
DEPARTMENT OF THE TREASURY
Office of the Comptroller of the Currency**12 CFR Part 3**

[Docket ID OCC–2009–0002]

RIN 1557–AD15

Risk-Based Capital Guidelines—Money Market Mutual Funds**AGENCY:** Office of the Comptroller of the Currency, Treasury.**ACTION:** Final rule.

SUMMARY: On September 19, 2008, the Board of Governors of the Federal Reserve System adopted the Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility (the “AMLF” or “ABCP Lending Facility”) which enables depository institutions and bank holding companies to borrow from the Federal Reserve Bank of Boston on a non-recourse basis if they use the proceeds of the loan to purchase certain asset-backed commercial paper (ABCP) from money market mutual funds. The purpose of this action was to reduce strains being experienced by money market mutual funds. To facilitate national bank participation in the program, the Office of the Comptroller of the Currency (OCC) adopted on September 19, 2008, 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.

The AMLF was set to expire on January 30, 2009. However, to encourage the stability of money market mutual funds, the program has been extended to October 30, 2009. This rule finalizes the risk-based capital exemption and extends the risk-based capital exemption to ABCP purchased beyond the original January 30, 2009, date. This final rule applies the risk-based capital exemption to any ABCP purchased as a result of a national bank’s participation in the facility. The risk-based capital exemption will continue to apply if the AMLF is extended beyond October 30, 2009.

DATES: *Effective Date:* March 27, 2009.

FOR FURTHER INFORMATION CONTACT: Margot Schwadron, Senior Risk Expert, (202) 874–6022, Capital Policy Division; Hugh Carney, Attorney; or Stuart Feldstein, Assistant Director, 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**

In light of the ongoing dislocations in the financial markets, and their impact on the functioning of the ABCP markets and the operations of money market mutual funds, the Board of Governors of the Federal Reserve System (FRB) adopted the AMLF on September 19, 2008.¹ Under the AMLF, 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 AMLF is to enable money market mutual funds to increase their liquidity by enabling them to sell some of their high-credit-quality secured assets at amortized cost. The AMLF was set to expire on January 30, 2009. However, to promote continued stability in the money market mutual funds, the FRB extended the program until October 30, 2009.

Description of Interim Final Rule

National banks that participate in the AMLF must acquire and hold ABCP on their balance sheet. These ABCP holdings are subject to regulatory capital requirements under the OCC’s regulatory capital guidelines and rules.² To facilitate national bank participation in the AMLF, the OCC 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.³ Specifically, the interim final rule amended the OCC’s risk-based capital guidelines to permit national banks to assign a zero percent risk weight to ABCP purchased as a result of participation in the facility. The interim final rule applied to ABCP purchased between September 19, 2008, and

January 30, 2009. The OCC received one comment from an industry trade group that supported the rule and encouraged its adoption without change.

Description of Final Rule

The OCC continues to believe that the ABCP acquired by a national bank pursuant to the AMLF does not expose the participating national banks to credit or market risk because of the non-recourse nature of the Federal Reserve’s credit extension. Therefore, the OCC concludes that it would be appropriate—and consistent with the economic substance of the transactions—to continue to apply the risk-based capital exemption to a national bank that serves as an intermediary in the AMLF. In light of the Federal Reserve’s extension of the AMLF program, the OCC has determined to extend the risk-based capital exemption to ABCP purchased beyond the original January 30, 2009 date. The risk-based capital exemption applies to any ABCP purchased as a result of a national bank’s participation in the facility. The risk-based capital exemption will continue to apply if the Federal Reserve further extends the AMLF program beyond October 30, 2009.

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 non-recourse 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

This final rule is effective immediately upon publication. An agency may publish a final rule with an immediate effective date if the agency finds good cause and publishes such with the final rule.⁴

The OCC finds that good cause exists for an immediate effective date. As previously described in this preamble, modification of the risk-based capital guidelines is critical to maintain the orderly functioning of financial markets, to provide market liquidity, and to encourage stability of the operations of money market mutual funds. In the current market environment, a 30 day delayed effective date is impracticable

¹ The OCC’s interim final rule refers to the AMLF as the “ABCP Lending Facility.”

² See 12 CFR Part 3.

³ 73 FR 55704 (Sept. 26, 2008).

⁴ 5 U.S.C. 553(d)(3).

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 financial markets. Issuance of this final rule furthers the public interest because it will reduce liquidity and other strains being experienced by money market mutual funds.

Regulatory Analysis

Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866. The changes made by this final rule will not have an annual effect on the economy of \$100 million or more within the meaning of Executive Order 12866.

Regulatory Flexibility Act Analysis

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).⁵ 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."⁶

For the reasons set forth in the interim final rule,⁷ the OCC determined for good cause that the APA did not require general notice and public comment on the interim final rule and, therefore, did not publish a general notice of proposed rulemaking. Thus, the RFA, pursuant to 5 U.S.C. 601(2), does not apply to this final rule.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), the OCC has reviewed the final rule and determined that it contains no collections of information as defined by the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 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 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 final rule is not subject to section 202 of the Unfunded Mandates Act.

List of Subjects in 12 CFR Part 3

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

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 by revising paragraph (ix) to read as follows:

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. * * *

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

(A) Purchased by the bank on or after September 19, 2008, from a 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 (AMLF) established by the Federal Reserve Board on September 19, 2008.

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Dated: March 19, 2009.

John C. Dugan,

Comptroller of the Currency.

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⁵ 5 U.S.C. 601(2).

⁶ 5 U.S.C. 553(b)(B).

⁷ 73 FR 55704 (Sept. 26, 2008).