and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (Mar. 18, 1988) that this final determination does not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this final determination under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Because the final determination finds that standards for HID lamps are not warranted, it is not a significant energy action, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the Bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions. 70 FR 2667.

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The ''Energy Conservation Standards Rulemaking Peer Review Report'' dated February 2007 has been disseminated and is available at the following Web site: *www1.eere.energy.gov/buildings/appliance_standards/peer_review.html.*

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final determination.

Issued in Washington, DC, on December 2, 2015.

David Danielson,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2015–30992 Filed 12–8–15; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Docket No. R–1506]

RIN 7100–AE 27

Regulatory Capital Rules: Regulatory Capital, Final Rule Demonstrating Application of Common Equity Tier 1 Capital Eligibility Criteria and Excluding Certain Holding Companies From Regulation Q

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting amendments to the Board's regulatory capital framework (Regulation Q) to clarify how the definition of common equity tier 1 capital, a key capital component, applies to ownership interests issued by depository institution holding companies that are structured as partnerships or limited liability companies. In addition, the final rule amends Regulation Q to exclude temporarily from Regulation Q savings and loan holding companies that are trusts and depository institution holding companies that are employee stock ownership plans.

DATES: The final rule is effective January 1, 2016. Any company subject to the final rule may elect to adopt it before this date.

FOR FURTHER INFORMATION CONTACT: Juan Climent, Manager, (202) 872–7526, Page Conkling, Senior Supervisory Financial Analyst, (202) 912–4647, Noah Cuttler, Senior Financial Analyst, (202) 912–4678, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System; or Benjamin McDonough, Special Counsel, (202) 452–2036, or Mark Buresh, Senior Attorney, (202) 452–5270, Legal Division, 20th Street and Constitution Avenue NW., Washington, DC 20551. Users of Telecommunication Device for Deaf (TDD) only, call (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

In July 2013, the Board adopted Regulation Q, a revised capital framework that strengthened the capital requirements applicable to state member banks and bank holding companies (BHCs) and implemented capital requirements for certain savings and loan holding companies (SLHCs).[1]

[1] *See* 12 CFR part 217. Savings and loan holding companies that are substantially engaged in

Among other changes, Regulation Q introduced a common equity tier 1 capital (CET1) requirement.

Following issuance of Regulation Q, several depository institution holding companies sought clarification as to how the CET1 requirement would apply in light of their capital structures. These holding companies included BHCs and SLHCs organized in non-stock form (non-stock holding companies) (such as partnerships or limited liability corporations (LLCs)), estate trusts that are SLHCs (estate trust SLHCs), and employee stock ownership plans that are BHCs or SLHCs (ESOP holding companies).

On December 12, 2014, the Board invited comment on a proposed rule that described how the CET1 requirement would apply to holding companies organized as partnerships or LLCs and that would have temporarily excluded estate trust SLHCs and ESOP holding companies from Regulation Q.[2]

The Board received two comments on the proposal—one from a financial services trade association and another from a savings and loan holding company—both of which expressed support for the proposal. After reviewing these comments, the Board is adopting the proposal largely as proposed, with certain clarifying edits and non-substantive changes to order and formatting.

II. Description of the Proposed and Final Rules

1. Application of the Eligibility Criteria for Common Equity Tier 1 Instruments to LLC and Partnership Interests

Regulation Q includes a CET1 requirement of 4.5 percent of risk-weighted assets. The purpose of the requirement is to ensure that banking organizations subject to Regulation Q hold sufficient high-quality regulatory capital that is available to absorb losses on a going concern basis.[3] In particular, CET1 must be the most subordinated form of capital in an institution's capital structure and thus available to absorb losses first.[4] CET1 is composed of common stock and instruments issued by mutual banking organizations that meet certain eligibility criteria.[5]

In a stock company, common stock generally is the most subordinated element of its capital structure. While a non-stock holding company does not issue common stock, it generally should also have the ability to issue capital instruments that have loss absorbency features similar to those of common stock.

