

By order of the Board of Governors of the Federal Reserve System, October 31, 2017.

Ann E. Misback,

Secretary of the Board.

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FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. OP-1578]

Rules of Organization

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

ACTION: Amendment to Rules of Organization.

SUMMARY: The Board has amended its definition of a quorum of the Board in the Board's Rules of Organization. The amendment is designed to facilitate the Board's ability to continue to function efficiently during periods of substantial vacancies on the Board. The amendment does not alter the number of Board members required to constitute a quorum in normal operating environments. The amendment also addresses Board member recusals and disqualifications. In addition, the Board has provided a modified definition of a quorum during exigent circumstances. In connection with this modification, the Board is amending its Rules Regarding Delegation of Authority, published elsewhere in this **Federal Register**, to authorize the Chair (or Vice Chair, if the Chair is unavailable) to determine when an emergency situation exists.

DATES: The amendment to the Board's Rules of Organization became effective on October 25, 2017.

FOR FURTHER INFORMATION CONTACT: Laurie Schaffer, Associate General Counsel (202) 452-2272, or Daniel Hickman, Counsel (202) 973-7432, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. For the hearing impaired only, Telecommunication Device for Deaf (TDD) users may contact (202) 263-4869.

SUPPLEMENTARY INFORMATION: The Board consists of up to seven members appointed by the President, by and with the advice and consent of the Senate, as provided in the Federal Reserve Act (Act).¹ The Act does not define a quorum of the Board, and authorizes the Board to make all rules and regulations necessary to enable the Board effectively

to perform its duties and functions.² For many years, the Board defined a quorum to be a majority (four members) of its authorized strength of seven members. In 2003, the Board revised its definition of a quorum of the Board to be a majority of the Board members currently in office, unless there are five members in office, in which case a quorum would be four members.³ This modification allowed the Board to function with fewer than four members in office and enhanced the Board's ability to function during emergencies.

Over the past decade, the Board has had to operate with fewer than five members on several occasions.⁴ Based on this experience, the Board has determined that substantial vacancies present administrative and logistical challenges that make it difficult to conduct routine business and efficiently manage operations, particularly with the Board's traditional reliance on a 3-member committee structure. In light of these considerations, the Board has reconsidered its quorum practice and decided to amend its definition of a quorum to provide that a quorum of the Board is four members, unless there are three or fewer members in office, in which case a quorum would be all members in office. This revised definition will facilitate the Board's ability to continue to function efficiently during periods of substantial vacancies on the Board. This revision does not alter the number of Board members required to constitute a quorum or the functioning of the Board's committee structure in normal operating environments (that is, when five or more members are in office).

Increasing the quorum requirement for a four-member and three-member Board may make it more difficult to convene a quorum if a member of the Board is recused or disqualified from a particular matter. To address this concern, the Board also has amended its Rules of Organization to clarify that Board members who are recused or disqualified from participating in a particular matter will be excluded from calculations of the quorum requirement for that matter.

Since the revisions may make it more difficult to convene a quorum of the Board under exigent circumstances, the Board also has added a modified definition of quorum providing that, in

an emergency situation, a quorum of the Board consists of a majority of the Board members in office. An emergency situation is defined as a situation when action on a matter is necessary to prevent, correct, or mitigate serious harm to the economy or the stability of the financial system, and action is required before the full Board can convene. The Board is amending its Rules Regarding Delegation of Authority (12 CFR part 265), published elsewhere in this **Federal Register**, to authorize the Chair (or the Vice Chair, if the Chair is unavailable) to determine when an emergency situation exists.

The Board has incorporated these revisions into its Rules of Organization and Rules Regarding Delegation of Authority,⁵ published elsewhere in this **Federal Register**. The revisions relate solely to the internal procedure of the Board, and, accordingly, the public notice, public comment and delayed effective date provisions of the Administrative Procedure Act do not apply. See 5 U.S.C. 553(b) and (d). Because public notice and comment is not required, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) also does not apply to this action.

Board of Governors—Rules of Organization

■ Section 2 paragraph (b) is revised to read as follows:

Section 2 Composition, Location, and Public Information

* * * * *

(b)(1) *Quorum.* Four Board members constitutes a quorum of the Board for purposes of transacting business *except* that, if there are three or fewer Board members in office, then a quorum consists of all Board members currently in office. If a Board member is recused or disqualified from participating in a matter, the member shall not be counted for purposes of calculating the quorum for that matter.

(b)(2) *Exigent Circumstances.* In an emergency situation, a quorum of the Board consists of a majority of the Board members in office. An emergency situation exists when action on a matter is necessary to prevent, correct, or mitigate serious harm to the economy or the stability of the financial system, and action is required before the full Board can convene.

² See 12 U.S.C. 248(i).

³ 66 FR 37686 (Jul 19, 2001), as amended at 68 FR 24743 (May 8, 2003).

⁴ Since the current structure of the Board was established in 1936, the Board has had fewer than five members on only a few occasions for a short period of time and the Board has never had fewer than four members.

⁵ The Board's Rules Regarding Delegation of Authority are codified at 12 CFR part 265.

¹ See 12 U.S.C. 241.

By order of the Board of Governors of the Federal Reserve System, November 15, 2017.

Ann E. Misback,
Secretary of the Board.

