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FEDERAL RESERVE SYSTEM

12 CFR Part 209

[Regulation I; Docket No. R-1560]

RIN 7100-AE 68

Federal Reserve Bank Capital Stock

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors (Board) is publishing a final rule that applies an inflation adjustment to the threshold for total consolidated assets in Regulation I. Federal Reserve Bank (Reserve Bank) stockholders that have total consolidated assets above the threshold receive a different dividend rate on their Reserve Bank stock than stockholders with total consolidated assets at or below the threshold. The Federal Reserve Act requires that the Board annually adjust the total consolidated asset threshold to reflect the change in the Gross Domestic Product Price Index, published by the Bureau of Economic Analysis (BEA). Based on the change in the Gross Domestic Product Price Index as of September 28, 2017, the total consolidated asset threshold will be \$10,283,000,000 through December 31, 2018.

DATES: This final rule is effective January 1, 2018.

FOR FURTHER INFORMATION CONTACT: Evan Winerman, Counsel (202/872-7578), Legal Division; or Kimberly Zaikov, Financial Project Leader (202/452-2256), Reserve Bank Operations and Payments Systems Division. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Background

Regulation I governs the issuance and cancellation of capital stock by the Reserve Banks. Under section 5 of the

Federal Reserve Act¹ and Regulation I,² a member bank must subscribe to capital stock of the Reserve Bank of its district in an amount equal to six percent of the member bank's capital and surplus. The member bank must pay for one-half of this subscription on the date that the Reserve Bank approves its application for capital stock, while the remaining half of the subscription shall be subject to call by the Board.³

Section 7(a)(1) of the Federal Reserve Act⁴ provides that Reserve Bank stockholders with \$10 billion or less in total consolidated assets shall receive a six percent dividend on paid-in capital stock, while stockholders with more than \$10 billion in total consolidated assets shall receive a dividend on paid-in capital stock equal to the lesser of six percent and "the rate equal to the high yield of the 10-year Treasury note auctioned at the last auction held prior to the payment of such dividend."

Section 7(a)(1) requires that the Board adjust the threshold for total consolidated assets annually to reflect the change in the Gross Domestic Product Price Index, published by the BEA.

Regulation I implements section 7(a)(1) of the Federal Reserve Act by (1) defining the term "total consolidated assets,"⁵ (2) incorporating the statutory dividend rates for Reserve Bank stockholders⁶ and (3) providing that the Board shall adjust the threshold for total consolidated assets annually to reflect the change in the Gross Domestic Product Price Index.⁷ The Board has explained that it "expects to make this adjustment [to the threshold for total consolidated assets] using the final second quarter estimate of the Gross Domestic Product Price Index for each

year, published by the Bureau of Economic Analysis."⁸

II. Adjustment

The Board annually adjusts the \$10 billion total consolidated asset threshold based on the change in the Gross Domestic Product Price Index between the second quarter of 2015 (the baseline year) and the second quarter of the current year.⁹ The second quarter 2017 Gross Domestic Product Price Index estimate published by the BEA in September 2017 (113.037) is 2.83% higher than the second quarter 2015 Gross Domestic Product Price Index estimate published by the BEA in September 2017 (109.921). Based on this change in the Gross Domestic Product Price Index, the threshold for total consolidated assets in Regulation I will be \$10,283,000,000 as of the effective date of January 1, 2018.

III. Administrative Law Matters

Administrative Procedure Act

The provisions of 5 U.S.C. 553(b) relating to notice of proposed rulemaking have not been followed in connection with the adoption of these amendments. The amendments involve expected, ministerial adjustments that are required by statute and Regulation I and are consistent with a method previously set forth by the Board.¹⁰ Accordingly, the Board finds good cause for determining, and so determines, that notice in accordance with 5 U.S.C. 553(b) is unnecessary.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.¹¹ As noted previously, the Board has determined that it is unnecessary to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and

¹ 12 U.S.C. 287.

² 12 CFR 209.4(a).

³ 12 U.S.C. 287 and 12 CFR 209.4(c)(2).

⁴ 12 U.S.C. 289(a)(1).

⁵ 12 CFR 209.1(d)(3) ("Total consolidated assets means the total assets on the stockholder's balance sheet as reported by the stockholder on its Consolidated Report of Condition and Income (Call Report) as of the most recent December 31, except in the case of a new member or the surviving stockholder after a merger 'total consolidated assets' means (until the next December 31 Call Report becomes available) the total consolidated assets of the new member or the surviving stockholder at the time of its application for capital stock").

⁶ 12 CFR 209.4(e), (c)(1)(ii), and (d)(1)(ii); 209.2(a); and 209.3(d)(3).

⁷ 12 CFR 209.4(f).

⁸ 81 FR 84415, 84417 (Nov. 23, 2016).

⁹ The BEA makes ongoing revisions to its estimates of the Gross Domestic Product Price Index for historical calendar quarters. The Board calculates annual adjustments from the baseline year (rather than from the prior-year total consolidated asset threshold) to ensure that the adjusted total consolidated asset threshold accurately reflects the cumulative change in the BEA's most recent estimates of the Gross Domestic Product Price Index.

¹⁰ See 12 CFR 209.4(f) and n. 8 and accompanying text, *supra*.

