

August 6, 2019

MEMORANDUM TO: The Board of Directors

FROM: Doreen R. Eberley
Director, Division Risk Management Supervision

Mark Pearce
Director, Division of Depositor and Consumer Protection

SUBJECT: Notice of Proposed Rulemaking: Removal of Transferred OTS
Regulation at Part 390, Subpart M—Deposits

RECOMMENDATION AND SUMMARY

Staff recommends that the FDIC Board of Directors (“Board”) approve and authorize for publication in the *Federal Register* with a 30-day comment period, the attached notice of proposed rulemaking (“NPR” or “proposal”) to rescind part 390, subpart M, of title 12, Code of Federal Regulations (“part 390, subpart M”), entitled *Deposits*, relating to records on account transactions and deposit activities at State savings associations. Rescinding part 390, subpart M will serve to streamline the FDIC’s rules and eliminate unnecessary and duplicative regulations. The NPR would rescind part 390, subpart M and reserve the subpart for future use.

Concur:

Nicholas J. Podsiadly
General Counsel

Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”),¹ signed into law on July 21, 2010, provided for a substantial reorganization of the regulation of State and Federal savings associations and their holding companies. Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act (12 U.S.C. § 5411), the powers, duties and functions formerly performed by the Office of Thrift Supervision (“OTS”) were divided among the FDIC, as to State savings associations, the Office of the Comptroller of the Currency (“OCC”), as to Federal savings associations, and the Board of Governors of the Federal Reserve System (“FRB”), as to savings and loan holding companies. Section 316(b) of the Dodd-Frank Act (12 U.S.C. § 5414(b)) provides the manner of treatment for all orders, resolutions, determinations, regulations, and other advisory materials that were issued, made, prescribed, or allowed to become effective by the OTS. The section provides that if such regulatory materials were in effect on the day before the transfer date, they continue in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

Section 316(c) of the Dodd-Frank Act (12 U.S.C. § 5414(c)) further directed the FDIC and the OCC to consult with one another and to publish a list of the continued OTS regulations that would be enforced by the FDIC and the OCC, respectively. On June 14, 2011, the FDIC’s Board approved a “List of OTS Regulations to be Enforced by the OCC and the FDIC Pursuant to the

¹ Dodd-Frank Wall Street Reform and Consumer Protection Act, P. Law 111-203, 124 Stat. 1367 (2010).

Dodd-Frank Wall Street Reform and Consumer Protection Act.” This list was published by the FDIC and the OCC as a Joint Notice in the *Federal Register* on July 6, 2011.²

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act (12 U.S.C. § 5412(b)(2)(B)(i)(II)) granted the OCC rulemaking authority relating to both State and Federal savings associations, nothing in the Dodd-Frank Act affected the FDIC’s existing authority to issue regulations under the Federal Deposit Insurance Act (“FDI Act”) and other laws as the “appropriate Federal banking agency” or under similar statutory authority. Section 312(c) of the Dodd-Frank Act amended section 3(q) of the FDI Act (12 U.S.C. § 1813(q)) and designated the FDIC as the “appropriate Federal banking agency” for State savings associations. As a result, when the FDIC acts as the designated “appropriate Federal banking agency” or under similar authority for State savings associations, as it does here, the FDIC is authorized to issue, modify, and rescind regulations involving such associations.

On June 14, 2011, operating pursuant to this authority, the FDIC’s Board reissued and re-designated certain transferring regulations of the former OTS.³ In the preamble to the interim rule, the FDIC specifically noted that its staff would evaluate the transferred OTS rules and may later recommend incorporation of the transferred OTS regulations into existing FDIC rules, amending them, or rescinding them, as appropriate.

Part 390, Subpart M—Deposits

Part 390, subpart M was promulgated in 2011 as part of the transfer of a number of regulations from the former OTS pursuant to the Dodd-Frank Act. Section 390.231, “What records should I

² 76 FR 39247 (July 6, 2011).

³ 76 FR 47652 (Aug. 5, 2011).

maintain on deposit activities?” was transferred without substantive change from section 557.20 of the OTS regulations (12 CFR 557.20). The only revision was to limit the rule to State savings associations, reflecting the FDIC’s statutory authority. The OTS had issued section 557.20 as part of a streamlining of its regulations in 1997.⁴ At that time, the OTS regulations included several specific deposit recordkeeping requirements, and the OTS sought to replace those with one provision. In the associated NPR, the OTS explained the proposal as follows: “OTS is endeavoring to eliminate regulations that are outdated or micromanage thrift operations. For example, OTS proposes to replace several specific deposit-related recordkeeping requirements with a general recordkeeping regulation that is tied more closely to safety and soundness.”⁵

Other Applicable Statutes and Regulations on Maintenance of Deposit Account Records

Staff has conducted a careful review and has identified several provisions of statutes and regulations currently applicable to State savings associations that would obviate the need for part 390, subpart M, without necessitating additional amendment to such existing provisions of law. They include provisions from the FDI Act (12 U.S.C. 1817(a)(9)), the Treasury Department Bank Secrecy Act regulations (31 CFR 1020.410(c)(2)), FDIC safety and soundness regulations (12 CFR part 364, Appendix A II), FDIC deposit insurance coverage regulations (12 CFR 330.1(e)), and Bureau of Consumer Financial Protection regulations (12 CFR part 1005). Taken together, these provisions of law presently require State savings associations to collect and maintain timely and accurate records of transactions on deposit accounts, which is the intended purpose of the regulation proposed to be rescinded.

⁴ 62 FR 55759 (Oct. 22, 1997).

⁵ 62 FR 15627 (Apr. 2, 1997).

The Proposal

Staff recommends that the Board adopt the attached proposal to rescind and reserve part 390, subpart M, without further amendment to the FDIC's existing regulations. The proposal seeks comment on all aspects of the proposed rule, including (1) whether other existing provisions of law are sufficient to provide consistent and effective requirements related to the maintenance of records of deposit account activities at State savings associations for which the FDIC is the appropriate Federal banking agency; (2) what negative impacts, if any, could result from the rescission of part 390, subpart M; and (3) whether existing statutory and regulatory requirements relating to the maintenance of records of account transaction and deposits are sufficient to ensure the safety and soundness of insured State savings associations.

Conclusion

Staff recommends that the Board approve the attached NPR for publication in the *Federal Register*.

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