



**Billing Code 6714-01-P**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Parts 303, 308, 324, 325, 327, 333, 337, 347, 349, 360, 362, 363, 364, 365, and 390**

**RIN 3064-AE51**

**Regulatory Capital Rules: Removal of Certain Capital Rules that Are No Longer Effective Following the Implementation of the Revised Capital Rules**

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Final rule.

**SUMMARY:** This final rule rescinds certain capital regulations of the FDIC's codified rules (superseded capital rules) that were no longer effective following the January 1, 2015 implementation of the revised capital rules. The final rule also makes conforming changes to sections in the FDIC's codified rules that refer to the superseded capital rules. The FDIC has concluded that good cause exists to publish this rule as final without a period of notice and comment and with an effective date as of the date of its publication in the **Federal Register** because this final rule rescinds the superseded capital rules and other sections of the FDIC's codified rules that refer to the superseded capital rules and imposes no new requirement on FDIC-supervised institutions.

**DATES:** The final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

In 2014, the FDIC comprehensively revised and strengthened its capital regulations applicable to FDIC-supervised institutions (revised capital rule).<sup>1</sup> The revised capital rule was codified in part 324 of the FDIC's codified rules (effective January 1, 2014, for advanced approaches banking organizations) and was effective for all non-advanced approaches FDIC-supervised institutions on January 1, 2015. Before the effective dates of the revised capital rule, FDIC-supervised institutions were subject to the superseded capital rules in part 325 and subparts Y and Z of part 390 of the FDIC's codified rules. The superseded capital rules remain in the Code of Federal Regulations (CFR), even though they were no longer effective for any FDIC-supervised institution since January 1, 2015. Maintaining the superseded capital rules in the FDIC's codified rules could result in confusion and therefore this final rule removes the superseded capital rules.

### **II. Description of the Final Rule**

The final rule rescinds part 325, subpart A – Minimum Capital Requirements, subpart B – Prompt Corrective Action and appendices A through D, as the rules contained therein have been superseded by part 324. Under the final rule, the annual stress testing rule will remain in part 325. Part 325 will be retitled to Annual Stress Test and the stress testing rule will be renumbered to reflect the removed capital rules. Similarly, the final rule removes the superseded capital rules contained in part 390

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<sup>1</sup> 79 FR 20754 (April 14, 2014).

subpart Y – Prompt Corrective Action and part 390, subpart Z – Capital and related appendices. Under the final rule, sections in part 390 that are not removed will remain codified in part 390, including certain enforcement authorities related to savings association’s capital requirements. The final rule also makes conforming technical changes to provisions of the FDIC’s codified rules that refer to part 325 for state nonmember banks and subparts Y and Z of part 390 for state savings associations in conjunction with the FDIC’s capital rules. However, this final rule does not impact the legal status of any reference to the superseded capital rules in outstanding compliance and enforcement orders, agreements, and memoranda of understanding entered into by the FDIC prior to the effective date of this final rule. Regardless of whether an outstanding enforcement order refers to the superseded capital rule, all FDIC-supervised institutions are subject to the revised capital rule and must be in compliance with the minimum capital requirements in part 324.<sup>2</sup>

### **III. Administrative Procedure Act**

The Administrative Procedure Act (APA) does not require an agency to publish a notice of proposed rulemaking (NPR) in the **Federal Register** if an “agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”<sup>3</sup> The FDIC finds that for purposes of the rescission of the superseded capital rules, good cause exists to not publish a notice of proposed rulemaking

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<sup>2</sup> Generally FDIC-supervised institutions can demonstrate compliance with outstanding enforcement orders referencing the superseded capital rule by calculating their capital ratios under the revised capital rule. The FDIC made a finding during the interagency capital rulemaking process in 2013 that the revised capital rule is more stringent than the superseded capital rule. Therefore, an FDIC-supervised institution subject to an enforcement order under the superseded capital rule may demonstrate its compliance using its ratios as calculated under the revised capital rule.

<sup>3</sup> 5 U.S.C. 553(b).

in the **Federal Register** and, therefore, is issuing this rule as a final rule. The FDIC believes that a notice of proposed rulemaking is unnecessary for such purposes because the FDIC published three NPRs and an interim final rule for comment before issuing the revised capital rules in 2014.<sup>4</sup> The comment period for those NPRs and interim final rule provided sufficient public notice that the revised capital rules would replace the superseded capital rules for all FDIC-supervised institutions as of January 1, 2015. This final rule solely removes the obsolete provisions of, and references to, the superseded capital rules in the CFR and imposes no new requirement on FDIC-supervised institutions. Accordingly, the FDIC concludes that good cause exists to publish the rule as final without a notice and opportunity to comment.

