BOK FINANCIAL

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December 15, 2017

Via electronic delivery – regs.comments@occ.treas.gov

Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-281, Mail Stop 9W-11
Washington, DC 20219
Docket ID OCC-2017-0018

Re: Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996

Ladies and Gentlemen:

BOK Financial is a $33 billion full-service commercial banking organization with branches serving Oklahoma, Texas, New Mexico, Arizona, Colorado, Kansas, Missouri, and Arkansas. We appreciate the opportunity to provide comments on the proposed simplifications to the capital rule.

HVADC

Question 1: The agencies seek comment on whether the scope of the HVADC exposure definition presents operational concerns and is clear. Specifically what, if any, operational challenges would banking organizations expect when determining whether more than 50 percent of the loan proceeds will be used for acquisition, development, or construction purposes?

> The proposed definition is a significant improvement over the current criteria, will not be burdensome to interpret and should be more consistently applied by our banking competitors.

Question 2: The agencies seek comment on the degree to which the proposed HVADC exposure definition would simplify and enhance consistency in the treatment for credit facilities financing real estate acquisition, development, or construction. What other simplifications should the agencies consider to improve the simplicity and consistent treatment of these credit facilities?

> The revised definition which eliminates loan-to-value, contributed capital minimums and retention of capital requirements significantly simplifies and enhances the consistency of the treatment for HVADC loans. Current HVCRE requirements can be burdensome to interpret at the time of origination, are difficult to monitor on an ongoing basis and are inconsistently interpreted amongst our banking competitors.

Question 4: The agencies seek comment on whether the proposed community development exemption is clear. What, if any, additional clarification would help banking organizations identify exposures that meet the community development exemption? Please describe any implementation challenges with the exemption.

> The community development exemption is clear and we do not think any additional clarification is needed.

Question 5: The agencies seek comment on the clarity of the exemption for permanent loans in the proposed HVADC exposure definition and the ease with which banking organizations can determine whether an exposure qualifies for this exemption. What, if any, additional clarification would help banking organizations identify exposures that meet the permanent loan exemption?

> The rule permitting the exemption of permanent loans is clear but the definition of "permanent loans" as loans that meet prudent underwriting requirements of the institution at the time of origination permits wide latitude amongst banking institutions. Some would suggest that debt service coverage (DSC) of 1.10X at the current interest rate is adequate while others would measure prudent debt service coverage for a permanent loan as 1.25X at a stressed rate as the minimum requirement. This flexibility will tend to encourage minimally capitalized lenders to lower their permanent loan qualifying criteria (increasing risk) in order to reduce their capital requirements.
>
> We recommend establishing standard minimum loan-to-value, DSC and amortization criteria in order to remove the HVADC classification. Those terms would be: regulatory compliant loan-to-value for the applicable property type (following existing regulations), DSC of 1.15X calculated at current 10 year treasury rate + 2% and standard amortization period required by the institution's permanent loan guidelines. We believe these guidelines would discourage establishing high risk permanent loan criteria in order to reduce capital requirements.

Question 6: The agencies seek comment on the agencies' goal of achieving an appropriate balance between the proposed calibration and expanded scope of application for HVADC exposures. The agencies are interested in any additional data on the impact of the proposed rule's capital treatment of HVCRE exposures and the new capital treatment of HVADC exposures on bank holding companies, savings and loan holding companies, and insured depository institutions, both in the aggregate and on an individual banking organization level.

> We estimate that the proposed rule would result in an increase in Risk Weighted Assets of $270MM using data as of 9/30/2017. Our HVCRE outstanding loan balances were $302MM and we estimate applying the proposed criteria would result in $1,200MM of HVADC outstanding loan balances.

Question 7: What are the pros and cons of the grandfathering provision and does it sufficiently mitigate the compliance burden of having to reevaluate all acquisition, development, or construction exposures against the new HVADC exposure definition? Are there alternatives to the proposed grandfathering provision that the agencies should consider?

Maintaining two classifications is notably more burdensome and costly, so we would not recommend grandfathering the HVCRE designation. We prefer to invest the time and resources to convert existing HVCRE loans to HVADC classification. This reduces the ongoing need to track the retention of capital in existing HVCRE loans which is very time consuming and a source of friction with our borrowers.

