[BILLING CODE: 4810-01-P]

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 9

[Docket No. OCC-2020-0012]

RIN: 1557-AE84

Short-term Investment Funds

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC).

ACTION: Interim final rule and request for comment.

SUMMARY: The OCC is adopting an interim final rule to revise the OCC's short-term investment fund (STIF) rule (STIF Rule) for national banks acting in a fiduciary capacity. Sudden disruptions in the financial markets have created conditions that may constrain the ability of a national bank's management team to execute certain elements of a STIF's written investment policy, specifically with regard to investment plan components addressing the weighted average maturity and weighted average life of the STIF's investment portfolio. The OCC is issuing this interim final rule to allow national banks to operate affected STIFs on a limited-time basis with increased maturity limits under these circumstances.

DATE: The interim final rule is effective March 23, 2020, and is applicable beginning March 20, 2020. Comments on the interim final rule must be received no later than [45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Commenters are encouraged to submit comments through the Federal eRulemaking Portal or e-mail, if possible. Please use the title "Short-term Investment

Funds" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal – Regulations.gov Classic or Regulations.gov Beta:*

Regulations.gov Classic: Go to *https://www.regulations.gov/*. Enter "Docket ID OCC-2020-0012" in the Search Box and click "Search." Click on "Comment Now" to submit public comments. For help with submitting effective comments please click on "View Commenter's Checklist." Click on the "Help" tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.

Regulations.gov Beta: Go to *https://beta.regulations.gov/* or click "Visit New *Regulations.gov Site*" from the *Regulations.gov* Classic homepage. Enter "Docket ID OCC-2020-0012" in the Search Box and click "Search." Public comments can be submitted via the "Comment" box below the displayed document information or by clicking on the document title and then clicking the "Comment" box on the top-left side of the screen. For help with submitting effective comments please click on "Commenter's Checklist." For assistance with the *Regulations.gov* Beta site, please call (877) 378-5457 (toll free) or (703) 454-9859 Monday-Friday, 9am-5pm ET or e-mail *regulations@erulemakinghelpdesk.com*.

- *E-mail:* *regs.comments@occ.treas.gov*.
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, 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-2020-0012" in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided 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 – Regulations.gov Classic or Regulations.gov Beta:*

Regulations.gov Classic: Go to *https://www.regulations.gov/.* Enter "Docket ID OCC-2020-0012" 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.

Regulations.gov Beta: Go to *https://beta.regulations.gov/* or click "Visit New *Regulations.gov Site*" from the *Regulations.gov* Classic homepage. Enter "Docket ID

OCC-2020-0012" in the Search Box and click "Search." Click on the "Comments" tab. Comments can be viewed and filtered by clicking on the "Sort By" drop-down on the right side of the screen or the "Refine Results" options on the left side of the screen. Supporting materials can be viewed by clicking on the "Documents" tab and filtered by clicking on the "Sort By" drop-down on the right side of the screen or the "Refine Results" options on the left side of the screen." For assistance with the *Regulations.gov* Beta site, please call (877) 378-5457 (toll free) or (703) 454-9859 Monday-Friday, 9am-5pm ET or e-mail *regulations@erulemakinghelpdesk.com*.

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 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 comments.

FOR FURTHER INFORMATION CONTACT: Patricia Dalton, Director for Asset Management Policy, Market Risk Policy Division, Bank Supervision Policy, (202) 649-6401, Stephanie Boccio, Asset Management Lead Expert, Systemic Risk Identification Support and Specialty Supervision, (202) 649-6397, or Jamey Basham, Assistant Director, Chief Counsel's Office, (202) 649–5490, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background.

