responsive to the requirements set forth in 7 CFR 1700.107.

(b) If the Administrator determines that the application is eligible to receive consideration under this subpart and one or more SUTA requests are granted, the applicant will be so notified.

(c) If RUS determines that the application is not eligible to receive further consideration under this subpart, RUS will so notify the applicant. The applicant may withdraw its application or request that RUS treat its application as an ordinary application for review, feasibility analysis and service area verification by RUS consistent with the regulations and guidelines normally applicable to the relevant program.

§§ 1700.110–1700.149 [Reserved]

§ 1700.150 OMB Control Number.

The reporting and recordkeeping requirements contained in this part have been approved by the Office of Management and Budget and have been assigned OMB control number 0572–0147.

Dated: May 23, 2012.

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. 2012–14255 Filed 6–12–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 1, 5, 16, 28, and 160

[Docket ID OCC–2012–0005]

RIN 1557–AD36

Alternatives to the Use of External Credit Ratings in the Regulations of the OCC

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC).

ACTION: Final rule.

SUMMARY: Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) contains two directives to Federal agencies including the OCC. First, section 939A directs all Federal agencies to review, no later than one year after enactment, any regulation that requires the use of an assessment of creditworthiness of a security or money market instrument and any references to, or requirements in, such regulations regarding credit ratings. Second, the agencies are required to remove any references to, or requirements of reliance on, credit ratings and substitute such standard of creditworthiness as each agency determines is appropriate. The statute further provides that the agencies shall seek to establish, to the extent feasible, uniform standards of creditworthiness, taking into account the entities the agencies regulate and the purposes for which those entities would rely on such standards.

On November 29, 2011, the OCC issued a notice of proposed rulemaking (NPRM), seeking comment on a proposal to revise its regulations pertaining to investment securities, securities offerings, and foreign bank capital equivalency deposits to replace references to credit ratings with alternative standards of creditworthiness.

The OCC also proposed to amend its regulations pertaining to financial subsidiaries of national banks to better reflect the language of the underlying statute, as amended by section 939(d) of the Dodd-Frank Act.

Today, the OCC is finalizing those rules as proposed.

DATES: The final rule amending 12 CFR part 5 is effective on July 21, 2012. The final rules amending 12 CFR parts 1, 16, 28, and 160 are effective on January 1, 2013.

FOR FURTHER INFORMATION CONTACT: Kerri Corn, Director for Market Risk, Credit and Market Risk Division, (202) 874–4660; Michael Drennan, Senior Advisor, Credit and Market Risk Division, (202) 874–4660; Carl Kaminski, Senior Attorney, or Kevin Korzeniewski, Attorney, Legislative and Regulatory Activities Division, (202) 874–5090; or Eugene H. Cantor, Counsel, Securities and Corporate Practices Division, (202) 874–5210, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background

Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act [1] (the Dodd-Frank Act) contains two directives to Federal agencies including the OCC. First, section 939A directs all Federal agencies to review, no later than one year after enactment, any regulation that requires the use of an assessment of creditworthiness of a security or money market instrument and any references to or requirements in such regulations regarding credit ratings. Second, the agencies are required to remove references to, or requirements of reliance on, credit ratings and substitute such standard of creditworthiness as each agency determines is appropriate. The statute further provides that the agencies shall seek to establish, to the extent feasible, uniform standards of creditworthiness, taking into account the entities the agencies regulate and the purposes for which those entities would rely on those standards.

On November 29, 2011, the OCC issued a notice of proposed rulemaking (NPRM), seeking comment on a proposal to revise its regulations pertaining to investment securities, securities offerings, and foreign bank capital equivalency deposits to replace references to credit ratings with alternative standards of creditworthiness. The OCC also proposed to amend its regulations pertaining to financial subsidiaries of national banks to better reflect the language of the underlying statute, as amended by section 939(d) of the Dodd-Frank Act.

The proposal generally pertained to rules that require national banks and Federal savings associations to determine whether a particular security or issuance qualifies, or does not qualify, for a specific treatment. For example, except for U.S. government securities and certain municipal securities, the OCC's investment securities regulations generally require a national bank or Federal savings association to determine whether or not a security is ''investment grade'' in order to determine whether purchasing the security is permissible.

The OCC received 11 comments on the proposed rules from banks, bank trade groups, individuals, and bank service providers. The majority of the commenters generally supported the proposed rules and stated that they presented a workable alternative to the use of credit ratings. A few commenters raised specific issues, which are addressed in more detail below.

After considering the comments and the issues raised, the OCC has decided to finalize the rules as proposed. In order to assist national banks and Federal savings associations in making these ''investment grade'' determinations, the OCC also is publishing a final guidance document today in this issue of the **Federal Register**.

