

those presented in the interim rule, and is further supported by the commenters and the points they raised.

As noted in the preamble to the interim rule, the Board expects bank holding companies that issue Senior Perpetual Preferred Stock under the CPP, TIP, CAP, and AGP like all other bank holding companies, to hold capital commensurate with the level and nature of the risks to which they are exposed. In addition, the Board expects bank holding companies that issue Senior Perpetual Preferred Stock to appropriately incorporate the dividend features of the stock into the organization's liquidity and capital funding plans. Bank holding companies should not construe the Board's decision to allow the inclusion of the Senior Perpetual Preferred Stock as an unrestricted core capital element in bank holding companies' tier 1 capital as in any way (1) detracting from the Board's longstanding stance regarding the unacceptability of a rate step-up in other tier 1 capital instruments or (2) reflecting a decision by the Board to allow cumulative perpetual preferred stock to be includable in bank holding companies' tier 1 capital in excess of the limits established for restricted core capital elements under the Board's capital guidelines for bank holding companies.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA) requires an agency that is issuing a final rule to prepare and make available a regulatory flexibility analysis that describes the impact of the final rule on small entities.<sup>19</sup> The RFA provides that an agency is not required to prepare and publish a regulatory flexibility analysis if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.<sup>20</sup> Under regulations issued by the Small Business Administration,<sup>21</sup> a small entity includes a bank holding company with assets of \$175 million or less (a small bank holding company). As of December 31, 2008, there were approximately 2,586 small bank holding companies.

As a general matter, the Board's risk-based and leverage capital guidelines for bank holding companies apply only to a bank holding company that has consolidated assets of \$500 million or more. Accordingly, this final rule will not affect small bank holding companies and, for this reason, the Board hereby certifies that the rule will not have a

significant impact on a substantial number of small bank holding companies.

**Paperwork Reduction Act**

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), the Board has reviewed the final rule to assess any information collections. There are no collections of information as defined by the Paperwork Reduction Act in the final rule.

**Use of Plain Language**

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106-102, requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board invited comment on how to make the interim rule easier to understand. The Board received one comment generally criticizing the Board's capital adequacy guidelines as difficult to understand.

The Board acknowledges that the regulation of a banking organization's capital is a complex area. The Board's capital guidelines necessarily must reflect this complexity. Nevertheless, the Board has endeavored to present this final rule, like all of its capital rules, in a manner that, in light of the nature and complexity of the subject matter, is as brief, comprehensible, and straightforward as possible.

**List of Subjects in 12 CFR Part 225**

Administrative practice and procedure, Banks, Banking, 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 stated in the preamble, the Board of Governors of the Federal Reserve System amends part 225 of chapter II of title 12 of the Code of Federal Regulations as follows:

**PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)**

■ 1. The authority citation for part 225 continues to read as follows:

**Authority:** 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p-1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331-3351, 3906, 3907, and 3909; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

■ 2. In appendix A to part 225:

■ a. Revise section II.A.1.a.ii.; and

■ b. Revise footnote 8 in section II.A.1.c.ii.(2) to read as follows:

**Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure**

II. \* \* \*

A. \* \* \*

1. \* \* \*

a. \* \* \*

ii. Qualifying noncumulative perpetual preferred stock, including related surplus, and senior perpetual preferred stock issued to the United States Department of the Treasury (Treasury) under the Troubled Asset Relief Program (TARP), established by the Emergency Economic Stabilization Act of 2008 (EESA), Division A of Public Law 110-343 (which for purposes of this appendix shall be considered qualifying noncumulative perpetual preferred stock), including related surplus;

\* \* \* \* \*

c. \* \* \*

ii. \* \* \*

(2) \* \* \*

<sup>8</sup>Notwithstanding this provision, senior perpetual preferred stock issued to the Treasury under the TARP, established by the EESA, may be included in tier 1 capital. In addition, traditional convertible perpetual preferred stock, which the holder must or can convert into a fixed number of common shares at a preset price, generally qualifies for inclusion in tier 1 capital provided all other requirements are met.

