

**MEMORANDUM TO:** Board of Directors

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

**SUBJECT:** Regulatory Capital Rules: Removal of Certain Capital Rules That Are No Longer Effective Following the Implementation of the Revised Capital Rules

**Summary:** Staff recommends that the FDIC’s Board of Directors (“FDIC Board”) approve for publication in the *Federal Register* the attached final rule (“final rule”) that would remove certain superseded capital regulations in part 325 and subparts Y and Z of part 390 of FDIC’s codified rules (“superseded capital rules”). The superseded capital rules are no longer effective for FDIC-supervised institutions following the implementation of the new capital regulations on January 1, 2015 (“revised capital rules”). The final rule would also make conforming changes to the FDIC’s codified rules that refer to the superseded capital rules. FDIC staff recommends that the FDIC Board determine that good cause exists to publish this rule as final without a period of notice and comment and effective immediately upon being published in the *Federal Register* because this final rule (1) rescinds the superseded capital rules that are no longer effective and imposes no new requirement on FDIC-supervised institutions and (2) makes technical changes to the FDIC’s codified rules that refer to those superseded capital rules.

**Recommendation:** That the FDIC Board approve the attached final rule and authorize its publication in the *Federal Register* for good cause without a period of notice and comment and with the date of *Federal Register* publication as the effective date.

**Concur:**

Charles Yi  
General Counsel

**Discussion:**

In 2014, the FDIC comprehensively revised and strengthened its capital regulations applicable to FDIC-supervised institutions.<sup>1</sup> The revised capital rules, which are codified in part 324 of the FDIC's rules, were effective for almost all FDIC-supervised institutions on January 1, 2015.<sup>2</sup> Before the effective date of the revised capital rules, FDIC-supervised institutions were subject to the superseded capital rules. Thus, as of January 1, 2015, the superseded capital rules were no longer effective for any FDIC-supervised institution.

The final rule rescinds part 325 subpart A – Minimum Capital Requirements, subpart B – Prompt Corrective Action and Appendices A through D as the rules contained therein have been superseded by Part 324. Under the final rule, the annual stress testing rule will remain in Part 325. Part 325 will be retitled to Annual Stress Test and the stress testing rule will be renumbered to reflect the removed capital rules. Similarly, the final rule removes the superseded capital rules contained in part 390 subpart Y – Prompt Corrective Action and part 390 subpart Z – Capital and related appendices. Under the final rule, sections in part 390 that are not removed will remain codified in part 390, including certain enforcement authorities related to a savings association's capital requirements. The final rule also removes the superseded capital rules and makes conforming technical changes to provisions of the FDIC's codified rules that refer to part 325 for state nonmember banks and subparts Y and Z of part 390 for state savings associations in conjunction with the FDIC's capital rules. However, this final rule does not impact the legal status of any reference to the superseded capital rules in outstanding compliance and

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<sup>1</sup> See the FDIC's interim final rule that was published in 78 FR 55340 (September 10, 2013), and its final rule that was published in 79 FR 20754 (April 14, 2014).

<sup>2</sup> For FDIC-supervised institutions subject to the advanced approaches framework, the revised capital rules were effective on January 1, 2014.

enforcement orders, agreements, and memoranda of understanding entered into by the FDIC prior to the effective date of this final rule. Regardless of whether an outstanding enforcement order refers to the superseded capital rule, all FDIC-supervised institutions are subject to the revised capital rules and must be in compliance with the minimum capital requirements in part 324.

### *Good Cause Determination*

The Administrative Procedure Act does not require an agency to publish a notice of proposed rulemaking in the *Federal Register* if an “agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”<sup>3</sup>

Staff recommends that the FDIC Board determine that a notice of proposed rulemaking and delayed effective date are unnecessary. The FDIC published three notices of proposed rulemakings (“NPRs”) before issuing the revised capital rules and provided for a comment period following the issuance of the interim final rule for the revised capital rules. These NPRs provided public notice that the revised capital rules would replace the capital rules in part 325 and subparts Y and Z of part 390 of the FDIC’s codified rules.<sup>4</sup> Those NPRs and the interim final rule provided sufficient notice (and opportunity for comment) that the revised capital rules would replace the previous capital rules on January 1, 2015. This final rule merely removes the superseded capital rules and references to the superseded capital rules in the Code of Federal

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<sup>3</sup> See 5 U.S.C. 553(b)(B). Additionally, the Administrative Procedure Act provides that, for good cause found and published with the final rule, an agency does not have to comply with the requirement that a substantive rule be published not less than 30 days before its effective date. Similarly, because the final rule imposes no additional reporting, disclosure, or other requirements on insured depository institutions, the effective date provisions in 12 U.S.C. 4802 do not apply.

<sup>4</sup> See generally, 78 FR 55340 (Sept. 10, 2013). (In the preamble to the interim final rule, the FDIC stated: “The interim final rule will replace the FDIC’s general risk-based capital rules, advanced approaches rule, market risk rule, and leverage rules in accordance with the transition provisions described below.”) Also, section 324.1(f) of the revised capital rules provide the timing for the implementation of the revised capital rules. See 12 CFR 324.1(f).

Regulations and imposes no new requirements on FDIC-supervised institutions. Staff believes that there is sufficient support for the FDIC Board to conclude that the good cause exceptions to the prior notice and the 30-day publication requirements are met for the reasons discussed above.

Conclusion

FDIC staff recommends that the FDIC Board adopt the attached final rule and authorize its publication in the *Federal Register* without a period of notice and comment and with an effective date as of its date of publication.

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