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September 27, 2013

The Honorable Tim Johnson
Chairman
The Honorable Michael D. Crapo
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Jeb Hensarling
Chairman
The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Federal Deposit Insurance Corporation: Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach for Risk-weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Federal Deposit Insurance Corporation (FDIC) entitled "Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach for Risk-weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule" (RIN: 3064-AD95). We received the rule on September 16, 2013. It was published in the *Federal Register* as an interim final rule with request for comments on September 10, 2013. 78 Fed. Reg. 55,340.

The interim final rule revises its risk-based and leverage capital requirements for FDIC-supervised institutions. This interim final rule is substantially identical to a joint final rule issued by the Office of the Comptroller of the Currency (OCC) and the Board of Governors of the Federal Reserve System (Federal Reserve) (together, with FDIC, the agencies). The interim final rule consolidates three separate notices of proposed rulemaking that the agencies jointly published in the *Federal Register* on August 30, 2012, with selected changes. The interim final rule implements a revised definition of regulatory capital, a new common equity tier 1 minimum capital requirement, a higher minimum tier 1 capital requirement, and, for FDIC-supervised institutions subject to the advanced approaches risk-based capital rules, a supplementary leverage ratio that incorporates a broader set of exposures in the denominator. The interim final rule incorporates these new requirements into FDIC's prompt corrective action (PCA) framework. In addition, the interim final rule establishes limits on FDIC-supervised institutions'

capital distributions and certain discretionary bonus payments if the FDIC-supervised institution does not hold a specified amount of common equity tier 1 capital in addition to the amount necessary to meet its minimum risk-based capital requirements. The interim final rule amends the methodologies for determining risk-weighted assets for all FDIC-supervised institutions. The interim final rule also adopts changes to the FDIC's regulatory capital requirements that meet the requirements of section 171 and section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The interim final rule also codifies FDIC's regulatory capital rules, which have previously resided in various appendices to their respective regulations, into a harmonized integrated regulatory framework. In addition, FDIC is amending the market risk capital rule (market risk rule) to apply to state savings associations.

FDIC is issuing these revisions to its capital regulations as an interim final rule. FDIC invites comments on the interaction of this rule with other proposed leverage ratio requirements applicable to large, systemically important banking organizations. This interim final rule otherwise contains regulatory text that is identical to the common rule text adopted as a final rule by the Federal Reserve and the OCC. This interim final rule enables FDIC to proceed on a unified, expedited basis with the other federal banking agencies pending consideration of other issues. Specifically, FDIC intends to evaluate this interim final rule in the context of the proposed well-capitalized and buffer levels of the supplementary leverage ratio applicable to large, systemically important banking organizations, as described in a separate Notice of Proposed Rulemaking (NPR) published in the *Federal Register* August 20, 2013.

The interim final rule has an effective date of January 1, 2014, and a mandatory compliance date of January 1, 2014, for advanced approaches FDIC-supervised institutions and January 1, 2015, for all other FDIC-supervised institutions. Comments on the interim final rule must be received no later than November 12, 2013.

Enclosed is our assessment of FDIC's 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 FDIC 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: Eric J. Spittler
Director, Office of Legislative Affairs
Federal Deposit Insurance Corporation

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
FEDERAL DEPOSIT INSURANCE CORPORATION
ENTITLED
"REGULATORY CAPITAL RULES: REGULATORY CAPITAL, IMPLEMENTATION
OF BASEL III, CAPITAL ADEQUACY, TRANSITION PROVISIONS,
PROMPT CORRECTIVE ACTION, STANDARDIZED APPROACH FOR
RISK-WEIGHTED ASSETS, MARKET DISCIPLINE AND DISCLOSURE
REQUIREMENTS, ADVANCED APPROACHES RISK-BASED CAPITAL RULE,
AND MARKET RISK CAPITAL RULE"
(RIN: 3064-AD95)

