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12 CFR Parts 225

[Regulations Y; Docket No. R–1653 and RIN 7100—AF41]

Amendments to the Capital Plan Rule

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

ACTION: Final rule.

SUMMARY: The Board is amending the capital plan rule to limit the scope of potential objections to a firm's capital plan on the basis of qualitative deficiencies in the firm's capital planning process (qualitative objection). In particular, effective immediately, the Board will no longer issue a qualitative objection under the capital plan rule to a firm if the firm has been subject to a potential qualitative objection for four consecutive years, and the firm does not receive a qualitative objection in the fourth year of that period. In addition, except for certain firms that have received a qualitative objection in the immediately prior year, the Board will no longer issue a qualitative objection to any firm effective January 1, 2021.

DATES:

Effective date: March 13, 2019.

Applicability date: The removal of the qualitative objection under the capital plan was applicable on March 6, 2019.

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SUPPLEMENTARY INFORMATION:

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I. Introduction

A. Background

Capital planning and stress testing are two key components of the Federal Reserve's supervisory framework for large financial institutions. At the height of the 2007–2008 financial crisis, the Board turned to stress testing under the Supervisory Capital Assessment Program (SCAP) to determine potential losses at the largest firms if the prevailing stress severely worsened and to restore confidence in the financial sector.[1] Building on the success of SCAP, the Board introduced the current stress testing regime and the Comprehensive Capital Analysis and Review (CCAR) to assess whether the largest firms have sufficient capital to continue to lend and absorb potential losses under severely adverse conditions, and to ensure that they have sound, forward-looking capital planning practices.[2]

The Board adopted the capital plan rule in 2011. This rule requires certain large bank holding companies to submit an annual capital plan to the Board.[3] Under the capital plan rule as initially adopted, the Federal Reserve conducted a qualitative assessment of the strength of each bank holding company's internal capital planning process and a quantitative assessment of each bank holding company's capital adequacy. In the qualitative assessment, the Federal Reserve evaluated the extent to which the analysis underlying each bank holding company's capital plan comprehensively captured and addressed potential risks stemming from company-wide activities. In addition, the Federal Reserve evaluated the reasonableness of each bank holding company's capital plan, the assumptions and analysis underlying the plan, and the robustness of the bank holding company's capital planning process.

Under the capital plan rule, the Federal Reserve may object to the capital plan of a LISCC firm (a firm subject to the Large Institution Supervision Coordinating Committee (LISCC) supervisory framework) or a large and complex firm,[4] if the Federal Reserve determines that (1) the firm has material unresolved supervisory issues, including but not limited to issues associated with its capital adequacy process;[5] (2) the assumptions and analysis underlying the firm's capital plan, or the firm's methodologies for reviewing its capital adequacy process, are not reasonable or appropriate;[6] or

[1] SCAP applied to domestic bank holding companies with $100 billion or more in total consolidated assets.

[2] The changes in this rule will apply to bank holding companies with total consolidated assets of $50 billion or more, any nonbank financial company supervised by the Board that becomes subject to the capital planning requirements pursuant to a rule or order of the Board, and to U.S. intermediate holding companies established pursuant to the Board's Regulation YY (12 CFR part 252) in accordance with the transition provisions under the capital plan rule. References to "bank holding companies" or "firms" in this preamble should be read to include all of these companies, unless otherwise specified. Currently, no nonbank financial companies supervised by the Board are subject to the capital planning requirements. On July 6, 2018, the Board issued a statement regarding the impact of the Economic Growth, Regulatory Relief, and Consumer Protection Act. The Board announced that it will not take action to require bank holding companies with total consolidated assets greater than or equal to $50 billion but less than $100 billion to comply with the Board's capital plan rule. *See www.federalreserve.gov/newsevents/pressreleases/files/bcreg20180706b1.pdf.*

[3] *See* 12 CFR 225.8. A firm's capital plan must include (i) an assessment of the expected uses and sources of capital over the planning horizon; (ii) a detailed description of the firm's processes for assessing capital adequacy; (iii) the firm's capital policy; and (iv) a discussion of any expected changes to the firm's business plan that could materially affect its capital adequacy. A firm may be required to include other information and analysis relevant to its capital planning processes and internal capital adequacy assessment.

