



441 G St. N.W.
Washington, DC 20548

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February 18, 2014

The Honorable Debbie Stabenow
Chairwoman
The Honorable Thad Cochran
Ranking Member
Committee on Agriculture, Nutrition, and Forestry
United States Senate

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

The Honorable Frank D. Lucas
Chairman
The Honorable Collin C. Peterson
Ranking Member
Committee on Agriculture
House of Representatives

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

Subject: *Department of the Treasury, Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Securities and Exchange Commission, Commodity Futures Trading Commission: Treatment of Certain Collateralized Debt Obligations Backed Primarily by Trust Preferred Securities With Regard to Prohibitions and Restrictions on Certain Interests In, and Relationships With, Hedge Funds and Private Equity Funds*

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, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Securities and Exchange Commission, and Commodity Futures Trading Commission (individually, an agency, and collectively, the agencies) entitled "Treatment of Certain Collateralized Debt Obligations Backed Primarily by Trust Preferred Securities With Regard to Prohibitions and Restrictions on Certain Interests In, and Relationships With, Hedge Funds and

Private Equity Funds” (RINs: 1557-AD79; 7100 AE-11; 3064-AE11; 3235-AL52; 3038-AE13). We received the rule from the agencies on January 27, January 30, January 31, and February 6, 2014. It was published in the *Federal Register* as an interim final rule on January 31, 2014, with an effective date of April 1, 2014. 79 Fed. Reg. 5223.

The final rule is being adopted by the agencies as a common interim final rule that would permit banking entities to retain investments in certain pooled investment vehicles that invested their offering proceeds primarily in certain securities issued by community banking organizations of the type grandfathered under section 171 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The interim final rule is a companion rule to the final rules adopted by the agencies to implement section 13 of the Bank Holding Company Act of 1956 (BHC Act), which was added by section 619 of the Dodd-Frank Act.

The agencies state that comments on the interim final rule should be received by March 3, 2014.

Enclosed is our assessment of the 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, LRAD
Office of the Comptroller of the Currency
Department of the Treasury

Linda Robertson, Assistant to the Board of
Governors of the Federal Reserve System

Eric J. Spitler
Director, Office of Legislative Affairs
Federal Deposit Insurance Corporation

Elizabeth Murphy
Secretary of the Securities and Exchange Commission

Christopher J. Kirkpatrick
Deputy Secretary of the Commission
Commodity Futures Trading Commission

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,
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM,
FEDERAL DEPOSIT INSURANCE CORPORATION,
SECURITIES AND EXCHANGE COMMISSION,
COMMODITY FUTURES TRADING COMMISSION
ENTITLED
"TREATMENT OF CERTAIN COLLATERALIZED DEBT OBLIGATIONS
BACKED PRIMARILY BY TRUST PREFERRED SECURITIES WITH REGARD TO
PROHIBITIONS AND RESTRICTIONS ON CERTAIN INTERESTS IN, AND RELATIONSHIPS
WITH, HEDGE FUNDS AND PRIVATE EQUITY FUNDS"
(RINS: 1557-AD79; 7100 AE-11; 3064-AE11; 3235-AL52; 3038-AE13)

(i) Cost-benefit analysis

In its submission to the Comptroller General, the agencies did not include an analysis of the costs and benefits of the interim final rule.

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

The interim final rule applies to banking entities that may have ownership interests in trust preferred securities or subordinated debt securities (collectively referred to herein as TruPS) issued by community banks frequently through securitization pools (TruPS CDOs). The agencies state that the requirements of the Regulatory Flexibility Act are not applicable to this interim final rule. Nonetheless, the agencies observe that in light of the way the interim final rule operates, they believe that, with respect to the entities subject to the interim final rule and within each agency's respective jurisdiction, the interim final rule would not have a significant economic impact on a substantial number of small entities. The agencies requested comment on their conclusion that the new interim final rule should not have a significant economic impact on a substantial number of small entities.

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

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires a federal agency to prepare a budgetary impact statement before promulgating any rule likely to result in a federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. UMRA only applies when the federal agency issues a general notice of proposed rulemaking. Since this rule is published as an interim final rule, the agencies believe it is not subject to section 202 of the UMRA.

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

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

Each agency issued a common final rule implementing section 619 that becomes effective on April 1, 2014 (Final Rule). The agencies state that after the adoption of the Final Rule implementing section 619, a number of community banking organizations reached out to the agencies to express concerns about the Final Rule and, in particular, the implications for financial statement purposes relating to the banking organizations' holdings resulting from their previous capital-raising efforts involving TruPS issued by banking organizations for regulatory capital purposes. The agencies requested comment in the notices of proposed rulemaking issued by the agencies regarding the effects of the definition of covered fund and ownership interests on issuers of asset-backed securities, including the distinctions between debt and equity interests. The agencies also included a request for comment on trust preferred securities specifically in the context of the proposed rule's permitted activity for underwriting activities. Notwithstanding such requests, the agencies believe that the recently expressed concerns regarding the impact of including TruPS CDOs in the definition of covered fund or on investments by community banks in TruPS CDOs were not included in comments to the agencies during the comment process.

The agencies noted that they have considered carefully these recently identified concerns, particularly in light of the provisions in section 171 of the Dodd-Frank Act, and the concerns raised by community banking organizations regarding the consistency of treatment regarding TruPS issued by community banking organizations, and grandfathered under section 171, and the TruPS CDOs that were used as capital access vehicles for the TruPS issuances. In light of the significant concerns expressed, the agencies believe there is an urgent need to act in light of the uncertainty expressed by some community banking organizations about whether the final rule will require them to dispose of their holdings of TruPS CDOs, which they contend could have an immediate effect on their financial statements and their bank regulatory capital. The Board, OCC, FDIC, and SEC noted in the Statement that their accounting staffs believe that, "consistent with generally accepted accounting principles, any actions in January 2014 that occur before the issuance of December 31, 2013, financial reports, including the FR Y-9C and the Call Report, should be considered when preparing those financial reports." The agencies' decision in this interim final rule to permit a banking entity to retain certain TruPS CDOs should be factored into the accounting analysis. Accordingly, the agencies believe it necessary to take action at this time before banking entities are required to file their next financial reports. For the reasons discussed throughout, the agencies found good cause to act immediately to adopt this rule on an interim final basis without prior solicitation of comment. With this interim final rule and request for comment, the agencies are not reopening the final rules that have previously been adopted under section 619.

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

The agencies note that the new interim final rule does not create new regulatory obligations for banking entities, and therefore does not impose any new "collections of information" within the meaning of PRA nor does it create any new filing, reporting, recordkeeping, or disclosure reporting requirements. Accordingly, the agencies did not submit the interim final rule to the Office of Management and Budget for review in accordance with PRA. The agencies requested comment on their conclusion that there are no collections of information.

Statutory authorization for the rule

The agencies state that the interim final rule is issued under section 13 of the Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1851.

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

In its submission to the Comptroller General, the agencies did not include an analysis of the Order. However, as independent regulatory agencies, the Board, FDIC, SEC, and CFTC are not subject to the requirements of the Order.

Executive Order No. 13,132 (Federalism)

In its submission to the Comptroller General, the agencies did not include an analysis of the Order. However, as independent regulatory agencies, the Board, FDIC, SEC, and CFTC are not subject to the requirements of the Order.