Section 553(d)(3) of the APA provides that, for good cause found and published with the rule, an agency does not have to comply with the requirement that a substantive rule be published not less than 30 days before its effective date.<sup>5</sup> The final rule will be effective immediately upon its publication in the **Federal Register**. The FDIC invokes the good cause exception to the APA's 30-day publication requirement for the reasons discussed above.

#### **IV. Regulatory Analyses**

##### **A. Regulatory Flexibility Act**

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), requires an agency, in connection with a notice of proposed rulemaking, to prepare an Initial Regulatory

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<sup>4</sup> Concerning the NPRs for the revised capital rules, see 77 FR 52792 (August 30, 2012); 77 FR 52888 (August 30, 2012); 77 FR 52978 (August 30, 2012). The interim final rule for the revised capital rules was issued in September 10, 2013 (78 FR 55340). In the preamble to the interim final rule, the FDIC stated: "The interim final rule will replace the FDIC's general risk-based capital rules, advanced approaches rule, market risk rule, and leverage rules in accordance with the transition provisions described below." Also, section 324.1(f) of the revised capital rules states the timing for the implementation of the revised capital rules. See 12 CFR 324.1(f).

<sup>5</sup> 5 U.S.C. 553(d)(3).

Flexibility Analysis describing the impact of the proposed rule on small entities (defined by the Small Business Administration for purposes of the RFA to include banking entities with total assets of \$550 million or less) or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. The RFA also requires an agency, in connection with a final rule, to prepare a Final Regulatory Flexibility Act (FRFA) analysis describing the impact of the final rule on small entities. Neither an IRFA nor FRFA is required, however, if the rule is issued under the APA provision allowing the agency to forego notice and comment rulemaking for good cause. Therefore, the FDIC has not prepared either an IRFA or an FRFA in connection with this final rule. Nevertheless, the FDIC notes that the final rule does not impose any burden on small banking entities as it only rescinds obsolete provisions in the FDIC's CFR.

#### **B. Paperwork Reduction Act**

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521), the FDIC may not conduct or sponsor, and a 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 FDIC reviewed the rule and determined that it does not create any new, or revise any existing, collection of information under section 3504(h) of the Paperwork Reduction Act of 1980. Consequently, no information collection request will be submitted to the OMB for review.

#### **C. Small Business Regulatory Enforcement Fairness Act**

The Office of Management and Budget has determined that the final rule is not a “major rule” within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II, Pub. L. 104-121).

**D. The Treasury and General Government Appropriations Act, 1999—**

**Assessment of Federal Regulations and Policies on Families**

The FDIC has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Public Law 105-277, 112 Stat. 2681).

**E. Plain Language**

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

**F. Riegle Community Development and Regulatory Improvement Act of 1994**

Under the Riegle Community Development and Regulatory Improvement Act of 1994, 12 U.S.C. 4802, (RCDRIA), there is a requirement that “[n]ew regulations and amendments to regulations prescribed by a Federal banking agency which impose additional reporting, disclosures, or other new requirements on insured depository institutions shall take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form” absent a good cause determination by the agency.<sup>6</sup> The final rule imposes no additional reporting, disclosure,

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<sup>6</sup> 12 U.S.C. 4802(b).

or other new requirements on insured depository institutions and therefore is not subject to the effective date requirement in RCDRIA.

### **List of Subjects**

#### **12 CFR Part 303**

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings associations.

#### **12 CFR Part 308**

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Claims, Crime, Equal access to justice, Fraud, Investigations, Lawyers, Penalties.

#### **12 CFR Part 324**

Administrative practice and procedure, Banks, banking, Reporting and recordkeeping requirements, Savings associations.

#### **12 CFR Part 325**

Banks, banking, Reporting and recordkeeping requirement.

#### **12 CFR Part 327**

Bank deposit insurance, Banks, banking, Savings associations.

#### **12 CFR Part 333**

Banks, banking.

#### **12 CFR Part 337**

Banks, banking, Reporting and recordkeeping requirements, Securities.

#### **12 CFR Part 347**

Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Credit, Foreign banking, Investments, Reporting and recordkeeping requirements, U.S. Investments abroad.

**12 CFR Part 349**

Administrative practice and procedure, Banks, banking, Holding companies, Reporting and recordkeeping requirements, Savings associations, Swaps.

**12 CFR Part 360**

Savings associations.

**12 CFR Part 362**

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Investments, Reporting and recordkeeping requirements.

**12 CFR Part 363**

Accounting, Administrative practice and procedure, Banks, banking, Reporting and recordkeeping requirements.

**12 CFR Part 364**

Banks, banking, Information.

**12 CFR Part 365**

Banks, banking, Mortgages.

**12 CFR Part 390**

Administrative practice and procedure, Advertising, Aged, Civil rights, Conflict of interests, Credit, Crime, Equal employment opportunity, Fair housing, Government

employees, Individuals with disabilities, Reporting and recordkeeping requirements, Savings associations.