\* \* \* \* \*

By order of the Board of Governors of the Federal Reserve System, May 21, 2009.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E9-12628 Filed 5-29-09; 8:45 am]

**BILLING CODE 6210-02-P**

**DEPARTMENT OF THE TREASURY**

**Fiscal Service**

**31 CFR Part 356**

[Docket No. BPD GSRS 09-01; Department of the Treasury Circular, Public Debt Series No. 1-93]

**Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds**

**AGENCY:** Bureau of the Public Debt, Fiscal Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Treasury ("Treasury" or "We") is issuing in final form amendments to the Uniform Offering Circular for the Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds. This final rule makes conforming changes to several sections of the Uniform Offering Circular to be consistent with Treasury's

<sup>19</sup> 5 U.S.C. 603(a).

<sup>20</sup> 5 U.S.C. 605(b).

<sup>21</sup> See 13 CFR 121.201.

current auction practices. The first change modifies the description of Treasury bills to clarify that they may be issued at a discount or at par, depending upon the auction results. The second change clarifies that the rate or yield bid in Treasury bill or Treasury fixed-principal securities auctions must be a positive number or zero. The third change eliminates a provision related to "guaranteed bid" arrangements that was intended for multiple-price auctions. Because Treasury no longer conducts multiple-price auctions, the provision is no longer needed or effective. The fourth change updates an example of the proration of auction awards at the highest accepted yield or discount rate to reflect the change in minimum and multiple bid amounts to \$100 for all Treasury marketable securities auctions that became effective in 2008. The fifth change modifies the provision for the notification of auction awards and settlement amounts to provide language consistent with related provisions of the Uniform Offering Circular. Finally, we are updating several references to the Bureau of the Public Debt's Web site to reflect the current URL.

**DATES:** Effective June 1, 2009.

**ADDRESSES:** This final rule is available on the Bureau of the Public Debt's Web site at: <http://www.treasurydirect.gov>. It is also available for public inspection and copying at the Treasury Department Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. To visit the library, call (202) 622-0990 for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Lori Santamarena, Lee Grandy, or Kevin Hawkins, Department of the Treasury, Bureau of the Public Debt, Government Securities Regulations Staff, (202) 504-3632.

**SUPPLEMENTARY INFORMATION:** Part 356 of title 31 of the Code of Federal Regulations, also referred to as the Uniform Offering Circular ("UOC" or "auction rules"), sets out the terms and conditions for the sale and issuance by the Treasury to the public of marketable book-entry Treasury bills, notes, and bonds.<sup>1</sup> The UOC, together with the offering announcement for each auction, represents a comprehensive statement of the terms and conditions. This final rule makes conforming changes to the UOC to reflect Treasury's current auction practices.

<sup>1</sup> The UOC was published as a final rule in January 1993. See 58 FR 412, January 5, 1993. The circular, as amended, is codified at 31 CFR part 356.

### I. Treasury Bills Description

The UOC currently describes Treasury bills as being "issued at a discount."<sup>2</sup> Under certain market conditions, however, an auction can result in Treasury bills being issued at par (in essence yielding zero percent).<sup>3</sup> Treasury bill offering announcements,<sup>4</sup> starting in December 2008, clarified, in a footnote, that "Treasury bills will be issued at a discount or at par." In keeping with Treasury's practice of incorporating the terms and conditions of Treasury auctions into the UOC, the description of Treasury bills at 31 CFR 356.5(a)(1) is being modified to state that Treasury bills may be "issued at a discount or at par, depending upon the auction results."

### II. Competitive Bid Format

Treasury is adding a sentence to each of the descriptions of the competitive bid formats for Treasury bills and Treasury fixed-principal securities in 31 CFR 356.12 to clarify that the rate or yield bid must be a positive number or zero.<sup>5</sup>

### III. Guaranteed Bids

The UOC contains several provisions to regulate bidders<sup>6</sup> in a Treasury auction. We are eliminating a provision at 31 CFR 356.14(a) related to "guaranteed bid" arrangements in Treasury auctions that is no longer needed. Specifically, we are eliminating the provision in 31 CFR 356.14(a) that states, "If a bid from a depository institution or a dealer fulfills a guarantee to a customer to sell a specified amount of securities at an agreed-upon price, or a price fixed in terms of an agreed-upon standard, then the bid is a bid of that depository institution or dealer. It is not a customer bid." This particular provision dates back to 1995 when Treasury conducted multiple-price auctions, which are auctions in which each successful competitive bidder pays the price equivalent to the yield or rate that it bid. Prior to the close for submission of competitive bids, certain dealers were entering into arrangements to guarantee their customers<sup>7</sup> a price conditioned on

<sup>2</sup> 31 CFR 356.5(a)(1).