Question 8: The agencies request comment on whether it would be appropriate to replace the HVCRE exposure definition, as it is used in the advanced approaches, with the proposed HVADC exposure definition. What, if any, challenges do advanced approaches banking organizations face as a result of the agencies maintaining the existing HVCRE exposure definition for purposes of the advanced approaches while also proposing to adopt the more expansive HVADC exposure definition for purposes of the standardized approach? What, if any, changes should the agencies consider to address these challenges?

Our concern on this topic relates to level playing field. To the extent that Advanced Approach banks have HVADC in excess of HVCRE, they may have a capital advantage, and therefore a loan pricing advantage on these loans over banks using the standardized approach. Banks using the standardized approach would be required to use 130% risk weight on the same loans Advanced Approach banks might be able to use a 100% risk weight, depending on which capital approach is their binding constraint. We recommend consistent treatment for HVCRE / HVADC between the Advanced Approach and the Standardized Approach.

MSAs, Temporary Difference DTAs, Investments in the Capital of Unconsolidated Financial Institutions, and Minority Interest

We are supportive of the revised thresholds for MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions and believe the proposed treatment is appropriately risk-sensitive and removes the unnecessary complexity of the existing approach. Our institution views the elimination of the combination limit, and the change to the MSA threshold as most important. It is possible that tax reform legislation could reduce the level of the deferred tax liability associated with certain MSAs and, due to the netting allowed by the current rule, and increase net MSA levels for many financial institutions moving the industry closer to the 10% threshold.

Question 9: What impact would the agencies' proposed changes to the treatment of MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions for non-advanced approaches banking organizations have on (i) risks to the safety and soundness of the banking system and (ii) regulatory burden on non-advanced approaches banking organizations? If possible, please provide relevant data to support comments.

Relating to MSAs, we do not see safety and soundness concerns. Based on the levels at which we observed full-portfolio MSAs trade during and after the financial crisis, the 250% risk weight seems to provide ample capital support. The reduction in regulatory burden from the proposal would be very important and translates directly to a customer impact, as follows. When banks approach the existing 10% threshold, they are faced with the economic imperative to sell a portion of their servicing portfolio, due to the dollar-for-dollar capital reduction provision in the current capital rule. In the case of BOK Financial and many other mid-sized banks, our MSA growth is all organic growth, i.e. our own franchise customers. Many of these customers came to us because we do not sell servicing. They do not want the servicing of their loan to be sold, and we do not want to sell the servicing of their loan. But the relatively tight 10% limit creates conditions where any given bank with MSA's may need to, and the buyers of that MSA will be skewed toward the non-bank sector.

The existing regulation encourages mortgage loan servicing to be sold in bulk by banks to less well-regulated non-bank providers, which could actually increase operational and / or compliance risk for the financial system, and negatively impact consumers. The burden to banks of selling such assets is considerable, in terms of the friction costs of execution of servicing sales, the loss of an important touch-point to customers, as well as the negative consequences to the organic growth of our franchise.

Relating to DTAs, we do not see material safety and soundness concerns. The risk weight of 250% provides a significant element of safety. In a stress scenario, we would expect that impairment of the DTA under U.S. GAAP would likely occur before the 25% threshold is reached. For those banks with MSAs the 15% combination limit of the existing capital rule effectively translates into a 5% DTA limit, which is quite burdensome.

We do not have meaningful experience with Unconsolidated Financial Subsidiaries.

<u>Question 11</u>: What, if any, operational challenges does the proposed treatment of MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions pose? What, if any, modifications should the agencies consider to address such challenges?

We do not see any new challenges.

<u>Question 12</u>: What would be (i) the benefits and drawbacks and (ii) effects on regulatory burden of the agencies' proposed revisions to the quantitative limits for including minority interests in regulatory capital for non-advanced approaches banking organizations? The agencies solicit comment on all aspects of the proposed changes to the inclusion of minority interests in regulatory capital for non-advanced approaches banking organizations. If possible, please provide relevant data to support comments.