**Authority and Issuance**

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation amends 12 CFR parts 303, 308, 324, 325, 327, 333, 337, 347, 349, 360, 362, 363, 364, 365, and 390 as follows:

**PART 303 – FILING PROCEDURES**

1. The authority citation for part 303 continues to read as follows:

**Authority:** 12 U.S.C. 378, 1464, 1813, 1815, 1817, 1818, 1819(a) (Seventh and Tenth), 1820, 1823, 1828, 1831a, 1831e, 1831o, 1831p–1, 1831w, 1835a, 1843(l), 3104, 3105, 3108, 3207; 5414; 15 U.S.C. 1601–1607.

2. Section 303.2 is amended by revising paragraphs (b), (ee), and (ff) to read as follows:

**§ 303.2 Definitions.**

\* \* \* \* \*

(b) Adjusted part 324 total assets means adjusted 12 CFR part 324 total assets as calculated and reflected in the FDIC's Report of Examination.

\* \* \* \* \*

(ee) Tier 1 capital shall have the same meaning as provided in § 324.2 of this chapter.

(ff) Total assets shall have the same meaning as provided in § 324.401(g) of this chapter.

\* \* \* \* \*

3. Section 303.64 is amended by revising paragraph (a)(4)(i) to read as follows:

**§ 303.64 Processing.**

(a) \* \* \*

(4) \* \* \*

(i) Immediately following the merger transaction, the resulting institution will be well-capitalized pursuant to subpart H of part 324 of this chapter (12 CFR part 324); and

\* \* \* \* \*

4. Section 303.181 is amended by revising paragraph (c)(4) to read as follows:

**§ 303.181 Definitions.**

\* \* \* \* \*

(c) \* \* \*

(4) Is well-capitalized as defined in subpart H of part 324 of this chapter; and

\* \* \* \* \*

5. Section 303.184 is amended by revising paragraph (d)(1)(ii) to read as follows:

**§ 303.184 Moving an insured branch of a foreign bank.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(ii) The applicant is at least adequately capitalized as defined in subpart H of part 324 of this chapter;

\* \* \* \* \*

6. Section 303.200 is amended by revising paragraphs (a)(2) and (b) to read as follows:

**§ 303.200 Scope.**

(a) \* \* \*

(2) Definitions of the capital categories referenced in this Prompt Corrective Action subpart may be found in subpart H of part 324 of this chapter.

(b) Institutions covered. Restrictions and prohibitions contained in subpart H of part 324 of this chapter apply primarily to state nonmember banks and insured branches of foreign banks, as well as to directors and senior executive officers of those institutions. Portions of subpart H of part 324 of this chapter also apply to all insured depository institutions that are deemed to be critically undercapitalized.

\* \* \* \* \*

7. Section 303.241 is amended by revising paragraph (c)(4) to read as follows:

**§ 303.241 Reduce or retire capital stock or capital debt instruments.**

\* \* \* \* \*

(c) \* \* \*

(4) If the proposal involves a series of transactions affecting Tier 1 capital components which will be consummated over a period of time which shall not exceed twelve months, the application shall certify that the insured depository institution will maintain itself as a well-capitalized institution as defined in part 324 of this chapter both before and after each of the proposed transactions;

\* \* \* \* \*

**PART 308 – RULES OF PRACTICE AND PROCEDURE**

8. The authority citation for part 308 continues to read as follows:

**Authority:** 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1464, 1467(d), 1467a, 1468, 1815(e), 1817, 1818, 1819, 1820, 1828, 1829, 1829b, 1831i, 1831m(g)(4), 1831o, 1831p–1, 1832(c), 1884(b), 1972, 3102, 3108(a), 3349, 3909, 4717, 5412(b)(2)(C), 5414(b)(3); 15 U.S.C. 78(h) and (i), 78o(c)(4), 78o-4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, 78w, 6801(b), 6805(b)(1); 28 U.S.C. 2461 note; 31 U.S.C. 330, 5321; 42 U.S.C. 4012a; Pub.L. 104-134, sec. 3100(s), 110 Stat. 1321; Pub.L. 109–351, 120 Stat. 1966; Pub.L. 111–203, 124 Stat. 1376; Pub.L. 114–74, sec. 701, 129 Stat. 584.

9. Section 308.200 is revised to read as follows:

**§ 308.200 Scope.**

The rules and procedures set forth in this subpart apply to banks, insured branches of foreign banks and senior executive officers and directors of banks that are subject to the provisions of section 38 of the Federal Deposit Insurance Act (section 38) (12 U.S.C. 1831o) and subpart H of part 324 of this chapter.

