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Federal Deposit Insurance Corporation

Semiannual Regulatory Agenda

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Ch. III

Semiannual Agenda of Regulations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is hereby publishing items for the fall 2011 Unified Agenda of Federal Regulatory and Deregulatory Actions. The agenda contains information about FDIC's current and projected rulemakings, existing regulations under review, and completed rulemakings.

FOR FURTHER INFORMATION CONTACT:

Persons identified under regulations listed in the Agenda. Unless otherwise noted, the address for all FDIC staff identified in the agenda is Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Twice each year, the FDIC publishes an agenda of regulations to inform the public of its regulatory actions and to enhance public participation in the rulemaking process. Publication of the agenda is in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The FDIC amends its regulations under the general rulemaking authority prescribed in section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819) and under specific authority granted by the Act and other statutes.

Prerule

Recordkeeping Rules for Institutions Operating under the Exceptions or Exemptions for Banks from the Definitions of "Broker" or "Dealer" in the Securities Exchange Act of 1934 (AD80): The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and the Office of Thrift Supervision are requesting comment on proposed recordkeeping rules for banks, savings associations, federal and state-licensed branches and agencies of foreign banks, and Edge and agreement corporations that engage in securities-related activities under the statutory exceptions or regulatory exemptions for "banks" from the definitions of "broker" or "dealer" in section 3(a)(4)(B) or section 3(a)(5) of the Securities Exchange Act of 1934. The proposed rules are designed to facilitate and promote compliance with these exceptions and exemptions.

Calculation of Maximum Obligation Limitation (AD84): This notice is

published jointly by the Federal Deposit Insurance Corporation and the Departmental Offices of the Department of the Treasury and proposes rules to implement applicable provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). In accordance with the requirements of the Dodd-Frank Act, the proposed rules govern the calculation of the maximum obligation limitation (MOL), as specified in section 210(n)(6) of the Dodd-Frank Act. The MOL limits the aggregate amount of outstanding obligations that the FDIC may issue or incur in connection with the orderly liquidation of a covered financial company.

Prohibitions and Restrictions on Proprietary Trading and Certain Relationships With Hedge Funds and Private Equity Funds (AD85): This notice is published jointly by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Securities Exchange Commission, and the Commodity Futures Trading Commission and are requesting comment on a proposed rule that would implement section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act which contains certain prohibitions and restrictions on the ability of banking entities and nonbank financial companies supervised by the Board to engage in proprietary trading and have certain investments in, or relationships with, hedge funds or private equity funds. Section 619 is commonly referred to as the "Volcker Rule."

Proposed Rules

Special Reporting, Analysis and Contingent Resolution Plans at Certain Large Insured Depository Institutions (AD59): The Federal Deposit Insurance Corporation (FDIC) is seeking comment on a proposed rule that would require certain identified insured depository institutions (IDIs) that are subsidiaries of large and complex financial parent companies to submit to the FDIC analysis, information, and contingent resolution plans that address and demonstrate the IDI's ability to be separated from its parent structure, and to be wound down or resolved in an orderly fashion. The IDI's plan would include a gap analysis that would identify impediments to the orderly stand-alone resolution of the IDI, and identify reasonable steps that are or will be taken to eliminate or mitigate such impediments. The contingent resolution plan, gap analysis, and mitigation efforts are intended to enable the FDIC to

develop a reasonable strategy, plan, or options for the orderly resolution of the institution. The proposal would apply only to IDIs with greater than \$10 billion in total assets that are owned or controlled by parent companies with more than \$100 billion in total assets.

Alternatives to the Use of Credit Ratings in the Risk-Based Capital Guidelines of the Federal Banking Agencies (AD62): The regulations of the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of Thrift Supervision (collectively the Agencies) include various references to and requirements based on the use of credit ratings issued by nationally recognized statistical rating organizations. Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act, enacted on July 21, 2010, requires the Agencies to review their regulations that (1) require an assessment of the credit-worthiness of a security or money market instrument and (2) contain references to or requirements regarding credit ratings. In addition, the Agencies are required to remove such requirements that refer to or rely upon credit ratings, and to substitute in their place uniform standards of credit-worthiness.

