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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 8

[Docket ID OCC–2020–0024]

RIN 1557–AE95

Assessment of Fees

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Interim final rule and request for comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is adopting an interim final rule to reduce assessments in response to the national emergency declared in connection with coronavirus disease 2019 (COVID–19). Under the interim final rule, assessments due on September 30, 2020, for national banks, Federal savings associations, and Federal branches and agencies of foreign banks (collectively, banks under the jurisdiction of the OCC) will be calculated using the December 31, 2019, “Consolidated Reports of Condition and Income” (Call Report) for each institution, rather than the June 30, 2020 Call Report. This will result in lower assessments for most banks under the jurisdiction of the OCC. In the event a bank’s assets as reported on the June 30, 2020, Call Report are lower than on the December 31, 2019, Call Report, the OCC will calculate the assessment due on September 30, 2020, for the institution using the June 30, 2020, Call Report.

DATES: The interim final rule is effective from June 24, 2020 through October 15, 2020. Comments on the interim final rule must be received no later than July 24, 2020.

ADDRESSES: Interested parties are encouraged to submit written comments. Commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible.

Please use the title “Assessment of Fees” to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—Regulations.gov Classic or Regulations.gov Beta:*

Regulations.gov Classic: Go to <https://www.regulations.gov/>. Enter “Docket ID OCC–2020–0024” in the Search Box and click “Search.” Click on “Comment Now” to submit public comments. For help with submitting effective comments please click on “View Commenter’s Checklist.” Click on the “Help” tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.

Regulations.gov Beta: Go to <https://beta.regulations.gov/> or click “Visit New *Regulations.gov* Site” from the *Regulations.gov* Classic homepage. Enter “Docket ID OCC–2020–0024” in the Search Box and click “Search.” Public comments can be submitted via the “Comment” box below the displayed document information or by clicking on the document title and then clicking the “Comment” box on the top left side of the screen. For help with submitting effective comments please click on “Commenter’s Checklist.” For assistance with the *Regulations.gov* Beta site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5 p.m. ET or email regulations@erulemakinghelpdesk.com.

- *Email:* regs.comments@occ.treas.gov.
- *Mail:* Chief Counsel’s Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include “OCC” as the agency name and “Docket ID OCC–2020–0024” in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, email addresses, or phone numbers. Comments received, including

attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- *Viewing Comments Electronically—Regulations.gov Classic or Regulations.gov Beta:* *Regulations.gov Classic:* Go to <https://www.regulations.gov/>. Enter “Docket ID OCC–2020–0024” in the Search box and click “Search.” Click on “Open Docket Folder” on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on “View all documents and comments in this docket” and then using the filtering tools on the left side of the screen. Click on the “Help” tab on the *Regulations.gov* home page to get information on using *Regulations.gov*. The docket may be viewed after the close of the comment period in the same manner as during the comment period.

Regulations.gov Beta: Go to <https://beta.regulations.gov/> or click “Visit New *Regulations.gov* Site” from the *Regulations.gov* Classic homepage. Enter “Docket ID OCC–2020–0024” in the Search Box and click “Search.” Click on the “Comments” tab. Comments can be viewed and filtered by clicking on the “Sort By” drop-down on the right side of the screen or the “Refine Results” options on the left side of the screen. Supporting materials can be viewed by clicking on the “Documents” tab and filtered by clicking on the “Sort By” drop-down on the right side of the screen or the “Refine Results” options on the left side of the screen.” For assistance with the *Regulations.gov* Beta site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5 p.m. ET or email regulations@erulemakinghelpdesk.com. The docket may be viewed after the close of the comment period in the same manner.

FOR FURTHER INFORMATION CONTACT: Margaret Sherry, Principal Deputy Comptroller for Management and Deputy Chief Financial Officer, Financial Management, (202) 649–5658, or Mitchell Plave, Special Counsel, Chief Counsel’s Office, (202) 649–5490,

for persons who are deaf or hard of hearing, TTY, (202) 649-5597.

