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DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 46

[Docket ID. OCC-2017-0021]

RIN 1557-AD85

Annual Stress Test—Technical and Conforming Changes

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Proposed rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is inviting comment on a proposed rule that would make several revisions to its stress testing rule. The proposed rule would change the range of possible “as-of” dates used in the global market shock component to conform to changes recently made by the Board of Governors of the Federal Reserve System (Board) to its stress testing regulations. The proposed rule would also change the transition process for covered institutions with \$50 billion or more in assets. Under the proposed rule, a covered institution that becomes an over \$50 billion covered institution, as that term is defined in the OCC stress testing regulation, before September 30 would become subject to the requirements applicable to an over \$50 billion covered institution beginning on January 1 of the second calendar year after the covered institution becomes an over \$50 billion covered institution, and a covered institution that becomes an over \$50 billion covered institution after September 30 would become subject to the requirements applicable to an over \$50 billion covered institution beginning on January 1 of the third calendar year after the covered institution becomes an over \$50 billion covered institution. The proposed rule would also make certain

technical changes to clarify the requirements of the OCC's stress testing regulation.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments to the OCC by any of the methods set forth below. Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments through the Federal eRulemaking Portal or e-mail, if possible. Please use the title "Annual Stress Test—Technical and Conforming Changes" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- Federal eRulemaking Portal—"Regulations.gov": Go to *www.regulations.gov*.

Enter "Docket ID OCC-2017-0021" in the Search Box and click "Search." Click on "Comment Now" to submit public comments.

- Click on the "Help" tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.

- E-mail: *regs.comments@occ.treas.gov*.

- Mail: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street, SW., suite 3E-218, Washington, DC 20219.

- Hand Delivery/Courier: 400 7th Street, SW., suite 3E-218, Washington, DC 20219.

- Fax: (571) 465-4326.

Instructions: You must include "OCC" as the agency name and "Docket ID OCC-2017-0021" in your comment. In general, the OCC will enter all comments received into the docket and publish them on the Regulations.gov website without change, including any business or

personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- Viewing Comments Electronically: Go to *www.regulations.gov*. Enter “Docket ID OCC-2017-0021” in the Search box and click “Search.” Click on “Open Docket Folder” on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on “View all documents and comments in this docket” and then using the filtering tools on the left side of the screen.
- Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov. The docket may be viewed after the close of the comment period in the same manner as during the comment period.
- Viewing Comments Personally: You may personally inspect and photocopy comments at the OCC, 400 7th Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649-5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

FOR FURTHER INFORMATION CONTACT: Hein Bogaard, Lead Economic Expert, International Analysis and Banking Condition, (202) 649-5450; Andrew Tschirhart, Financial

Analyst, Large Bank Supervision, (202) 649-6210; Kari Falkenborg, Senior Financial Analyst, Midsize and Community Bank Supervision, (312) 917-5000; Henry Barkhausen, Counsel, or Ron Shimabukuro, Senior Counsel, Legislative and Regulatory Activities Division, (202) 649-5490; for persons who are deaf or hearing impaired, TTY, (202) 649-5597.

SUPPLEMENTARY INFORMATION:

I. Background

Section 165(i) of the Dodd-Frank Wall Street Reform and Consumer Protection Act¹ (“Dodd-Frank Act”) requires two types of stress tests. Section 165(i)(1) requires the Board to conduct annual stress tests of holding companies with \$50 billion or more in assets (“supervisory stress tests”). Section 165(i)(2) requires the federal banking agencies to issue regulations requiring financial companies with more than \$10 billion in assets to conduct annual stress tests themselves (“company-run stress tests”). In October 2012, the OCC, the Board, and the Federal Deposit Insurance Corporation issued final rules implementing the company-run stress tests.

The Dodd-Frank Act requires that the OCC and other federal primary financial regulatory agencies issue consistent and comparable regulations to implement the statutory stress testing requirement. In order to fulfill this requirement and minimize regulatory burden, the OCC has worked to ensure that its stress testing regulation remains consistent and comparable to the regulations enacted by other regulatory agencies, including the Board.