A. Short-Term Investment Funds

A STIF is a form of Collective Investment Fund (CIF). A CIF is a bank-managed fiduciary fund that holds pooled assets; the bank is required to establish and operate the CIF in accordance with specific criteria established by the OCC fiduciary activities regulation at 12 CFR 9.18. Under 12 CFR 9.18(b)(1), each CIF is established under a "Plan" approved by the bank's board of directors (or an authorized board committee) that details the terms under which the bank manages and administers the fund's assets. The bank acts as a fiduciary for the CIF and holds legal title to the fund's assets, which are funded through contributions by the CIF's participants, as discussed below. Participants in a CIF are the beneficial owners of the fund's assets. Each participant owns an undivided interest in the aggregate assets of a CIF; a participant does not directly own any specific asset held by a CIF.[1]

A participant's investment in a CIF is called a "participating interest." Participating interests in a CIF are not insured by the Federal Deposit Insurance Corporation (FDIC) and are not subject to potential claims by a bank's creditors. In addition, a participating interest in a CIF cannot be pledged or otherwise encumbered in favor of a third party. A CIF admitting a participant (that is, allowing the participant, in effect, to purchase a proportionate interest in the assets of the CIF) or withdrawing all or part of its participating interest in the CIF may only do so on the basis of a valuation of the CIF's assets, as of the admission or withdrawal date, and only for non-cancellable

[1] 12 CFR 9.18.

requests made before or on the valuation date.[2] This general valuation rule is designed to protect all participants in the CIF from the risk that other participants will be admitted or withdrawn at valuations that dilute the value of existing participating interests in the CIF.

A STIF is a type of CIF that permits a bank to value the STIF's assets on an amortized cost basis, rather than at mark-to-market value, for purposes of admissions and withdrawals. Because a STIF's investments are limited to shorter-term assets and those assets generally are required to be held to maturity, differences between the amortized cost and mark-to-market value of the assets will be rare, absent atypical market conditions or an impaired asset. STIFs typically operate with the primary objective of maintaining a stable net asset value (NAV) per participation interest of $1.00.[3]

The OCC's STIF Rule at 12 CFR 9.18(b)(4)(iii) governs STIFs managed by national banks, but it is also common for other types of financial institutions (collectively with national banks, "banks") to manage collective investment funds pursuant to the requirements of other laws which, in turn, cross-reference the OCC's CIF Rule at 12 CFR 9.18 and the STIF Rule subcomponent thereof at 12 CFR 9.18(b)(4)(iii).[4]

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[2] 12 CFR 9.18(b)(5).

[3] 12 CFR 9.18(b)(4)(iii)(A).

[4] For example, New York state law provides that all investments in short-term investment common trust funds may be valued at cost, if the plan of operation requires that: (i) the type or category of investments of the fund shall comply with the rules and regulations of the Comptroller of the Currency pertaining to short-term investment funds and (ii) in computing income, the difference between cost of investment and anticipated receipt on maturity of investment shall be accrued on a straight-line basis. See N.Y. Comp. Codes R. & Regs. Tit. 3, section 22.23 (2010). Additionally, in order to retain their tax-exempt status pursuant to the Internal Revenue Code, common trust funds must operate in compliance with § 9.18 as well as the Federal tax laws. See 26 U.S.C. 584. Although the direct scope of the STIF Rule provisions in § 9.18 of the OCC's regulations is national banks and Federal branches and agencies of foreign banks acting in a fiduciary capacity

There are also other types of funds that seek to maintain a stable NAV. The most significant of these from a financial market presence standpoint are "money market mutual funds" (MMMFs). These funds are organized as open-ended management investment companies and are regulated by the U.S. Securities and Exchange Commission ("SEC") pursuant to the Investment Company Act of 1940, particularly pursuant to the provisions of SEC Rule 2a-7 thereunder ("Rule 2a-7").

There are a number of important differences between MMMFs and STIFs; most significantly, MMMFs are open to all retail, commercial, institutional, and public sector investors, whereas, STIFs only are available to authorized fiduciary accounts of a bank and certain employee benefit plans.[5] Additionally, the combined asset value of all STIFs nationwide totals only a fraction of the combined asset value of all MMMFs.

