

**[BILLING CODE 4810-33-P]**

**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Part 3**

**Docket ID OCC-2008-0015**

**RIN 1557-AD15**

**Risk-Based Capital Guidelines—Money Market Mutual Funds**

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Interim final rule with request for public comment.

**SUMMARY:** To reduce liquidity and other strains being experienced by money market mutual funds, the Board of Governors of the Federal Reserve System adopted on September 19, 2008, a special lending facility that enables depository institutions and bank holding companies to borrow from the Federal Reserve Bank of Boston on a nonrecourse basis if they use the proceeds of the loan to purchase certain types of asset-backed commercial paper (ABCP) from money market mutual funds. This lending facility is referenced to as the ABCP Lending Facility. To facilitate the ability of national banks to participate in the program, the Office of the Comptroller of the Currency (OCC) has adopted, on an interim final basis, an exemption from its risk-based capital guidelines for ABCP held by a national bank as a result of its participation in this program.

**DATES:** This interim final rule is effective on September 19, 2008. However, comments must be received on or before October 31, 2008.

**ADDRESSES:** Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by e-mail, if possible. Please use the

title “Risk-Based Capital Guidelines—Money Market Mutual Funds” to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- **Federal eRulemaking Portal – “Regulations.gov”:** Go to <http://www.regulations.gov>, under the “More Search Options” tab click next to the “Advanced Docket Search” option where indicated, select “Comptroller of the Currency” from the agency drop-down menu, then click “Submit.” In the “Docket ID” column, select “OCC-2008-0015” to submit or view public comments and to view supporting and related materials for this interim final rule. The “How to Use This Site” link on the Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- **E-mail:** [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov).
- **Mail:** Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1-5, Washington, DC 20219.
- **Fax:** (202) 874-4448.
- **Hand Delivery/Courier:** 250 E Street, SW., Attn: Public Information Room, Mail Stop 1-5, Washington, DC 20219.

*Instructions:* You must include “OCC” as the agency name and “Docket ID OCC-2008-0015” in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov website without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone

numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this interim final rule by any of the following methods:

- **Viewing Comments Electronically:** Go to <http://www.regulations.gov>, under the “More Search Options” tab click next to the “Advanced Docket Search” option where indicated, select “Comptroller of the Currency” from the agency drop-down menu, then click “Submit.” In the “Docket ID” column, select “OCC-2008-0015” to view public comments for this rulemaking action.
- **Viewing Comments Personally:** You may personally inspect and photocopy comments at the OCC’s Public Information Room, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874-5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.
- **Docket:** You may also view or request available background documents and project summaries using the methods described above.

**FOR FURTHER INFORMATION CONTACT:** Margot Schwadron, Senior Risk Expert, (202) 874-6022, Capital Policy Division; Ron Shimabukuro, Senior Counsel; or Hugh Carney,

Attorney, Legislative and Regulatory Activities Division, (202) 874-5090; Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

## **SUPPLEMENTARY INFORMATION:**

### **Introduction; Description of Interim Final Rule**

In light of the ongoing dislocations in the financial markets, and the impact of such dislocations on the functioning of the markets for ABCP and on the operations of money market mutual funds, the Board of Governors of the Federal Reserve System adopted the ABCP Lending Facility on September 19, 2008. Under the ABCP Lending Facility, depository institutions and bank holding companies (banking organizations) are able to borrow from the Federal Reserve Bank of Boston on a nonrecourse basis on condition that the banking organizations use the proceeds of the Federal Reserve credit to purchase, at amortized cost, certain highly rated U.S. dollar-denominated ABCP from money market mutual funds. The ABCP purchased must be used to secure the borrowing from the Reserve Bank. The purpose of the ABCP Lending Facility is to assist money market mutual funds to obtain liquidity by enabling them to sell some of their high-credit-quality secured assets at amortized cost. The ABCP Lending Facility will expire on January 30, 2009.

National banks that participate in the ABCP Lending Facility must acquire and hold ABCP on their balance sheet. These ABCP holdings attract regulatory capital requirements under the OCC's regulatory capital guidelines and rules.<sup>1</sup> To facilitate the ABCP Lending Facility, and for the reasons discussed below, the OCC has adopted, on an interim final basis, an exemption from its risk-based capital guidelines for ABCP purchased by a national bank as a result of its participation in the facility. Specifically, the interim final rule amends the OCC's

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<sup>1</sup> See 12 CFR Part 3.

risk-based capital guidelines to permit national banks to assign a zero percent risk weight to ABCP purchased by the national bank as a result of its participation in the facility.

The OCC has determined that the current risk-based capital requirements for ABCP acquired by a national bank pursuant to the ABCP Lending Facility do not reflect the substantial protections provided to the bank by the Federal Reserve in connection with the facility. Because of the non-recourse nature of the Federal Reserve’s credit extension to the banking organization, the bank is not exposed to the credit or market risk of the ABCP purchased by the bank and pledged to the Federal Reserve. Therefore, the OCC believes that it would be appropriate—and consistent with the economic substance of the transactions—not to impose risk-based capital requirements on a national bank that serves as an intermediary in the ABCP Lending Facility.