Risk-Based Capital Guidelines: Market Risk (AD70): The Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation (collectively the Agencies) are requesting comment on a proposal to revise their market risk capital rules to modify their scope to better capture positions for which the market risk capital rules are appropriate; reduce procyclicality in market risk capital requirements; enhance the rules' sensitivity to risks that are not adequately captured under the current regulatory measurement methodologies; and increase transparency through enhanced disclosures. The proposal does not include the methodologies adopted by the Basel Committee on Banking Supervision for calculating the specific risk capital requirements for debt and securitization positions due to their reliance on credit ratings, which is impermissible under the Dodd-Frank Wall Street Reform and Consumer Protection Act. The proposal, therefore, retains the current specific risk treatment for these positions until the Agencies develop alternatives standards of creditworthiness as required by the Act. The proposed rules are substantively the same across the Agencies.

Credit Risk Retention (AD74): The Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, U.S. Securities and Exchange Commission, Federal Housing Finance Agency, and Department of Housing and Urban Development (collectively the Agencies) are proposing rules to implement the credit risk retention requirements of section 15G of the Securities Exchange Act of 1934 (15 U.S.C. 78o–11), as added by section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Section 15G generally requires the securitizer of asset-backed securities to retain not less than five percent of the credit risk of the assets collateralizing the asset-backed securities. Section 15G includes a variety of exemptions from these requirements, including an exemption for asset-backed securities that are collateralized exclusively by residential mortgages that qualify as “qualified residential mortgages,” as such term is defined by the Agencies by rule.

Resolution Plans and Credit Exposure Reports Required (AD77): The Board of Governors of the Federal Reserve System (Board) and the Federal Deposit Insurance Corporation (FDIC) request comment on this proposed rule that implements the requirements in section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) regarding resolution plans and credit exposure reports. Section 165(d) requires each nonbank financial company supervised by the Board and each bank holding company with assets of \$50 billion or more to report periodically to the Board, the FDIC, and the Financial Stability Oversight Council (the Council) (i) the plan of such company for rapid and orderly resolution in the event of material financial distress or failure, and (ii) the nature and extent of credit exposures of such company to significant bank holding companies and significant nonbank financial companies and the nature and extent of the credit exposures of significant bank holding companies and significant nonbank financial companies to such company. Section 165(d)(8) of the Dodd-Frank Act requires the Board and the FDIC to jointly issue final rules implementing section 165(d) by not later than January 21, 2012.

Margin and Capital Requirements for Covered Swap Entities (AD79): The Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Farm Credit Administration and Federal Housing

Finance Agency (collectively, the Agencies) are requesting comment on a proposal to establish minimum margin and capital requirements for registered swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants for which one of the Agencies is the prudential regulator.

Incentive-Based Compensation Arrangements (AD86): The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, the U.S. Securities Exchange Commission, and the Fair Housing Finance Agency (collectively the Agencies) are proposing rules to implement section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The proposed rule would require the reporting of incentive-based compensation arrangements by a covered financial institution and prohibit incentive-based compensation arrangements at a covered financial institution that provide excessive compensation or that could expose the institution to inappropriate risks that could lead to material financial loss.

Final Rules

Retail Foreign Exchange Transactions (AD81): The Federal Deposit Insurance Corporation (FDIC) is adopting a final rule that imposes requirements for foreign currency futures, options on futures, and options that an insured depository institution supervised by the FDIC engages in with retail customers. The final rule also imposes requirements on other foreign currency transactions that are functionally or economically similar, including so-called “rolling spot” transactions that an individual enters into with a foreign currency dealer, usually through the Internet or other electronic platform, to transact in foreign currency. The regulations do not apply to traditional foreign currency forwards, spots, or swap transactions that an insured depository institution engages in with business customers to hedge foreign exchange risk. The final rule applies to all state nonmember banks and, as of July 21, 2011, also to all state savings associations.