II. Description of the Proposed Rule

A. New Range of Possible As-Of Dates for Trading and Counterparty Scenario Component

Under 12 CFR 46.5(c) the OCC may require a covered institution with significant trading

¹ Pub. L. 111–203, 124 Stat. 1376 (2010).

activities to include trading and counterparty components in its adverse and severely adverse scenarios. The trading and counterparty position data to be used in this component is as of a date between January 1 and March 1 of a calendar year. On February 3, 2017 the Board issued a final rule that extended this range to run from October 1 of the calendar year preceding the year of the stress test to March 1 of the calendar year of the stress test.² The proposed rule would make the same change to the OCC's stress testing regulation. Extending this range would increase the OCC's flexibility to choose an appropriate as-of date. The OCC continues to coordinate its stress testing program with the Board in order to minimize regulatory burden.

B. New Applicability Transition and Terminology for Covered Institutions with \$50 Billion or More in Assets

The proposed rule would change the term “over \$50 billion covered institution” to “\$50 billion or over covered institution.” The change would not alter the scope of this defined term and would not change the substantive requirements of the regulation. The new defined term would be a more precise description of the entities included within this category, which includes all national banks and federal savings associations “with average total consolidated assets . . . that are not less than \$50 billion.”³ While the proposed rule would change the defined term “over \$50 billion covered institution” to “\$50 billion or over covered institution,” this supplementary information section will continue to use the defined term “over \$50 billion covered institution” since that is the term used in the current regulatory text.

The proposed rule would also change the transition process for covered institutions that become an “over \$50 billion covered institution.” On February 3, 2017, the Board issued a final

² 82 FR 9308 (February 3, 2017).

³ 12 CFR 46.2.

rule that provides additional time for bank holding companies that cross the \$50 billion asset threshold close to the April 5 submission date.⁴ The proposed rule would make a parallel amendment to the OCC's stress testing regulation. Under the proposed rule, a national bank or federal savings association that becomes an over \$50 billion covered institution in the fourth quarter of a calendar year⁵ would not be subject to the stress testing requirements applicable to over \$50 billion covered institutions until the third year after it crosses the asset threshold. For example, if a national bank or federal savings association became an over \$50 billion covered institution on September 15, 2017, the institution would be expected to comply with the requirements applicable to over \$50 billion covered institutions beginning in 2019 and file the OCC DFAST-14A in April 2019. If a national bank or federal savings association became an over \$50 billion covered institution on October 15, 2017, the institution would be required to comply with the stress testing requirements applicable to over \$50 billion covered institutions beginning in 2020 and file the OCC DFAST-14A in April 2020.

The stress testing timeline and transition process for national banks or federal savings associations which become \$10 to \$50 billion covered institutions remains unchanged. A national bank or federal savings association that becomes a \$10 to \$50 billion covered institution on or before March 31 of a given year would be required to conduct its first stress test in the next calendar year. For example, a national bank or federal savings association that becomes a \$10 to \$50 billion covered institution as of March 31, 2017 would be required to conduct its first stress test in the stress testing cycle beginning January 1, 2018. A national bank or federal savings

⁴ 82 FR 9308 (February 3, 2017).

⁵ An institution becomes an over \$50 billion covered institution when its average total consolidated assets, as reported on the covered institution's Call Reports, for the four most recent consecutive quarters, equals \$50 billion or more. 12 CFR 46.3(a).

association that becomes a \$10 to \$50 billion covered institution after March 31 of a given year would be required to conduct its first stress test in the second calendar year after the date the national bank or federal savings association becomes a covered institution. For example, a national bank or federal savings association that becomes a \$10 to \$50 billion covered institution on June 30, 2017 would be required to conduct its first stress test in the stress testing cycle beginning January 1, 2019.

C. Remove Obsolete Transition Language

In 2014 the OCC, in coordination with the Board and Federal Deposit Insurance Corporation, shifted the dates of the annual stress testing cycle by approximately three months.⁶ The OCC's stress testing regulation continues to include transition language to facilitate this schedule shift. The transition to the new schedule is now complete, and the proposed rule would remove this obsolete transition language.

III. Request for Comment

The OCC requests comment on all aspects of the proposal.