B. Market Disturbances Impacting STIF Liquidity Management Functions

Recent events have significantly and adversely impacted global financial markets, and the OCC is concerned about the potential effects on STIFs operated by national banks. The spread of the Coronavirus Disease 2019 (COVID-2019) has slowed economic activity in many countries, including the United States. Sudden disruptions in

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(12 CFR 9.1(c)) in regard to STIFs, the nomenclature of the STIF Rule refers simply to "banks." For the sake of convenience, the OCC continues this approach and also applies the same convention to the discussion of the STIF final rule.

[5] 15 U.S.C. 80a; 17 CFR 270.2a-7. Because STIFs are a form of CIF, they are generally exempt from the SEC's rules under the Investment Company Act. STIFs used exclusively for (1) the collective investment of money by a bank in its fiduciary capacity as trustee, executor, administrator, or guardian and (2) the collective investment of assets of certain employee benefit plans are exempt from the Investment Company Act under 15 U.S.C. 80a-3(c)(3) and (c)(11), respectively. MMMFs are not subject to comparable restrictions as to the type of participant who may invest in the fund or the purpose of such investment.

financial markets have put increasing liquidity pressure on MMMFs, as they have been faced with redemption requests from clients with immediate cash needs. The Board of Governor of the Federal Reserve System, with the approval of the Secretary of the Treasury, has authorized the Federal Reserve Bank of Boston to establish the Money Market Mutual Fund Liquidity Facility, pursuant to section 13(3) of the Federal Reserve Act,[6] as a measure to ameliorate these liquidity pressures. Although STIFs do not serve the same broad investor market as MMMFs, the OCC remains concerned that, in light of the acute effects the COVID-2019 virus is triggering across the markets broadly, there may be elevated participation interest withdrawals for STIFs operated by national banks, notwithstanding these differences between STIFs and MMMFs. Regulatory authorities supervising other categories of banks operating STIFs – in accordance with the legal requirements governing those banks and incorporating the OCC's STIF rules as part of those requirements – have conveyed similar concerns to the OCC.

In addition to the OCC's concerns about unusual withdrawal levels, the OCC observes that STIF investment portfolios are generally made up of the same types of securities and investments as those held by MMMFs. Accordingly, liquidity pressures related to the COVID-2019 virus in the marketplace for those assets raise similar concerns as those presented for MMMFs. The OCC's STIF Rule requires management to operate the fund pursuant to liquidity management standards allowing the STIF to balance appropriately the volume of the STIF's daily admissions and withdrawals in conjunction with the maturities of the fund's investments. Under the OCC STIF Rule, these standards must address contingent funding needs, and the bank must operate an

[6] 12 U.S.C. 343(3).

independent program of stress testing to assess the STIF's ability to maintain a stable NAV in varying market conditions.[7] Acute market-wide disturbances in the depth of liquidity available for a bank seeking to purchase and sell portfolio assets to maintain a STIF's liquidity put pressure on the bank's ability to perform these functions.

In addition, the OCC's STIF Rule requires the STIF to be operated pursuant to a written, board-approved plan that requires the fund to maintain a dollar-weighted average portfolio maturity of 60 days or less and a dollar-weighted average portfolio life maturity of 120 days or less, as determined in the same manner as is required by the Securities and Exchange Commission pursuant to Rule 2a-7 for money market mutual funds (17 CFR 270.2a-7). The OCC is concerned that the current market-wide liquidity disturbances may put pressure on bank management's ability to comply with these maturity limits.

II. Description of the Interim Final Rule

The OCC is amending the OCC STIF Rule to add a reservation of authority provision addressing the rule's limits on weighted average portfolio maturity, weighted average portfolio life maturity, and the method for determining those limits. The OCC believes that the temporary nature of the need for relief, and the uncertainty associated with future market conditions, counsel the OCC's use of a flexible method of administering relief from the limits, rather than a direct rule amendment to the limits themselves. In designing the proposed rule, the OCC is also mindful that banks other than national banks supervised and regulated by the OCC also operate their STIFs under applicable legal requirements that cross-reference the OCC STIF Rule. The OCC believes it is important to include a mechanism in the reservation of authority that

[7] 12 CFR 9.18(b)(4)(iii)(F), (H).

provides these banks access to public information about the OCC's use of the reservation of authority.