Transfer and Redesignation of Certain Regulations Involving State Savings Associations Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (AD82): Consistent with the authority provided to the Federal Deposit Insurance Corporation (FDIC) by the Dodd-Frank

Wall Street Reform and Consumer Protection Act of 2010, and other statutory authorities, the FDIC is reissuing and redesigning certain transferring Office of Thrift Supervision (OTS) regulations currently found in title 12, chapter V of the Code of Federal Regulations. In republishing these rules, the FDIC is making only technical changes to existing OTS regulations (such as nomenclature or address changes), and eliminating those OTS regulations for which other appropriate Federal banking agencies are authorized to act. In the future, the FDIC may take other actions related to the transferred rules: Incorporating them into other FDIC regulations contained in title 12, chapter III; amending them; or rescinding them, as appropriate.

Disclosure of Information; Privacy Act Regulations; Notice and Amendments (AD83): The Dodd-Frank Wall Street Reform and Consumer Protection Act abolished the Office of Thrift Supervision (OTS) and redistributed, as of July 21, 2011, the statutorily prescribed transfer date (Transfer Date), the functions and regulations of the OTS relating to savings and loan holding companies, Federal savings associations, and State savings associations to the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation (FDIC), respectively. The FDIC has determined that, effective on the Transfer Date, the OTS Freedom of Information Act (FOIA) and Privacy Act (PA) regulations will not be enforced by the FDIC and that, instead, all FOIA and PA issues will be addressed under the FDIC’s regulations involving disclosure of information and the PA, as amended. In taking this action the FDIC’s goal is to avoid potential confusion and uncertainty that may arise regarding information concerning State savings associations after the Transfer Date.

Completed Actions

Guidelines for Furnishers of Information to Consumer Reporting Agencies (AD40): The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Trade Commission (collectively the Agencies) requested comment to gather information that would assist the Agencies in considering the development of a possible proposed addition to the furnisher accuracy and integrity guidelines which, along with

the accompanying regulations, implement the accuracy and integrity provisions in section 312 of the Fair and Accurate Credit Transactions Act of 2003 that amended section 623 of the Fair Credit Reporting Act. This rule would also assist the Agencies in determining whether it would be appropriate to propose an addition to one of the guidelines that would delineate the circumstances under which a furnisher would be expected to provide an account opening date to a consumer reporting agency to promote the integrity of the information. In addition, the Agencies requested comment more broadly on whether furnishers should be expected to provide any other types of information to a consumer reporting agency in order to promote integrity.

Defining Safe Harbor Protection for Treatment by the Federal Deposit Insurance Corporation as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution (AD53): The Federal Deposit Insurance Corporation (FDIC) is amending its regulation codified at 12 CFR section 360.6, Defining Safe Harbor Protection for Treatment by the Federal Deposit Insurance Corporation as Conservator or Receiver of Financial Assets Transferred in Connection with a Securitization or Participation. The amendment adds a new subparagraph (b)(2) in order to continue for a limited time the safe harbor provision of section 360.6(b) for participations or securitizations that would be affected by recent changes to generally accepted accounting principles. In effect, the Rule “grandfathers” all participations and securitizations for which financial assets were transferred or, for revolving securitization trusts, for which

securities were issued prior to March 31, 2010, so long as those participations or securitizations complied with the preexisting section 360.6 under generally accepted accounting principles in effect prior to November 15, 2009. The transitional safe harbor will apply irrespective of whether or not the participation or securitization satisfies all of the conditions for sale accounting treatment under generally accepted accounting principles as effective for reporting periods after November 15, 2009.

Risk-Based Capital Standards: Advanced Capital Adequacy Framework-Basel II; Establishment of a Risk-Based Capital Floor (AD71): The Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, the Agencies) propose to amend the advanced risk-based capital adequacy standards (advanced approaches rules) to be consistent with certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) and amend the general risk-based capital rules to provide limited flexibility consistent with section 171(b) of the Dodd-Frank Act for recognizing the relative risk of certain assets generally not held by depository institutions.

Procedures for Monitoring Bank Secrecy Act Compliance and Fair Credit Reporting: Technical Amendments (AD76): The Federal Deposit Insurance Corporation has adopted a final rule updating the cross-references in its anti-money laundering program and Fair Credit Reporting Act rules, to conform to changes in the numbering of the Department of the Treasury’s rules that implement the Bank Secrecy Act.