[4] A firm is a large and complex firm if it otherwise had total consolidated assets of $250 billion or more, on-balance sheet foreign exposure of $10 billion or more, or nonbank assets of $75 billion or more. Based on the current population of firms, all LISCC firms have total consolidated assets of $250 billion or more, on-balance sheet foreign exposure of $10 billion or more, or nonbank assets of $75 billion or more.

[5] 12 CFR 225.8(f))(2)(ii)(B)(*2*).

[6] 12 CFR 225.8(f))(2)(ii)(B)(*3*).

(3) the firm's capital planning process or proposed capital distributions otherwise constitute an unsafe or unsound practice, or would violate any law, regulation, Board order, directive, or condition imposed by, or written agreement with, the Board or the appropriate Federal Reserve Bank (together, qualitative objection criteria).[7] In addition to the qualitative objection criteria, the Federal Reserve can object to a firm's capital plan if the firm has not demonstrated an ability to maintain capital above each minimum regulatory capital ratio on a pro forma basis under expected and stressful conditions throughout the planning horizon.[8]

In past CCAR exercises, the Board has publicly announced its decision to object to a firm's capital plan, along with the basis for the decision.[9] If the Federal Reserve objects to a firm's capital plan, the firm may not make any capital distributions unless the Federal Reserve indicates in writing that it does not object to such distributions.[10]

B. Revisions to Capital Plan Rule

In 2017, the Board adopted a rule to reduce the burden on less complex firms by removing them from the qualitative assessment of CCAR (2017 Final Rule).[11] As a result of the 2017 Final Rule, firms that are not identified as global systemically important bank holding companies and that have average total consolidated assets of $50 billion or more but less than $250 billion and total nonbank assets of less than $75 billion (large and noncomplex firms) are no longer subject to the qualitative objection.[12] By the time the Board issued the 2017 Final Rule, most large and noncomplex firms were meeting or close to meeting supervisory expectations relating to capital planning practices. Because large and noncomplex firms had substantially strengthened their capital positions and improved their risk management capabilities since the inception of CCAR, the Board determined that the added regulatory burden of complying with CCAR's qualitative component outweighed its benefits for these firms. Instead, these firms were subject to regular supervisory review of their capital planning processes.

In the preamble to the 2017 Final Rule, the Board noted that the Federal Reserve would conduct its supervisory assessment of large and noncomplex firms' risk-management and capital planning practices through the regular supervisory process and targeted, horizontal assessments of particular aspects of capital planning, rather than through the annual CCAR assessment. The Board further noted that, while it would not object to the capital plans of large and noncomplex firms due to qualitative deficiencies in their capital planning process, it would incorporate an assessment of capital planning practices into its regular, ongoing supervisory activities. Under the 2017 Final Rule, the Federal Reserve may object to the capital plan of a LISCC or large and complex firm based on the qualitative objection criteria.

As it has with other bodies of regulation, the Board has reviewed the CCAR program to assess its effectiveness and to identify any areas that should be refined (CCAR review). Based in part on the CCAR review, in April 2018, the Board invited public comment on a notice of proposed rulemaking (2018 NPR) that would integrate its regulatory capital rule and the CCAR and stress test rules in order to simplify the capital regime applicable to firms subject to the capital plan rule.[13] As part of the 2018 NPR, the Board sought comment on the advantages and disadvantages associated with removing or adjusting the provisions that allow the Board to object to large and complex or LISCC firms' capital plans on the basis of qualitative deficiencies in the firms' capital planning process.[14]

Several commenters supported eliminating the qualitative objection from the capital plan rule, noting that firms subject to the capital plan rule have raised significant amounts of capital and made significant enhancements to their capital planning and stress testing processes since the capital plan rule and CCAR processes were first adopted in 2011. Commenters argued that assessments of a firm's capital planning processes are supervisory in nature and therefore should be conducted through customary supervisory channels, and addressed through supervisory actions, rather than being subject to a potentially unexpected public qualitative objection that could result in market events that have potential adverse impacts on a firm. These commenters stated that the same approach to assessing the capital planning processes of large and noncomplex firms through the ongoing supervisory process and targeted horizontal assessments should be adopted for large and complex and LISCC firms, noting that the Board should place greater emphasis on its recent large financial institution rating proposal.[15] Two commenters argued for keeping the qualitative objection. One such commenter argued that the qualitative objection helps to ensure the integrity of the data that firms use to model the stress tests.