II. Description of the Final Rules

For the purposes of its regulations at 12 CFR parts 1, 16, 28, and 160, the OCC is amending the definition of ''investment grade'' to remove references to credit ratings and nationally recognized statistical rating

[1] Public Law 111–203, Section 939A, 124 Stat. 1376, 1887 (July 21, 2010).

organizations (NRSROs).[2] Where appropriate, the final rules replace the references to credit ratings with non-ratings based standards of creditworthiness.

Parts 1, 16, and 160

These final rules remove references to credit ratings provided by NRSROs and instead generally require national banks and Federal savings associations to make assessments of a security's creditworthiness, similar to the assessments currently required for the purchase of unrated securities.

National Bank Regulations

Under the proposed amendments to parts 1 and 16, a security would be ''investment grade'' if the issuer of the security has an adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure. To meet this new standard, national banks must determine that the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected. In the case of a structured security (that is, a security that relies primarily on the cash flows and performance of underlying collateral for repayment, rather than the credit of the issuer), the determination that full and timely repayment of principal and interest is expected may be influenced more by the quality of the underlying collateral, the cash flow rules, and the structure of the security itself than by the condition of the entity that is technically the issuer.

When determining whether a particular security is ''investment grade,'' the OCC expects national banks to consider a number of factors, to the extent appropriate. While external credit ratings and assessments remain valuable sources of information and provide national banks with a standardized credit risk indicator, if a national bank chooses to use credit ratings as part of its ''investment grade'' determination and due diligence, the bank should, consistent with existing rules and guidance, supplement the external ratings with a degree of due diligence processes and additional analyses that are appropriate for the bank's risk profile and for the size and complexity of the instrument. In other words, a security rated in the top four rating categories by an NRSRO is not automatically deemed to satisfy the revised ''investment grade'' standard.

Importantly, the proposal did not include a requirement that a national bank consider external credit ratings to make an ''investment grade'' determination. Therefore, a national bank could rely on other sources of information, including its own internal systems and/or analytics provided by third parties, when conducting due diligence and determining whether a particular security is a permissible and appropriate investment.

In comments on the proposed rule and guidance, banks and industry groups expressed concern about the amount of due diligence that the OCC would require a bank to conduct to determine whether an issuer has an adequate capacity to meet financial commitments under the security. Commenters were particularly concerned about the impact of due diligence requirements on smaller institutions. The OCC believes that the proposed ''investment grade'' standard and the due diligence required to meet it are consistent with those under prior ratings-based standards and existing due diligence requirements and guidance. Even under the prior ratings-based standards, national banks of all sizes should not rely solely on a credit rating to evaluate the credit risk of a security, and consistently have been advised through guidance and other supervisory materials to supplement any use of credit ratings with additional research on the credit risk of a particular security. Therefore, the OCC expects that most national banks already have such processes in place.

After considering the comments received, the OCC has decided to finalize the definition of ''investment grade'' as proposed. Also, in today's **Federal Register**, the OCC is publishing final guidance to assist national banks in determining whether a security is ''investment grade'' and to further explain the OCC's expectations with regard to regulatory due diligence requirements,[3] which remain unchanged. While the final guidance explains the OCC's expectations in more detail, the OCC's regulations require national banks to understand and evaluate the risks of purchasing investment securities. Fundamentally, national banks should not purchase securities for which they do not understand the relevant risks.

One commenter stated that the definition of ''investment grade'' for structured securities should explicitly require a bank to consider the likely performance of the underlying collateral under stressed economic scenarios. In the proposed rule, the OCC noted that the National Credit Union Administration (NCUA) explicitly proposed to include a similar requirement for all investment securities in regulations applicable to Federal credit unions.[4] Under the NCUA proposal, a Federal credit union must consider whether an obligor will continue to have the capacity to meet financial commitments, *even under adverse economic conditions,* when considering the creditworthiness of a security. In the November 29, 2011, proposal, the OCC requested comment on whether OCC regulations should include a similar requirement in the regulations applicable to national banks and Federal savings associations.

Under the OCC's prior ratings-based definition of ''investment grade,'' a security could be characterized as ''investment grade'' if it was rated in the top four ''investment grade'' ratings by two NRSROs (or one NRSRO if only one NRSRO had rated the particular security) or, if no NRSROs had rated the security, if the national bank or Federal savings association determined that the security was the credit equivalent of a security rated in the top four ''investment grade'' categories by an NRSRO. As a general matter, NRSROs consider potential adverse economic conditions when determining how to appropriately rate a security.[5] Therefore, the ratings-based standard for determining whether a security is ''investment grade'' generally included the consideration of potential adverse economic conditions.