In addition, a stock company may issue capital instruments that are not the most subordinated elements of its capital structure, such as preferred stock with a liquidation preference and cumulative dividend rights. Similarly, non-stock holding companies may issue capital instruments that are not the most subordinated elements of their capital structure. Regardless of whether the issuer is a stock company or a non-stock company, a capital instrument that is not the most subordinated element of a company's capital structure would not qualify as CET1 under Regulation Q.[6]

Features that cast doubt on whether a particular class of capital instruments is the most subordinated and therefore available to absorb losses first include unlimited liability for the general partner in a partnership, allocation of losses among classes that is disproportionate to amounts invested, mandatory distributions, minimum rates of return, and/or reallocations of earlier distributions. If such features limit or could limit the ability of capital instruments to bear first losses or effectively absorb losses then such features are inconsistent with Regulation Q's eligibility criteria for CET1 instruments and therefore may not qualify as such under Regulation Q.[7]

The proposed rule would have clarified, through examples, how the definition of CET1 would apply to ownership interests issued by non-stock holding companies.[8] In general, the examples showed that an LLC or partnership could issue capital that would qualify as CET1 provided that all ownership classes shared equally in losses, even if all ownership classes do not share equally in profits. The examples also showed that other features of capital instruments, such as a mandatory capital distribution upon the occurrence of an event or a date, different liquidation preferences among ownership classes, or unequal sharing of losses, could prevent a capital instrument from qualifying as CET1.

As noted, the Board received two comments on the proposal. One comment related to the application of the eligibility criteria for CET1 instruments to LLC and partnership interests. The commenter expressed concern that Regulation Q did not adequately address the special characteristics of non-stock holding companies and observed that the proposal facilitated the application of Regulation Q to such holding companies.

The final rule follows the same basic structure of the proposal, and adds some clarifications. The Board reordered the examples in the final rule to group together those examples discussing similar structures. In addition, the Board revised examples related to loss sharing to clarify that each distribution must be reviewed separately and to clarify that losses must be borne equally by all holders of CET1 instruments when investment proceeds are distributed.

In particular, Example (3) in the proposal related to an LLC with two classes of membership interests that share proportionately in losses, return of contributed capital, and profits up to a set rate of return. However, the classes of membership interests share disproportionately in profits above a particular level. This example provided that both classes of membership interest could qualify as CET1 so long as the classes always share any losses proportionately among the classes or among the instruments in each class, even if there is disproportionate allocation of profits. In the final rule, this example, renumbered as Example (4), clarifies that disproportionate sharing of profits does not prevent qualification as CET1, so long as the classes bear the losses pro rata. Despite the potential for disproportionate allocations of profits from a distribution, the classes of capital instruments would bear losses pro rata, placing them at the same level of seniority in bankruptcy or liquidation.

In the proposal, Example (7) related to an LLC with two classes of membership interests where one class could be required, under certain circumstances, to return previously received distributions that would then be allocated to the other class. The example provided that a class of capital instruments advantaged by an arrangement such that the advantaged

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insurance underwriting or commercial activities are exempt temporarily from the revised capital framework. *See* 12 CFR 217.2, ''Covered savings and loan holding company.'' In addition, earlier this year, the Board issued a final rule that raised the asset threshold for applicability of the Board's Small Bank Holding Company Policy Statement (12 CFR part 225, Appendix C) from less than $500 million to less than $1 billion and made corresponding revisions to the applicability provisions of Regulation Q to exempt small SLHCs from Regulation Q to the same extent as small BHCs. *See* 12 CFR 217.1(c)(1)(ii) and (iii); 80 FR 20153 (April 15, 2015).

[2] 79 FR 75759 (December 19, 2014).

[3] 12 CFR 217.20(b); 78 FR 62018, 62029.

[4] 78 FR 62018, 62044.

[5] The qualifying criteria under Regulation Q for a CET1 instrument are at 12 CFR 217.20(b)(1).

[6] *See* 12 CFR 217.20(b)(1)(i).

[7] To the extent that the economic rights of one class of ownership interests differ from those of another class, each class should be evaluated separately to determine qualification as common equity tier 1 capital.