<sup>3</sup> The 4-week bill auctions conducted on December 9, 16, and 23, 2008, resulted in Treasury bills being issued at par. See Treasury securities auction 2008 press releases for 4-week bills at: [http://treasurydirect.gov/instit/annnceresult/press/preanre/2008/2008\\_4week.htm](http://treasurydirect.gov/instit/annnceresult/press/preanre/2008/2008_4week.htm).

<sup>4</sup> *Id.*

<sup>5</sup> 31 CFR 356.12(c)(1)(i) and (ii).

<sup>6</sup> The UOC defines a "bidder" at 31 CFR 356.2 to include persons and entities who offer to purchase Treasury securities in an auction through a depository institution or dealer.

<sup>7</sup> See definition of "customer" at 31 CFR 356.2.

the outcome of the auction (*e.g.*, the weighted average yield determined in the auction).<sup>8</sup> This provision was added in response to and intended to address that specific practice. In 1998, Treasury shifted to single-price auctions for all Treasury marketable securities, which are auctions in which all successful bidders pay the same price regardless of the yields or rates they each bid.<sup>9</sup> Because Treasury no longer conducts multiple-price auctions, the provision is no longer needed or effective. Treasury expects any depository institution or dealer guaranteeing bids in a single-price auction to reexamine this practice, confirm that the bidder has been properly identified on the bid, and raise any questions with Treasury staff. Questions related to particular facts and circumstances may be directed to the Government Securities Regulations Staff at the telephone number listed above.

Treasury expects transparency in the submission of all auction bids, including those for customers, to maintain the integrity of the auction process. All auction participants, including bidders, customers, and submitters must comply with Treasury's auction rules. This rule makes no changes to the general UOC requirements of 31 CFR 356.12 bidding restrictions, 31 CFR 356.13 net long position reporting, 31 CFR 356.14 proper identification of customers, 31 CFR 356.16 certifications, and 31 CFR 356.24 confirmations required from any customer awarded a par amount equal to or greater than \$750 million.

### IV. Proration Example

On March 20, 2008, Treasury amended the UOC to lower the minimum and multiple par amounts for which bidders may bid in all Treasury marketable securities auctions from \$1,000 to \$100.<sup>10</sup> We are updating the example in 31 CFR 356.21(a) of the proration of auction awards at the highest accepted yield or discount rate to reflect the \$100 minimum and multiple bid amounts.

### V. Settlement Notification

The UOC includes certain notification requirements of auction awards. We are making a nonsubstantive change to the

<sup>8</sup> See 60 FR 13906, March 15, 1995. The "guarantee bid" provision was subsequently moved from the definition of "bid" in 31 CFR 356.2 to 31 CFR 356.14(a) when the UOC was converted to plain language in 2004. See 69 FR 45202, July 28, 2004.

<sup>9</sup> See November 1998 Quarterly Refunding Statement remarks by Gary Gensler, Treasury Assistant Secretary for Financial Markets (October 28, 1998) <http://www.treas.gov/press/releases/r2782.htm>.

<sup>10</sup> See 73 FR 14937, March 20, 2008.

first sentence in 31 CFR 356.24(c) to conform to the language in 31 CFR 356.24(a).

VI. Web Site References

Information regarding Treasury's marketable securities auctions can be found on or accessed by way of the Bureau of the Public Debt's Web site. The Web site has changed and it can now be accessed at http://www.treasurydirect.gov instead of its previous address, http://www.publicdebt.treas.gov. Therefore, we are updating the references to the Web site at 31 CFR 356.23(a) and 31 CFR 356.31(a) accordingly.