We appreciate the openness to simplification for minority interest deductions. We agree that the proposed approach is less burdensome. The downside of the proposed approach is how this limitation might play out in a scenario of economic stress. Consider a bank which initially issues a "maximum" level of bank-level subordinated debt which fully qualifies for consolidated Tier 2 capital treatment. Because the limitation is expressed as

10% of parent company capital, and because parent company capital may decline in a stress scenario, the effective limit may initially be 115 bps of Total Risk Based Capital at the consolidated level, but in the depths of a stress scenario where all capital levels and ratios decline, the limit of 115 bps may fall to 95bp (for example) and the Total Risk Based Capital ratio at the consolidated level may fall faster than all the other capital ratios. To eliminate this effect, the capital limitations could be expressed in terms of basis points, such as 70bp limit for CET1, 85bp for Tier 1, and 105bp for Total Risk Based Capital. We would recommend 80bp, 95bp, and 115bp respectively. Or a 75bp limit on Tier 1 elements, and 125bp on the sum of Tier 1 and Tier 2 elements. This would seem to achieve the same basic outcome without the practical uncertainty of how much bank-level subordinated debt will qualify at the consolidated level in a stress scenario. We recognize that this effect is not terribly large, or that the effect of the proposed approach may be intentional. However, we offer this idea in the interest of increasing capital predictability and durability for small and mid-sized banks.

Question 13: The agencies solicit comments on the proposed technical amendments to the capital rule. What, if any, potentially unintended consequences do the proposed changes pose and how should the agencies consider addressing such consequences? What, if any, additional technical amendments not already identified by the agencies in this proposed rule would be appropriate for the agencies to consider and why?

Removing the transition provisions is operationally simpler and reduces regulatory burden.

Question 14: While the proposed rule addresses comments received during the EGRPRA review regarding the complexity of the risk based capital standards, the agencies seek comment on additional alternatives to simplify and streamline the regulatory capital rules. The agencies recognize the difficulties in achieving simplification of the risk based capital standards, particularly the burden related to their calculation and reporting, and the potential disparate impact to smaller and medium sized banks relative to their GSIB counterparts. Therefore, the agencies seek comment on whether they should consider a fundamental change to the manner in which banking organizations calculate and comply with minimum capital standards such as through the use of a simple U.S. GAAP based equity to assets ratio (leverage ratio) for non-GSIB banks. If so, what would be the appropriate definition and level for the ratio? Also, what relief should be realized upon implementation of this capital standard relative to changes in the call report and other reporting standards?

We recommend against a U.S. GAAP based equity metric for regulatory capital. This would effectively put an important element of capital policy in the hands of the FASB, and the FASB has no duty to support, or even consider, the stability of the financial system.

We are concerned about the potential cliff effects which could result from a leverage driven mechanism. Some constructs which have received attention over the last year or two have included a 10% leverage ratio threshold as a trigger for certain regulatory relief elements. Assuming that the threshold was based on standard Tier 1 leverage ratios, over half of banks under $1 billion (roughly 60% or 2,770 banks) would appear to have qualified for the set of relief elements triggered by such a 10% threshold as of December 2016. Smaller banks do not generally have ready access to the capital markets. Those banks near the threshold would face an incentive to shrink their balance sheets in an effort to increase leverage capital ratios. These balance sheet reductions would likely occur through some combination of reductions in loans and investment securities. To the extent that reductions in loans are pursued, that could slow their local economies. To the extent that reductions in investment securities are pursued, that will harm liquidity.

Banks just over the 10% will also face an incentive to shrink their balance sheets to build up capital since they will need a little cushion to protect from slipping below the threshold. As one looks at banks further above $1 billion in assets, many fewer banks already have 10% leverage ratios. Will some of those banks chose to shrink or reduce growth in their balance sheets and build capital to meet the 10% level? More importantly, what happens in the next big economic down-turn? Banks with leverage ratios just over 10% may need to shrink to stay above the 10% threshold and avoid the impending regulatory burden should they slip below. The costs and execution difficulty of a quick build-up of regulatory capability could be significant, depending on the magnitude of the relief elements. Those banks will face an incentive to slow their lending activities to preserve capital ratios. That would be pro-cyclical, and exactly the opposite of what the economy would need at that time. Reductions in securities portfolios under those circumstances could harm liquidity, just when liquidity will be important. While we support the desire to simplify capital rules, our view is that cliff effects should be minimized to the extent possible. We do not think that the agencies should consider a fundamental shift in capital standards.

Conclusion

Thank you for the opportunity to provide feedback. We appreciate both the importance of capital policy and the challenges associated with its development. Please contact us if we can clarify or provide any additional background for our comments.

Sincerely,

[redacted]

Martin Grunst, CFA
Chief Risk Officer