Accordingly, the interim final rule sets out a framework under which the OCC's reservation of authority will be exercised in the format of an OCC administrative order. The administrative order will be issued by authorization of the Comptroller of the Currency. The OCC will publish the administrative order on its website at www.occ.gov and through other methods, as appropriate. The interim final rule provides that a bank seeking to comply with the requirements of the OCC STIF Rule on weighted average portfolio maturity, weighted average portfolio life maturity, and the method for determining them will deemed to be in compliance with the rule's limits if the bank complies with the limits or other revisions, and any applicable conditions, described in the administrative order.

III. Description of the Administrative Order

Concurrently with the OCC's issuance of this interim final rule, the OCC is issuing an administrative order pursuant to provisions of the interim final rule.

The order states that banks seeking to comply with the requirements of section 9.18(b)(4)(iii)(B) will be deemed to be in compliance with that section, if (1) the STIF maintains a dollar-weighted average portfolio maturity of 120 days or less, and (2) the STIF maintains a dollar-weighted average portfolio life maturity of 180 days or less. Consistent with the terms of section 9.18(b)(4)(iii)(B), both maturities must be determined in the same manner as is required by the Securities and Exchange Commission pursuant to Rule 2a-7 for money market mutual funds (17 CFR 270.2a-7).

The relief provided by the OCC's order terminates on July 20, 2020, unless the OCC revises the order to provide otherwise before that date. The OCC will monitor market conditions during this period to assess whether extensions beyond that date are necessary and appropriate.

The order also states the bank must determine it is acting in the best interests of the STIF under applicable law in connection with using these temporary limits. This determination may be made under the bank's standard procedures for making determinations in regards to the best interests of its collective investment funds.[8] In addition, the order states the bank must make any necessary amendments to the written plan for the STIF to reflect these temporary changes.

The OCC seeks comment on all aspects of the interim final rule.

IV. Administrative Law Matters

A. Administrative Procedure Act

The OCC is issuing the interim final rule without prior notice and the opportunity for public comment and the delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).[9] Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an "agency for good cause finds (and incorporates the finding and a

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[8] For national banks and federal savings associations, *see, e.g.* 12 CFR 9.11 and 9.18(a); *see also* 12 CFR 9.2(b).

[9] 5 U.S.C. 553.

brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."[10]

The OCC believes that the public interest is best served by implementing the interim final rule immediately upon publication in the Federal Register. The spread of the COVID-19 virus has slowed economic activity in many countries, including the United States, and have put increasing liquidity pressure on the markets in which STIFs buy and sell their portfolio assets. These market conditions make it unusually difficult for banks to operate STIFs on a current basis in compliance with the maturity limits of the OCC STIF Rule. For these reasons, the OCC finds that there is good cause consistent with the public interest to issue the rule without advance notice and comment.[11]

The APA also requires a 30-day delayed effective date, except for (1) substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause.[12] Because the interim final rule relieve a restriction, it is exempt from the APA's delayed effective date requirement.[13]

While the OCC believes that there is good cause to issue the rule without advance notice and comment and with an immediate effective date, the agencies are interested in the views of the public and requests comment on all aspects of the interim final rule.

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[10] 5 U.S.C. 553(b)(3)(A).

[11] 5 U.S.C. 553(b)(B); 553(d)(3).

[12] 5 U.S.C. 553(d).

[13] 5 U.S.C. 553(d)(1).

B. Congressional Review Act

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a "major" rule.[14] If a rule is deemed a "major rule" by the Office of Management and Budget (OMB), the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[15]

The Congressional Review Act defines a "major rule" as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[16]

For the same reasons set forth above, the OCC is adopting the interim final rule without the delayed effective date generally prescribed under the Congressional Review Act. The delayed effective date required by the Congressional Review Act does not apply to any rule for which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public

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[14] 5 U.S.C. 801 *et seq*.