II. Removal of the Qualitative Objection

The original rationale for providing that the Board could object to firms' capital plans based on the qualitative objection criteria was to provide strong incentives for firms to address the significant shortcomings in risk management and capital planning practices that the Federal Reserve observed during the financial crisis. For example, many firms supervised by the Federal Reserve had substantial deficiencies in their ability to measure, monitor, and manage their risks. Since the Federal Reserve started the CCAR process in 2011, most supervised firms have significantly improved their risk management and capital planning processes. For instance, the qualitative assessment conducted as part of the 2018 CCAR cycle found that most firms either meet or are close to meeting the Federal Reserve's supervisory expectations for capital planning. These advances have resulted from firms improving the methods they use to identify their unique risks, using sound practices for identifying and addressing model deficiencies, and appropriately relying upon the results of capital stress testing to evaluate their capital positions on a forward-looking basis.

The Board continues to believe that it is important for firms to maintain strong capital planning practices that respond appropriately to changes in firms' financial conditions, business models and operating environment. The Federal Reserve has increasingly integrated the CCAR qualitative assessment into the regular supervisory process over the past several years. For example, the Board recently adopted a new rating system for large financial institutions (LFI rating system) to align with the Federal Reserve's current supervisory programs and practices for these firms.[16]

[7] 12 CFR 225.8(f))(2)(ii)(B)(*4*).

[8] 12 CFR 225.8(f))(2)(ii)(B)(*1*).

[9] *See* 12 CFR 225.8(f)(v).

[10] *See* 12 CFR 225.8(f)(2)(iv).

[11] *See* 82 FR 9308 (Feb. 3, 2017).

[12] *See* 12 CFR 225.8(f)(2)(ii)(A).

[13] 83 FR 18160 (April 25, 2018).

[14] *See* Question 23(i), 83 FR 18160 (April 25, 2018). The Board continues to consider the other comments received on the 2018 NPR and the other aspects of the proposal raised in the 2018 NPR. The Board may issue one or more additional final rules to implement all or part of that proposal at a later date.

[15] *See* 82 FR 39049 (August 17, 2017).

[16] 83 FR 58724 (Nov. 21, 2018). The final rating system applies to bank holding companies and non-insurance, non-commercial savings and loan holding companies with total consolidated assets of $100 billion or more, and U.S. intermediate holding companies of foreign banking organizations

The LFI rating system will assign component ratings with respect to a firm's capital planning and positions, in addition to its liquidity risk management and positions and governance and controls. The LFI rating system will give supervisors the opportunity to provide more regular, ongoing feedback to firms regarding their capital planning processes.

In recognition of the continued progress that firms have made in their risk management and capital planning practices, their significantly strengthened capital positions,[17] and changes to the Board's supervisory processes, the Board believes it is appropriate to transition away from the qualitative objection under the capital plan rule. Instead, supervisors would incorporate a robust qualitative assessment of capital planning practices into the traditional supervisory approach with respect to LISCC and large and complex firms.