The OCC does not intend for the elimination of references to credit ratings, in accordance with the Dodd-Frank Act, to change substantively the standards national banks must follow when deciding whether a security is ''investment grade,'' nor does it change the requirement set forth at 12 CFR 1.5, that institutions adhere to safe and sound banking practices when dealing in, underwriting, and purchasing and selling investment securities, and consider, as appropriate, the risks associated with the particular activities

[2] A nationally recognized statistical rating organization (NRSRO) is an entity registered with the U.S. Securities and Exchange Commission (SEC) as an NRSRO under section 15E of the Securities Exchange Act of 1934. *See,* 15 U.S.C. 78o–7, as implemented by 17 CFR 240.17g–1.

[3] *See* 12 CFR 1.5 (national banks) and 12 CFR 160.1(b) and 160.40(c) (federal savings associations).

[4] 76 FR 11164 (March 1, 2011).

[5] For example, on its public Web site, Moody's Corporation includes the following statement in its description of its ratings methodology:

In coming to a conclusion, rating committees routinely examine a variety of scenarios. Moody's ratings deliberately do not incorporate a single, internally consistent economic forecast. They aim rather to measure the issuer's ability to meet debt obligations against economic scenarios reasonably adverse to the issuer's specific circumstances.

Available at, http://www.moodys.com/ratings-process/Ratings-Policy-Approach/002003.

undertaken by the bank. As previously noted, national banks must perform due diligence necessary to establish (1) that the risk of default by the obligor is low, and (2) that full and timely repayment of principal and interest is expected. The depth of the due diligence should be a function of the security's credit quality, the complexity of the structure, and the size of the investment. The more complex a security's structure, the greater the expectations, even when the credit quality is perceived to be very high. To satisfy the ''investment grade'' and safety and soundness standards, a national bank should ensure that it understands a security's structure and how the security may perform under adverse economic conditions. A national bank should be particularly diligent when purchasing a structured security.

To the extent a national bank would be expected to consider adverse economic conditions under the current ''investment grade'' and safety and soundness standards, the OCC would expect the national bank to continue to consider adverse economic conditions, as appropriate, when conducting investment securities activities. Importantly, a national bank may not need to develop its own internal systems to measure potential adverse economic conditions to meet the revised standard. Instead, a national bank could consider projections provided by third parties, including those provided by NRSROs. Therefore, the OCC has determined that the ''investment grade'' standard does not need to be revised to address the commenter's concern. However, the OCC recognizes the need to clarify its expectations with regard to the level of due diligence necessary to meet the investment grade and safety and soundness standards. Therefore, the final guidance document, which is being published in today's **Federal Register**, provides further detail on the amount of due diligence the OCC expects national banks and Federal savings associations to undertake, including, as appropriate, the consideration of potential adverse economic conditions.

Federal Savings Association Regulations

Under current law, savings associations generally are prohibited by statute from investing in corporate debt securities unless they are rated ''investment grade'' by an NRSRO.[6] However, the Dodd-Frank Act provides that on July 21, 2012, this statutory requirement will be replaced by ''standards of creditworthiness established by the [FDIC].'' [7] In this final rule, the OCC is adopting the rule as proposed to define the term ''investment grade,'' as it is used in Part 160, to refer to 12 U.S.C. 1831e. Therefore, it will continue to reference the current ratings-based requirement until such time as that requirement is replaced by the FDIC.

A few commenters were concerned that the statutory provision requiring the FDIC to create an alternative for ratings under 12 U.S.C. 1831e could lead to different alternatives to the use of ratings for corporate debt securities. The OCC has consulted with and intends to continue to consult with the FDIC on the development of the alternative creditworthiness standard under 12 U.S.C. 1831e to ensure consistency to the extent possible.

At 12 CFR 160.42, Federal savings associations are subject to certain limitations with regard to purchases of state and local government obligations. Previously, Federal savings associations could hold state or municipal revenue bonds that have ratings in one of the four highest ''investment grade'' rating categories from one issuer up to a limit of 10 percent of total capital without prior OCC approval. Under the revised rules, this provision would apply to state or municipal revenue bonds if the issuer has an adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure. An issuer has an adequate capacity to meet financial commitments if the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected.

The OCC considered the comments discussed above regarding changes to the definition of ''investment grade'' for national bank regulations. For the same reasons, the OCC believes that Federal savings associations already should be conducting due diligence on these securities and that the new ''investment grade'' standard is appropriate. Therefore, the OCC adopts the revisions to § 160.42 as proposed. In addition, Federal savings associations should look to the final guidance document, issued today in the **Federal Register**, to provide more information about how to meet the ''investment grade'' standard in § 160.42.