SUPPLEMENTARY INFORMATION:

I. Background

The National Bank Act¹ and the Home Owners' Loan Act² authorize the Comptroller to recover the costs of the OCC's operations through assessments, fees, and other charges on banks under the jurisdiction of the OCC.³ In setting assessments, the Comptroller has broad authority to consider variations among institutions, including the nature and scope of the activities of the entity, the amount and type of assets that the entity holds, the financial and managerial condition of the entity, and any other factor the Comptroller determines is appropriate.⁴

The OCC collects assessments from banks under its jurisdiction in accordance with 12 CFR part 8. Under part 8, the base assessment for banks is calculated using a table with eleven categories, or brackets, each of which comprises a range of asset-size values. The assessment for each bank is the sum of a base amount, which is the same for every bank in its asset-size bracket, plus a marginal amount, which is computed by applying a marginal assessment rate to the amount in excess of the lower boundary of the asset-size bracket.⁵ The marginal assessment rate declines as asset size increases, reflecting economies of scale in bank examination and supervision.

The OCC's annual Notice of Office of the Comptroller of the Currency Fees and Assessments (Notice of Fees) sets forth the marginal assessment rates applicable to each asset-size bracket for each year, as well as other assessment components and fees. Under part 8, the OCC may adjust the marginal rates to account for inflation through the annual Notice of Fees.⁶ The OCC also has the discretion under part 8 to adjust marginal rates by amounts other than inflation.⁷ The OCC may issue an interim or amended Notice of Fees if the Comptroller determines that it is

necessary to revise assessments to meet the OCC's supervisory obligations.⁸

Under 12 CFR 8.2, the OCC collects assessments on a semiannual basis, with fees due by March 31 and September 30 (payment due dates) of each year for the six-month period beginning on January 1 and July 1 before each payment due date.⁹ Each semiannual assessment is based upon the total assets shown in the institution's most recent Call Report preceding the payment date.

II. Description of the Interim Final Rule

COVID-19 has significantly affected financial institutions, businesses, and consumers. In light of the adverse economic effect of the extraordinary measures that have been taken to limit the public health impacts of the COVID-19 pandemic, the OCC is issuing this interim final rule to reduce assessments for the upcoming semiannual assessment. Under the interim final rule, which amends 12 CFR part 8, the OCC will calculate assessments due on September 30, 2020, using Call Report assets as of December 31, 2019, rather than June 30, 2020. The use of December 31, 2019, Call Report assets will result in reduced assessments for most banks. If an institution's June 30, 2020, Call Report assets are lower than the institution's assets as reported on December 31, 2019, the OCC will use the June 30, 2020, Call Report for calculation of the institution's assessment.

The interim final rule will expire after the collection of assessments on September 30, 2020. Thereafter, semiannual assessments will be based on the total assets shown in each institution's most recent Call Report preceding the payment date.

The OCC seeks comment on all aspects of this interim final rule.

III. Administrative Law Matters

A. Administrative Procedure Act

The OCC is issuing this interim final rule without prior notice and the opportunity for public comment and the delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).¹⁰ Pursuant to section 553(b)(B) of the APA, general notice and opportunity for the public to comment are not required with respect to a rulemaking when an "agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are

impracticable, unnecessary, or contrary to the public interest."¹¹

The OCC believes that the public interest is best served by implementing the interim final before the next assessment collection. As discussed above, COVID-19 has significantly affected global economic activity. The reduction of assessments for banks under the jurisdiction of the OCC will reduce burden during this period. Issuance of an interim final rule will provide for expedited implementation of the assessment change and permit the OCC to timely issue an amended Notice of Fees, which will implement the assessment change for the semiannual assessment due on September 30, 2020.¹² For these reasons, the OCC believes that there is good cause consistent with the public interest to issue the interim final rule without advance notice and comment.¹³

The APA also requires a 30-day delayed effective date, except for (1) substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause.¹⁴ Because the rule grants an exemption, the interim final rule is exempt from the APA's delayed effective date requirement.¹⁵ Additionally, the OCC finds good cause to publish the interim final rule with an immediate effective date for the same reasons set forth above. While the OCC believes that there is good cause to issue the rule without advance notice and comment and with an immediate effective date, the OCC is interested in the views of the public and requests comment on all aspects of the interim final rule.