10. Section 308.202 is amended by revising paragraphs (a)(1)(i)(A) and (a)(1)(ii) to read as follows:

**§ 308.202 Procedures for reclassifying a bank based on criteria other than capital.**

(a) \* \* \*

(1) \* \* \*

(i) Grounds for reclassification. (A) Pursuant to § 324.403(d) of this chapter, the FDIC may reclassify a well-capitalized bank as adequately capitalized or subject an adequately capitalized or undercapitalized institution to the supervisory actions applicable to the next lower capital category if:

(1) The FDIC determines that the bank is in unsafe or unsound condition; or

(2) The FDIC, pursuant to section 8(b)(8) of the FDI Act (12 U.S.C. 1818(b)(8)), deems the bank to be engaged in an unsafe or unsound practice and not to have corrected the deficiency.

\* \* \* \* \*

(ii) Prior notice to institution. Prior to taking action pursuant to § 324.403(d) of this chapter, the FDIC shall issue and serve on the bank a written notice of the FDIC’s intention to reclassify it.

\* \* \* \* \*

11. Section 308.204 is amended by revising paragraphs (b)(2) and (c) to read as follows:

**§ 308.204 Enforcement of directives.**

\* \* \* \* \*

(b) \* \* \*

(2) Failure to implement capital restoration plan. The failure of a bank to implement a capital restoration plan required under section 38, or subpart H of part 324 of this chapter, or the failure of a company having control of a bank to fulfill a guarantee of a capital restoration plan made pursuant to section 38(e)(2) of the FDI Act shall subject the bank to the assessment of civil money penalties pursuant to section 8(i)(2)(A) of the FDI Act.

(c) Other enforcement action. In addition to the actions described in paragraphs (a) and (b) of this section, the FDIC may seek enforcement of the provisions of section 38

or subpart H of part 324 of this chapter through any other judicial or administrative proceeding authorized by law.

\* \* \* \* \*

**PART 324—CAPITAL ADEQUACY OF FDIC-SUPERVISED INSTITUTIONS**

12. The authority citation for part 324 continues to read as follows:

**Authority:** 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; 5371; 5412; Pub.L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub.L. 102–242, 105 Stat. 2236, 2355, as amended by Pub.L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub.L. 102–242, 105 Stat. 2236, 2386, as amended by Pub.L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note); Pub.L. 111–203, 124 Stat. 1376, 1887 (15 U.S.C. 78o–7 note).

13. Section 324.22 is amended by revising footnote 22 in paragraph (b)(2)(iii) to read as follows:

**§ 324.22 Regulatory capital adjustments and deductions.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(iii) \* \* \*

<sup>22</sup> These rules include the regulatory capital requirements set forth at 12 CFR part 3 (OCC); 12 CFR part 217 (Board); 12 CFR part 324 (FDIC).

\* \* \* \* \*

**PART 325 – ANNUAL STRESS TEST**

14. The authority citation for part 325 continues to read as follows:

**Authority:** 12 U.S.C. 5365(i)(2), 12 U.S.C. 5412(b)(2)(C), 12 U.S.C. 1818, 12 U.S.C. 1819(a)(Tenth), 12 U.S.C. 1831o, and 12 U.S.C. 1831p–1.

15. The heading for part 325 is revised to read as set forth above.

Subparts A and B [Removed]

16. Remove subparts A and B.

Subpart C [Amended]

17. Remove the heading for subpart C.

§§ 325.201 through 325.207 [Redesignated as §§ 325.1 through 325.7]

18. Redesignate §§ 325.201 through 325.207 as §§ 325.1 through 325.7, respectively.

19. Amend newly redesignated § 325.1 by revising paragraph (c)(5) to read as follows:

**§ 325.1 Authority, purpose, and reservation of authority.**

\* \* \* \* \*

(c) \* \* \*

(5) Notice and comment procedures: In exercising its authority to require different or additional stress tests and different or additional scenarios (including components for the scenarios) under paragraph (c)(2) of this section, the Corporation will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in 12 CFR 324.5, as appropriate.

\* \* \* \* \*

Appendices A, B, C, and D [Removed]

20. Remove appendices A, B, C, and D.

**PART 327 – ASSESSMENTS**

21. The authority citation for part 327 continues to read as follows:

**Authority:** 12 U.S.C. 1441, 1813, 1815, 1817–19, 1821.

22. Appendix A to subpart A of part 327 is amended by revising footnote 5 in section VI to read as follows:

**Appendix A to Subpart A of Part 327--Method to Derive Pricing Multipliers and Uniform Amount**

\* \* \* \* \*

VI. \* \* \*

<sup>5</sup> *Market risk* is defined in 12 CFR 324.202.