The qualitative objection under the capital plan rule has provided helpful focus that has led to improvements in firms' capital planning. As a result, it would be prudent temporarily to retain the qualitative objection for those firms that only very recently became subject to the Federal Reserve's qualitative assessment. This approach would provide additional time for those firms to improve their capital planning practices before the qualitative objection is removed. Accordingly, for firms subject to the capital plan rule as of January 1, 2019, the Board is amending the capital plan rule to limit the scope of potential objections to the capital plan of a firm based on qualitative deficiencies subject to transitional arrangements. These are that the firm's capital plan has been subject to review and a potential qualitative objection by the Board for any period of four consecutive years, and the firm does not receive a qualitative objection in the fourth year of that period. If a firm receives a qualitative objection in the fourth year of that period, the firm will remain subject to a potential qualitative objection until January 1 of the year after the first year in which the firm does not receive a qualitative objection. In addition, except for a firm that receives a qualitative objection in the fourth year of the four-year period and in subsequent years, the Board would not object to the capital plan of any firm based on qualitative deficiencies after December 31, 2020. For example, if a large and complex firm first became subject to the capital plan rule in 2017 and that firm received a qualitative objection in 2020, the firm would be subject to a potential qualitative objection in 2021. If that firm does not receive a qualitative objection in 2021, the firm would no longer be subject to a potential qualitative objection under the capital plan rule. If that firm receives a qualitative objection in 2021, the firm would remain subject to a potential qualitative objection in 2022.

The Board believes that by January 2021, all LISCC and large and complex firms should have had sufficient time to improve their capital planning practices such that assessments of capital planning should be undertaken through the regular course of supervision and, when needed, targeted assessments of particular aspects of a firm's capital planning. However, if a LISCC or large and complex firm has not improved its capital planning practices by January 2021, the Board believes it is appropriate for that firm to continue to be subject to a potential qualitative objection until the firm demonstrates satisfactory capital planning practices.

If a large and complex or LISCC firm was required under the capital plan rule to submit its first capital plan to the Federal Reserve and was subject to a confidential review process, that year will be considered the first year that a firm would have been subject to a qualitative objection. The Board will consider whether a firm is a successor for purposes of the four-year period on a case-by-case basis.[18] If a bank holding company subsidiary of a U.S. intermediate holding company that was required to be established by July 1, 2016, previously participated in CCAR,[19] the U.S. intermediate holding company will not be considered the same firm or a successor firm to that bank holding company subsidiary for purposes of the four-year tolling period. If the Board previously permitted a foreign banking organization to form two or more U.S. intermediate holding companies under 12 CFR 252.153(c)(4)(ii), the Board will consider the first year that the first U.S. intermediate holding company submitted a capital plan to be the first year of the four-year period for all of the foreign banking organization's U.S. intermediate holding companies.

For example, a large and complex or LISCC firm that submitted its first capital plan pursuant to the capital plan rule beginning with the 2016 capital plan cycle would be subject to a qualitative objection of its annual capital plan through the 2019 capital plan cycle, and a large and complex or LISCC firm that submitted its first capital plan and was subject to a confidential review process in the 2017 capital plan cycle would be subject to a qualitative objection of its annual capital plan through the 2020 capital plan cycle. As a further example, if a foreign banking organization's first U.S. intermediate holding company submitted its first capital plan in 2017 and the foreign banking organization was permitted to form a second U.S. intermediate holding company that submitted its first capital plan in 2018, the first year of the four-year period would be 2017 for both U.S. intermediate holding companies.

All LISCC and large and complex firms will still be required to meet their capital requirements under stress as part of CCAR's quantitative assessment and will be subject to regular supervisory assessments that examine their capital planning processes.[20] In particular, these firms will remain subject to the same supervisory expectations as under the capital plan rule, and examiners will continue to conduct rigorous horizontal and firm-specific assessments of each firm's capital positions and capital planning, tailored to the risk profile of the firm. While much of the examination work centers on a firm's capital plan submissions, examination work would continue on a year-round basis, taking into account the firm's management of other financial risks. For example, a firm's capital rating under the LFI rating system will reflect a broad assessment of the firm's capital planning and positions. In consolidating supervisory findings into a comprehensive assessment of a firm's capital planning and positions, the Federal Reserve will take into account

established under Regulation YY with total consolidated assets of $50 billion or more.

[17] Staff calculations based on the Consolidated Financial Statement for Holding Companies indicated that common equity capital levels among the nation's largest bank holding companies have risen by over $700 billion since 2009.