B. Congressional Review Act

For purposes of Congressional Review Act, the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a "major" rule.¹⁶ If a rule is deemed a "major rule" by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.¹⁷

The Congressional Review Act defines a "major rule" as any rule that the Administrator of the Office of Information and Regulatory Affairs of

¹ Revised Statutes of the United States, Title LXII, 12 U.S.C. 1 *et seq.*

² The Home Owners' Loan Act, 12 U.S.C. 1461 *et seq.*

³ 12 U.S.C. 16, 481, 482, 1467.

⁴ 12 U.S.C. 16. *See also* 12 U.S.C. 1467 (providing that the Comptroller has the authority to recover costs of examination of federal savings associations "as the Comptroller deems necessary or appropriate.").

⁵ 12 CFR 8.2(a). Only the total domestic assets of federal branches and agencies are subject to assessment. 12 CFR 8.2(b)(2).

⁶ 12 CFR 8.2(a)(4).

⁷ *Id.*

⁸ 12 CFR 8.8(b).

⁹ 12 CFR 8.2(a) and 8.2(b)(1).

¹⁰ 5 U.S.C. 553.

¹¹ 5 U.S.C. 553(b)(B).

¹² 12 CFR 8.8. An amended Notice of Fees becomes effective 30 days after issuance. *Id.* 8.8(b).

¹³ 5 U.S.C. 553(b)(B); 553(d)(3).

¹⁴ 5 U.S.C. 553(d).

¹⁵ 5 U.S.C. 553(d)(1).

¹⁶ 5 U.S.C. 801 *et seq.*

¹⁷ 5 U.S.C. 801(a)(3).

the OMB finds has resulted in or is likely to result in (A) an annual effect on the economy of \$100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic and export markets.¹⁸

For the same reasons set forth above with respect to APA requirements, the OCC is adopting the interim final rule without the delayed effective date generally prescribed under the Congressional Review Act. The delayed effective date required by the Congressional Review Act does not apply to any rule for which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.¹⁹ Because the interim rule will reduce assessments and provide relief to institutions during the financial stress introduced by the measures taken to limit the public health risks of the COVID-19 pandemic, the OCC believes that delaying the rule would be contrary to the public interest.

As required by the Congressional Review Act, the OCC will submit this interim final rule and other appropriate reports to Congress and the Government Accountability Office for review.

C. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA),²⁰ the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC has reviewed this interim final rule and determined that it would not introduce any new or revise any collection of information pursuant to the PRA. Therefore, no submissions will be made to OMB.

D. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA)²¹ generally requires that an agency to consider whether a proposed rule will have a significant economic impact on a substantial number of small

entities.²² The RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b).²³ As discussed above, consistent with section 553(b)(B) of the APA, the OCC has determined for good cause that general notice and opportunity for public comment is unnecessary, and, therefore, the OCC is not issuing a notice of proposed rulemaking. Accordingly, the OCC has concluded that the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply.

Nevertheless, the OCC seeks comment on whether, and the extent to which, the interim final rule would affect a significant number of small entities.

E. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),²⁴ in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), the OCC must consider, consistent with the principle of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosure, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, with certain exceptions, including for good cause.²⁵ The interim final rule would not impose any additional reporting, disclosure, or other new requirements on IDIs. Therefore, for the reasons described above, the OCC finds good cause exists under section 302 of RCDRIA to publish this interim final rule with an immediate effective date. As such, the interim final rule will be effective on June 24, 2020.

²² 5 U.S.C. 604. Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of \$600 million or less and trust companies with total assets of \$41.5 million or less. See 13 CFR 121.201.