23. Appendix C to subpart A of part 327 is amended by revising the appendix heading and the first and second sentences in the first paragraph in section I.A.5 to read as follows:

**Appendix C to Subpart A to Part 327--Description of Concentration Measures**

I. \* \* \*

A. \* \* \*

5. \* \* \*

Higher-risk securitizations are defined as securitization exposures (except securitizations classified as trading book), where, in aggregate, more than 50 percent of the assets backing the securitization meet either the criteria for higher-risk C & I loans or securities, higher-risk consumer loans, or nontraditional mortgage loans, except those

classified as trading book. A securitization exposure is as defined in 12 CFR 324.2, as it may be amended from time to time. \* \* \*

\* \* \* \* \*

**PART 333 – EXTENSION OF CORPORATE POWERS**

24. The authority citation for part 333 continues to read as follows:

**Authority:** 12 U.S.C. 1816, 1818, 1819 (“Seventh”, “Eighth” and “Tenth”), 1828, 1828(m), 1831p–1(c).

25. Section 333.4 is amended by revising the fourth sentence in paragraph (a) to read as follows:

**§ 333.4 Conversions from mutual to stock form.**

(a) Scope. \* \* \* As determined by the Board of Directors of the FDIC on a case-by-case basis, the requirements of paragraphs (d), (e), and (f) of this section do not apply to mutual-to-stock conversions of insured mutual state savings banks whose capital category under § 324.403 of this chapter is “undercapitalized”, “significantly undercapitalized” or “critically undercapitalized”. \* \* \*

\* \* \* \* \*

**PART 337 – UNSAFE AND UNSOUND BANKING PRACTICES**

26. The authority citation for part 337 continues to read as follows:

**Authority:** 12 U.S.C. 375a(4), 375b, 1463(a)(1), 1816, 1818(a), 1818(b), 1819, 1820(d), 1828(j)(2), 1831, 1831f, 5412.

27. Section 337.6 is amended by revising footnote 12 in paragraph (a)(3)(i) and the second sentence in footnote 13 in paragraph (a)(3)(iii) to read as follows:

**§ 337.6 Brokered deposits.**

\* \* \* \* \*

(a) \* \* \*

(3) \* \* \*

(i) \* \* \*

<sup>12</sup> For the most part, the capital measure terms are defined in the following regulations: FDIC--12 CFR part 324, subpart H; Board of Governors of the Federal Reserve System--12 CFR part 208; and Office of the Comptroller of the Currency--12 CFR part 6.

\* \* \* \* \*

(iii) \* \* \*

<sup>13</sup> \* \* \* Provisions specifying the effective date of determination of capital category are generally published in the following regulations: FDIC—12 CFR 324.402; Board of Governors of the Federal Reserve System—12 CFR part 208, subpart D; and Office of the Comptroller of the Currency—12 CFR 6.3.

\* \* \* \* \*

**PART 347 – INTERNATIONAL BANKING**

28. The authority citation for part 347 continues to read as follows:

**Authority:** 12 U.S.C. 1813, 1815, 1817, 1819, 1820(d), 1828, 3103, 3104, 3105, 3108, 3109; Title IX, Pub.L. 98–181, 97 Stat. 1153 (12 U.S.C. 3901 et seq.).

29. Section 347.102 is amended by revising paragraphs (u) and (v) to read as follows:

**§ 347.102 Definitions.**

\* \* \* \* \*

(u) Tier 1 capital means Tier 1 capital as defined in § 324.2 of this chapter.

(v) Well capitalized means well capitalized as defined in § 324.403 of this chapter.

## **PART 349 – DERIVATIVES**

### **Subpart B—Retail Foreign Exchange Transactions**

30. The authority citation for part 349, subpart B, continues to read as follows:

**Authority:** 12 U.S.C. 1813(q), 1818, 1819, and 3108; 7 U.S.C. 2(c)(2)(E), 27 et seq.

31. Section 349.20 is revised to read as follows:

#### **§ 349.20 Capital requirements.**

An FDIC-supervised insured depository institution offering or entering into retail forex transactions must be well capitalized as defined by 12 CFR part 324, unless specifically exempted by the FDIC in writing.

## **PART 360 – RESOLUTION AND RECEIVERSHIP RULES**

32. The authority citation for part 360 continues to read as follows:

**Authority:** 12 U.S.C. 1821(d)(1), 1821(d)(10)(C), 1821(d)(11), 1821(e)(1), 1821(e)(8)(D)(i), 1823(c)(4), 1823(e)(2); Sec. 401(h), Pub. L. 101-73, 103 Stat. 357.

33. Section 360.5 is amended by revising paragraph (b) to read as follows:

#### **§ 360.5 Definition of qualified financial contracts.**

\* \* \* \* \*

(b) Repurchase agreements. The following agreements shall be deemed “repurchase agreements” under section 11(e)(8)(D)(v) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1821(e)(8)(D)(v)): A repurchase agreement on qualified

foreign government securities is an agreement or combination of agreements (including master agreements) which provides for the transfer of securities that are direct obligations of, or that are fully guaranteed by, the central governments (as set forth at 12 CFR 324.2 (definition of sovereign exposure), as may be amended from time to time) of the OECD-based group of countries (as generally discussed in 12 CFR 324.32) against the transfer of funds by the transferee of such securities with a simultaneous agreement by such transferee to transfer to the transferor thereof securities as described above, at a date certain not later than one year after such transfers or on demand, against the transfer of funds.