[18] The Bank Holding Company Act provides that any "successor" to a bank holding company shall be deemed to be a bank holding company from the date on which the predecessor became a bank holding company. 12 U.S.C. 1841(a)(6). The Bank Holding Company Act defines "successor" to "include any company which acquires directly or indirectly from a bank holding company shares of any bank, when and if the relationship between such company and the bank holding company is such that the transaction effects no substantial change in the control of the bank or beneficial ownership of such shares of such bank." The Bank Holding Company Act also provides that the Board may, by regulation, further define the term "successor" to the extent necessary to prevent evasion of the purposes of the Bank Holding Company Act. 12 U.S.C. 1841(e).

[19] *See* 12 CFR 225.8(c)(2)(ii).

[20] The 2018 NPR proposed to eliminate the quantitative objection from CCAR. Board staff is currently considering all comments received on the 2018 NPR.

the materiality of a firm's outstanding and newly identified supervisory issues. In addition, any findings from supervisory stress testing, such as CCAR or similar activities, will represent inputs into the Capital Planning and Positions component rating. Firms with deficient practices would receive supervisory findings through the examination process, and would be subject to a deficient supervisory rating, and potentially an enforcement action, if those deficiencies were sufficiently material.

In addition, consistent with the current capital plan rule, if the Federal Reserve determines that a firm has unsafe or unsound capital planning processes or the financial condition of the firm is unsafe or unsound, the Federal Reserve is reserving the authority to issue publicly a capital directive, such as a directive to reduce capital distributions, and to take other supervisory or public enforcement actions, including an action to address such unsafe or unsound practices or any other conditions or violations of law.[21]

Effective Date

The Board is issuing this final rule without the 30-day delayed effective date ordinarily prescribed by the Administrative Procedure Act.[22] The APA 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.[23] The Board has concluded that, because the rule relieves a restriction, the final rule is exempt from the APA's delayed effective date requirement.[24] Accordingly, the Board is publishing the final rule with an immediate effective date.

III. Administrative Law Matters

A. Paperwork Reduction Act

In accordance with section 3512 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA), the Board 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 OMB control number is 7100–0342 for this information collection. The Board reviewed the final rule under the authority delegated to the Board by OMB. No specific comments related to the PRA were received. The final rule contains requirements subject to the PRA. The reporting requirements are found in sections 12 CFR 225.8.

The Board has a continuing interest in the public's opinions of this collection of information. At any time, commenters may submit comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing burden sent to: Nuha Elmaghrabi: Federal Reserve Clearance Officer, Office of the Chief Data Officer, Mail Stop K1–148, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget (OMB) desk officer by mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503 or by facsimile to 202–3955806, Attention, Agency Desk Officer.

Proposed Revisions, With Extension for Three Years, of the Following Information Collections:

Title of Information Collection: Recordkeeping and Reporting Requirements Associated with Regulation Y (Capital Plans).

Agency Form Number: Reg. Y–13.

OMB Control Number: 7100–0342.

Frequency of Response: Annually.

Affected Public: Businesses or other for-profit.

Respondents: BHCs and IHCs.

Abstract: Regulation Y (12 CFR part 225) requires large bank holding companies (BHCs) to submit capital plans to the Federal Reserve on an annual basis and to require such BHCs to request prior approval from the Federal Reserve under certain circumstances before making a capital distribution.

Current Actions: The final rule contains requirements subject to the PRA. The collection of information revised by this final rule is found in § 225.8 of Regulation Y (12 CFR part 225). Under § 225.8(f)(2) of the final rule, certain large and complex firms will no longer be subject to the provisions of the Board's capital plan rule whereby the Board can object to a capital plan on the basis of qualitative deficiencies in the firm's capital planning process. In comments received on the proposal, commenters expressed the view that the provision of the rule permitting the Board to object to a capital plan on the basis of qualitative deficiencies, in their view, required a firm to develop a large amount of documentation and stress test models in order to avoid risk of a public objection to its capital plan. Accordingly, the final rule is expected to reduce the recordkeeping requirements for immediately excluded large and complex firms by approximately 25 percent, or 3,000 hours for the immediately excluded large and complex firms for 2019 and 2020. In addition, the final rule is expected to reduce the recordkeeping requirements for the remaining large and complex firms by approximately 25 percent, or 3,000 hours in 2021 and thereafter.