(i) Cost-benefit analysis

FDIC has considered concerns raised by commenters and believes that it is important to take into account and address regulatory costs (and their potential effect on FDIC-supervised institutions' roles as financial intermediaries in the economy) when FDIC establishes or revises regulatory requirements. In developing regulatory capital requirements, these concerns are considered in the context of the FDIC's broad goals—to enhance the safety and soundness of FDIC-supervised institutions and promote financial stability through robust capital standards for the entire banking system. The agencies participated in the development of a number of studies to assess the potential impact of the revised capital requirements, including participating in the Basel Committee on Banking Supervision's (BCBS) Macroeconomic Assessment Group as well as its quantitative impact study (QIS), the results of which were made publicly available by BCBS upon their completion. FDIC notes that BCBS analysis suggested that stronger capital requirements help reduce the likelihood of banking crises while yielding positive net economic benefits. According to FDIC, to evaluate the potential reduction in economic output resulting from the new framework, the analysis assumed that banking organizations replaced debt with higher-cost equity to the extent needed to comply with the new requirements, that there was no reduction in the cost of equity despite the reduction in the riskiness of banking organizations' funding mix, and that the increase in funding cost was entirely passed on to borrowers. Given these assumptions, FDIC states that the analysis concluded there would be a slight increase in the cost of borrowing and a slight decrease in the growth of the gross domestic product. Additionally, FDIC states that the analysis concluded that this cost would be more than offset by the benefit to the gross domestic product resulting from a reduced likelihood of prolonged economic downturns associated with a banking system whose lending capacity is highly vulnerable to economic shocks.

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

In accordance with section 4 of the RFA, FDIC published the following summary of its final regulatory flexibility analysis (FRFA). For purposes of the FRFA, FDIC analyzed the potential economic impact on the entities it regulates with total assets of \$175 million or less and \$500 million or less, including state nonmember banks and state savings associations (small FDIC-supervised institutions). As discussed in the interim final rule, FDIC believes that this interim final rule may have a significant economic impact on a substantial number of the small entities under its jurisdiction. Accordingly, FDIC has prepared a FRFA pursuant to the RFA.

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

As an independent regulatory agency, FDIC is not subject to the Act.

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

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

On August 30, 2012, FDIC, OCC, and the Federal Reserve published in the *Federal Register* three joint notices of proposed rulemaking seeking public comment on revisions to their risk-based and leverage capital requirements and on methodologies for calculating risk-weighted assets under the standardized and advanced approaches. 77 Fed. Reg. 52,792; 77 Fed. Reg. 52,888; 77 Fed. Reg. 52,978.

FDIC states that each agency received over 2,500 public comments on the proposals from banking organizations, trade associations, supervisory authorities, consumer advocacy groups, public officials (including Members of the U.S. Congress), private individuals, and other interested parties. FDIC explains that overall, while most commenters supported more robust capital standards and the agencies' efforts to improve the resilience of the banking system, many commenters expressed concerns about the potential costs and burdens of various aspects of the proposals, particularly for smaller banking organizations. A substantial number of commenters also requested withdrawal of, or significant revisions to, the proposals. A few commenters argued that new capital rules were not necessary at this time. Some commenters requested that the agencies perform additional studies of the economic impact of part or all of the proposed rules. Many commenters asked for additional time to transition to the new requirements. FDIC provided a more detailed discussion of the comments provided on particular aspects of the proposals in the interim final rule.

According to FDIC, the interim final rule will replace FDIC's general risk-based capital rules, advanced approaches rule, market risk rule, and leverage rules in accordance with the transition provisions described in the interim final rule. After considering the comments received, FDIC has made substantial modifications in the interim final rule to address specific concerns raised by commenters regarding the cost, complexity, and burden of the proposals.

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

In conjunction with the proposed rules, FDIC submitted the information collection requirements contained therein to the Office of Management and Budget (OMB) for review. In response, OMB filed comments with FDIC in accordance with 5 C.F.R. § 1320.11(c) withholding PRA approval and instructing that the collection should be resubmitted to OMB at the interim final rule stage. As instructed by OMB, the information collection requirements contained in this interim final rule have been submitted by FDIC to OMB for review under PRA, under OMB Control No. 3064-0153.

FDIC states that the interim final rule contains information collection requirements subject to PRA. According to FDIC, they are found in sections 324.3, 324.22, 324.35, 324.37, 324.41, 324.42, 324.62, 324.63 (including tables), 324.121, through 324.124, 324.132, 324.141, 324.142, 324.153, 324.173 (including tables). The information collection requirements

contained in sections 324.203, through 324.210, and 324.212 concerning market risk are approved by OMB under Control No. 3604–0178.

Statutory authorization for the rule

The interim final rule is authorized by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act). Pub. L. No. 111–203.

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

The interim final rule has been reviewed by OMB and determined to be economically significant.

Executive Order No. 13,132 (Federalism)

As an independent regulatory agency, FDIC is not subject to the requirements of the Executive Order.