\* \* \* \* \*

34. Section 360.9 is amended by revising paragraph (e)(6) to read as follows:

**§ 360.9 Large-bank deposit insurance determination modernization.**

\* \* \* \* \*

(e) \* \* \*

(6) Notwithstanding the general requirements of this paragraph (e), on a case-by-case basis, the FDIC may accelerate, upon notice, the implementation timeframe of all or part of the requirements of this section for a covered institution that: Has a composite rating of 3, 4, or 5 under the Uniform Financial Institution's Rating System, or in the case of an insured branch of a foreign bank, an equivalent rating; is undercapitalized, as defined under the prompt corrective action provisions of 12 CFR part 324; or is determined by the appropriate Federal banking agency or the FDIC in consultation with the appropriate Federal banking agency to be experiencing a significant deterioration of capital or significant funding difficulties or liquidity stress, notwithstanding the

composite rating of the institution by its appropriate Federal banking agency in its most recent report of examination. In implementing this paragraph (e)(6), the FDIC must consult with the covered institution's primary federal regulator and consider the: Complexity of the institution's deposit systems and operations, extent of the institution's asset quality difficulties, volatility of the institution's funding sources, expected near-term changes in the institution's capital levels, and other relevant factors appropriate for the FDIC to consider in its roles as insurer and possible receiver of the institution.

\* \* \* \* \*

**PART 362 – ACTIVITIES OF INSURED STATE BANKS AND INSURED SAVINGS ASSOCIATIONS**

35. The authority citation for part 362 continues to read as follows:

**Authority:** 12 U.S.C. 1816, 1818, 1819(a)(Tenth), 1828(j), 1828(m), 1828a, 1831a, 1831e, 1831w, 1843(l).

36. Section 362.2 is amended by revising paragraphs (s) and (t) to read as follows:

**§ 362.2 Definitions.**

\* \* \* \* \*

(s) Tier one capital has the same meaning as set forth in part 324 of this chapter for an insured State nonmember bank or insured state savings association. For other state-chartered depository institutions, the term “tier one capital” has the same meaning as set forth in the capital regulations adopted by the appropriate Federal banking agency.

(t) Well-capitalized has the same meaning set forth in part 324 of this chapter for an insured State nonmember bank or insured state savings association. For other state-chartered depository institutions, the term “well-capitalized” has the same meaning as set forth in the capital regulations adopted by the appropriate Federal banking agency.

37. Section 362.4 is amended by revising paragraph (e)(3) to read as follows:

**§ 362.4 Subsidiaries of insured State banks.**

\* \* \* \* \*

(e) \* \* \*

(3) Use such regulatory capital amount for the purposes of the bank's assessment risk classification under part 327 of this chapter and its categorization as a “well-capitalized”, an “adequately capitalized”, an “undercapitalized”, or a “significantly undercapitalized” institution as defined in § 324.403(b) of this chapter, provided that the capital deduction shall not be used for purposes of determining whether the bank is “critically undercapitalized” under part 324 of this chapter.

38. Section 362.17 is amended by revising paragraph (d) to read as follows:

**§ 362.17 Definitions.**

\* \* \* \* \*

(d) Tangible equity and Tier 2 capital have the same meaning as set forth in part 324 of this chapter.

\* \* \* \* \*

**PART 363 – ANNUAL INDEPENDENT AUDITS AND REPORTING REQUIREMENTS**

39. The authority citation for part 363 continues to read as follows:

**Authority:** 12 U.S.C. 1831m.

40. Appendix A to part 363 is amended by revising Table 1 to Appendix A to read as follows:

**Appendix A to Part 363 – Guidelines and Interpretations**

\* \* \* \* \*

Table 1 to Appendix A--Designated Federal Laws and Regulations Applicable to:

		National banks	State member banks	State non- member banks	Savings associations
<b>Insider Loans--Parts and/or Sections of Title 12 of the United States Code</b>					
375a	Loans to Executive Officers of Banks	√	√	(A)	(A)
375b	Extensions of Credit to Executive Officers, Directors, and Principal Shareholders of Banks	√	√	(A)	(A)
1468(b)	Extensions of Credit to Executive Officers, Directors, and Principal Shareholders				√
1828(j)(2)	Extensions of Credit to Officers, Directors, and Principal Shareholders			√	
1828(j)(3)(B)	Extensions of Credit to Officers, Directors, and Principal Shareholders		(B)	(C)	
<b>Parts and/or Sections of Title 12 of the Code of Federal Regulations</b>					
31	Extensions of Credit to Insiders	√			
32	Lending Limits	√			
215	Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks	√	√	(D)	(E)
337.3	Limits on Extensions of Credit to Executive Officers, Directors, and Principal Shareholders of Insured Nonmember Banks			√	
390.338 (state	Loans by Savings Associations to Their				√

