

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[4] For PCA purposes, an IDI that otherwise meets the ratio threshold requirements for the well capitalized PCA category: (1) will be classified as an adequately capitalized if it is subject to a written agreement, order, capital directive, or prompt corrective action directive to meet and maintain a specific capital level for any capital measure; and (2) may be reclassified as adequately capitalized, if, following notice and an opportunity for hearing, the bank is determined to be unsafe or unsound or has failed to correct a less-than-satisfactory rating for asset quality, management, earnings, or liquidity. See 12 CFR 6.4(c)(1)(v) and (e), 12 CFR 208.43(b)(1)(v) and (c), and 12 CFR 324.403(b)(1)(v) and (d).

[5] Current assessment regulations generally incorporate PCA capital standards for new small banks, but, as the result of an error, they do not incorporate for new small banks the PCA standard that an advanced approaches bank will be considered undercapitalized if it has a supplementary leverage ratio (SLR) of less than 3.0 percent. As defined in the PCA capital rules, an advanced approaches bank, including one that is a new small bank, will be considered undercapitalized if its SLR is below 3.0 percent, even if all other ratios meet the ratio thresholds for well capitalized or adequately capitalized. See 12 CFR 6.4(c)(3)(iv)(B), 208.43(b)(3)(iv)(B), and 324.403(b)(3)(v).

[6] See 79 FR 70427, 70429 (Nov. 26, 2014).