Procedural Requirements

This final rule only makes conforming changes to the UOC and, therefore, does not meet the criteria for a "significant regulatory action" pursuant to Executive Order 12866. Because this rule relates to public contracts and procedures for United States securities, the notice, public comment, and delayed effective date provisions of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2).

As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) do not apply.

There is no new collection of information contained in this final rule, and, therefore, the Paperwork Reduction Act does not apply. The Office of Management and Budget has approved the collections of information already contained in 31 CFR part 356, under control number 1535-0112. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

List of Subjects in 31 CFR Part 356

Bonds, Federal Reserve System, Government securities, Securities.

For the reasons set forth in the preamble, 31 CFR part 356 is amended as follows:

PART 356—SALE AND ISSUE OF MARKETABLE BOOK-ENTRY TREASURY BILLS, NOTES, AND BONDS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 1-93)

1. The authority citation for part 356 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3102, et seq.; 12 U.S.C. 391.

2. Section 356.5 is amended by revising paragraph (a)(1) to read as follows:

§ 356.5 What types of securities does the Treasury auction?

\* \* \* \* \*

(a) \* \* \*

(1) Are issued at a discount or at par, depending upon the auction results;

\* \* \* \* \*

3. Section 356.12 is amended by revising paragraphs (c)(1)(i) and (ii) to read as follows:

§ 356.12 What are the different types of bids and do they have specific requirements or restrictions?

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) Treasury bills. A competitive bid must show the discount rate bid, expressed with three decimals in .005 increments. The third decimal must be either a zero or a five, for example, 5.320 or 5.325. We will treat any missing decimals as zero, for example, a bid of 5.32 will be treated as 5.320. The rate bid may be a positive number or zero.

(ii) Treasury fixed-principal securities. A competitive bid must show the yield bid, expressed with three decimals, for example, 4.170. We will treat any missing decimals as zero, for example, a bid of 4.1 will be treated as 4.100. The yield bid may be a positive number or zero.

\* \* \* \* \*

4. Section 356.14 is amended by revising paragraph (a) to read as follows:

§ 356.14 What are the requirements for submitting bids for customers?

(a) Institutions that may submit bids for customers. Only depository institutions or dealers may submit bids for customers (see definitions at § 356.2), or for customers of intermediaries, under the requirements set out in this section.

\* \* \* \* \*

5. Section 356.21 is amended by revising paragraph (a) to read as follows:

§ 356.21 How are awards at the high yield or discount rate calculated?

(a) Awards to submitters. We generally prorate bids at the highest accepted yield or discount rate under § 356.20(a)(2) of this part. For example, if 80.15% is the announced percentage at the highest yield or discount rate, we award 80.15% of the amount of each bid at that yield or rate. A bid for \$100 million at the highest accepted yield or discount rate would be awarded \$80,150,000 in this example. We always make awards for at least the minimum to bid, and above that amount we make awards in the appropriate multiple to

bid. For example, Treasury bills may be issued with a minimum to bid of \$100 and multiples to bid of \$100. Say we accept an \$18,000 bid at the high discount rate, and the percent awarded at the high discount rate is 88.27%. We would award \$15,900 to that bidder, which is an upward adjustment from \$15,888.60 (\$18,000 × .8827) to the nearest multiple of \$100. If we were to award 4.65% of bids at the highest accepted rate, for example, the award for a \$100 bid at that rate would be \$100, rather than \$4.65, in order to meet the minimum to bid for a bill issue.

\* \* \* \* \*

6. Section 356.23 is amended by revising paragraph (a) to read as follows:

§ 356.23 How are the auction results announced?

(a) After the conclusion of the auction, we will announce the auction results through a press release that is available on our Web site at http://www.treasurydirect.gov.

\* \* \* \* \*

7. Section 356.24 is amended by revising paragraph (c) to read as follows:

§ 356.24 Will I be notified directly of my awards and, if I am submitting bids for others, do I have to provide confirmations?