¹¹ 5 U.S.C. 603 and 604.

final regulatory flexibility analysis do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,¹² the Board has reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

List of Subjects in 12 CFR Part 209

Banks and banking, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, the Board amends Regulation I, 12 CFR part 209, as follows:

PART 209—ISSUE AND CANCELLATION OF FEDERAL RESERVE BANK CAPITAL STOCK (REGULATION I)

■ 1. The authority citation for part 209 continues to read as follows:

Authority: 12 U.S.C. 222, 248, 282, 286–288, 289, 321, 323, 327–328, and 466.

■ 2. In part 209, remove all references to “\$10,122,000,000” and add in their place “\$10,283,000,000”, wherever they appear.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, November 7, 2017.

Margaret M. Shanks,

Deputy Secretary of the Board.

[FR Doc. 2017–24553 Filed 11–9–17; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

RIN 3245–AG65

Small Business Investment Companies—Administrative Fees

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is revising its regulations to increase the Small Business Investment Company (SBIC) licensing and examination fees. The Small Business Investment Act of 1958, as amended, allows SBA to collect licensing and examination fees to offset SBA’s costs associated with the administration of these two activities.

SBA last increased fees for SBICs in 1996. Current fees offset less than 40% of SBA’s administrative expenses related to these activities. This final rule increases SBIC licensing and examination fees in annual steps through October 2020, at which time SBA estimates that the annual fees will recoup approximately 80% of SBA’s annual expenses directly related to these activities. Beginning in October 2021, this rule increases licensing and examination fees annually based on inflation.

DATES: This rule is effective December 13, 2017.

FOR FURTHER INFORMATION CONTACT: Theresa Jamerson, Office of Investment and Innovation, (202) 205–7563 or sbic@sba.gov.

SUPPLEMENTARY INFORMATION:

I. Background Information

The Small Business Investment Act of 1958, as amended (“Act”), authorizes SBA to collect fees to cover the costs associated with the licensing and examination of SBICs. 15 U.S.C. 681(e)(2)(B) and 687b(b). Although SBA has regulations setting the amount of these fees, SBA has not increased licensing and examination fees for SBICs since 1996. As part of the final rule published January 31, 1996 (61 FR 3177), SBA set licensing fees “to reflect the Agency’s costs of processing applications” and similarly set examination fees to “produce total revenue sufficient to cover the current direct costs to SBA of conducting examinations.” In a subsequent rule published on April 30, 1997 (62 FR 23337), SBA capped examination fees at \$14,000, which lowered the fee for SBICs with over \$60 million in assets. As part of the rationale for this change, the rule stated, “many of the largest SBICs are bank-owned and do not use federal leverage, so that fees computed on the basis of total assets do not appropriately reflect the level of effort and risk associated with the examination process.” Neither rule included an adjustment for inflation.

Although fees set in 1996, as adjusted in 1997, were intended to fully reimburse SBA’s costs, by fiscal year (FY) 1999 (the earliest fiscal year for which SBA expenses are readily available), licensing and examination fees only covered approximately 85% of SBA’s direct costs. SBA’s direct costs are the expenses related to licensing and examination (e.g., personnel compensation and benefits associated with licensing and examinations, technology, subscription services, travel and other costs associated with

licensing and examinations), and excludes SBA’s overhead costs (e.g., office space, utilities, and other supporting offices within SBA). In FY 2016, licensing and examination fees reimbursed approximately 35% of SBA’s direct licensing and examination expenses, and less than a quarter of SBA’s licensing and examination expenses when including overhead.

On December 16, 2016, SBA published a proposed rule (81 FR 91049) to gradually increase the SBIC licensing and examination fees each year through October 1, 2020, and thereafter annually based on inflation, beginning on October 1, 2021. The proposed rule detailed the reasons for the widening gap between fees received and SBA related expenses. Key reasons include inflation, changes in the SBIC portfolio, increased capital at risk (SBA-guaranteed leverage and commitments), SBA’s efforts to improve SBIC program performance, and technology implementation.

As noted above, the Act authorizes SBA to collect fees to cover the costs associated with the licensing and examination of SBICs. The Act requires SBA to deposit the fees in the account for salaries and expenses of the Administration and authorizes SBA to use licensing fees to cover licensing costs and examination fees to cover the costs of examinations and other program oversight activities. 15 U.S.C. 681(e)(2) and 687b(b). To the extent that SBA does not cover its licensing and examination costs by charging SBICs for these fees, the balance is paid out of Agency funds. In other words, when SBICs do not pay fees sufficient to cover SBA’s licensing and examination costs, taxpayers bear the burden of covering those costs. It is an appropriate use of SBA’s statutory authority in this final rule to increase SBIC licensing and examination fees to cover a greater percentage of licensing and examination costs.

The effect of the statutory language authorizing SBA to use licensing fees to cover licensing costs and examination fees to cover the costs of examinations and “other program oversight activities” is that SBA may use examination fees to cover a broader category of expenses than those for which it may charge (i.e., examination costs alone). Although the current and estimated future costs of compensation and benefits of SBA personnel involved in licensing and examinations, not including any additional related expenses, fully support the fee increases in this final rule, in the proposed rule, SBA identified a number of costs it expected to pay for with the funds made available

¹² 44 U.S.C. 3506; 5 CFR part 1320.