FEDERAL RESERVE SYSTEM

12 CFR Parts 217 and 225

Regulations Q and Y

Docket No. R-1619; RIN 7100-AF 13

Interim Final Rule to amend the Small Bank Holding Company and Savings and Loan Holding Company Policy Statement and related regulations; Changes to Reporting Requirements.

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Interim final rule with request for comment; changes to reporting requirements.

SUMMARY: The Board invites comment on an interim final rule that raises the asset size threshold for determining applicability of the Board's Small Bank Holding Company and Savings and Loan Holding Company Policy Statement (Regulation Y, Appendix C) (Policy Statement) to $3 billion from $1 billion of total consolidated assets. The interim final rule also makes related and conforming revisions to the Board's regulatory capital rule (Regulation Q) and requirements for bank holding companies (Regulation Y). In connection with these changes, the Board is modifying the respondent panel for certain holding company financial reports.

DATES: The interim final rule is effective immediately. Comments on the interim final rule must be received no later than [INSERT 60 days from the date of publication in the *Federal Register*].

ADDRESSES: You may submit comments, identified by Docket No. R-1619 and RIN No 7100 AF 13, by any of the following methods:

- **Agency Web Site**: http://www.federalreserve.gov. Follow the instructions for submitting comments at http://www.federalreserve.gov/apps/foia/proposedregs.aspx.

- **E-mail**: regs.comments@federalreserve.gov. Include the docket number in the subject line of the message.
- **Fax**: (202) 452-3819 or (202) 452-3102.
- **Mail**: Ann Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551.

All public comments will be made available on the Board's web site at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 3515, 1801 K Street NW (between 18th and 19th Streets NW), between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Constance M. Horsley, Deputy Associate Director, (202) 452-5239, Cynthia Ayouch, Manager, (202) 452-2204, Douglas Carpenter, Senior Supervisory Financial Analyst, (202) 452-2205, Vanessa Davis, Supervisory Financial Analyst, (202) 475-6647, or Kevin Tran, Supervisory Financial Analyst, (202) 452-2309, Division of Supervision and Regulation; Laurie Schaffer, Associate General Counsel, (202) 452-2272; Benjamin McDonough, Assistant General Counsel, (202) 452-2036, or Mark Buresh, (202) 452-5270, Senior Attorney, Legal Division; Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

The Board issued the Small Bank Holding Company and Savings and Loan Holding Company Policy Statement (Regulation Y, Appendix C) (Policy Statement) in 1980 to facilitate the transfer of ownership of small community-based banks in a manner consistent with bank safety and soundness.[1] In general, the Board has discouraged the use of debt by bank holding companies and savings and loan holding companies (collectively, depository institution holding companies) to finance acquisitions because high levels of debt can impair the ability of a depository institution holding company to serve as a source of strength to its subsidiary depository institutions. However, the Board has recognized that small depository institution holding companies have less access to equity financing than larger depository institution holding companies and that, therefore, an acquisition by a small depository institution holding company often requires the use of debt.

[1] 12 CFR part 225, App. C.

The Board originally adopted the Policy Statement to permit the formation and expansion of small bank holding companies with debt levels that are higher than typically permitted for larger bank holding companies. The Policy Statement contains several conditions and restrictions designed to ensure that a small depository institution holding company that operates with the heightened level of debt permitted under the Policy Statement does not present an undue risk to the safety and soundness of its subsidiary depository institutions.

Currently, the Policy Statement applies to bank holding companies with *pro forma* consolidated assets of less than $1 billion that: (i) are not engaged in significant nonbanking activities either directly or through a nonbank subsidiary; (ii) do not conduct significant off-balance sheet activities (including securitization and asset management or administration) either directly or through a nonbank subsidiary;[2] and (iii) do not have a material amount of debt or equity securities outstanding (other than trust preferred securities) that are registered with the Securities and Exchange Commission (the foregoing enumerated items referred to hereafter as qualitative requirements). The Policy Statement also applies to small savings and loan holding companies as if they were bank holding companies.[3]

The Policy Statement provides that bank holding companies that meet the qualitative requirements (qualifying small holding companies) may use debt to finance up to 75 percent of the purchase price of an acquisition (that is, they may have a debt-to-

[2] The examples provided in the Policy Statement are not exhaustive and simply highlight off-balance sheet activities that may involve substantial risk. Other activities than securitization and asset management or administration may present similar concerns. *See also* 71 FR 9897, 9899, fn. 2 (February 28, 2006) (2006 Final Rule).