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 704

RIN 3133-AE75

Corporate Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is amending its regulations governing corporate credit unions (corporates) and the scope of their activities. Specifically, the amendments revise provisions on retained earnings and Tier 1 capital.

DATES: The rule is effective December 22, 2017.

FOR FURTHER INFORMATION CONTACT:

Yvonne Applonie, Director of Supervision, Office of National Examinations and Supervision, at 1775 Duke Street, Alexandria, Virginia 22314 or telephone (703) 518-6595; or Marvin Shaw, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518-6553.

SUPPLEMENTARY INFORMATION:

I. Background

The Financial Crisis of 2007–2009

The financial crisis of 2007–2009 took a heavy toll on the corporate credit union system. The crisis, largely mortgage related, greatly affected the investment portfolios of many corporates, causing widespread liquidity problems, instability in the system, and failures. During this period, the NCUA took extraordinary short and mid-term measures to stabilize the corporate system. Among other things, it: (1) Made capital injections; (2) approved the Temporary Corporate Credit Union Share Guarantee Program, which guaranteed uninsured shares at participating corporates; (3) retained an independent third party to analyze expected non-recoverable credit losses for distressed securities held by corporates; (4) conserved five corporates; and (5) created the NCUA Guaranteed Note Program.¹

¹ As part of the corporate system resolution, the NCUA created the NCUA Guaranteed Note Program to provide long-term funding for distressed investment securities (Legacy Assets) from the five

The 2010 Amendments

In 2010, the Board comprehensively revised the regulations governing corporates and their activities to provide longer term structural enhancements to the corporate system.² The 2010 rule established a regulatory framework that provides a foundation for a healthy corporate system that: (1) Delivers important services to the corporates' natural person credit union members, such as payment systems and liquidity; and (2) builds and attracts sufficient capital.³ The 2010 rule also sought to prevent the recurrence of financial losses similar to those that led to the failure of the referenced five corporates and weakened the financial condition of others.

The 2010 rule curtailed several practices that contributed to the corporate failures. Specifically, it established investment concentration limits, limited asset maturities, and prohibited investments in subordinated and private label mortgage-backed securities. The 2010 rule also implemented a prompt corrective action (PCA) regime stipulating capital adequacy for corporates. Largely based on the Basel I requirements, the capital requirements of the 2010 rule emphasized corporates holding tangible and durable capital.

The Current Environment

The provisions of the 2010 rule have successfully stabilized the corporate system and improved the corporates' ability to function and provide services to natural person credit unions. Additionally, since 2010, the overall economy has improved greatly, thereby improving the economic landscape in which corporates operate. Further, the large concentration of troubled assets within the corporate system has been reduced through portfolio repositioning or the NCUA's intervention. The corporate system has significantly contracted and consolidated, with assets declining from approximately \$81.7 billion prior to the 2010 rule to approximately \$24.9 billion today. In that same time period, the number of corporates has decreased from 26 to 11. Given these developments, the Board decided to revisit the 2010 rule's capital standards.

failed corporates. Legacy Assets consisted of over 2,000 investment securities secured by approximately 1.6 million residential mortgages, as well as commercial mortgages and other securitized assets.

² 12 CFR part 704; 75 FR 64786 (Oct. 20, 2010).

³ 75 FR 64787, 64787 (Oct. 20, 2010).

II. July 2017 Proposal

As a result of its review of the corporate capital standards, in July 2017, the Board published amendments to the corporate rule, which primarily affect the calculation of capital after corporates consolidate and set a retained earnings ratio target in meeting PCA standards.⁴

Specifically, the Board proposed incorporating "GAAP equity acquired in a merger" as a component of retained earnings. This amendment to the definition of "retained earnings" in turn affects the definition of "Tier 1 capital," which includes retained earnings as one component of Tier 1 capital. In the proposal, the Board stated that expressly including such equity acquired in a merger as retained earnings and referencing GAAP clarifies that this capital is available to cover losses, enhances transparency, and reduces ambiguity.⁵ The Board also proposed deleting the phrase "the retained earnings of any acquired credit union, or an integrated set of activities and assets, calculated at the point of acquisition, if the acquisition is a mutual combination" from the current definition of "Tier 1 capital," given that it would be redundant as a result of the proposal.

In the 2010 rule, the Board encouraged corporates to build retained earnings, which has generally yielded positive results. Nevertheless, in the July 2017 proposal, the Board proposed amending this aspect of the regulation for three reasons: (1) The 2010 rule's language did not expressly reference "GAAP equity acquired in mergers" as a component of retained earnings; (2) the 2010 rule's language limited perpetual contributed capital (PCC) for regulatory capital purposes; and (3) the 2010 rule's language was inconsistent with other capital regulations. Specifically, the Board proposed removing the requirement⁶ to limit PCC counted as Tier 1 capital to the amount of retained earnings. Further, the Board proposed permitting a corporate to include in its Tier 1 capital all PCC that is sourced from an entity not covered by federal share insurance.

Further, as discussed in greater detail below, the Board proposed adding a definition of "retained earnings ratio" to the regulation. Under the proposal, that term would mean "the corporate credit union's retained earnings divided by its moving daily average net assets." The Board proposed requiring all corporates

⁴ 82 FR 30774 (July 3, 2017).

⁵ *Id.*

⁶ This requirement would not have gone into effect until October 2020.