Consistent with generally accepted accounting principles, the OCC would expect national banks to report purchased ABCP as an investment security (for example, held-to-maturity). These assets would be reflected at the time of purchase at the national bank’s best estimate of fair value. The nonrecourse nature of the transaction would impact the valuation of the liability to the Federal Reserve. After reflecting any appropriate discounts on the assets and associated liabilities, national banks are not expected to report any material net gains or losses at the time of purchase.

### **Effective Date; Solicitation of Comments**

This interim final rule is effective immediately upon adoption. 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.”<sup>2</sup>

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<sup>2</sup> 5 U.S.C. 553(b)(B).

Similarly, a final rule may be published with an immediate effective date if an agency finds good cause and publishes such with the final rule.<sup>3</sup>

Consistent with section 553(b)(B) of the APA, the OCC finds that good cause exists for a finding that notice and comment is impracticable and contrary to the public interest. As previously described, modification of the risk-based capital guidelines are critical to maintain the orderly functioning of markets and provide market liquidity. Completion of notice and comment rulemaking procedures prior to issuing this interim final rule would delay their implementation. In the current market environment, such a delay is impracticable and inconsistent with the public interest since it may result in undue constraint on national banks' ability to perform critical lending and financial intermediary roles which are necessary for the orderly functioning and liquidity of markets. Issuance of this interim final rule furthers the public interest because it will reduce liquidity and other strains being experienced by money market mutual funds. For the same reasons, the OCC finds good cause to publish this interim final rule with an immediate effective date.<sup>4</sup>

Although notice and comment are not required prior to the effective date of this interim final rule, the OCC invites comments on all aspects of the rule and will revise it if necessary or appropriate in light of the comments received.

### **Regulatory Analysis**

#### **Executive Order 12,866**

For the reasons described elsewhere in the **Supplementary Information** the OCC's issuance of this interim final rule is subject to the procedures set forth in Section 6(a)(3)(D) of

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

<sup>4</sup> *Id.*

Executive Order 12,866.

### **Regulatory Flexibility Act**

The Regulatory Flexibility Act (Pub. L. 96-354, Sept. 19, 1980) (RFA) applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b).<sup>5</sup> Pursuant to the Administrative Procedure Act (APA) at 5 U.S.C. 553(b)(B), general notice and an opportunity for public comment are not required prior to the issuance of a final rule when an agency, for good cause, finds that “notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”<sup>6</sup>

As discussed above, the OCC has determined for good cause that the APA does not require general notice and public comment on this interim final rule and, therefore, we are not publishing a general notice of proposed rulemaking. Thus, the RFA, pursuant to 5 U.S.C. 601(2), does not apply to this interim final rule.

### **Paperwork Reduction Act**

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), we have reviewed the interim final rule to assess any information collections. There are no collections of information as defined by the Paperwork Reduction Act in the interim final rule.

### **Unfunded Mandates Reform Act of 1995**

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the

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<sup>5</sup> 5 U.S.C. 601(2).

<sup>6</sup> 5 U.S.C. 553(b)(B).

expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. The OCC has determined that there is no Federal mandate imposed by this rulemaking. Accordingly, the interim final rule is not subject to section 202 of the Unfunded Mandates Act.

## **List of Subjects**

### 12 CFR Part 3

Administrative practices and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

## **DEPARTMENT OF THE TREASURY**

### **Office of the Comptroller of the Currency**

### **12 CFR Chapter I**

#### **Authority and Issuance**

For the reasons stated in the preamble, the Office of the Comptroller of the Currency amends Part 3 of chapter I of Title 12, Code of Federal Regulations as follows:

#### **PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES**

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

**Authority:** 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

2. In Appendix A to part 3, section 3(a)(1) is amended to add new paragraph (ix) to read as follows:

#### **PART 3—MINIMUM CAPTIAL RATIOS; ISSUANCE OF DIRECTIVES**

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#### **APPENDIX A TO PART 3—RISK-BASED CAPITAL GUIDELINES**



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*Section 3. Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items*

(a) \* \* \*

(1) *Zero percent risk weight.* (i) \* \* \*

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(ix) Asset-backed commercial paper (ABCP):

(A) Purchased by the bank between September 19, 2008, and January 30, 2009 (unless further extended by the OCC), from an Securities and Exchange Commission (SEC)-registered open-end investment company that holds itself out as a money market mutual fund under SEC Rule 2a-7 (17 CFR 270.2a-7); and

(B) Pledged by the bank to a Federal Reserve Bank to secure financing from the ABCP lending facility established by the Federal Reserve Board on September 19, 2008.

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**[THIS SIGNATURE PAGE RELATES TO THE OCC INTERIM FINAL RULE TITLED  
"RISK-BASED CAPITAL GUIDELINES—MONEY MARKET MUTUAL FUNDS".]**

September 19, 2008  
Dated: \_\_\_\_\_

John C. Dugan (signed)

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John C. Dugan,  
Comptroller of the Currency.