[8] *See* 79 FR 75759, 75761–2.

class might not bear losses pro rata with the other class, would not qualify as CET1. The example also offered general suggestions for revising such arrangements so that such class of capital instrument could count as CET1. In the final rule, the Board revised Example (7) to emphasize the concern that a reallocation of distributions may affect the analysis of whether a class of capital instruments is in a first-loss position. In addition, the Board revised Example (7) to state that reallocations that were limited to reversing prior disproportionate allocations of profits would not raise this concern. Finally, the Board removed general suggestions in Example (7) regarding potential alternative structures to avoid confusion for the reader.

Section 217.501 of the final rule does not differ fundamentally from the existing CET1 eligibility criteria in Regulation Q. Instead, it expands on and clarifies the application of these criteria in particular circumstances in substantially the same manner as the proposal.

In addition, the proposed rule would have allowed an LLC or partnership with outstanding capital instruments that would not have qualified under the proposed rule as CET1 to continue to treat these instruments as CET1 until January 1, 2016. The Board proposed this extension to provide time for depository institution holding companies organized as LLCs or partnership to assess whether their capital instruments comply with the Regulation Q eligibility criteria and to make any needed modifications. The final rule extends this compliance date to July 1, 2016.

The Board expects that all holding companies that are subject to Regulation Q and that have issued capital instruments that do not qualify as CET1 under sections 217.20 and 217.501 to be in full compliance with Regulation Q by July 1, 2016. A non-stock holding company subject to Regulation Q, such as a company organized as an LLC or partnership, that has capital instruments that do not meet the applicable eligibility criteria under Regulation Q may need to take steps to ensure compliance with Regulation Q, including modifying its capital structure or the governing documents of specific capital instruments or issuing additional qualifying capital.

The Board may consider the appropriate treatment under Regulation Q for specific capital instruments on a case-by-case basis. Further, the Board reserves the authority to determine that a particular capital instrument may or may not qualify as any form of regulatory capital based on its ability to absorb losses or other considerations, or whether the capital instrument qualifies as an element of a particular regulatory capital component under Regulation Q.[9]

2. Estate Trust SLHCs

Estate trust SLHCs with total consolidated assets of more than $1 billion became subject to Regulation Q on January 1, 2015.[10] Many estate trusts, however, do not issue capital instruments that would qualify as regulatory capital under Regulation Q or prepare financial statements under U.S. Generally Applicable Accounting Principles (GAAP). Such estate trust SLHCs, therefore, may not be able to meet the minimum regulatory capital ratios under Regulation Q, and requiring these institutions to develop and implement the management information systems necessary to prepare financial statements to demonstrate compliance with Regulation Q could impose significant burden and expense. In addition, a temporary exemption from Regulation Q for estate trust SLHCs does not appear to raise significant supervisory concerns because the estate planning purpose of these entities generally results in limited operations and leverage.[11] To address these issues, the proposed rule would have excluded estate trust SLHCs from Regulation Q, pending development by the Board of an alternative capital regime for these institutions.

The Board received one comment on this aspect of the proposal. This commenter noted that it was a closely held SLHC with an ownership structure that included estate trusts and a limited partnership. This commenter expressed concern over the application of Regulation Q and other prudential regulations to family estate planning vehicles and expressed support for the Board's proposed temporary exclusion of estate trust SLHCs from Regulation Q.

The final rule adopts the exclusion for SLHCs that are estate trusts without modification. For these entities, the Board intends to develop alternative capital adequacy standards.[12]

3. ESOPs

ESOPs are entities created as part of employee benefits arrangements that hold shares of the sponsoring entities' stock. An ESOP may be a holding company due to its ownership interest in the banking organization that sponsors the ESOP. Under U.S. GAAP, the assets and liabilities of ESOP holding companies are consolidated onto the balance sheet of the banking organization that sponsors the ESOP (either a depository institution or a holding company that may be subject to Regulation Q). Thus, an ESOP holding company may be considered the top-tier holding company in a banking organization for ownership purposes but not considered the top-tier holding company for accounting purposes. This distinction has created confusion regarding the application of Regulation Q to ESOP holding companies, which generally do not issue capital instruments.

The proposed rule would have excluded ESOPs from Regulation Q until the Board clarifies the regulatory capital treatment for these entities. The Board did not receive any comments on the aspects of the proposal related to ESOPs and is adopting the proposed temporary exclusion for ESOPs without modification.