Interest On Deposits; Deposit Insurance Coverage (AD78): Effective July 21, 2011, the statutory prohibition against the payment of interest on demand deposits will be repealed pursuant to section 627 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. In light of this, the Federal Deposit Insurance Corporation (FDIC) proposes to rescind part 329, the regulation that has implemented this prohibition with respect to state-chartered nonmember (SNM) banks. Because part 329 includes a definition of “interest” that may assist the FDIC in interpreting a recent statutory amendment that provides temporary, unlimited deposit insurance coverage for noninterest-bearing transaction accounts, the FDIC also proposes to retain and move the definition of “interest” into part 330, the deposit insurance regulations.

Certain Orderly Liquidation Authority Provisions under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (AD87): The Federal Deposit Insurance Corporation (FDIC) issued a final rule to implement certain provisions of its authority to resolved covered financial companies under title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act). The Final Rule established a more comprehensive framework for the implementation of the FDIC’s orderly liquidation authority and will provide greater transparency to the process for the orderly liquidation of a systemically important financial institution under the Dodd-Frank Act.

Federal Deposit Insurance Corporation.

Valerie Best,

Assistant Executive Secretary.

FEDERAL DEPOSIT INSURANCE CORPORATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
572	12 CFR 342 Recordkeeping Rules for Institutions Operating Under the Exceptions or Exemptions for Banks From the Definitions of “Broker” or “Dealer” in the Securities Exchange Act of 1934.	3064–AD80

FEDERAL DEPOSIT INSURANCE CORPORATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
573	12 CFR 325 Alternatives to the Use of Credit Ratings in the Risk-Based Capital Guidelines of the Federal Banking Agencies.	3064–AD62

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC)*Proposed Rule Stage***572. • Recordkeeping Rules for Institutions Operating Under the Exceptions or Exemptions for Banks From the Definitions of “Broker” or “Dealer” in the Securities Exchange Act of 1934**

Legal Authority: 12 U.S.C. 1818; 12 U.S.C. 1819 (Tenth); 12 U.S.C. 1828(t)

Abstract: The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and the Office of Thrift Supervision are requesting comment on proposed recordkeeping rules for banks, savings associations, federal and state-licensed branches and agencies of foreign banks, and Edge and agreement corporations that engage in securities-related activities under the statutory exceptions or regulatory exemptions for “banks” from the definitions of “broker” or “dealer” in section 3(a)(4)(B) or section 3(a)(5) of the Securities Exchange Act of 1934. The proposed rules are designed to facilitate and promote compliance with these exceptions and exemptions.

Timetable:

Action	Date	FR Cite
NPRM	12/00/11	

Regulatory Flexibility Analysis

Required: Yes.

Agency Contact: Michael Phillips, Counsel, Legal Division, Federal Deposit Insurance Corporation, Washington, DC 20429, *Phone:* 202 898–3581.
RIN: 3064–AD80

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC)*Final Rule Stage***573. Alternatives to the Use of Credit Ratings in the Risk-Based Capital Guidelines of the Federal Banking Agencies**

Legal Authority: Not Yet Determined
Abstract: The regulations of the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of Thrift Supervision (collectively the Agencies) include various references to and requirements based on the use of credit ratings issued by nationally recognized statistical rating organizations. Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act, enacted on July 21, 2010, requires the Agencies to

review their regulations that (1) require an assessment of the credit-worthiness of a security or money market instrument and (2) contain references to or requirements regarding credit ratings. In addition, the Agencies are required to remove such requirements that refer to or rely upon credit ratings, and to substitute in their place uniform standards of credit-worthiness.

Timetable:

Action	Date	FR Cite
ANPRM	08/25/10	75 FR 52283
ANPRM Comment Period End.	10/25/10	
Final Rule	12/00/11	

Regulatory Flexibility Analysis

Required: Yes.

Agency Contact: Bobby R. Bean, Chief, Policy Section, Federal Deposit Insurance Corporation, Washington, DC 20429, *Phone:* 202 898–3575.

Mark Handzlik, Senior Attorney, Federal Deposit Insurance Corporation, Washington, DC 20429, *Phone:* 202 898–3900.

Michael Phillips, Counsel, Legal Division, Federal Deposit Insurance Corporation, Washington, DC 20429, *Phone:* 202 898–3581.

RIN: 3064–AD62

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