Safety and Soundness Regulations

In addition to regulatory provisions that generally limit national banks and Federal savings associations to purchasing securities that are of ''investment grade,'' OCC regulations require that national banks and Federal savings associations conduct their investment activities in a manner that is consistent with safe and sound practices.[8] Specifically, national banks and Federal savings associations must consider the interest rate, credit, liquidity, price and other risks presented by investments, and the investments must be appropriate for the particular institution.[9] In addition to determining whether a security is of ''investment grade,'' national banks and Federal savings associations with substantial securities portfolios, in particular, must have and maintain robust risk management frameworks to ensure that an investment in a particular security appropriately fits within its goals and that the institution will remain in compliance with all relevant concentration limits. The final rules do not amend those provisions.[10]

Part 28—Foreign Banking Institutions

The OCC's capital equivalency deposit regulation at 12 CFR 28.15 previously allowed for the use of certificates of deposit or bankers' acceptances as part of the deposit if the issuer is rated ''investment grade'' by an internationally recognized rating organization. This final rule removes the requirement referencing credit ratings provided by ratings organizations. Instead, the issuer of the certificate of deposit or banker's acceptance must have ''an adequate capacity to meet financial commitments for the projected life of the asset or exposure.'' The OCC received no comments on this revision, and adopts it as proposed.

Effective Date

The OCC did not propose a specific effective date in the proposed rule. Two bank industry commenters were concerned that banks and savings associations would have insufficient time to develop processes for making ''investment grade'' determinations on new securities purchased before the effective date of this final rule. In addition, these commenters were concerned about the burden of analyzing securities institutions had purchased before the effective date of this final rule. These commenters suggested that the OCC adopt a one-year delayed effective date and allow for grandfathering of securities held by the institution before the effective date of this rule.

The OCC recognizes that it may take time for some national banks and

[6] 12 U.S.C. 1831e(d)(1).

[7] Public Law 111–203, Section 939(a)(2) (July 21, 2010).

[8] 12 CFR 1.5; 12 CFR 160.1(b), 160.40(c).

[9] 12 CFR 1.5(a); 12 CFR 160.1(b), 160.40(c).

[10] 76 FR 11164 (March 1, 2011).

Federal savings associations to develop the systems and processes necessary to make ''investment grade'' determinations under the new standard. Therefore, the OCC is allowing institutions until January 1, 2013, to come into compliance with this rule.

The OCC also understands that national banks and Federal savings associations own a significant amount of securities that were purchased with heavy reliance on credit ratings. Some of these securities, particularly structured securities, have maturity dates that could extend to 30 years. Therefore, the OCC does not believe that grandfathering would be appropriate, as institutions would be able to hold a grandfathered security for decades without performing additional ''investment grade'' analysis. National banks and Federal savings associations will still have until the proposed effective date of January 1, 2013, to evaluate their existing holdings and ensure that they meet the revised standard.

Part 5—Financial Subsidiaries

Finally, the OCC is adopting as proposed a technical change to 12 CFR 5.39, which pertains to financial subsidiaries of national banks, to conform with section 939(d) of the Dodd-Frank Act, which amends the criteria applicable to national banks seeking to control or hold an interest in a financial subsidiary.

Currently, pursuant to 12 U.S.C. 24a(a)(3), a national bank that is one of the 50 largest insured banks may control or hold an interest in a financial subsidiary if, among other criteria, the bank has at least one issue of outstanding eligible debt rated in one of the top three ''investment grade'' rating categories by an NRSRO.[11] A national bank that is one of the second 50 largest insured banks may either satisfy this requirement or it may satisfy such other criteria as the Secretary of the Treasury and the Federal Reserve Board may establish jointly by regulation. The Secretary of the Treasury and the Federal Reserve Board established an alternative creditworthiness requirement under this provision of the National Bank Act; however, the alternative requirement also is based on NRSRO credit ratings. Pursuant to Treasury Department regulations, a national bank that is within the second 50 largest insured banks may invest in a financial subsidiary if it has a ''current long-term issuer credit rating from at least one NRSRO that is within the three highest ''investment grade'' rating categories used by the organization.'' [12] No statutory creditworthiness requirement applies under current law to national banks that are not among the largest 100 insured banks.