For a banking organization that has an ESOP holding company within its structure, the Board will evaluate compliance with Regulation Q by assessing the regulatory capital of an ESOP holding company's sponsor banking organization.

4. Early Compliance

The final rule will be effective January 1, 2016. As noted above, the final rule includes an extended compliance date of July 1, 2016, to allow time for non-stock holding companies to assess whether their capital instruments comply with Regulation Q and to make any necessary modifications. However, any banking organization subject to Regulation Q may elect to treat the final rule as effective before the effective date. Accordingly, the Board will not

[9] 12 CFR 217.1(d)(2).

[10] While the Home Owners' Loan Act contains a narrow exemption for testamentary trusts from the definition of savings and loan holding company, there are approximately 107 family and personal trusts that do not qualify for this exemption and thus, are savings and loan holding companies. As of January 1, 2015, some of these entities became subject to Regulation Q. The Bank Holding Company Act exempts certain testamentary and inter vivos trusts from the definition of ''company.''

[11] A review of estate trust SLHCs found that these institutions generally hold high levels of capital, with an estimated median leverage ratio of approximately 99 percent and an estimated mean leverage ratio of approximately 94 percent. Leverage was measured as the ratio of assets minus liabilities over assets. However, estate trust SLHCs do not file regular financial reports with the Board, and estimated median and mean leverage ratios are based on data collected from a significant number of estate trust SLHCs in 2014.

[12] Any alternative capital standard must be consistent section 171 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Section 171 of the Dodd-Frank Act generally requires that the Board impose minimum leverage and risk-based capital requirements on depository institution holding companies, including estate trust SLHCs.

object if an institution wishes to apply the provisions of the final rule beginning with the date it is published in the **Federal Register**.

III. Regulatory Analysis

A. Paperwork Reduction Act (PRA)

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320, Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. The final rule contains no requirements subject to the PRA.

B. Regulatory Flexibility Act Analysis

The Board is providing a final regulatory flexibility analysis with respect to this final rule. As discussed previously, the final rule provides examples of how the Board will apply the eligibility criteria for CET1 under Regulation Q to instruments issued by non-stock holding companies and provides certain exclusions from Regulation Q. The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), generally requires that an agency provide a final regulatory flexibility analysis in connection with a final rule. Under regulations issued by the Small Business Administration, a small entity includes a BHC, bank, or SLHC with assets of $550 million or less (small banking organization).[13] As of December 31, 2014, there were approximately 3,833 small BHCs and 271 small SLHCs.

The Board received no comments from the public or from the Chief Counsel for Advocacy of the Small Business Administration in response to the initial regulatory flexibility analysis. Thus, no issues were raised in public comments related to the Board's initial Regulatory Flexibility Act analysis and no changes are being made in response to such comments.

The final rule would apply to top-tier depository institution holding companies that are subject to Regulation Q. A substantial number of small depository institution holding companies are exempt from Regulation Q through the application of the Board's Small Bank Holding Company Policy Statement.[14] In addition, the Board does not believe that the final rule would have a significant impact on small banking organizations because the Board considers the final rule as clarifying the CET1 eligibility criteria and providing specific guidance on the application of the eligibility criteria to entities subject to Regulation Q, rather than imposing significant new requirements. The temporary exemptions from Regulation Q provided for estate trust SLHCs and ESOP holding companies relieve burden on covered small banking organizations, rather than imposing burden.

The Board is not aware of any other Federal rules that duplicate, overlap, or conflict with the final rule. The Board believes that the final rule will not have a significant economic impact on small banking organizations supervised by the Board and therefore believes that there are no significant alternatives to the final rule that would reduce the economic impact on small banking organizations supervised by the Board.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board has sought to present the final rule in a simple and straightforward manner. The Board did not receive any comments on its use of plain language in the proposed rule.

List of Subjects in 12 CFR Part 217

Administrative practice and procedure, Banks, Banking, Capital, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

Board of Governors of the Federal Reserve System

12 CFR CHAPTER II

Authority and Issuance

For the reasons set forth in the preamble, part 217 of chapter II of title 12 of the Code of Federal Regulations is amended as follows:

PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES AND STATE MEMBER BANKS (REGULATION Q)

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371.

■ 2. Add subpart I to read as follows:

Subpart I—Application of Capital Rules

Sec.