[3] 12 CFR 238.9.

equity ratio of up to 3:1). However, a qualifying small holding company must satisfy additional ongoing requirements, including that it: (i) reduce its debt such that all debt is retired within 25 years of the debt being incurred; (ii) reduce its debt-to equity ratio to .30:1 or less within 12 years of the debt being incurred; (iii) ensure that each of its subsidiary insured depository institutions is well capitalized; and (iv) refrain from paying dividends until such time as it reduces its debt-to-equity ratio to 1.0:1 or less. The Policy Statement also provides that a qualifying small holding company may not use the expedited applications procedures or obtain a waiver of the stock redemption filing requirements applicable to bank holding companies under the Board's Regulation Y unless the bank holding company has a *pro forma* debt-to-equity ratio of 1.0:1 or less.[4]

II. The Interim Final Rule

New Asset Threshold of $3 Billion

On May 24, 2018, the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) was enacted.[5] Section 207 of EGRRCPA directs the Board to revise the Policy Statement to raise the consolidated assets threshold from $1 billion to $3 billion within 180 days of the enactment of EGRRCPA. The Board last raised the asset limit in 2015 when it increased it from $500 million to $1 billion.[6] The Board is issuing this interim final rule to increase the asset threshold to $3 billion consistent with EGRRCPA. The Board is not making any additional modifications to the Policy

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[4] 12 CFR 225.4(b), 225.14, and 225.23.

[5] Pub. L. 115-174 (May 24, 2018).

[6] *See* 80 FR 20153 (April 15, 2015). In this final rule, the Board also applied the Policy Statement to small savings and loan holding companies as if they were bank holding companies. 80 FR 20153 (April 15, 2015).

Statement at this time. The final rule applies to small savings and loan holding companies to the same extent as small bank holding companies, by operation of Regulation LL.

The Board believes it is appropriate to issue an interim final rule revising the Policy Statement and making conforming revisions to Regulation Q and Regulation Y to apply the statutorily mandated threshold of $3 billion to qualifying holding companies consistent with EGRRCPA. Without such action, qualifying holding companies that cross $1 billion during the pendency of the proposal would be required to incur costs to implement regulatory capital and financial reporting systems that would cease to be necessary upon issuance of the final rule. In addition, the Board believes that it is appropriate to allow holding companies with total consolidated assets of $1 billion or more but less than $3 billion to immediately become subject to reduced regulatory and reporting requirements, consistent with the congressionally-mandated increase in the threshold, so that such firms are not obligated to incur significant compliance costs in the interim until the traditional rulemaking process is completed.

Conforming Regulation Q Change

For the reasons described previously, the Board is revising Regulation Q to conform the language in section 217.1 to reflect the heightened threshold of the Policy Statement resulting from the interim final rule. Specifically, section 217.1(c)(1)(iii) is revised to remove the reference to the $1 billion threshold.

Other Conforming Amendments

A number of reporting, filing, and other provisions in Regulation Y are triggered by the consolidated asset threshold established by the Policy Statement. In connection with revising the threshold under the Policy Statement, the Board is making technical and conforming amendments to these provisions to provide that qualifying small holding companies may take advantage of the streamlined informational, notice, and other requirements embodied in these rules. These technical and conforming amendments will provide regulatory burden relief to most holding companies with less than $3 billion of consolidated total assets. The final rule makes the following changes:

- In § 225.2(r), footnote 2, the footnote describing the application of the definition of "well-capitalized" in the Board's Regulation Y (12 CFR part 225) to entities subject to the Policy Statement is revised to remove the reference to the threshold of $1 billion under the Policy Statement.
- In § 225.4(b)(2)(iii), the thresholds for the different *pro forma* financial information required of smaller bank holding companies compared to larger bank holding companies under § 225.4(b)(1) of the Board's Regulation Y is revised to refer to total assets of less than $3 billion rather than total assets of less than $1 billion.
- In § 225.14(a)(1)(v), the thresholds for the different *pro forma* financial information required of smaller bank holding companies compared to larger bank holding companies under § 225.14 of the Board's Regulation Y is revised to refer to total assets of less than $3 billion rather than total assets of less than $1 billion.
- In § 225.17(a)(6), footnote 6, the total asset threshold for application of the footnote related to demonstrating that debt incurred will not unduly burden the bank holding company is revised to refer to total assets of less than $3 billion rather than total assets of less than $1 billion.
- In § 225.23(a)(1)(iii), the threshold for the different *pro forma* financial information required of smaller bank holding companies compared to larger bank

holding companies under § 225.23 of the Board's Regulation Y is revised to refer to total assets of less than $3 billion rather than total assets of less than $1 billion.

Regulatory Reporting Changes

The Board requires all depository institution holding companies to file certain reports with the Federal Reserve to monitor the financial condition and operations of depository institution holding companies. Those reports include the Financial Statements for Holding Companies (FR Y-9 series of reports; OMB No. 7100–0128). Depository institution holding companies with consolidated assets of less than $1 billion that also meet qualitative requirements submit summary parent-only financial data semiannually on the FR Y-9SP. Bank holding companies and savings and loan holding companies with consolidated assets of $1 billion or more—or that are otherwise not subject to the Policy Statement—submit consolidated financial data on the FR Y-9C and parent-only financial data on the FR Y-9LP, both quarterly.

The Board is modifying, effective immediately, the respondent panel for the FR Y-9SP, FR Y-9C, and FR Y-9LP for bank holding companies and savings and loan holding companies with $1 billion or more but less than $3 billion in total consolidated assets to align the threshold in the Policy Statement. If these institutions meet the qualitative requirements, they will not be required to file the FR Y-9C and the FR Y-9LP (including regulatory capital information) and would instead file the FR Y-9SP. These changes would be consistent with the final rule's changes to the Policy Statement and will reduce the regulatory reporting burden for these smaller institutions. Since most bank holding companies and savings and loan holding companies with less than $3 billion in total consolidated assets have limited activities outside of their subsidiary banks, the Board believes relying on summary parent-only financials from the FR Y-9SP and detailed depository institution financials from the Consolidated Reports of Condition and Income (FFIEC 031, FFIEC 041, FFIEC 051; OMB No. 7100-0036)) is sufficient for supervisory purposes.

Comments

The Board invites comments on all aspects of this interim final rule. Interested parties are encouraged to provide comments on the $3 billion asset size threshold adjustment, the revision to Regulation Q, and the related and conforming amendments to Regulations Y.

Effective Date/Request for Comments

The Board is issuing this interim final rule without prior notice and the opportunity for public comment and the 30-day delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA). Pursuant to the Administrative Procedure Act (APA), at 5 U.S.C. 553(b)(B), notice and comment are not required prior to the issuance of a final rule if an agency, for good cause, finds that "notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."[7] The interim final rule implements the provisions in section 207 of EGRRCPA, which was enacted on May 24, 2018. EGRRCPA includes a directive that the Board revise appendix C to part 225 of title 12 of the Code of Federal Regulations within 180 days to raise the consolidated asset threshold under that appendix from $1 billion to $3 billion.[8] This section of EGRRCPA was effective upon enactment.

[7] 5 U.S.C. 553(b)(B).

[8] Pub. Law 115-174 (May 24, 2018), section 207(b).