Section 939(d) of the Dodd-Frank Act amends the creditworthiness requirements applicable to the 100 largest insured banks by removing the reference to NRSRO ratings and by eliminating any distinction between the first 50 largest insured banks and the second 50 such institutions. Effective on July 21, 2012, a national bank that is one of the 100 largest insured banks may control a financial subsidiary, directly or indirectly, or hold an interest in a financial subsidiary if the bank has not fewer than one issue of outstanding debt that meets such standards of creditworthiness or other criteria as the Secretary of the Treasury and the Federal Reserve Board may jointly establish. As is the case under current law, this statutory creditworthiness requirement does not apply to an insured depository institution that is not among the largest 100 insured depository institutions. Therefore, the Dodd-Frank revision will not affect the ability of such an institution to control or hold an interest in a financial subsidiary.[13]

The Secretary of the Treasury and Federal Reserve Board have not yet established alternative non-ratings-based creditworthiness requirements applicable to the 100 largest insured banks under this revised provision of the National Bank Act. Until specific creditworthiness standards are established under 12 U.S.C. 24a, as modified by the Dodd-Frank Act, no specific creditworthiness requirements will be required of national banks applying to control or hold an interest in a financial subsidiary. Importantly, however, the requirements at 12 CFR 5.39(g)(1) and (2) still apply. These provisions provide that a national bank may control or hold an interest in a financial subsidiary only if it and each depository institution affiliate is well-capitalized and well-managed, and the aggregate consolidated total assets of all financial subsidiaries of the national bank do not exceed the lesser of 45 percent of the consolidated total assets of the parent bank or $50 billion (or such greater amount as is determined according to an indexing mechanism jointly established by regulation by the Secretary of the Treasury and the Board of Governors of the Federal Reserve System).

In the NPRM and technical supplement,[14] the OCC proposed to revise 12 CFR 5.39 to be consistent with the Dodd-Frank Act revisions to 12 U.S.C. 24a described above. The OCC received no comments on the proposed revision, and therefore adopts it as proposed in the NPRM and technical amendment supplement.

III. Implementation Guidance

Together with this final rule, the OCC is publishing guidance for national bank and Federal savings association investment activities. This guidance is designed as an aid to institutions, particularly community banks and thrifts, regarding the factors they should consider in their due diligence with respect to securities of different degrees of complexity. The guidance reflects the OCC's expectations for national banks and Federal savings associations as they review their systems and consider any changes necessary to comply with the provisions for assessing credit risk in this final rule. The guidance describes factors institutions should consider with respect to certain types of investment securities to assess creditworthiness and to continue conducting their activities in a safe and sound manner.

As noted above, OCC regulations require that national banks and Federal savings associations conduct their investment activities in a manner that is consistent with safe and sound practices. Neither the final rules, nor the final guidance, change this requirement. The OCC expects national banks and Federal savings associations to continue

[11] 12 U.S.C. 24a(a)(3)(A)(i).

[12] 12 U.S.C. 24a(a)(3)(A)(ii). *See,* 12 CFR 1501.3.

[13] The reference to creditworthiness standards issued jointly by the Treasury Department and the Federal Reserve Board with respect to the 100 largest insured banks appears in a paragraph—paragraph (3)—that is cross-referenced by section 24a(a)(2)(E), which lists all of the requirements necessary for a national bank to have a financial subsidiary. This (a)(2)(E) list of requirements was amended by Dodd-Frank so that it continues to cross-reference paragraph (3), but now also refers to standards of creditworthiness established by the OCC as a criterion for having a financial subsidiary. Under one reading, (a)(2)(E) could be construed to impose new creditworthiness requirements for having a financial subsidiary on national banks that are not among the 100 largest insured banks and to permit banks that are among the 100 largest insured banks to choose between any creditworthiness standards that the OCC might issue and those issued jointly by the Treasury and the Board. Neither result squares with the cross-reference in the text to the requirement for the Treasury and the Board to issue creditworthiness standards for the 100 largest insured banks. Moreover, this reading is not sensible given that the statutory purpose is to eliminate references to credit rating agency ratings in statute and regulation, not to alter the requirements for all national banks to hold financial subsidiaries. The better reading is that national banks that are among the 100 largest insured banks must meet such standards of creditworthiness as the Treasury and the Board jointly establish and that the OCC is not required to impose new requirements on national banks that are not in that category.

[14] 76 FR 76905 (December 9, 2011).

to follow safe and sound practices in their investment activities.

IV. Regulatory Analyses

A. Paperwork Reduction Act

This final rule amends several regulations for which the OCC currently has approved collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520) (OMB Control Nos. 1557–0014; 1557–0190; 1557–0120; 1557–0205). The amendments in this final rule do not introduce any new collections of information into the rules, nor do they amend the rules in a way that substantively modifies the collections of information that Office of Management and Budget (OMB) has previously approved. Therefore, no additional OMB Paperwork Reduction Act approval is required at this time.

B. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act,[15] (RFA), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banks with assets less than or equal to $175 million) and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule.

This final rule would affect all 599 small national banks and all 284 small federally chartered savings associations.[16] However, because banks have long been expected to maintain a risk management process to ensure that credit risk is effectively identified, measured, monitored, and controlled, most if not all of the institutions affected by the rule already engage in appropriate risk management activity. Although the rule will affect a substantial number of small banks and federally chartered savings associations, it will not have a significant effect on a substantial number of those institutions. Therefore, the OCC certifies that the rule would not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (UMRA) requires that an agency prepare 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 (adjusted annually for inflation) in any one year. If a budgetary impact statement is required, section 205 of the UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

The OCC has determined that its final rule would not result in expenditures by state, local, and tribal governments, or by the private sector, of $100 million or more. Accordingly, the OCC has not specifically addressed the regulatory alternatives considered.

[15] 5 U.S.C. 605(b).

[16] All totals are as of March 31, 2012.

List of Subjects

12 CFR Part 1

Banks, Banking, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 16

National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 28

Foreign banking, National banks, Reporting and recordkeeping requirements.

12 CFR Part 160

Banks, Banking, Consumer protection, Investments, manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

Authority and Issuance

For the reasons stated in the preamble, the Office of the Comptroller of the Currency is amending parts 1, 5, 16, 28, and 160 of chapter I of Title 12, Code of Federal Regulations as follows:

PART 1—INVESTMENT SECURITIES

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

Authority: 12 U.S.C. 1, *et. seq.,* 12 U.S.C. 24 (Seventh), and 12 U.S.C. 93a.

■ 2. In § 1.2, revise paragraphs (d) through (f), remove and reserve paragraph (h), and revise paragraphs (m) and (n), to read as follows:

§ 1.2 Definitions.

* * * * *

(d) *Investment grade* means the issuer of a security has an adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure. An issuer has an adequate capacity to meet financial commitments if the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected.

(e) *Investment security* means a marketable debt obligation that is investment grade and not predominately speculative in nature.

(f) *Marketable* means that the security:

(1) Is registered under the Securities Act of 1933, 15 U.S.C. 77a *et seq.;*

(2) Is a municipal revenue bond exempt from registration under the Securities Act of 1933, 15 U.S.C. 77c(a)(2);

(3) Is offered and sold pursuant to Securities and Exchange Commission Rule 144A, 17 CFR 230.144A, and investment grade; or

(4) Can be sold with reasonable promptness at a price that corresponds reasonably to its fair value.

* * * * *

(h) [Reserved]

* * * * *

(m) *Type IV security* means:

(1) A small business-related security as defined in section 3(a)(53)(A) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(53)(A), that is fully secured by interests in a pool of loans to numerous obligors.

(2) A commercial mortgage-related security that is offered or sold pursuant to section 4(5) of the Securities Act of 1933, 15 U.S.C. 77d(5), that is investment grade, or a commercial mortgage-related security as described in section 3(a)(41) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(41), that represents ownership of a promissory note or certificate of interest or participation that is directly secured by a first lien on one or more parcels of real estate upon which one or more commercial structures are located and that is fully secured by interests in a pool of loans to numerous obligors.

(3) A residential mortgage-related security that is offered and sold pursuant to section 4(5) of the Securities Act of 1933, 15 U.S.C. 77d(5), that is investment grade, or a residential mortgage-related security as described in section 3(a)(41) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(41)) that does not otherwise qualify as a Type I security.

(n) *Type V security* means a security that is:

(1) Investment grade;

(2) Marketable;

(3) Not a Type IV security; and

(4) Fully secured by interests in a pool of loans to numerous obligors and in which a national bank could invest directly.

■ 3. In § 1.3, revise paragraphs (e) and (h) to read as follows:

§ 1.3 Limitations on dealing in, underwriting, and purchase and sale of securities.

* * * * *

(e) *Type IV securities.* A national bank may purchase and sell Type IV securities for its own account. The amount of the Type IV securities that a bank may purchase and sell is not limited to a specified percentage of the bank's capital and surplus.

* * * * *

(h) *Pooled investments*—(1) *General.* A national bank may purchase and sell for its own account investment company shares provided that:

(i) The portfolio of the investment company consists exclusively of assets that the national bank may purchase and sell for its own account; and

(ii) The bank's holdings of investment company shares do not exceed the limitations in § 1.4(e).