§ 217.501 The Board's Regulatory Capital Framework for Depository Institution Holding Companies Organized as Non-Stock Companies.

(a) *Applicability.* (1) This section applies to all depository institution holding companies that are organized as legal entities other than stock corporations and that are subject to this part (Regulation Q, 12 CFR part 217).[1]

(2) Notwithstanding §§ 217.2 and 217.10, a bank holding company or covered savings and loan holding company that is organized as a legal entity other than a stock corporation and has issued capital instruments that do not qualify as common equity tier 1 capital under § 217.20 by virtue of the requirements set forth in this section may treat those capital instruments as common equity tier 1 capital until July 1, 2016.

(b) *Common equity tier 1 capital criteria applied to capital instruments issued by non-stock companies.* (1) Subpart C of this part provides criteria for capital instruments to qualify as common equity tier 1 capital. This section describes how certain criteria apply to capital instruments issued by bank holding companies and covered savings and loan holding companies that are organized as legal entities other than stock corporations, such as limited liability companies (LLCs) and partnerships.

(2) Holding companies are organized using a variety of legal structures, including corporate forms, LLCs, partnerships, and similar structures.[2] In the Board's experience, some depository institution holding companies that are organized in non-stock form issue multiple classes of capital instruments that allocate profit and loss from a distribution differently among classes, which may affect the ability of those classes to qualify as common equity tier 1 capital.[3]

(3) Common equity tier 1 capital is defined in § 217.20(b). To qualify as

[13] *See* 13 CFR 121.201. Effective July 14, 2014, the Small Business Administration revised the size standards for banking organizations to $550 million in assets from $500 million in assets. 79 FR 33647 (June 12, 2014).

[14] *See* 12 CFR 217.1; 12 CFR part 225, Appendix C; 80 *FR* 5666 (February 3, 2015).

[1] *See* 12 CFR 217.1(c)(1) through (3).

[2] A stock corporation's common stock should satisfy the CET1 criteria so long as the common stock does not have unusual features, such as a limited duration.

[3] Notably, voting powers or other means of exercising control are not relevant for purposes of satisfying the CET1 eligibility criteria. Thus, the fact that a particular partner or member controls a holding company, for instance, due to serving as general partner or managing member, is not material to qualification of particular interests as CET1.

common equity tier 1 capital, capital instruments must satisfy a number of criteria. This section provides examples of the application of certain common equity tier 1 capital criteria that relate to the economic interests in the company represented by particular capital instruments.

(c) *Examples.* The following examples show how the criteria for common equity tier 1 capital apply to particular partnership or LLC structures.[4]

(1) *LLC with one class of membership interests.* (i) An LLC issues one class of membership interests that provides that all holders of the interests bear losses and receive dividends proportionate to their levels of ownership.

(ii) Provided that the other criteria in § 217.20(b) are met, the membership interests would qualify as common equity tier 1 capital.

(2) *Partnership with limited and general partners.* (i) A partnership has two classes of interests: General partnership interests and limited partnership interests. The general partners and the limited partners bear losses and receive distributions allocated proportionately to their capital contributions. In addition, the general partner has unlimited liability for the debts of the partnership.

(ii) Provided that the other criteria in § 217.20(b) are met, the general and limited partnership interests would qualify as common equity tier 1 capital. The fact of unlimited liability of the general partner is not relevant in the context of the eligibility criteria of common equity tier 1 capital instruments, provided that the general partner and limited partners share losses equally to the extent of the assets of the partnership, and the general partner is liable after the assets of the partnership are exhausted. In this regard, the general partner's unlimited liability is similar to a guarantee provided by the general partner, rather than a feature of the general partnership interest.

(3) *Senior and junior classes of capital instruments.* (i) An LLC issues two types of membership interests, Class A and Class B. Holders of Class A and Class B interests participate equally in operating distributions and have equal voting rights. However, in liquidation, holders of Class B interests must receive the entire amount of their contributed capital in order for any distributions to be made to holders of Class A interests.

(ii) Class B interests have a preference over Class A interests in liquidation and, therefore, would not qualify as common equity tier 1 capital as the Class B interests are not the most subordinated claim (criterion (i)) and do not share losses proportionately (criterion (viii) (§ 217.20(b)(1)(i) and (viii), respectively).

