Rules and Regulations

Federal Register Vol. 60, No. 157 Tuesday, August 15, 1995

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[No. 95-151]

RIN 1550-AA71

Regulatory Capital: Common Stockholders' Equity

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS), consistent with the other Federal banking agencies (collectively, the Agencies), is amending its capital rule to conform its definition of "common stockholders' equity" with the terminology used in referring to available-for-sale equity securities in Statement of Financial Accounting Standard No. 115, "Accounting for Certain Investments in Debt and Equity Securities" (SFAS No. 115). Specifically, this rule substitutes the term "available-for-sale equity securities with readily determinable fair values' used in SFAS No. 115 for the current reference to "marketable equity securities" in the OTS definition of 'common stockholders' equity.'

The OTS has decided not to adopt other provisions of its June 1994 proposal that would include net unrealized gains and losses on all available-for-sale debt and equity securities in regulatory capital.

The OTS and the other Agencies had initially issued proposed rules to change institutions' regulatory capital computations to be consistent with generally accepted accounting principles (GAAP), as amended by SFAS No. 115. Although the Agencies' regulatory capital rules will not conform with SFAS No. 115, institutions will continue to be required to comply with SFAS No. 115 for regulatory reporting purposes, as required by statute.

The Agencies decided not to change their regulatory capital standards to conform with SFAS No. 115 after extensive interagency discussion and consideration of comments received, most of which opposed the Agencies' proposals. Those comments included concerns about capital volatility if institutions were required to compute regulatory capital in accordance with SFAS No. 115, which would also have a prompt corrective action effect.

As a result of not amending the Agencies' capital rules to incorporate SFAS No. 115, available-for-sale debt securities will continue to be valued at amortized cost in computing regulatory capital. (This differs from their valuation at fair value under SFAS No. 115.) Available-for-sale equity securities will continue to be valued at the lower of fair value or amortized cost in computing regulatory capital, as they have been under the Agencies' capital rules.

EFFECTIVE DATE: October 1, 1995. **FOR FURTHER INFORMATION CONTACT:** John F. Connolly, Senior Program Manager

F. Connolly, Senior Program Manager for Capital Policy, Supervision, (202) 906–6465, or Ellen J. Sazzman, Counsel, Regulations and Legislation Division, Chief Counsel's Office, (202) 906–7133, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

I. Background of SFAS No. 115

Under the current OTS minimum regulatory capital requirements set forth at 12 CFR Part 567, common stockholders' equity is the primary component of core capital for most savings associations. It includes items that are generally the same as the items that comprised GAAP equity when the capital rule was adopted. Common stockholders' equity currently includes: (1) Common stock, (2) common stock surplus, (3) retained earnings, (4) adjustments for the cumulative effect of foreign currency translation, and (5) adjustments for net unrealized losses on non-current marketable equity securities. The net unrealized losses were those recorded under SFAS No. 12, "Accounting for Certain Marketable Securities."

In May 1993, the Financial Accounting Standards Board (FASB) amended GAAP by adopting SFAS No. 115, which superseded SFAS No. 12. SFAS No. 115 divides securities held by depository institutions into three categories: (1) Securities held to maturity; (2) trading account securities; and (3) securities available for sale.

Under SFAS No. 115, held-tomaturity securities generally are debt securities that an institution has the positive intent and ability to hold to maturity, as evidenced by standards established by SFAS No. 115. Held-tomaturity securities are to be recorded at amortized cost.

Under SFAS No. 115, trading securities are defined as those securities that an institution buys and holds principally for the purpose of selling in the near term. As under earlier accounting standards, these securities are to be reported at fair value (*i.e.*, generally at market value), with net unrealized changes in their value reported directly in the income statement as part of an institution's earnings.

Securities meeting the definition of the available-for-sale category (i.e., all debt and equity securities not held for trading that an institution does not have the requisite intent and ability to hold to maturity) are to be reported at fair value. This category generally encompasses: (1) nontrading debt securities (e.g., bonds, debentures, collateralized mortgage obligations) that an institution cannot show it will hold to maturity, and (2) nontrading equity securities (e.g., Fannie Mae or Freddie Mac stock). Changes in the fair value of available-for-sale securities are to be reported, net of tax effects, directly in a separate component of common stockholders' equity. Consequently, any unrealized appreciation or depreciation in the value of securities in the available-for-sale category has no impact on the reported earnings of an institution but does affect its GAAP equity capital position.

In August 1993, the Federal Financial Institutions Examination Council (FFIEC) announced the adoption of SFAS No. 115 for regulatory reporting purposes, effective January 1, 1994. The OTS made a similar decision for regulatory reporting by savings associations in an August 16, 1993