

amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–10 (42 U.S.C. 2014, 2021, 2021b, 2111).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance 1015 is revised to read as follows:

**§ 72.214 List of approved spent fuel storage casks.**

\* \* \* \* \*

Certificate Number: 1015.

Initial Certificate Effective Date:

November 20, 2000.

Amendment Number 1 Effective Date:

February 20, 2001.

Amendment Number 2 Effective Date:

December 31, 2001.

Amendment Number 3 Effective Date:

March 31, 2004.

Amendment Number 4 Effective Date:

October 11, 2005.

Amendment Number 5 Effective Date:

January 12, 2009.

SAR Submitted by: NAC International, Inc.

SAR Title: Final Safety Analysis Report for the NAC–UMS Universal Storage System.

Docket Number: 72–1015.

Certificate Expiration Date: November 20, 2020.

Model Number: NAC–UMS.

\* \* \* \* \*

Dated at Rockville, Maryland, this 7th day of October 2008.

For the Nuclear Regulatory Commission.

**R. W. Borchardt,**

*Executive Director for Operations.*

[FR Doc. E8–25540 Filed 10–24–08; 8:45 am]

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## FEDERAL RESERVE SYSTEM

### 12 CFR Part 225

[Regulation Y; Docket No. R–1336]

#### Capital Adequacy Guidelines: Treatment of Perpetual Preferred Stock Issued to the United States Treasury Under the Emergency Economic Stabilization Act of 2008

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

**ACTION:** Correcting amendments.

**SUMMARY:** The Board published an interim final rule with request for public comment in the **Federal Register** on October 22, 2008 (73 FR 62851), providing that bank holding companies that issue new senior perpetual preferred stock to the U.S. Department of Treasury under the capital purchase program announced by the Secretary of the Treasury on October 14, 2008, may include such capital instruments in Tier 1 capital for purposes of the Board's risk-based and leverage capital rules and guidelines for bank holding companies. The Public Law was cited incorrectly. This document corrects the citation in footnote 1 of the Supplementary Information and in the interim final regulation by revising these sections.

**DATES:** Effective October 27, 2008.

**ADDRESSES:** You may submit comments, identified by Docket No. R–1336, by any of the following methods:

- *Agency Web Site:* <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include docket number in the subject line of the message.

- *FAX:* (202) 452–3819 or (202) 452–3102.

- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C

Streets, NW) between 9 a.m. and 5 p.m. on weekdays.

#### FOR FURTHER INFORMATION CONTACT:

Norah M. Barger, Deputy Director, (202) 452–2402, or John Connolly, Senior Project Manager, (202) 452–3621, Division of Banking Supervision and Regulation; or Kieran J. Fallon, Assistant General Counsel, (202) 452–5270, Mark E. Van Der Weide, Assistant General Counsel, (202) 452–2263, or Benjamin W. McDonough, Senior Attorney, (202) 452–2036, Legal Division; Board of Governors of the Federal Reserve System, 20th Street and Constitution Ave., NW., Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

**SUPPLEMENTARY INFORMATION:** On October 3, 2008, President Bush signed the Emergency Economic Stabilization Act of 2008 (Act)<sup>1</sup> into law.

#### List of Subjects in 12 CFR Part 225

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

■ Accordingly, 12 CFR part 225 is corrected by making the following correcting amendment:

#### Authority and Issuance

■ For the reasons stated in the preamble, the Board of Governors of the Federal Reserve System amends part 225 of chapter II of title 12 of the Code of Federal Regulations 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, 3907, and 3909; 15 U.S.C. 6801 and 6805.

■ 2. In appendix A to part 225, revise section II.A.1.a.ii.; and footnote 8 in section II.A.1.c.ii.(2) to read as follows:

#### Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

\* \* \* \* \*

II. \* \* \*

A. \* \* \*

1. \* \* \*

a. \* \* \*

ii. Qualifying noncumulative perpetual preferred stock, including related surplus, and senior perpetual preferred stock issued

<sup>1</sup> Division A of Pub. L. No. 110–343, 122 Stat. 3765 (2008).

to the United States Department of the Treasury (Treasury) under the Troubled Asset Relief Program (TARP) established by the Emergency Economic Stabilization Act of 2008, Division A of Pub. L. No. 110–343 (which for purposes of this appendix shall be considered qualifying noncumulative perpetual preferred stock), including related surplus;

\* \* \* \* \*

- c. \* \* \*
- ii. \* \* \*
- (2) \* \* \*

<sup>8</sup> Notwithstanding this provision, senior perpetual preferred stock issued to the Treasury under the TARP established by the Emergency Economic Stabilization Act of 2008, Division A of Pub. L. No. 110–343, may be included in tier 1 capital. In addition, traditional convertible perpetual preferred stock, which the holder must or can convert at a fixed number of common shares at a preset price, generally qualifies for inclusion in tier 1 capital provided all other requirements are met.

\* \* \* \* \*

By order of the Board of Governors of the Federal Reserve System, October 22, 2008.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. E8–25489 Filed 10–24–08; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

[Docket ID: OTS–2008–0013]

### 12 CFR Part 509

RIN 1550–AC27

### Rules of Practice and Procedure in Adjudicatory Proceedings; Civil Money Penalty Inflation Adjustment

**AGENCY:** Office of Thrift Supervision, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 requires all federal agencies with statutory authority to impose civil money penalties (CMPs) to evaluate and adjust those CMPs every four years. OTS last adjusted its CMP statutes in 2004. Consequently, OTS is issuing this final rule to implement the required adjustments to OTS's CMP statutes.