The Board believes that the public interest is best served by implementing the statutorily amended thresholds as soon as possible. Delaying the revisions to the Policy Statement, Regulation Q, and Regulation Y to complete a traditional notice and comment rulemaking process would cause holding companies with total consolidated assets of $1 billion or more and less than $3 billion to expend significant resources to continue to comply with Regulation Q and would subject these firms to heightened requirements under Regulation Y for the time necessary for the Board to go through the notice and comment rulemaking process. In addition, any holding companies that qualified under the Policy Statement and that came to have $1 billion or more in total consolidated assets while the rulemaking process was ongoing would be required to expend significant resources to comply with Regulation Q. The Board believes that providing a notice and comment period prior to issuance of the interim final rules is unnecessary because the Board does not expect public objection to the interim final rule being promulgated, as the rule merely provides the relief that Congress intended.

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.[9] The Board has concluded that, because the rule recognizes an exemption, the interim final rule is exempt from the APA's delayed effective date requirement.[10] Additionally, the Board finds good cause to publish the interim final rule with an

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[9] 5 U.S.C. 553(d).

[10] 5 U.S.C. 553(d)(1).

immediate effective date for the same reasons set forth above under the discussion of section 553(b)(B) of the APA.

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

III. Administrative Law Matters

A. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq., applies only to rules for which an agency publishes a general notice of proposed rulemaking. Because the Board has determined for good cause that a notice of proposed rulemaking for this rule is unnecessary, the Regulatory Flexibility Act does not apply to this final rule.

B. Paperwork Reduction Act

The Board has revised the respondent panel for each of the FR Y-9SP, FR Y-9C, and FR Y-9LP in connection with this final rule. Specifically, the minimum total consolidated asset threshold for filing the FR Y-9C and FR Y-9LP has been increased to $3 billion, and the FR Y-9SP has been updated to apply to holding companies with less than $3 billion in total consolidated assets. Though the number of total respondents is not affected, the result of this modification is to reduce the aggregate burden for the FR Y-9C, FR Y-9LP, and FR Y-9SP by 75,233 hours because more firms will file the less complex FR Y-9SP.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Federal banking agencies to use “plain language” in all proposed and final rules published after January 1,

2000. In light of this requirement, the Board has sought to present the interim final rule in a simple and straightforward manner. The Board invites comments on whether there are additional steps it could take to make the rule easier to understand.

List of Subjects

12 CFR Part 217

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements.

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

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

PART 217 – CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q)

1. The authority citation for part 217 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321-338a, 481-486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p-l, 1831w, 1835, 1844(b), 1851, 3904, 3906-3909, 4808, 5365, 5368, 5371.

2. In § 217.1, amend paragraph (c)(1)(iii) to read as follows:

§ 217.1 Purpose, applicability, reservations of authority, and timing.

* * * * *

(c) *Applicability.*

* * * * *

(1)

* * * * *

(iii) A covered savings and loan holding company domiciled in the United States, other than a savings and loan holding company that meets the requirements of 12 CFR part 225, Appendix C, as if the savings and loan holding company were a bank holding company and the savings association were a bank. For purposes of compliance with the capital adequacy requirements and calculations in this part, savings and loan holding companies that do not file the FR Y-9C should follow the instructions to the FR Y-9C.

PART 225 – BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

3. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p-1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331-3351, 3906, 3907, and 3909; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

4. In § 225.2, paragraph (r), amend footnote 2 to read as follows:

§ 225.2 Definitions.

* * * * *

(r) *Well-capitalized–*

* * * * *

Footnote 2: For purposes of this subpart and subparts B and C of this part, a bank holding company that is subject to the Small Bank Holding Company and Savings and Loan Holding Company Policy Statement in appendix C of this part will be deemed to be "well-capitalized" if the bank holding company meets the requirements for expedited/waived processing in appendix C.

5. In § 225.4, amend paragraph (b)(2)(iii) to read as follows:

§ 225.4 Corporate practices.

* * * * *

(b) *Purchase or redemption by bank holding company of its own securities—*

* * * * *

(2) *Contents of notice*

* * * * *

(iii) (A) If the bank holding company has consolidated assets of $3 billion or more, consolidated *pro forma* risk-based capital and leverage ratio calculations for the bank holding company as of the most recent quarter, and, if the redemption is to be debt funded, a parent-only *pro forma* balance sheet as of the most recent quarter; or

(B) If the bank holding company has consolidated assets of less than $3 billion, a *pro forma* parent-only balance sheet as of the most recent quarter, and, if the redemption is to be debt funded, one-year income statement and cash flow projections.