savings associations)	Executive Officers, Directors, and Principal Shareholders				
<b>Dividend Restrictions--Parts and/or Sections of Title 12 of the United States Code</b>					
56	Prohibition on Withdrawal of Capital and Unearned Dividends	√	√		
60	Dividends and Surplus Fund	√	√		
1467a(f)	Declaration of Dividend				√
1831o(d)(1)	Prompt Corrective Action--Capital Distributions Restricted	√	√	√	√
<b>Parts and/or Sections of Title 12 of the Code of Federal Regulations</b>					
5 Subpart E	Payment of Dividends	√			
6.6	Prompt Corrective Action--Restrictions on Undercapitalized Institutions	√			
208.5	Dividends and Other Distributions			√	
208.45	Prompt Corrective Action--Restrictions on Undercapitalized Institutions			√	
324.405	Prompt Corrective Action--Restrictions on Undercapitalized Institutions				√
390.342-.348 (state savings associations)	Capital Distributions				√
390.455 (state savings associations)	Prompt Corrective Action--Restrictions on Undercapitalized Institutions				√

(A) Subsections (g) and (h) of section 22 of the Federal Reserve Act [12 U.S.C. 375a, 375b]

(B) Applies only to insured Federal branches of foreign banks.

(C) Applies only to insured State branches of foreign banks.

(D) See 12 CFR 337.3.

(E) See 12 CFR 390.338 (state savings associations).

## **PART 364 – STANDARDS FOR SAFETY AND SOUNDNESS**

41. The authority citation in part 364 continues to read as follows:

**Authority:** 12 U.S.C. 1818 and 1819 (Tenth), 1831p–1; 15 U.S.C. 1681b, 1681s, 1681w, 6801(b), 6805(b)(1).

42. Appendix A to part 364 is amended by revising the last sentence in section I.A. to read as follows:

**Appendix A to Part 364—Interagency Guidelines Establishing Standards for Safety and Soundness**

\* \* \* \* \*

I. \* \* \*

A. \* \* \*

\* \* \* Nothing in these Guidelines limits the authority of the FDIC pursuant to section 38(i)(2)(F) of the FDI Act (12 U.S.C. 1831o) and part 324 of title 12 of the Code of Federal Regulations.

\* \* \* \* \*

**PART 365 – REAL ESTATE LENDING STANDARDS**

43. The authority citation for part 365 continues to read as follows:

**Authority:** 12 U.S.C. 1828(o) and 5101 et seq.

44. Appendix A to subpart A of part 365 is amended by revising footnote 2 to the “Loans in Excess of the Supervisory Loan-to-Value Limits” section to read as follows:

**Appendix A to Subpart A of Part 365 – Interagency Guidelines for Real Estate Lending Policies**

\* \* \* \* \*

Loans in Excess of the Supervisory Loan-to-Value Limits

\* \* \* \* \*

<sup>2</sup> For state non-member banks and state savings associations, “total capital” refers to that term described in 12 CFR 324.2.

\* \* \* \* \*

**PART 390 – REGULATIONS TRANSFERRED FROM THE OFFICE OF  
THRIFT SUPERVISION**

45. The authority citation for part 390 is revised to read as follows:

**Authority:** 12 U.S.C. 1819.

§ 390.101 [Amended]

46. Section 390.101 is amended in paragraph (f) by removing “subpart Z” and adding in its place “12 CFR part 324.”

47. Section 390.264 is revised to read as follows:

**§ 390.264 Real estate lending standards; purpose and scope.**

This section, and § 390.265, issued pursuant to section 18(o) of the Federal Deposit Insurance Act, (12 U.S.C. 1828(o)), prescribe standards for real estate lending to be used by State savings associations and all their includable subsidiaries, as defined in part 324 of this chapter, over which the State savings associations exercise control, in adopting internal real estate lending policies.

48. The appendix to § 390.265 is amended by revising footnote 4 to read as follows:

**§ 390.265 Real estate lending standards.**

\* \* \* \* \*

**Appendix to § 390.265 – Interagency Guidelines for Real Estate Lending  
Policies**

\* \* \* \* \*

<sup>4</sup> For the state member banks, the term “total capital” is defined at 12 CFR 217.2. For insured state non-member banks, the term “total capital” is defined at 12 CFR 324.2. For national banks, the term “total capital” is defined at 12 CFR 3.2. For state savings associations, the term “total capital” is defined at 12 CFR 324.2.

\* \* \* \* \*

49. Section 390.316 is amended by revising paragraph (c) to read as follows:

**§ 390.316 With recourse.**

\* \* \* \* \*

(c) This definition does not apply for purposes of determining the capital adequacy requirements under part 324 of this chapter.