²³ 5 U.S.C. 604(a).

²⁴ 12 U.S.C. 4802(a).

²⁵ 12 U.S.C. 4802.

Nevertheless, the OCC seeks comment on RCDRIA.

F. Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act²⁶ requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The OCC has sought to present the interim final rule in a simple and straightforward manner. The OCC invites comment on whether there are additional steps it could take to make the rule easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand? What else could we do to make the regulation easier to understand?

G. OCC Unfunded Mandates Reform Act of 1995 Determination

Consistent with the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531 *et seq.*, the OCC typically prepares a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. However, UMRA does not apply to final rules for which a general notice of proposed rulemaking was not published.²⁷ Therefore, because the OCC has found good cause to dispense with notice and comment for this interim final rule, the OCC has not prepared a budgetary impact statement for this interim final rule.

List of Subjects in 12 CFR Part 8

Assessments, Federal branches and agencies, National banks, Reporting and recordkeeping requirements, Savings associations.

²⁶ 12 U.S.C. 4809.

²⁷ See 2 U.S.C. 1532(a).

¹⁸ 5 U.S.C. 804(2).

¹⁹ 5 U.S.C. 808(2).

²⁰ 44 U.S.C. 3501–3521.

²¹ U.S.C. 601 *et seq.*

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the preamble, chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 8—ASSESSMENT OF FEES

■ 1. The authority for part 8 continues to read as follows:

Authority: 12 U.S.C. 16, 93a, 481, 482, 1467, 1831c, 1867, 3102, 3108, and 5412(b)(2)(B); and 15 U.S.C. 78c and 78l.

■ 2. Section 8.2 is amended by:

■ a. Redesignating paragraph (a)(5) as paragraph (a)(5)(i);

■ b. Adding paragraph (a)(5)(ii);

■ c. Redesignating paragraph (b)(3) as paragraph (b)(3)(i); and

■ d. Adding paragraph (b)(3)(ii).

The additions read as follows:

§ 8.2 Semiannual assessment.

(a) * * *

(5) * * *

(ii) Notwithstanding paragraph (a)(5)(i) of this section, the semiannual assessment for each national bank or Federal savings association due on September 30, 2020, will be based upon the lesser of total assets shown in the national bank's or Federal savings association's December 31, 2019, Call Report or June 30, 2020, Call Report.

* * * * *

(b) * * *

(3) * * *

(ii) Notwithstanding paragraph (b)(3)(i) of this section, the semiannual assessment for each Federal branch and each agency due on September 30, 2020, will be based upon the lesser of total assets shown in the Federal branch's or agency's December 31, 2019, Call Report or June 30, 2020, Call Report.

* * * * *

Brian P. Brooks,

Acting Comptroller of the Currency.

[FR Doc. 2020-13719 Filed 6-23-20; 8:45 am]

BILLING CODE 4810-33-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038-AE62

Retail Commodity Transactions Involving Certain Digital Assets

AGENCY: Commodity Futures Trading Commission.

ACTION: Final interpretive guidance.

SUMMARY: The Commodity Futures Trading Commission (the “Commission” or “CFTC”) is issuing this final interpretive guidance concerning the term “actual delivery” as set forth in the Commodity Exchange Act (“CEA”) pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”). Specifically, this final interpretive guidance is being issued to inform the public of the Commission’s views when determining whether actual delivery has occurred in the context of retail commodity transactions in certain types of digital assets that serve as a medium of exchange, colloquially known as “virtual currencies.” The Commission issues this interpretive guidance after a 90-day comment period and a significant amount of time and effort further observing the development of the digital asset and virtual currency marketplace.

DATES: This final guidance is effective on June 24, 2020.