The final rule provides that a large and complex firm that has submitted a capital plan subject to potential objection by the Board on the basis of qualitative deficiencies for any period of four consecutive years and that does not receive a qualitative objection in the fourth and final year will no longer be subject to potential objection by the Board on the basis of qualitative deficiencies. In addition, except for any firm that receives a qualitative objection, the final rule provides that the Board will no longer object to a capital plan on the basis of qualitative deficiencies beginning in 2021 and continuing thereafter.

Number of Respondents: 36.

Current Estimated Average Hours per Response: Annual capital planning recordkeeping (§ 225.8(e)(1)(i)) (LISCC and large and complex firms), 11,920 hours; annual capital planning recordkeeping (§ 225.8(c)(1)(i)) (large and noncomplex firms), 8,920 hours; annual capital planning recordkeeping § (225.8(e)(1)(iii), 100 hours; annual capital planning reporting (§ 225.8(e)(1)(ii)), 80 hours; data collections reporting ((§ 225.8(e)(3)), 1,005 hours; data collections reporting (§ 225.8(e)(4)), 100 hours; review of capital plans by the Federal Reserve reporting (§ 225.8(f)(3)(i)), 16 hours; prior approval request requirements reporting (§ 225.8(g)(1), (3), & (4)), 100 hours; prior approval request requirements exceptions (§ 225.8(g)(3)(iii)(A)), 16 hours; prior approval request requirements reports (§ 225.8(g)(6)), 16 hours.

Current Estimated Annual Burden Hours: Annual capital planning recordkeeping (§ 225.8(e)(1)(i)) (LISCC and large and complex firms), 214,560 hours; annual capital planning recordkeeping (§ 225.8(e)(1)(i)) (large and noncomplex firms), 160,560 hours; annual capital planning recordkeeping (§ 225.8(e)(1)(iii)), 2,800 hours; annual capital planning reporting (§ 225.8(e)(1)(ii)), 2,240 hours; data collections reporting ((§ 225.8(e)(3)(i)–(vi)), 36,180 hours; data collections reporting (§ 225.8(e)(4)), 1,000 hours; review of capital plans by the Federal Reserve reporting (§ 225.8(f)(3)(i)), 32 hours; prior approval request requirements reporting (§ 225.8(g)(1),

[21] *See* 12 CFR 225.8(b)(4).

[22] 12 U.S.C. 551 *et seq.*

[23] 12 U.S.C. 553(d).

[24] 12 U.S.C. 553(d)(1).

(3), & (4)), 2,600 hours; prior approval request requirements exceptions (§ 225.8(g)(3)(iii)(A)), 32 hours; prior approval request requirements reports (§ 225.8(g)(6)), 32 hours.

Approved Revisions Only Change in Estimated Average Hours per Response: Annual capital planning recordkeeping (§ 225.8(e)(1)(i)), 3,000 hours.

Approved Revisions Only Change in Estimated Annual Burden Hours: Annual capital planning reporting (§ 225.8(e)(1)(ii)), 54,000 hours.

Approved Total Estimated Annual Burden Hours: Annual capital planning recordkeeping (§ 225.8(e)(1)(i)) (LISCC and large and complex firms), 160,560 hours; annual capital planning recordkeeping (§ 225.8(e)(1)(i)) (large and noncomplex firms), 160,560 hours; annual capital planning recordkeeping (§ 225.8(e)(1)(iii)), 2,800 hours; annual capital planning reporting (§ 225.8(e)(1)(ii)), 2,240 hours; data collections reporting ((§ 225.8(e)(3)(i)–(vi)), 36,180 hours; data collections reporting (§ 225.8(e)(4)), 1,000 hours; review of capital plans by the Federal Reserve reporting (§ 225.8(f)(3)(i)), 32 hours; prior approval request requirements reporting (§ 225.8(g)(1), (3), & (4)), 2,600 hours; prior approval request requirements exceptions (§ 225.8(g)(3)(iii)(A)), 32 hours; prior approval request requirements reports (§ 225.8(g)(6)), 32 hours.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* (RFA), requires an agency to consider whether the rules it finalizes will have a significant economic impact on a substantial number of small entities.[25] The RFA generally requires that an agency prepare and make available an initial regulatory flexibility analysis (IRFA) in connection with a notice of proposed rulemaking and that an agency prepare a final regulatory flexibility analysis (FRFA) in connection with promulgating a final rule. A FRFA issued by the Board must contain (1) a statement of the need for, and objectives of, the rule; (2) a statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; (4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (5) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; (6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.[26]