IV. Regulatory Analysis

Paperwork Reduction Act

Under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501-3520), the OCC may not conduct or sponsor, and a person is not required to respond to, an information collection unless the information collection displays a valid Office of Management and Budget (OMB) control number. This notice of proposed rulemaking amends 12 CFR part 46, which has an approved information collection under the PRA (OMB Control No. 1557-0319). The amendments proposed today do not introduce any new collections of information, nor do they amend 12 CFR

⁶ 79 FR 71630 (December 3, 2014).

part 46 in a way that modifies the collection of information that OMB has approved. Therefore, this proposal does not require a PRA submission to OMB.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., requires generally that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities. However, the regulatory flexibility analysis otherwise required under 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 (defined in regulations promulgated by the Small Business Administration (SBA) to include banking organizations with total assets of less than or equal to \$500 million) and publishes its certification and a brief explanatory statement in the **Federal Register** together with the rule.

As discussed in the **SUPPLEMENTARY INFORMATION** above, the proposed changes will only affect institutions with more than \$10 billion in total assets. Therefore, the rule will not affect any small entities. As such, pursuant to section 605(b) of the RFA, the OCC certifies that this proposal would not have a significant economic impact on a substantial number of small entities because no small national banks or federal savings associations would be affected by the proposal. Accordingly, an initial regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act

The OCC has analyzed the proposed rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes 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

in any one year (adjusted annually for inflation). The OCC has determined that this proposed rule will not result in expenditures by state, local, and tribal governments, or the private sector, of \$100 million or more in any one year. Accordingly, this proposal is not subject to section 202 of the UMRA.

Riegle Community Development and Regulatory Improvement Act of 1994

The Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that each federal banking agency, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.⁷ The proposed rule would not impose additional reporting, disclosure, or other requirements; therefore the requirements of the RCDRIA do not apply.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The OCC has sought to present the proposed rule in a simple and straightforward manner, and invites comment on the use of plain language. For example:

⁷ 12 U.S.C. 4802.

- Has the OCC organized the material to suit your needs? If not, how could the OCC present the proposed rule more clearly?
- Are the requirements in the proposed rule clearly stated? If not, how could the proposed rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would achieve that?
- Is this section format adequate? If not, which of the sections should be changed and how?
- What other changes can the OCC incorporate to make the regulation easier to understand?

List of Subjects in 12 CFR Part 46

Banking, Banks, Capital, Disclosures, National banks, Recordkeeping, Risk, Savings associations, Stress test.

Authority and Issuance

For the reasons set forth in the preamble, the OCC proposes to amend 12 CFR part 46 as follows:

PART 46—ANNUAL STRESS TEST

1. The authority citation for part 46 continues to read as follows:

Authority: 12 U.S.C. 93a; 1463(a)(2); 5365(i)(2); and 5412(b)(2)(B).

Part 46 – [Amended]

2. Remove the phrase “over \$50 billion covered institution” and add the phrase “\$50 billion or over covered institution” in its place wherever it appears.
3. Section 46.2 is amended by removing the definition of “over \$50 billion covered institution” and adding the definition for “\$50 billion or over covered institution” in its place:

§ 46.2 Definitions.

* * * * *

\$50 billion or over covered institution means a national bank or Federal savings association with average total consolidated assets, calculated as required under this part, that are not less than \$50 billion.

* * * * *

4. Section 46.3 is amended by:
 - a. Removing paragraph (b);
 - b. Redesignating paragraphs (c) through (e) as paragraphs (b) through (d), respectively; and
 - c. Revising newly redesignated paragraphs (b) and (c).

The revisions read as follows:

§ 46.3 Applicability.

* * * * *

(b) *Covered institutions that become subject to stress testing requirements.* A national bank or Federal savings association that becomes a \$10 to \$50 billion covered institution on or before March 31 of a given year shall conduct its first annual stress test under this part in the next calendar year after the date the national bank or Federal savings association becomes a \$10 to

\$50 billion covered institution, unless that time is extended by the OCC in writing. A national bank or Federal savings association that becomes a \$10 to \$50 billion covered institution after March 31 of a given year shall conduct its first annual stress test under this part in the second calendar year after the calendar year in which the national bank or Federal savings association becomes a \$10 to \$50 billion covered institution, unless that time is extended by the OCC in writing.

(c) *Ceasing to be a covered institution or changing categories.* (1) A covered institution shall remain subject to the stress test requirements based on its applicable category, as defined in § 46.2, unless and until total consolidated assets of the covered institution falls below the relevant size threshold for each of four consecutive quarters as reported by the covered institution's most recent Call Reports. The calculation shall be effective on the "as of" date of the fourth consecutive Call Report.

