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Libor Transition: Regulatory Capital Rule Frequently Asked Questions

Summary

The Office of the Comptroller of the Currency (OCC) is publishing two frequently asked questions (FAQ) concerning the regulatory capital treatment of capital instruments whose terms reference the London Interbank Offered Rate (Libor). The Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation are issuing similar FAQs.

Note for Community Banks

The statement applies to community banks that have issued regulatory capital instruments referencing Libor.[1]

To

Chief Executive Officers of All National Banks, Federal Savings Associations, and Federal Branches and Agencies; Department and Division Heads; All Examining Personnel; and Other Interested Parties

Highlights

The two FAQs address the continued regulatory capital eligibility of capital instruments that a bank replaces or amends as a result of the transition from Libor.

Frequently Asked Questions

Redemption or Reissuance of Regulatory Capital Instruments

Question: Would replacing or amending the terms of a capital instrument to transition from Libor to another reference rate or rate structure be considered an issuance of a new instrument under the capital rule (12 CFR 3) for purposes of the eligibility criteria for regulatory capital?

Answer: The OCC does not consider the replacement or amendment of a capital instrument that solely replaces a reference rate linked to Libor with another reference rate or rate structure to constitute an issuance of a new capital instrument for purposes of the capital rule. If changes in the terms of the replacement or amended capital instrument solely relate to the adoption of the new reference rate or rate structure, and there are no substantial differences from the original instrument from an economic perspective, the replacement or amended instrument would not be considered a new instrument for purposes of the eligibility criteria for regulatory capital. In this case, for purposes of the capital rule, the replacement or amended instrument would retain the maturity of the original instrument.

A bank that replaces or amends the terms of a capital instrument to transition from Libor should support its determination with an appropriate analysis that demonstrates that the replacement or amended instrument is not substantially different from the original instrument from an economic perspective. The OCC may request that the bank provide this analysis. Considerations for determining that a replacement or amended capital instrument is not substantially different from the original instrument from an economic perspective could include, but are not limited to, whether the replacement or amended instrument has amended terms beyond those relevant to implementing the new reference rate or rate structure.

Regulatory Capital Instruments With Changing Distribution Rates

Question: For purposes of the eligibility criteria for regulatory capital, would replacing or amending the terms of a capital instrument to transition from Libor to another reference rate or rate structure be considered creating an incentive to redeem the instrument under the capital rule (12 CFR 3)?

Answer: The OCC does not consider the replacement or amendment of a capital instrument that solely replaces a reference rate linked to Libor with another reference rate or rate structure to constitute creating an incentive to redeem, as long as the replacement or amended capital instrument is not substantially different from the original instrument from an economic perspective. For example, amending the credit spread solely to reflect the difference in basis between Libor and the replacement reference rate and not adjusting for changes in the credit quality of the issuer would not result in creating an incentive to redeem the capital instrument.

A bank that replaces or amends the terms of a capital instrument to transition from Libor should support its determination with an appropriate analysis that demonstrates that the replacement or amended instrument is not substantially different from the original instrument from an economic perspective. The OCC may request that the bank provide this analysis. Considerations for determining that a replacement or amended capital instrument is not substantially different from the original instrument from an economic perspective could include, but are not limited to, whether the replacement or amended instrument has amended terms beyond those relevant to implementing the new reference rate or rate structure.

Further Information

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[1] “Banks” refers collectively to national banks, federal savings associations, covered savings associations, and federal branches and agencies of foreign banking organizations.