The Board solicited public common on this rule in a notice of proposed rulemaking and has considered the potential impact of this rule on small entities in accordance with section 604 of the RFA.[27] Based on the Board's analysis, and for the reasons stated below, the Board believes the final rule will not have a significant economic impact on a substantial number of small entities.

1. Statement of the Need for, and Objectives of, the Final Rule

As discussed, the Board is issuing this final to transition away from the qualitative objection under the capital plan rule towards greater reliance on the Board's general supervisory processes.

The final rule would change the scope of firms with capital plans subject to potential objection by the Board under the capital plan rule for non-quantitative reasons. The capital plan rule applies to bank holding companies with total consolidated assets of $50 billion or more, any nonbank financial company supervised by the Board that becomes subject to the capital planning requirements pursuant to a rule or order of the Board, and to U.S. intermediate holding companies established pursuant to the Board's Regulation YY. This rule narrows the scope of banking organizations subject to potential objection of their capital plans by the Board under the capital plan rule. As a result, this rule does not apply to any small entities.

2. Significant Issues Raised by the Public Comments in Response to the IRFA and Comments Filed by the Chief Counsel for Advocacy of the Small Business Administration in Response to the Proposed Rule and Summary of Any Changes Made in the Proposed Rule as a Result of Such Comments

Commenters did not raise any issues in response to the IRFA. The Chief Counsel for Advocacy of the Small Business Administration did not file any comments in response to the proposed rule.

3. Description and Estimate of the Number of Small Entities To Which the Final Rule Will Apply

The Board estimates that approximately 18 banking organizations were subject to potential objection to their capital plans for non-quantitative reasons prior to this rule. As a result of this rule, the Board estimates that approximately 6 banking organization will be subject to potential objection to their capital plans for non-quantitative reasons. None of these banking organizations would qualify as a small banking entity for the purposes of the RFA.

4. Significant Alternatives to the Final Rule

The Board does not believe that this final rule will have a significant negative economic impact on any small entities and therefore believes that there are no significant alternatives to the final rule that would reduce the impact on small entities.

5. Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Rule

The Board does not believe that the final rule imposes any reporting, recordkeeping, or other compliance requirements.

6. Steps Taken To Minimize the Significant Economic Impact on Small Entities

The Board does not believe that this final rule will have a significant economic impact on any small entities.

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

[25] 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 $550 million or less and trust companies with total assets of $38.5 million or less. As of June 30, 2018, there were approximately 3,053 small bank holding companies, 184 small savings and loan holding companies, and 541 small state member banks.

[26] 5 U.S.C. 601(a).

[27] 83 FR 18160 (April 25, 2018).

requirement, the Board has sought to present the final rule in a simple and straightforward manner, and did not receive any comments on the use of plain language.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, banking, Capital planning, Holding companies, Reporting and recordkeeping requirements Securities, Stress testing.

Accordingly, the Board amends 12 CFR part 225 as follows:

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

■ 1. 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.

Subpart A—General Provisions

■ 2. Section 225.8 is amended by revising paragraph (f)(2)(ii)(B) to read as follows:

§ 225.8 Capital planning.