(A) If all other criteria are satisfied, Class A interests would qualify as common equity tier 1 capital.

(B) Class B interests may qualify as additional tier 1 capital, or tier 2 capital, if the Class B interests meet the applicable criteria (§ 217.20(c) and (d)).

(4) *LLC with two classes of membership interests.* (i) An LLC issues two types of membership interests, Class A and Class B. To the extent that the LLC makes a distribution, holders of Class A and Class B interests share proportionately in any losses and receive proportionate shares of contributed capital. To the extent that a capital distribution includes an allocation of profits, holders of Class A and Class B interests share proportionately up to the point where all holders receive a specific annual rate of return on capital contributions, and, if the distribution exceeds that point, holders of Class B interests receive double their proportional share and holders of Class A interests receive the remainder of the distribution.

(ii) Class A and Class B interests would both qualify as common equity tier 1 capital, provided that under all circumstances they share losses proportionately, as measured with respect to each distribution, and that they satisfy the common equity tier 1 capital criteria. The holders of Class A and Class B interests may receive different allocations of profits with respect to a distribution, provided that the distribution is made simultaneously to all members of Class A and Class B interests. Despite the potential for disproportionate profits, Class A and Class B interests have the same level of seniority with regard to potential losses and therefore they both satisfy all the criteria in § 217.20(b), including criterion (ii) (§ 217.20(b)(1)(ii)).

(5) *Alternative LLC with two classes of membership interests.* (i) An LLC issues two types of membership interests, Class A and Class B. In the event that the LLC makes a distribution, holders of Class A interests bear a disproportionately low level of any losses, such that the Class B interests bear a disproportionately high level of losses at the distribution. In contrast to the example in paragraph (c)(4) of this section, the different participation rights apply to distributions in situations where losses are allocated, including losses at liquidation.

(ii) Because holders of the Class A interests do not bear a proportional interest in the losses (criterion (ii) (§ 217.20(b)(1)(ii)), the Class A interests would not qualify as common equity tier 1 capital.

(A) Companies with such structures may revise their capital structures in order to provide for a sufficiently large class of capital instruments that proportionally bear first losses in liquidation (that is, the Class B interests in this example).

(B) Alternatively, companies with such structures could revise their capital structure to ensure that all classes of capital instruments that are intended to qualify as common equity tier 1 capital share equally in losses in liquidation consistent with criteria (i), (ii), (vii), and (viii) in § 217.20(b)(1)(i), (ii), (vii), respectively, even if each class of capital instruments has different rights to allocations of profits, as in paragraph (c)(4) of this section.

(6) *Mandatory distributions.* (i) A partnership agreement contains provisions that require distributions to holders of one or more classes of capital instruments on the occurrence of particular events, such as upon specific dates or following a significant sale of assets, but not including any final distributions in liquidation.

(ii) Any class of capital instruments that provides holders with rights to mandatory distributions would not qualify as common equity tier 1 capital because a holding company must have full discretion at all times to refrain from paying any dividends and making any other distributions on the instrument without triggering an event of default, a requirement to make a payment-in-kind, or an imposition of any other restriction on the holding company (criterion (vi) in § 217.20(b)(1)(vi)). Companies must ensure that they have a sufficient amount of capital instruments that do not have such rights and that meet the other criteria of common equity tier 1 capital, in order to meet the requirements of Regulation Q.

(7) *Features that Reallocate Prior Distributions.* (i) An LLC issues two types of membership interests, Class A and Class B. The terms of the LLC's membership interests provide that, under certain circumstances, holders of Class A interests must return a portion of earlier distributions, which are then distributed to holders of Class B interests (sometimes called a ''clawback'').

(ii) If the reallocation of prior distributions described in paragraph (c)(7)(i) of this section could result in holders of the Class B interests bearing

[4] Although the examples refer to specific types of legal entities for purposes of illustration, the substance of the Regulation Q criteria reflected in the examples applies to all types of legal entities.

fewer losses on an aggregate basis than Class A interests, the Class B interests would not qualify as common equity tier 1 capital. However, where the membership interests provide for disproportionate allocation of profits, such as described in the example in paragraph (c)(4) of this section, and the reallocation of prior distributions would be limited to reversing the disproportionate portions of prior distributions, both the Class A and Class B interests could qualify as common equity tier 1 capital provided that they met all the other criteria in § 217.20(b).