FOR FURTHER INFORMATION CONTACT: Philip W. Raimondi, Special Counsel, (202) 418-5717, *praimondi@cftc.gov*; Office of the Chief Counsel, Division of Market Oversight, Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

With certain exceptions, the CFTC has been granted exclusive jurisdiction over commodity futures, options, and all other derivatives that fall within the definition of a swap.¹ Further, the Commission has been granted general anti-fraud and anti-manipulation authority over any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity.² The Commission’s mission is to promote the integrity, resilience, and vibrancy of the U.S. derivatives markets through sound regulation; it does so, in part, by protecting the American public from fraudulent schemes and abusive practices in those markets and products over which it has been granted jurisdiction.

The Commission has long held that certain speculative commodity transactions involving leverage or margin are futures contracts subject to

Commission oversight.³ However, certain judicial decisions called that view into question with respect to certain leveraged retail transactions primarily in foreign currencies.⁴ In 2008, Congress addressed this judicial uncertainty by providing that certain enumerated provisions of the CEA apply to certain retail foreign currency transactions pursuant to CEA section 2(c)(2)(C)(iv).⁵ This new statutory provision is subject to an exception for retail foreign currency transactions that result in “actual delivery” within two days.⁶ Two years later, in the Dodd-Frank Act, Congress similarly extended certain provisions of the CEA to apply to all other “retail commodity transactions” pursuant to CEA section 2(c)(2)(D)(iii).⁷

Specifically, CEA section 2(c)(2)(D) applies to any agreement, contract, or transaction in any commodity that is (i) entered into with, or offered to (even if not entered into with), a person that is neither an eligible contract participant⁸ nor an eligible commercial entity⁹ (“retail”), (ii) on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis.¹⁰ CEA section 2(c)(2)(D) provides that such an agreement, contract, or transaction is subject to CEA sections 4(a),¹¹ 4(b),¹² and 4b¹³ “as if the agreement, contract,

³ See *In re Stovall*, CFTC Docket No. 75-7 [1977-1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) paragraph 20,941, at 23,777 (CFTC Dec. 6, 1979) (applying traditional elements of a futures contract to a purported cash transaction).

⁴ See, e.g., *CFTC v. Zelener*, 373 F.3d 861 (7th Cir. 2004); *CFTC v. Erskine*, 512 F.3d 309 (6th Cir. 2008).

⁵ See Food, Conservation and Energy Act of 2008, Public Law 110-246, 122 Stat. 1651 (2008).

⁶ U.S.C. 2(c)(2)(C)(i)(II)(bb)(AA).

⁷ See Sec. 742 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law 111-203, 124 Stat. 1376 (2010); see also *Hearing to Review Implications of the CFTC v. Zelener Case Before the Subcomm. on General Farm Commodities and Risk Management of the H. Comm. on Agriculture*, 111th Cong. 52-664 (2009) (statement of Rep. Marshall, Member, H. Comm. on Agriculture) (“If in substance it is a futures contract, it is going to be regulated. It doesn’t matter how clever your draftsmanship is.”); 156 Cong. Rec. S5, 924 (daily ed. July 15, 2010) (statement of Sen. Lincoln) (“Section 742 corrects [any regulatory uncertainty] by extending the Farm Bill’s ‘Zelener fraud fix’ to retail off-exchange transactions in all commodities.”) (emphasis added).

⁸ U.S.C. 1a(18).

⁹ U.S.C. 1a(17); see also 7 U.S.C. 2(c)(2)(D)(iv).

¹⁰ 7 U.S.C. 2(c)(2)(D)(i).

¹¹ 7 U.S.C. 6(a) (prohibiting the off-exchange trading of futures transactions by U.S. persons unless the transaction is conducted on or subject to the rules of a designated contract market).

¹² 7 U.S.C. 6(b) (permitting foreign boards of trade registered with the Commission with the ability to provide direct access to U.S. persons).

¹³ 7 U.S.C. 6b (prohibiting fraudulent conduct in connection with any contract of sale of any

¹ 7 U.S.C. 2(a)(1)(A). The CFTC shares its swap jurisdiction in certain aspects with the Securities and Exchange Commission (“SEC”). See 7 U.S.C. 2(a)(1)(C).

² 7 U.S.C. 9(1).