* * * * *

(f) * * *

(2) * * *

(ii) * * *

(B) *Bank holding companies that are not large and noncomplex bank holding companies.* The Board or the appropriate Reserve Bank with concurrence of the Board, may object to a capital plan submitted by a bank holding company that is not a large and noncomplex bank holding company if it determines that:

(*1*) The bank holding company has not demonstrated an ability to maintain capital above each minimum regulatory capital ratio on a pro forma basis under expected and stressful conditions throughout the planning horizon; or

(*2*) Until January 1, 2021, except as provided in paragraph (f)(2)(ii)(B)(*3*) of this section, for a bank holding company that was subject to this section as of January 1, 2019, but whose capital plan has not been subject to review and a potential qualitative objection under the criteria listed in paragraph (f)(2)(ii)(B)(*2*)(*i*) through (*iii*) of this section for any period of four consecutive years:

(*i*) The bank holding company has material unresolved supervisory issues, including but not limited to issues associated with its capital adequacy process;

(*ii*) The assumptions and analysis underlying the bank holding company's capital plan, or the bank holding company's methodologies and practices that support its capital planning process, are not reasonable or appropriate; or

(*iii*) The bank holding company's capital planning process or proposed capital distributions otherwise constitute an unsafe or unsound practice, or would violate any law, regulation, Board order, directive, or condition imposed by, or written agreement with, the Board or the appropriate Reserve Bank. In determining whether a capital plan or any proposed capital distribution would constitute an unsafe or unsound practice, the Board or the appropriate Reserve Bank would consider whether the bank holding company is and would remain in sound financial condition after giving effect to the capital plan and all proposed capital distributions.

(*3*) Notwithstanding paragraph (f)(2)(ii)(B)(*2*) of this section, a bank holding company that was subject to this section as of January 1, 2019, and that receives a qualitative objection in the fourth year of the four-year period described in paragraph (f)(2)(ii)(B)(*2*), pursuant to the criteria in paragraph (f)(2)(ii)(B)(*2*)(*i*) through (*iii*) of this section, will remain subject to a qualitative objection under this section until January 1 of the year after the first year in which the bank holding company does not receive a qualitative objection.

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By order of the Board of Governors of the Federal Reserve System, March 6, 2019.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2019–04515 Filed 3–12–19; 8:45 am]

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FINANCIAL STABILITY OVERSIGHT COUNCIL

12 CFR Part 1310

RIN 4030–AA03

Authority To Require Supervision and Regulation of Certain Nonbank Financial Companies

AGENCY: Financial Stability Oversight Council.

ACTION: Final rule.

SUMMARY: The Financial Stability Oversight Council (the ''Council'') is adopting a rule stating that the Council shall not amend or rescind its interpretive guidance on nonbank financial company determinations without providing the public with notice and an opportunity to comment consistent with the Administrative Procedure Act.

DATES: *Effective date:* April 12, 2019.

FOR FURTHER INFORMATION CONTACT: Bimal Patel, Office of Domestic Finance, Treasury, at (202) 622–2850; Eric Froman, Office of the General Counsel, Treasury, at (202) 622–1942; or Mark Schlegel, Office of the General Counsel, Treasury, at (202) 622–1027.

SUPPLEMENTARY INFORMATION:

I. Background

Section 111 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5321) (the ''Dodd-Frank Act'') established the Financial Stability Oversight Council. The purposes of the Council under section 112 of the Dodd-Frank Act (12 U.S.C. 5322) are (A) to identify risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected bank holding companies or nonbank financial companies, or that could arise outside the financial services marketplace; (B) to promote market discipline, by eliminating expectations on the part of shareholders, creditors, and counterparties of such companies that the Government will shield them from losses in the event of failure; and (C) to respond to emerging threats to the stability of the United States financial system.

The Dodd-Frank Act also authorizes the Council to determine that certain nonbank financial companies will be subject to supervision by the Board of Governors of the Federal Reserve System (the ''Federal Reserve'') and prudential standards. On April 11, 2012, the Council issued interpretive guidance (the ''2012 Interpretive Guidance'') regarding the manner in which the Council makes determinations under section 113 of the Dodd-Frank Act, as an appendix to a final rule (together, the ''2012 Rule and Interpretive Guidance''). The 2012 Rule and Interpretive Guidance were codified at part 1310 to title 12 of the Code of Federal Regulations.

The Council is modifying the rule text in the 2012 Final Rule and Interpretive Guidance by adding a new section (12 CFR 1310.3) stating that the Council shall not amend or rescind the interpretive guidance set forth in appendix A to part 1310 without providing the public with notice and an opportunity to comment.

The Council is adopting this rule pursuant to its authority under section