**DATES:** *Effective Date:* October 27, 2008.

**FOR FURTHER INFORMATION CONTACT:** Marvin L. Shaw, Senior Attorney, (202) 906–6639, Regulations and Legislation Division, Office of the Chief Counsel, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

### SUPPLEMENTARY INFORMATION:

## I. Background

The Federal Civil Monetary Penalties Inflation Adjustment Act of 1990<sup>1</sup> (FCMPIAA) requires each agency to make inflationary adjustments to the CMPs in statutes that it administers.<sup>2</sup> Under the FCMPIAA, agencies must make those adjustments at least once every four years. OTS last adjusted its CMPs in 2004.<sup>3</sup> OTS's civil money penalty adjustment regulation is 12 CFR 509.103. An increased CMP applies only to violations that occur after the increase takes effect.

While the CMP statutes of many agencies provide for minimum and maximum penalty amounts, all of OTS's CMP statutes provide only for a daily maximum amount. Today's rule therefore refers only to maximum CMPs. Today's increases in maximum CMPs may not necessarily affect the amount of any CMP that OTS may seek for a particular violation. OTS calculates each CMP on a case-by-case basis based upon a variety of factors (including the gravity of the violation, whether the violation was willful or recurring, and any harm to the depository institution). As a result, the maximums merely serve as a cap.

Under the statute, the agency determines the inflation adjustment by increasing the maximum CMP by a “cost-of-living” adjustment. The “cost-of-living” adjustment is the percentage by which the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the calendar year in which the amount of the CMP was last set or adjusted. OTS must use the CPI for All Urban Consumers (CPI-U) published by the Department of Labor.<sup>4</sup>

The statute contains specific rules for rounding any increase.<sup>5</sup> Agencies do not have discretion in choosing whether to adjust a maximum CMP, how much to

adjust a maximum CMP or the methods used to determine the adjustment.

## II. Summary of Calculation

To explain the inflation adjustment calculation, we will use the following example. Under 12 U.S.C. 1818(i), as adjusted under 12 CFR 509.103, OTS may impose a daily maximum third-tier CMP not to exceed \$1,250,000 for violations of certain banking laws.

First, we determine the appropriate CPI-U. The statute requires OTS to use the CPI-U for June of the calendar year preceding the year of adjustment. Here, because we are adjusting CMPs in 2008, we use the CPI-U for June 2007, which was 208.4. We must also determine the CPI-U for June of the year the CMP was last set by law or adjusted for inflation. Because OTS last adjusted the CMPs under 12 U.S.C. 1818 in 2004, we use the CPI-U for June 2004, which was 189.7.

Second, we calculate the cost of living adjustment or inflation factor. To do this, we divide the CPI-U for June 2007 (208.4) by the CPI-U for June 2004 (189.7). Our result is 1.098 (i.e., a 9.8 percent increase).<sup>6</sup>

Third, we calculate the raw inflation adjustment. To do this, we multiply the maximum penalty amounts by the inflation factor. In our example, \$1,250,000 multiplied by the inflation factor of 1.098 equals \$1,372,500.

Fourth, we round the raw inflation amounts according to the rounding rules in section 5(a) of the FCMPIAA. Since we round only the increased amount, we calculate the increased amount by the subtracting the current maximum penalty amounts from the raw maximum inflation adjustments. Accordingly, the increased amount for the maximum penalty in our example is \$122,500 (i.e., \$1,372,500 less \$1,250,000). Under the rounding rules, if the penalty is greater than \$200,000, we round the increase to the nearest multiple of \$25,000. Therefore, the maximum penalty increase for our example is \$125,000.

Fifth, we add the rounded increase to the maximum penalty amount last set or adjusted. In our example, \$1,250,000 plus \$125,000 yields a maximum inflation adjusted penalty amount of \$1,375,000.<sup>7</sup>

<sup>6</sup> A few CMPs were not adjusted for inflation in 2004. In such cases, the inflation factor is calculated from the time that CMP was last adjusted. For a CMP that was last adjusted in 2000, the inflation factor would be 20.9 percent. For a CMP that was last adjusted in 1996, the inflation factor would be 33 percent.

<sup>7</sup> Three CMPs are treated slightly differently because the statutorily mandated computation and the rounding rules did not result in any adjustment

Continued

<sup>1</sup> 28 U.S.C. 2461 note.

<sup>2</sup> Some of OTS's CMPs are in a commonly administered statute, 12 U.S.C. 1818. Each agency that administers that statute is making identical adjustments.

<sup>3</sup> 12 CFR 509.103; 69 FR 64249 (November 4, 2004).

<sup>4</sup> <http://data.bls.gov/cgi-bin/surveymost>.

<sup>5</sup> 28 U.S.C. 2461 note specifies that “Any increase determined under this subsection shall be rounded to the nearest—“(1) multiple of \$10 in the case of penalties less than or equal to \$100; “(2) multiple of \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000; “(3) multiple of \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000; “(4) multiple of \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000; “(5) multiple of \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and “(6) multiple of \$25,000 in the case of penalties greater than \$200,000.”