(2) Notwithstanding paragraph (c)(1) of this section, a national bank or Federal savings association that becomes a \$50 billion or over covered institution, whether by migrating from being a \$10 to \$50 billion covered institution or by directly becoming a \$50 billion or over covered institution, after September 30 of a calendar year must comply with the requirements applicable to a \$50 billion or over covered institution beginning on January 1 of the third calendar year after the national bank or Federal savings association becomes a \$50 billion or over covered institution, unless that time is extended by the OCC in writing. A national bank or Federal savings association that becomes a \$50 billion or over covered institution on or before September 30 of a calendar year must comply with the requirements applicable to a \$50 billion or over covered institution beginning on January 1 of the second calendar year after the national bank or Federal savings association becomes a \$50 billion or over covered institution, unless that

time is extended by the OCC in writing.

* * * * *

5. Revise § 46.5 to read as follows:

§ 46.5 Annual stress test.

Each covered institution must conduct the annual stress test under this part subject to the following requirements:

(a) *Financial data.* A covered institution must use financial data as of December 31 of the previous calendar year.

(b) *Scenarios provided by the OCC.* In conducting the stress test under this part, each covered institution must use the scenarios provided by the OCC. The scenarios provided by the OCC will reflect a minimum of three sets of economic and financial conditions, including baseline, adverse, and severely adverse scenarios. The OCC will provide a description of the scenarios required to be used by each covered institution no later than February 15 of that calendar year.

(c) *Significant trading activities.* The OCC may require a covered institution with significant trading activities, as determined by the OCC, to include trading and counterparty components in its adverse and severely adverse scenarios. The trading and counterparty position data to be used in this component will be as of a date between October 1 of the previous calendar year and March 1 of that calendar year in which the stress test is performed, and the OCC will communicate a description of the component to the covered institution no later than March 1 of that calendar year.

(d) *Use of stress test results.* The board of directors and senior management of each covered institution must consider the results of the stress tests conducted under this section in the

normal course of business, including but not limited to the covered institution's capital planning, assessment of capital adequacy, and risk management practices.

6. Section 46.7 is amended by revising paragraphs (a) and (b) to read as follows:

§ 46.7 Reports to the Office of the Comptroller of the Currency and the Board of Governors of the Federal Reserve System.

(a) *\$10 to \$50 billion covered institution.* A \$10 to \$50 billion covered institution must report to the OCC and to the Board of Governors of the Federal Reserve System, on or before July 31, the results of the stress test in the manner and form specified by the OCC.

(b) *\$50 billion or over covered institution.* A \$50 billion or over covered institution must report to the OCC and to the Board of Governors of the Federal Reserve System, on or before April 5, the results of the stress test in the manner and form specified by the OCC.

* * * * *

7. Section 46.8 is amended by revising paragraph (a) to read as follows:

§ 46.8 Publication of disclosures.

(a) *Publication date.* (1) *\$50 billion or over covered institution.* A \$50 billion or over covered institution must publish a summary of the results of its annual stress test in the period starting June 15 and ending July 15 provided:

(i) Unless the OCC determines otherwise, if the \$50 billion or over covered institution is a consolidated subsidiary of a bank holding company or savings and loan holding company subject to supervisory stress tests conducted by the Board of Governors of the Federal Reserve System pursuant to 12 CFR part 252, then within the June 15 to July 15 period such covered institution may not publish the required summary of its annual stress test earlier than the date that

the Board of Governors of the Federal Reserve System publishes the supervisory stress test results of the covered bank's parent holding company.

(ii) If the Board of Governors of the Federal Reserve System publishes the supervisory stress test results of the covered institution's parent holding company prior to June 15, then such covered institution may publish its stress test results prior to June 15, but no later than July 15, through actual publication by the covered institution or through publication by the parent holding company pursuant to paragraph (b) of this section.

(2) *\$10 to \$50 billion covered institution.* A \$10 to \$50 billion covered institution must publish a summary of the results of its annual stress test in the period starting October 15 and ending October 31.

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Dated: October 19, 2017.

Keith A. Noreika
Acting Comptroller of the Currency
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