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September 19, 2012

The Honorable Tim Johnson
Chairman
The Honorable Richard C. Shelby
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Spencer Bachus
Chairman
The Honorable Barney Frank
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Department of the Treasury, Office of the Comptroller of the Currency; Federal Reserve System, and Federal Deposit Insurance Corporation: Risk-Based Capital Guidelines: Market Risk*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of the Treasury, Office of the Comptroller of the Currency (OCC); the Board of Governors of the Federal Reserve System (Board), and Federal Deposit Insurance Corporation (FDIC), entitled "Risk-Based Capital Guidelines: Market Risk" (RINs: 1557-AC99; 7100-AD61; 3064-AD70). We received the rule from the Department of the Treasury on September 5, 2012. It was published in the *Federal Register* as a joint final rule on August 30, 2012, with an effective date of January 1, 2013. 77 Fed. Reg. 53,060.

The final rule revises OCC's, the Board's, and FDIC's market risk capital rules to better capture positions for which the market risk capital rules are appropriate; reduce procyclicality; enhance the rules' sensitivity to risks that are not adequately captured under current methodologies; and increase transparency through enhanced disclosures. The final rule does not include all of the methodologies adopted by the Basel Committee on Banking Supervision for calculating the standardized specific risk capital requirements for debt and securitization positions due to their reliance on credit ratings, which is impermissible under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Instead, the final rule

includes alternative methodologies for calculating standardized specific risk capital requirements for debt and securitization positions.

Enclosed is our assessment of agencies' compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that the agencies complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Mary H. Gottlieb
Regulatory Specialist, LRA
Office of the Comptroller of the Currency
Department of the Treasury

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMPTROLLER OF THE CURRENCY;
FEDERAL RESERVE SYSTEM, AND
FEDERAL DEPOSIT INSURANCE CORPORATION
ENTITLED
"RISK-BASED CAPITAL GUIDELINES: MARKET RISK"
(RINS: 1557-AC99; 7100-AD61; 3064-AD70)

(i) Cost-benefit analysis

The costs and benefits of the rule were assessed under OCC's Unfunded Mandates Reform Act (UMRA) Determination.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

The Regulatory Flexibility Act, 5 U.S.C. §§ 601 *et seq.*, generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment a final regulatory flexibility analysis that describes the impact of a final rule on small entities. The regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the *Federal Register* along with its rule. Under regulations issued by the Small Business Administration, a small entity includes a commercial bank or bank holding company with assets of \$175 million or less (a small banking organization). As of December 31, 2011, the agencies state that there were approximately 2,385 small bank holding companies, 607 small national banks, 386 small state member banks, and 2,466 small state nonmember banks. According to the agencies, no comments on the effect of small entities were received in response to the notice of proposed rulemaking. The agencies note that the final rule applies only if a bank holding company or bank has aggregated trading assets and trading liabilities equal to 10 percent or more of quarter-end total assets or \$1 billion or more. The agencies state that no small bank holding companies or banks satisfy these criteria. Therefore, according to the agencies no small entities would be subject to this rule.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. §§ 1532-1535

OCC conducted an UMRA Determination that included an assessment on the need for regulatory action and a cost-benefit analysis of the final rule. The determination

also examined a comparison between the final rule and baseline, comparison between final rule and alternatives, and an examination of the overall impact of the final rule, baseline, and alternatives.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On January 11, 2011, the agencies issued a joint notice of proposed rulemaking (January 2011 proposal) that sought public comment on revisions to the agencies' market risk capital rules to implement the 2005, 2009, and 2010 revisions. 76 Fed. Reg. 1,890. In December 2011, the agencies issued a joint notice of proposed rulemaking that amended the January 2011 proposal (December 2011 amendment) to include alternative methodologies for calculating the specific risk capital requirements for covered debt and securitization positions under the market risk capital rules, consistent with section 939A of the Dodd-Frank Act. The agencies received six comment letters on the January 2011 proposal and 30 comment letters on the December 2011 amendment from banking organizations, trade associations representing the banking or financial services industry, and other interested parties.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. §§ 3501–3521), the agencies may not conduct or sponsor, and the respondent is not required to respond to an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The agencies explain that the OMB control number for the OCC and the FDIC will be assigned and the OMB control number for the Board will be 7100–0314. In conjunction with the January 2011 notice of proposed rulemaking, the OCC and the FDIC submitted the information collection requirements contained therein to OMB for review. In response, OMB filed comments with the OCC and FDIC in accordance with 5 CFR § 1320.11(c) withholding PRA approval. The agencies subsequently determined that there were no additional information collection requirements in the December 2011 Amendment and, therefore, the agencies made no PRA filing in conjunction with it. In addition, the agencies note that the final rule contains no additional information collection requirements. The OCC and the FDIC have submitted the information collection requirements in the final rule to OMB for review and approval under 44 U.S.C. § 3506 and 5 CFR part 1320. The Board reviewed the final rule under the authority delegated to the Board by OMB. The final rule contains requirements subject to the PRA. The information collection requirements are found in sections 3, 4, 5, 6, 7, 8, 9, 10, and 13 of the final rule.

Statutory authorization for the rule

The final rule is authorized by 12 U.S.C. §§ 24, 36, 92a, 93a, 161, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1815(a), 1815(b), 1816, 1817(j)(13), 1818, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1820(d)(9), 1823(j), 1828 note, 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1828 note, 1831, 1831i, 1831n note, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835, 1835a, 1843(c)(8), 1844(b), 1851, 1882, 1972(1), 2901–2907, 3105, 3106, 3106a(1), 3108, 3108(a), 3310, 3331–3351, 3906–3909, 4808; and 5101 et seq.; 15 U.S.C. §§ 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, 78w, 1681s, 1681w, 6801 and 6805; 31 U.S.C. § 5318; and 42 U.S.C. §§ 4012a, 4104a, 4104b, 4106, and 4128.

Executive Order No. 12,866 (Regulatory Planning and Review)

Though the Board is an independent regulatory agency not subject to the review requirements of the order, the remaining agencies did not include an analysis of the final rule in its submission to the Comptroller General.

Executive Order No. 13,132 (Federalism)

Though the Board is an independent regulatory agency not subject to the review requirements of the order, the remaining agencies did not include an analysis of the final rule in its submission to the Comptroller General.