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6. In § 225.14, amend paragraph (a)(1)(v) to read as follows:

§ 225.14 Expedited action for certain bank acquisitions by well-run bank holding companies.

* * * * *

(a) *Filing of notice–*

* * * * *

(1)

* * * * *

(v)(A) If the bank holding company has consolidated assets of $3 billion or more, an abbreviated consolidated *pro forma* balance sheet as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, consolidated *pro forma* risk-based capital ratios for the acquiring bank holding company as of the most recent quarter, and a description of the purchase price and the terms and sources of funding for the transaction;

(B) If the bank holding company has consolidated assets of less than $3 billion, a *pro forma* parent-only balance sheet as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, and a description of the purchase price, the terms and sources of funding for the transaction, and the sources and schedule for retiring any debt incurred in the transaction;

* * * * *

7. In § 225.17, paragraph (a)(6), amend footnote 6 to read as follows:

§ 225.17 Notice procedure for one-bank holding company formations.

* * * * *

(a) *Transactions that qualify under this section.*

* * * * *

(6)

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Footnote 6 – For a banking organization with consolidated assets, on a *pro forma* basis, of less than $3 billion (other than a banking organization that will control a de novo bank), this requirement is satisfied if the proposal complies with the Board's Small Bank Holding Company and Savings and Loan Holding Company Policy Statement (appendix C of this part).

8. In § 225.23, amend paragraph (a)(1)(iii) to read as follows:

§ 225.23 Expedited action for certain nonbanking proposals by well-run bank holding companies.

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(a) *Filing of notice–*

* * * * *

(1) *Information required.*

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(iii) If the proposal involves an acquisition of a going concern:

(A) If the bank holding company has consolidated assets of $3 billion or more, an abbreviated consolidated *pro forma* balance sheet for the acquiring bank holding company as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, consolidated *pro forma* risk-based capital ratios for the acquiring bank holding company as of the most recent quarter, a description of the purchase price and the terms and sources of funding for the transaction, and the total revenue and net income of the company to be acquired;

(B) If the bank holding company has consolidated assets of less than $3 billion, a *pro forma* parent-only balance sheet as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, a description of the purchase price and the terms and sources of funding for the transaction and the sources and schedule for retiring any debt incurred in the transaction, and the total assets, off-balance sheet items, revenue and net income of the company to be acquired;

(C) For each insured depository institution whose Tier 1 capital, total capital, total assets or risk-weighted assets change as a result of the transaction, the total risk-weighted assets, total assets, Tier 1 capital and total capital of the institution on a *pro forma* basis;

Appendix C to Part 225—Small Bank Holding Company and Savings and Loan Holding Company Policy Statement

9. In part 225, appendix C, under the header "1. APPLICABILITY OF POLICY STATEMENT," remove the first undesignated paragraph and replace with a paragraph that reads as follows:

Policy Statement on Assessment of Financial and Managerial Factors

* * * * *

1. APPLICABILITY OF POLICY STATEMENT

This policy statement applies only to bank holding companies with *pro forma* consolidated assets of less than $3 billion that (i) are not engaged in significant nonbanking activities either directly or through a nonbank subsidiary; (ii) do not conduct significant off-balance sheet activities (including securitization and asset management or administration) either directly or through a nonbank subsidiary; and (iii) do not have a material amount of debt or equity securities outstanding (other than trust preferred securities) that are registered with the Securities and Exchange Commission. The Board may in its discretion exclude any bank holding company, regardless of asset size, from the policy statement if such action is warranted for supervisory purposes.[1] With the exception of section 4 (Additional Application Requirements for Expedited/Waived Processing), the policy statement applies to savings and loan holding companies as if they were bank holding companies.

Footnote 1: [RESERVED]

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By order of the Board of Governors of the Federal Reserve System, April 24, 2018.

/s/

Ann Misback,
Secretary of the Board.

BILLING CODE: 6210 01-P