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September 21, 2009

The Honorable Christopher J. Dodd
Chairman
The Honorable Richard C. Shelby
Ranking Minority Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

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

Subject: *Federal Reserve System: Capital Adequacy Guidelines; Small Bank Holding Company Policy Statement: Treatment of Subordinated Securities Issued to the United States Treasury Under the Emergency Economic Stabilization Act of 2008*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Board of Governors of the Federal Reserve System (Board), entitled “Capital Adequacy Guidelines; Small Bank Holding Company Policy Statement: Treatment of Subordinated Securities Issued to the United States Treasury Under the Emergency Economic Stabilization Act of 2008” (Docket No. R-1356). We received the rule on September 4, 2009. It was published in the *Federal Register* as an “interim final rule with request for public comment” on June 1, 2009. 74 Fed. Reg. 26,077.

The interim final rule with request for public comment permits bank holding companies that have made a valid election to be taxed under Subchapter S of Chapter 1 of the U.S. Internal Revenue Code (S-Corp BHCs) and bank holding companies organized in mutual form (Mutual BHCs) to include the full amount of any new subordinated debt securities issued to the Treasury under the capital purchase program in tier 1 capital for purposes of the Board’s risk-based and leverage capital guidelines for bank holding companies, provided that the Subordinated Securities will count toward the limit on the amount of other restricted core capital elements includable in tier 1 capital. The interim final rule with request for public comment also allows bank holding companies that are subject to the

Board's Small Bank Holding Company Policy Statement that are S-Corps or Mutual BHCs to exclude the Subordinated Securities from treatment as debt for purposes of the debt-to-equity standard under the Small Bank Holding Company Policy Statement.

The Congressional Review Act requires major rules to have a 60-day delay in their effective date following their publication in the *Federal Register* or receipt by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). However, notwithstanding the 60-day delay requirement, any rule that an agency for good cause finds that notice and public procedures are impractical, unnecessary, or contrary to the public interest is to take effect when the promulgating agency so determines. 5 U.S.C. § 808(2). The Board found good cause, by determining that it would be impracticable, unnecessary, or contrary to the public interest to issue a notice of proposed rulemaking and provide an opportunity for comment before the effective date. Therefore, the requirement to have a 60-day delay does not apply to this rule.

Enclosed is our assessment of the Board'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 the Board 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: Linda Robertson
Assistant to the Board of Governors
Federal Reserve System

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
FEDERAL RESERVE SYSTEM
ENTITLED
"CAPITAL ADEQUACY GUIDELINES; SMALL BANK HOLDING
COMPANY POLICY STATEMENT: TREATMENT OF
SUBORDINATED SECURITIES ISSUED TO THE UNITED STATES
TREASURY UNDER THE EMERGENCY ECONOMIC
STABILIZATION ACT OF 2008"
(DOCKET NO. R-1356)

(i) Cost-benefit analysis

The Board did not prepare a cost-benefit analysis in conjunction with the interim final rule.

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

The Board certified that the interim final rule will not have a significant impact on a substantial number of small bank holding companies.

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

The Unfunded Mandates Reform Act does not apply to independent regulatory agencies, such as the Federal Reserve System.

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

Administrative Procedure Act (APA), 5 U.S.C. §§ 551 *et seq.*

The Board issued this rule as an interim final rule with request for public comment, with an effective date of June 1, 2009. The APA generally requires that rules be published not less than 30 days before their effective date. 5 U.S.C. § 553(d). The Board concluded, however, that “good cause” exists to publish the interim final rule less than 30 days before the effective date. *Id.*

The Board similarly concluded that there was “good cause” to exempt this interim final rule with request for public comment from the notice and comment requirements under the APA, 5 U.S.C. § 552(b)(B). Despite the publication and effective date of June 1, 2009, comments could be submitted through July 1, 2009.

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

This final rule imposes no new information and recordkeeping requirements; therefore, the Office of Management and Budget (OMB) clearance under the Paperwork Reduction Act is not required.

Statutory authorization for the rule

The interim final rule with request for public comment is authorized by section 101 of the Emergency Economic Stabilization Act of 2008, Division A of Public Law No. 110-343, 122 Stat. 3765 (2008).

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

The Executive Order does not apply to independent regulatory agencies, such as the Federal Reserve System.

Executive Order No. 13,132 (Federalism)

The Executive Order does not apply to independent regulatory agencies, such as the Federal Reserve System.