Banking and Finance Law Daily Wrap Up, BANKING OPERATIONS—Fed amends dividend payment rate for large banks in Interim final rule, (Feb. 19, 2016)

Banking and Finance Law Daily Wrap Up

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The Federal Reserve Board has issued an interim final rule reducing the dividend rate paid to large member banks, those with total assets of more than $10 billion, to the lesser of 6 percent or the most recent 10--year Treasury auction rate prior to the dividend payment. The interim final rule amends Regulation I—governing the issuance and cancellation of capital stock by the Federal Reserve Banks—to implement the provisions of section 32203 of the "Fixing America's Surface Transportation Act," (FAST Act) which was signed into law on Dec. 4, 2015.

According to the Fed, the interim final rule adjusts the accrued dividend rates for larger institutions to be consistent with the rate adopted in the FAST Act. The interim final rule sets out the dividend rates applicable to Federal Reserve Bank depository institution stockholders and amends provisions of Regulation I regarding treatment of accrued dividends when a Reserve Bank issues or cancels Federal Reserve Bank capital stock.

Effect of FAST Act changes. The FAST Act contains a five-year plan to broadly deal with U.S. roads and bridges, public transportation, car and truck safety, and railroads. In order to adequately fund transportation projects, the FAST Act used revenue sources to close any funding gaps, including two that encroach upon decades-old practices at the Fed (see *Banking and Finance Law Daily*, Feb. 10, 2016). The FAST Act reduced the dividend rate applicable to Federal Reserve Bank depository institution stockholders with total assets of more than $10 billion to the lesser of 6 percent or the most recent 10-year Treasury auction rate prior to the dividend payment. The dividend rate for other member banks remains at 6 percent. Federal Reserve Banks typically pay dividends to member banks in June and December each year.

The conflict arises between section 5 and section 7 of the Federal Reserve Act for stockholders with more than $10 billion in total consolidated assets. Section 7 of the Federal Reserve Act now provides that stockholders with more than $10 billion in total consolidated assets will receive an annual dividend at the lesser of six percent and the high yield of the 10-year Treasury note auctioned at the last auction held prior to the payment of the dividend. This could cause a larger stockholder to overpay for accrued dividends if it paid at a rate based on a six percent annual rate but received its next dividend payment at an annual rate below six percent.

The Fed resolved this conflict by requiring these stockholders to pay for accrued dividends at an annual rate of the lesser of six percent and the high yield of the 10-year Treasury note auctioned at the last auction held prior to the previous dividend payment date prorated to cover the period between the last dividend payment date and the date of subscription. The Fed believes that this approach allows the stockholders to pay at a rate that is generally close to the dividend rate the stockholder will earn at the next dividend payment. Additionally, this also resolves the statutory conflict in favor of giving effect to the most recent Congressional act regarding the payment of dividends as provided in the FAST Act.

New paragraph added. The interim rule adds a new paragraph, Section 209.4(e), to Regulation I that addresses the rate for dividend payments by the Reserve Banks. The interim final rule also adjusts the treatment of accrued dividends when a Federal Reserve Bank issues or cancels capital stock owned by a large member bank. The interim final rule is effective upon publication in the *Federal Register*.

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