50. Section 390.341 is amended by revising paragraphs (a), (c)(1)(i)(G), and (d)(2)(ii) to read as follows:

**§ 390.341 Inclusion of subordinated debt securities and mandatorily redeemable preferred stock as supplementary capital.**

(a) *Scope.* A State savings association must comply with this section in order to include subordinated debt securities or mandatorily redeemable preferred stock (“covered securities”) in supplementary capital (tier 2 capital) under part 324 of this chapter. If a State savings association does not include covered securities in supplementary capital, it is not required to comply with this section.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) \* \* \*

(G) State or refer to a document stating that the State savings association must obtain FDIC approval before the voluntarily prepayment of principal on subordinated debt securities, the acceleration of payment of principal on subordinated debt securities, or the voluntarily redemption of mandatorily redeemable preferred stock (other than scheduled redemptions), if the State savings association is undercapitalized, significantly undercapitalized, or critically undercapitalized as described in subpart H of part 324 of this chapter, fails to meet the regulatory capital requirements in part 324, or would fail to meet any of these standards following the payment.

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(ii) The State savings association is at least adequately capitalized under subpart H of part 324 of this chapter and meets the regulatory capital requirements in part 324.

\* \* \* \* \*

51. Section 390.343 is amended by revising paragraphs (b) and (d) to read as follows:

**§ 390.343 What is a capital distribution?**

\* \* \* \* \*

(b) Your payment to repurchase, redeem, retire or otherwise acquire any of your shares or other ownership interests, any payment to repurchase, redeem, retire, or

otherwise acquire debt instruments included in your total capital under part 324 of this chapter, and any extension of credit to finance an affiliate's acquisition of your shares or interests;

\* \* \* \* \*

(d) Any other distribution charged against your capital accounts if you would not be well capitalized, as set forth in subpart H of part 324 of this chapter, following the distribution; and

\* \* \* \* \*

52. Section 390.344 is amended by revising the definition of *Capital* to read as follows:

**§ 390.344 Definitions applicable to capital distributions.**

\* \* \* \* \*

*Capital* means total capital, as computed under part 324 of this chapter.

\* \* \* \* \*

§ 390.345 [Amended]

53. Section 390.345 is amended as follows:

a. In paragraph (a)(3), by removing “§390.453(b)(2)” and adding in its place “subpart H of part 324 of this chapter.”

b. In paragraph (b), by removing “§390.453(b)(1)” and “subpart Z” wherever they appear and add in their place “subpart H of part 324 of this chapter.”

54. Section 390.348 is amended by revising paragraph (a) to read as follows:

**§ 390.348 Will the FDIC permit my capital distribution?**

\* \* \* \* \*

(a) You will be undercapitalized, significantly undercapitalized, or critically undercapitalized as set forth in subpart H of part 324 of this chapter, following the capital distribution. If so, the FDIC will determine if your capital distribution is permitted under 12 U.S.C. 1831o(d)(1)(B).

\* \* \* \* \*

55. Section 390.362 is amended by revising paragraphs (a)(1)(i) and (iii) to read as follows:

**§ 390.362 Who must give prior notice?**

(a) \* \* \*

(1) \* \* \*

(i) You do not comply with all minimum capital requirements under part 324 of this chapter;

\* \* \* \* \*

(iii) The FDIC has notified you, in connection with its review of a capital restoration plan required under section 38 of the Federal Deposit Insurance Act or subpart H of part 324 of this chapter or otherwise, that a notice is required under §§ 390.360 through 390.368; or

\* \* \* \* \*

**§§ 390.450 through 390.455 [Removed and Reserved]**

56. Remove and reserve §§ 390.450 through 390.455.

57. Section 390.457 is amended by revising paragraphs (a)(1)(i)(A) and (a)(1)(ii) to read as follows:

**§ 390.457 Procedures for reclassifying a State savings association based on criteria other than capital.**

(a) \* \* \*

(1) \* \* \*

(i) \* \* \*

(A) Pursuant to § 324.403(d) of this chapter, the FDIC may reclassify a well capitalized State savings association as adequately capitalized or subject an adequately capitalized or undercapitalized institution to the supervisory actions applicable to the next lower capital category if:

(1) The FDIC determines that the State savings association is in unsafe or unsound condition; or

(2) The FDIC deems the State savings association to be engaged in an unsafe or unsound practice and not to have corrected the deficiency.

\* \* \* \* \*

(ii) Prior notice to institution. Prior to taking action pursuant to § 324.403(d) of this chapter, the FDIC shall issue and serve on the State savings association a written notice of the FDIC's intention to reclassify the State savings association.

\* \* \* \* \*

**Subpart Z—[Removed and Reserved]**

58. Remove and reserve subpart Z.

Dated at Washington, DC on March 20, 2018.

By order of the Board of Directors.

Federal Deposit Insurance Corporation

**Valerie Best,**

*Assistant Executive Secretary.*

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