(2) *Other issuers.* The OCC may determine that a national bank may invest in an entity that is exempt from registration as an investment company under section 3(c)(1) of the Investment Company Act of 1940, provided that the portfolio of the entity consists exclusively of assets that a national bank may purchase and sell for its own account.

(3) Investments made under this paragraph (h) must comply with § 1.5 of this part, conform with applicable published OCC precedent, and must be:

(i) Marketable and investment grade, or

(ii) Satisfy the requirements of § 1.3(i).

* * * * *

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

■ 4. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 1, *et. seq.,* 12 U.S.C. 93a, 215a–2, 215a–3, 481, and section 5136A of the Revised Statutes (12 U.S.C. 24a).

■ 5. In § 5.39, revise paragraph (g)(3), add paragraph (g)(4), and revise paragraph (j)(2) to read as follows:

§ 5.39 Financial subsidiaries.

* * * * *

(g) * * *

(3) If the national bank is one of the 100 largest insured banks, determined on the basis of the bank's consolidated total assets at the end of the calendar year, the bank has not fewer than one issue of outstanding debt that meets such standards of creditworthiness or other criteria as the Secretary of the Treasury and the Federal Reserve Board may jointly establish pursuant to Section 5136A of title LXII of the Revised Statutes (12 U.S.C. 24a).

(4) Paragraph (g)(3) of this section does not apply if the financial subsidiary is engaged solely in activities in an agency capacity.

* * * * *

(j) * * *

(2) *Eligible debt requirement.* A national bank that does not continue to meet the qualification requirement set forth in paragraph (g)(3) of this section, applicable where the bank's financial subsidiary is engaged in activities other than solely in an agency capacity, may not directly or through a subsidiary, purchase or acquire any additional equity capital of any such financial subsidiary until the bank meets the requirement in paragraph (g)(3) of this section. For purposes of this paragraph (j)(2), the term ''equity capital'' includes, in addition to any equity investment, any debt instrument issued by the financial subsidiary if the instrument qualifies as capital of the subsidiary under Federal or state law, regulation, or interpretation applicable to the subsidiary.

* * * * *

PART 16—SECURITIES OFFERING DISCLOSURE RULES

■ 6. The authority citation for part 16 continues to read as follows:

Authority: 12 U.S.C. 1, *et. seq.,* 12 U.S.C. 93a.

■ 7. In § 16.2, revise paragraph (g) to read as follows:

§ 16.2 Definitions.

* * * * *

(g) *Investment grade* means the issuer of a security has an adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure. An issuer has an adequate capacity to meet financial commitments if the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected.

* * * * *

■ 8. In § 16.6, revise paragraph (a)(4) to read as follows:

§ 16.6 Sales of nonconvertible debt.

(a) * * *

(4) The debt is investment grade.

* * * * *

PART 28—INTERNATIONAL BANKING ACTIVITIES

■ 9. The authority citation for part 28 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 24 (Seventh), 93a, 161, 602, 1818, 3101 *et seq.,* and 3901 *et seq.*

■ 10. In § 28.15, revise paragraph (a)(1)(iii) to read as follows:

§ 28.15 Capital equivalency deposits.

(a) * * * (1) * * *

(iii) Certificates of deposit, payable in the United States, and banker's acceptances, provided that, in either case, the issuer has an adequate capacity to meet financial commitments for the projected life of the asset or exposure. An issuer has an adequate capacity to meet financial commitments if the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected

* * * * *

PART 160—LENDING AND INVESTMENT

■ 11. The authority citation for part 160 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1701j–3, 1828, 3803, 3806, 5412(b)(2)(B); 42 U.S.C. 4106.

■ 12. In § 160.3, add the definition of *Investment grade* in alphabetical order to read as follows:

§ 160.3 Definitions.

* * * * *

Investment grade means a security that meets the creditworthiness standards described in 12 U.S.C. 1831e.

* * * * *

■ 13. In § 160.40, revise paragraphs (a)(1)(i), (a)(1)(ii), and (a)(2)(ii) as follows:

§ 160.40 Commercial paper and corporate debt securities.

* * * * *

(a) * * * (1) * * *

(i) Investment grade as of the date of purchase; or

(ii) Guaranteed by a company having outstanding paper that meets the standard set forth in paragraph (a)(1)(i) of this section.

(2) * * *

(ii) Investment grade.

* * * * *

■ 14. In § 160.42, revise paragraphs (a) and (d) to read as follows:

§ 160.42 State and local government obligations.