§ 217.502 Application of the Board's Regulatory Capital Framework to Employee Stock Ownership Plans that are Depository Institution Holding Companies and Certain Trusts that are Savings and Loan Holding Companies.

(a) *Employee Stock Ownership Plans.* Notwithstanding § 217.1(c), a bank holding company or covered savings and loan holding company that is an employee stock ownership plan is exempt from this part until the Board adopts regulations that directly relate to the application of capital regulations to employee stock ownership plans.

(b) *Personal or Family Trusts.* Notwithstanding § 217.1(c), a covered savings and loan holding company is exempt from this part if it is a personal or family trust and not a business trust until the Board adopts regulations that apply capital regulations to such a covered savings and loan holding company.

By order of the Board of Governors of the Federal Reserve System, December 4, 2015.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2015–31013 Filed 12–8–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. FAA–2015–3464; Special Conditions No. 23–272–SC]

Special Conditions: Cirrus Aircraft Corporation, SF50; Auto Throttle

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Cirrus Aircraft Corporation Model SF50 airplane. This airplane will have a novel or unusual design feature(s) associated with installation of an Auto Throttle System. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is December 9, 2015 and are applicable on December 2, 2015.

FOR FURTHER INFORMATION CONTACT: Jeff Pretz, Regulations and Policy Branch, ACE–111, Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, ACE–111, 901 Locust, Room 301, Kansas City, MO 64106; telephone (816) 329–3239, facsimile (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Background

On September 9, 2008, Cirrus Aircraft Corporation applied for a type certificate for their new Model SF50. On December 11, 2012 Cirrus elected to adjust the certification basis of the SF50 to include 14 CFR part 23 through amendment 62. The SF50 is a low-wing, 7-seat (5 adults and 2 children), pressurized, retractable gear, carbon composite airplane with one turbofan engine mounted partially in the upper aft fuselage. It is constructed largely of carbon and fiberglass composite materials. Like other Cirrus products, the SF50 includes a ballistically deployed airframe parachute. The SF50 has a maximum operating altitude of 28,000 feet and the maximum takeoff weight will be at or below 6,000 pounds with a range at economy cruise of roughly 1,000 nautical miles.

Current part 23 airworthiness regulations do not contain appropriate safety standards for an Auto Throttle System (ATS) installation; therefore, special conditions are required to establish an acceptable level of safety. Part 25 regulations contain appropriate safety standards for these systems, making the intent for this project to apply the language in § 25.1329 for the auto throttle, while substituting § 23.1309 and § 23.143 in place of the similar part 25 regulations referenced in § 25.1329. In addition, malfunction of the ATS to perform its intended function shall be evaluated per the Loss of Thrust Control (LOTC) criteria established under part 33 for electronic engine controls. An analysis must show that no single failure or malfunction or probable combinations of failures of the ATS will permit the LOTC probability to exceed those established under part 33 for an electronic engine control.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Cirrus must show that the Model SF50 meets the applicable provisions of part 23, as amended by amendments 23–1 through 23–62 thereto.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 23) do not contain adequate or appropriate safety standards for the SF50 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the SF50 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36 and the FAA must issue a finding of regulatory adequacy under section 611 of Public Law 92–574, the Noise Control Act of 1972.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The SF50 will incorporate the following novel or unusual design features: An ATS as part of the automatic flight control system. The ATS utilizes a Garmin ''smart'' autopilot servo with a physical connection to the throttle quadrant control linkage. The auto throttle may be controlled by the pilot with an optional auto throttle control panel adjacent to the throttle lever. The auto throttle also provides an envelope protection function which does not require installation of the optional control panel.

Discussion

Part 23 currently does not sufficiently address auto throttle (also referred to as auto thrust) technology and safety concerns. Therefore, special conditions must be developed and applied to this project to ensure an acceptable level of safety has been obtained. For approval to use the ATS during flight, the SF50 must demonstrate compliance to the intent of the requirements of § 25.1329,