[15] 5 U.S.C. 801(a)(3).

[16] 5 U.S.C. 804(2).

procedure thereon are impracticable, unnecessary, or contrary to the public interest.[17] In light of current market uncertainty, the OCC believes that delaying the effective date of the rule would be contrary to the public interest.

As required by the Congressional Review Act, the OCC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521) (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid OMB control number. The interim final rule contains no collection of information under the PRA.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[18] requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.[19] The RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). As discussed previously, consistent with section 553(b)(B) of the APA, the OCC has determined for good cause that general notice and opportunity for public comment is unnecessary, and therefore the OCC is not issuing a notice of proposed rulemaking. Accordingly, the OCC has

[17] 5 U.S.C. 808.

[18] 5 U.S.C. 601 et seq.

[19] Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $600 million or less and trust companies with total assets of $41.5 million or less. See 13 CFR 121.201.

concluded that the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply.

Nevertheless, the OCC seeks comment on whether, and the extent to which, the interim final rule would affect a significant number of small entities.

E. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[20] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), each Federal banking agency must consider, consistent with the principle 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, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to 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, with certain exceptions, including for good cause.[21] For the reasons described above, the OCC finds good cause exists under section 302 of RCDRIA to publish this interim final rule with an immediate effective date.

As such, the final rule will be effective immediately. Nevertheless, the OCC seeks comment on RCDRIA.

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[20] 12 U.S.C. 4802(a).

[21] 12 U.S.C. 4802.

F. Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act[22] 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 interim final rule in a simple and straightforward manner. The OCC invites comments on whether there are additional steps it could take to make the rule easier to understand. For example:

- Have the OCC organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the regulation contain 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 to the format would make the regulation easier to understand? What else could we do to make the regulation easier to understand?

G. *Unfunded Mandates*

As a general matter, the Unfunded Mandates Act of 1995 (UMRA), 2 U.S.C. 1531 et seq., requires the preparation of a budgetary impact statement before promulgating a rule that 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. However, the UMRA does not apply to final rules for

[22] 12 U.S.C. 4809.

which a general notice of proposed rulemaking was not published. See 2 U.S.C. 1532(a). Therefore, because the OCC has found good cause to dispense with notice and comment for this interim final rule, the OCC has not prepared an economic analysis of the rule under the UMRA.

List of Subjects in 12 CFR Part 9

Estates, Investments, National banks, Reporting and recordkeeping requirements, Trusts and trustees.

For the reasons set forth in the preamble, chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 9 – FIDUCIARY ACTIVITIES OF NATIONAL BANKS

1. The authority citation for part 9 continues to read as follows:

Authority: 12 U.S.C. 24(Seventh), 92a, and 93a; 12 U.S.C. 78q, 78q-1, and 78w.

2. Section 9.18 is amended by adding paragraph (b)(4)(iv) to read as follows:

§ 9.18 Collective investment funds.

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(b) * * *

(4) * * *

(iv) *Reservation of authority*. Notwithstanding paragraph (b)(4)(iii)(B) of this section, during periods of market stress negatively affecting, on a temporary basis, the ability of banks to operate STIFs in compliance with the requirements of the paragraph:

(A) The OCC may issue an administrative order specifying, for purposes of paragraph (b)(4)(iii)(B) of this section, temporary revisions to the length of the dollar-weighted average portfolio maturity requirement, the length of dollar-weighted average portfolio life maturity, and the manner of determining such limits;

(B) A bank seeking to comply with paragraph (b)(4)(iii)(B) will be deemed to be in compliance with that paragraph's requirements by complying with the limits or other revisions, and any applicable conditions, described in the administrative order; and

(C) The OCC will publish the administrative order on www.occ.gov and through other methods, as appropriate.

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DATED: March 21, 2020.

Morris R. Morgan,
First Deputy Comptroller, Comptroller of the Currency.

[FR Doc. 2020-06293 Filed: 3/23/2020 11:15 am; Publication Date: 3/25/2020]