

TO: The Board of Directors

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



SUBJECT: Review of Regulations Transferred from the Former Office of Thrift Supervision:  
Part 390, Subpart L – Electronic Operations

### **Recommendation**

Staff recommends that the Federal Deposit Insurance Corporation (“FDIC”) Board of Directors (“Board”) approve the attached resolution to adopt and authorize for publication in the *Federal Register* a final rule (“Final Rule”) to rescind and remove 12 C.F.R. Part 390, Subpart L (“Part 390, Subpart L”), entitled *Electronic Operations*. Rescinding Part 390, Subpart L, will serve to streamline the FDIC’s rules and eliminate obsolete, unnecessary, and burdensome regulations.

### **Status of OTS Rules Review**

The proposed rescission of Part 390, Subpart L, completes the FDIC’s review of this subpart of the former Office of Thrift Supervision (“OTS”) rules for rescission, amendment, or adoption. This subpart was included in the regulations that were transferred to the FDIC from the 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 (“Dodd-Frank Act”).<sup>1</sup>

The proposed rescission also fulfills the FDIC’s review of the Electronic Operations section of the FDIC rules and regulations impacted by the abolishment of the OTS and the transfer of supervisory responsibilities for State savings associations to the FDIC.

On July 21, 2014, a notice of proposed rulemaking (“NPR” or “Proposed Rule”) was published in the *Federal Register* that proposed the removal of Part 390, Subpart L.<sup>2</sup> The public comment period expired on September 19, 2014, and no comments were received. Accordingly, staff recommends that the Board approve and authorize the publication in the *Federal Register* of a Final Rule to adopt the Proposed Rule without changes.

Further, staff recommends that the action taken on this rulemaking be considered part of the FDIC’s decennial regulatory review required by section 2222 of the Economic Growth and

<sup>1</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (codified at 12 U.S.C. §§ 5301 *et seq.*).

<sup>2</sup> 79 Fed. Reg. 42231 (July 21, 2014).

Regulatory Paperwork Reduction Act of 1996 (“EGRPRA”),<sup>3</sup> a review process that is currently underway.

## **Background**

The Dodd-Frank Act, 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, (“Transfer Date”), the powers, duties and functions formerly performed by the 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 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.<sup>4</sup>

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.

---

<sup>3</sup> Economic Growth and Regulatory Paperwork Reduction Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996).

<sup>4</sup> 76 Fed. Reg. 39247 (July 6, 2011).

On June 14, 2011, operating pursuant to this authority, the FDIC's Board reissued and re-designated certain transferring regulations of the former OTS.<sup>5</sup> 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, or rescinding them, as appropriate.

In 1999, the former OTS issued its Electronic Operations rule, 12 C.F.R. Part 555, Subpart B, which required savings associations to file a written notice with the OTS at least 30 days before establishing a transactional website.<sup>6</sup> The OTS issued its Electronic Operations rule unilaterally; the FDIC, OCC, and the FRB do not have any similar rule or requirement. Pursuant to the Dodd-Frank Act, the former OTS rule was transferred to the FDIC with only technical changes and is currently located in the FDIC's rules at 12 C.F.R. Part 390, Subpart L.

### **Proposed Rule to Remove Part 390, Subpart L**

On July 21, 2014, the FDIC published a Proposed Rule regarding the removal of Part 390, Subpart L, which governs electronic operations of State savings associations. The NPR proposed removing Part 390, Subpart L, from the Code of Federal Regulations in an effort to streamline FDIC regulations for all FDIC-supervised institutions that are not subject to a similar rule or requirement.

As discussed in the Proposed Rule, after careful review of the OTS's transferred rule in Part 390, Subpart L, and the former OTS's stated rationale for the rule, staff recommended that the FDIC, as the appropriate Federal banking agency for State savings associations, rescind and remove the former OTS rule in its entirety. The FDIC determined, as it has in the past, that there was no supervisory value in a prior notice requirement that an insured depository institution be required to give the FDIC regarding the establishment of a transactional website. The FDIC relies on dynamic, in-depth supervisory means to evaluate an insured depository institution's information technology systems. Instead of a general notice requirement for the establishment of a transactional website, the FDIC has developed and relies upon more useful and ongoing sources of information to evaluate FDIC-supervised institutions' financial condition, risks, and regulatory compliance. Prior notification that an institution is establishing a transactional website is an outdated and unnecessary requirement.

Rescinding Part 390, Subpart L, will also serve to streamline the FDIC's rules and eliminate obsolete, unnecessary, and burdensome regulations. If the proposal is adopted in final form, all insured depository institutions regulated by the FDIC—including State savings associations—will be regulated in a uniform manner.

---

<sup>5</sup> 76 Fed. Reg. 47652 (Aug. 5, 2011).

<sup>6</sup> 12 C.F.R. § 555.310.

The FDIC issued the Proposed Rule with a 60-day comment period, which closed on September 19, 2014. The FDIC received no comments on its Proposed Rule, and, consequently, staff recommends that the Board adopt the Final Rule as proposed without any changes.

### **The Final Rule**

As discussed in the Proposed Rule, Part 390, Subpart L, was enacted unilaterally by the OTS and there is no similar rule or requirement by the FDIC, the OCC, or the FRB. Rescinding Part 390, Subpart L, will serve to eliminate obsolete, unnecessary, and burdensome regulations. If approved, the Final Rule will remove and rescind Part 390, Subpart L, in its entirety.

### **EGRPRA**

Section 2222 of EGRPRA requires the FDIC to review all of its regulations at least once every 10 years in order to identify any outdated or otherwise unnecessary regulations imposed on insured depository institutions. The FDIC's review is ongoing and must be completed by 2016. The Proposed Rule solicited comments on whether the proposed rescission of Part 390, Subpart L, would impose any outdated or unnecessary regulatory requirements on insured depository institutions. No comments on this issue were received. Upon review, staff believes that rescinding Part 390, Subpart L, would eliminate an outdated and unnecessary regulatory requirement for insured depository institutions and would harmonize FDIC's regulations and ensure uniform treatment of all FDIC-supervised institutions.

### **Recommendation**

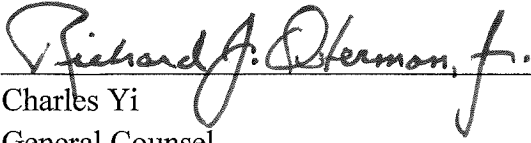
Based on the foregoing, staff recommends that the Board approve the attached resolution to rescind and remove Part 390, Subpart L, and authorize publication of the attached Final Rule in the *Federal Register*, to be made effective 30 days after its publication. Further, staff recommends that the action taken on this rulemaking be considered a part of the FDIC's decennial EGRPRA regulatory review process.

### **Staff members knowledgeable about this case**

Jennifer Maree, Legal Division, (202) 898-6543

Frederick M. Coleman, Division of Risk Management Supervision, (703) 254-0452

**Concur**

*for*   
\_\_\_\_\_  
Charles Yi  
General Counsel  
Legal Division

[Attachment: Proposed Final Rule entitled, "Removal of Transferred OTS Regulations Regarding Electronic Operations."]