\* \* \* \* \*

(c) Notification of awards and settlement amounts to a depository institution having an autocharge agreement with a submitter or a clearing corporation. We will provide notice to each depository institution that has entered into an autocharge agreement with a submitter or a clearing corporation of the amount to be charged, on the issue date, to the institution's funds account at the Federal Reserve Bank servicing the institution. We will provide this notification no later than the day after the auction.

\* \* \* \* \*

8. Section 356.31 is amended by revising paragraph (a) to read as follows:

§ 356.31 How does the STRIPS program work?

(a) General. Notes or bonds may be "stripped"—divided into separate principal and interest components. These components must be maintained in the commercial book-entry system. Stripping is done at the option of the holder, and may occur at any time from issuance until maturity. We provide the CUSIP numbers and payment dates for the principal and interest components in auction announcements and on our

Web site at <http://www.treasurydirect.gov>.

\* \* \* \* \*

**Gary Grippo,**

*Acting Fiscal Assistant Secretary.*

[FR Doc. E9-12787 Filed 5-28-09; 4:15 pm]

**BILLING CODE 4810-39-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2009-0218]

#### Drawbridge Operation Regulation; Sacramento River, Knights Landing, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Eleventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Knights Landing Drawbridge across the Sacramento River, mile 90.1, at Knights Landing, CA. The deviation is necessary to allow the bridge owner, California Department of Transportation, to perform maintenance and replace the paint coating system for the drawbridge. This deviation allows the bridge to remain in the closed-to-navigation position during the deviation period.

**DATES:** This deviation is effective from 7 a.m. on June 1, 2009 to 7 a.m. on November 26, 2009.

**ADDRESSES:** Documents mentioned in this preamble as being available in the docket are part of docket USCG-2009-0346 and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG-2009-0218 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510-437-3516, e-mail [David.H.Sulouff@uscg.mil](mailto:David.H.Sulouff@uscg.mil). If you have questions on viewing the docket, call

Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:** California Department of Transportation requested a temporary change to the operation of the Knights Landing Drawbridge, mile 90.1, Sacramento River, at Knights Landing, CA. The drawbridge opens on signal if at least 12 hours' notice is given as required by 33 CFR 117.189(b). The deviation period would allow the drawspan to remain in the closed-to-navigation position from 7 a.m. on June 1, 2009 to 7 a.m. on November 26, 2009, to perform maintenance and replace the paint coating system on the drawbridge.

The Knights Landing Drawbridge navigation span provides a minimum vertical clearance of 3 feet above the 100-year floodplain. During the deviation period, the vertical clearance will be reduced by no more than 5 feet, due to an under-deck work platform and sealed containment the length of the bridge. Navigation on the waterway consists mainly of recreational vessels. During the past 7 years, in addition to the annual bridge openings for maintenance, the bridge drawspan was open one time for a sailboat.

No alternative routes are available. The bridge drawspan can open for an emergency if 72 hours' advance notice is given to the bridge owner. This temporary deviation has been coordinated with all affected waterway users. No objections to the proposed temporary deviation were raised.

Vessels that can transit the bridge, while in the closed-to-navigation position, may continue to do so at any time.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 14, 2009.

**P.F. Zukunft,**

*Rear Admiral, U.S. Coast Guard Commander, Eleventh Coast Guard District.*

[FR Doc. E9-12599 Filed 5-29-09; 8:45 am]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2009-0330]

RIN 1625-AA00

#### Safety Zone; June and July Northwest Harbor Safety Zone; Northwest Harbor, San Clemente Island, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone on the navigable waters of the Northwest Harbor of San Clemente Island in support of the Naval Underwater Detonation. This safety zone is necessary to ensure non-authorized personnel and vessels remain safe by keeping clear of the hazardous area during the training activity. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port (COTP) or his designated representative.

**DATES:** This rule is effective from June 1, 2009 through July 31, 2009.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2009-0330 and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG-2009-0330 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying at two locations: the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail Petty Officer Kristen Beer, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619-278-7262, e-mail [Kristen.A.Beer@uscg.mil](mailto:Kristen.A.Beer@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

The Coast Guard is issuing this temporary final rule without prior