(a) Pursuant to HOLA section 5(c)(1)(H), a Federal savings association may invest in obligations issued by any state, territory, possession, or political subdivision thereof (''governmental entity''), subject to appropriate underwriting and the following conditions:

	Aggregate limitation	Per-issuer limitation
(1) General obligations	None	None.
(2) Other obligations of a governmental entity (*e.g.*, revenue bonds) if the issuer has an adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure. An issuer has an adequate capacity to meet financial commitments if the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected.	None	10% of the institution's total capital.
(3) Obligations of a governmental entity that do not qualify under any other paragraph but are approved by the OCC.	As approved by the OCC	10% of the institution's total capital.

* * * * *

(d) For all securities, the institution must consider, as appropriate, the interest rate, credit, liquidity, price, transaction, and other risks associated with the investment activity and determine that such investment is appropriate for the institution. The institution must also determine that the obligor has adequate resources and willingness to provide for all required payments on its obligations in a timely manner.

■ 15. In § 160.93, revise paragraph (d)(5) introductory text and paragraph (d)(5)(i) to read as follows:

§ 160.93 Lending limitations.

* * * * *

(d) * * *

(5) Notwithstanding the limit set forth in paragraphs (c)(1) and (c)(2) of this section, a savings association may invest up to 10 percent of unimpaired capital and unimpaired surplus in the obligations of one issuer evidenced by:

(i) Commercial paper or corporate debt securities that are, as of the date of purchase, investment grade.

* * * * *

■ 16. In § 160.121, revise paragraphs (b)(1) and (2) to read as follows:

§ 160.121 Investments in state housing corporations.

* * * * *

(b) * * *

(1) The obligations are investment grade; or

(2) The obligations are approved by the OCC. The aggregate outstanding direct investment in obligations under paragraph (b) of this section shall not exceed the amount of the Federal savings association's total capital.

* * * * *

Dated: June 4, 2012.

Thomas J. Curry,

Comptroller of the Currency.

[FR Doc. 2012–14169 Filed 6–12–12; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 1 and 160

[Docket ID OCC–2012–0006]

RIN 1557–AD36

Guidance on Due Diligence Requirements in Determining Whether Securities Are Eligible for Investment

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC).

ACTION: Final guidance.

SUMMARY: On November 29, 2011, the Office of the Comptroller of the Currency (OCC) proposed guidance to assist national banks and Federal savings associations in meeting due diligence requirements in assessing credit risk for portfolio investments. Today, the OCC is issuing final guidance that clarifies regulatory expectations with respect to investment purchase decisions and ongoing portfolio due diligence processes.

DATES: This guidance is effective January 1, 2013.

FOR FURTHER INFORMATION CONTACT: Kerri Corn, Director for Market Risk, or Michael Drennan, Senior Advisor, Credit and Market Risk Division, (202) 874–4660; or Carl Kaminski, Senior Attorney, or Kevin Korzeniewski, Attorney, Legislative and Regulatory Activities Division, (202) 874–5090; or Eugene H. Cantor, Counsel, Securities and Corporate Practices Division, (202) 874–5202, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act [1] requires each Federal agency, within one year of enactment, to review: (1) Any regulations that require the use of an assessment of the creditworthiness of a security or money market instrument and (2) any references to or requirements in those regulations regarding credit ratings. Section 939A then requires the Federal agencies to modify the regulations identified during the review to substitute any references to or requirements of reliance on credit ratings with such standards of creditworthiness that each agency determines to be appropriate. The statute provides that the agencies shall seek to establish, to the extent feasible, uniform standards of creditworthiness, taking into account the entities the agencies regulate and the purposes for which those entities would rely on such standards.

On November 29, 2011 (76 FR 73777), the OCC issued proposed guidance together with a notice of proposed rulemaking (NPRM) to remove references to credit ratings in the OCC's non-capital regulations. In particular, the OCC proposed to amend the definition of ''investment grade'' in 12 CFR part 1 to no longer reference credit ratings. Instead, ''investment grade'' securities would be those where the issuer has an adequate capacity to meet the financial commitments under the security for the projected life of the investment. An issuer has an adequate capacity to meet financial commitments if the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected. Generally, securities with good to very strong credit quality will meet this standard. National banks will have to meet this new standard before purchasing investment securities. In addition, national banks and Federal savings associations should continue to maintain appropriate ongoing reviews of their investment portfolios to verify that their portfolios meet safety and soundness requirements that are appropriate for the institution's risk profile and for the size and complexity of their portfolios.

The OCC received 11 comments on the proposed rules and guidance from banks, bank trade groups, individuals, and bank service providers. The majority of the commenters generally supported the proposed rules and stated that the proposal presented a workable alternative to the use of credit ratings.

[1] Public Law 111–203, 939A (July 21, 2010) (Dodd-Frank Act).