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exposure if the reference capital instrument were to have a value of zero.

(3) *Adjustments to reflect a short position.* In order to adjust the gross long position to recognize a short position in the same instrument, the following criteria must be met:

(i) The maturity of the short position must match the maturity of the long position, or the short position has a residual maturity of at least one year (maturity requirement); or

(ii) For a position that is a trading asset or trading liability (whether on- or off-balance sheet) as reported on the national bank's or Federal savings association's Call Report, if the national bank or Federal savings association has a contractual right or obligation to sell the long position at a specific point in time and the counterparty to the contract has an obligation to purchase the long position if the national bank or Federal savings association exercises its right to sell, this point in time may be treated as the maturity of the long position such that the maturity of the long position and short position are deemed to match for purposes of the maturity requirement, even if the maturity of the short position is less than one year; and

(iii) For an investment in the national bank's or Federal savings association's own capital instrument under paragraph (c)(1) of this section or an investment in a capital of an unconsolidated financial institution under paragraphs (c)(4), (c)(5), and (d)(1)(iii) of this section.

(A) A national bank or Federal savings association may only net a short position against a long position in the national bank's or Federal savings association's own capital instrument under paragraph (c)(1) of this section if the short position involves no counterparty credit risk.

(B) A gross long position in a national bank's or Federal savings association's own capital instrument or in a capital instrument of an unconsolidated financial institution resulting from a position in an index may be netted against a short position in the same index. Long and short positions in the same index without maturity dates are considered to have matching maturities.

(C) A short position in an index that is hedging a long cash or synthetic position in a national bank's or Federal savings association's own capital instrument or in a capital instrument of an unconsolidated financial institution can be decomposed to provide recognition of the hedge. More specifically, the portion of the index that is composed of the same underlying instrument that is being hedged may be used to offset the long position if both the long position being hedged and the short position in the index are reported as a trading asset or trading liability (whether on- or off-balance sheet) on the national bank's or Federal savings association's Call Report, and the hedge is deemed effective by the national bank's or Federal savings association's internal control processes, which have not been found to be inadequate by the OCC.

§§ 3.23–3.29 [Reserved]

Subpart D—Risk-Weighted Assets—Standardized Approach

SOURCE: 78 FR 62157, 62273, Oct. 11, 2013, unless otherwise noted.

§ 3.30 Applicability.

(a) This subpart sets forth methodologies for determining risk-weighted assets for purposes of the generally applicable risk-based capital requirements for all national banks or Federal savings associations.

(b) Notwithstanding paragraph (a) of this section, a market risk national bank or Federal savings association must exclude from its calculation of risk-weighted assets under this subpart the risk-weighted asset amounts of all covered positions, as defined in subpart F of this part (except foreign exchange positions that are not trading positions, OTC derivative positions, cleared transactions, and unsettled transactions).

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RISK-WEIGHTED ASSETS FOR GENERAL CREDIT RISK

§ 3.31 Mechanics for calculating risk-weighted assets for general credit risk.

(a) *General risk-weighting requirements.* A national bank or Federal savings association must apply risk weights to its exposures as follows:

(1) A national bank or Federal savings association must determine the exposure amount of each on-balance sheet exposure, each OTC derivative contract, and each off-balance sheet commitment, trade and transaction-related contingency, guarantee, repo-style transaction, financial standby letter of credit, forward agreement, or other similar transaction that is not:

- (i) An unsettled transaction subject to § 3.38;
- (ii) A cleared transaction subject to § 3.35;
- (iii) A default fund contribution subject to § 3.35;
- (iv) A securitization exposure subject to §§ 3.41 through 3.45; or
- (v) An equity exposure (other than an equity OTC derivative contract) subject to §§ 3.51 through 3.53.

(2) The national bank or Federal savings association must multiply each exposure amount by the risk weight appropriate to the exposure based on the exposure type or counterparty, eligible guarantor, or financial collateral to determine the risk-weighted asset amount for each exposure.

(b) Total risk-weighted assets for general credit risk equals the sum of the risk-weighted asset amounts calculated under this section.

§ 3.32 General risk weights.

(a) *Sovereign exposures*—(1) *Exposures to the U.S. government.* (i) Notwithstanding any other requirement in this subpart, a national bank or Federal savings association must assign a zero percent risk weight to:

(A) An exposure to the U.S. government, its central bank, or a U.S. government agency; and

(B) The portion of an exposure that is directly and unconditionally guaranteed by the U.S. government, its central bank, or a U.S. government agency. This includes a deposit or other ex-

posure, or the portion of a deposit or other exposure, that is insured or otherwise unconditionally guaranteed by the FDIC or National Credit Union Administration.

(ii) A national bank or Federal savings association must assign a 20 percent risk weight to the portion of an exposure that is conditionally guaranteed by the U.S. government, its central bank, or a U.S. government agency. This includes an exposure, or the portion of an exposure, that is conditionally guaranteed by the FDIC or National Credit Union Administration.

(2) *Other sovereign exposures.* In accordance with Table 1 to § 3.32, a national bank or Federal savings association must assign a risk weight to a sovereign exposure based on the CRC applicable to the sovereign or the sovereign’s OECD membership status if there is no CRC applicable to the sovereign.

TABLE 1 TO § 3.32—RISK WEIGHTS FOR SOVEREIGN EXPOSURES

	Risk weight (in percent)
CRC:	
0–1	0
2	20
3	50
4–6	100
7	150
OECD Member with No CRC	0
Non-OECD Member with No CRC	100
Sovereign Default	150

(3) *Certain sovereign exposures.* Notwithstanding paragraph (a)(2) of this section, a national bank or Federal savings association may assign to a sovereign exposure a risk weight that is lower than the applicable risk weight in Table 1 to § 3.32 if:

- (i) The exposure is denominated in the sovereign’s currency;
- (ii) The national bank or Federal savings association has at least an equivalent amount of liabilities in that currency; and
- (iii) The risk weight is not lower than the risk weight that the home country supervisor allows national banks or Federal savings associations under its jurisdiction to assign to the same exposures to the sovereign.

(4) *Exposures to a non-OECD member sovereign with no CRC.* Except as provided in paragraphs (a)(3), (a)(5) and

(a)(6) of this section, a national bank or Federal savings association must assign a 100 percent risk weight to an exposure to a sovereign if the sovereign does not have a CRC.

(5) *Exposures to an OECD member sovereign with no CRC.* Except as provided in paragraph (a)(6) of this section, a national bank or Federal savings association must assign a 0 percent risk weight to an exposure to a sovereign that is a member of the OECD if the sovereign does not have a CRC.

(6) *Sovereign default.* A national bank or Federal savings association must assign a 150 percent risk weight to a sovereign exposure immediately upon determining that an event of sovereign default has occurred, or if an event of sovereign default has occurred during the previous five years.

(b) *Certain supranational entities and multilateral development banks (MDBs).* A national bank or Federal savings association must assign a zero percent risk weight to an exposure to the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, or an MDB.

(c) *Exposures to GSEs.* (1) A national bank or Federal savings association must assign a 20 percent risk weight to an exposure to a GSE other than an equity exposure or preferred stock.

(2) A national bank or Federal savings association must assign a 100 percent risk weight to preferred stock issued by a GSE.

(d) *Exposures to depository institutions, foreign banks, and credit unions—*(1) *Exposures to U.S. depository institutions and credit unions.* A national bank or Federal savings association must assign a 20 percent risk weight to an exposure to a depository institution or credit union that is organized under the laws of the United States or any state thereof, except as otherwise provided under paragraph (d)(3) of this section.

(2) *Exposures to foreign banks.* (i) Except as otherwise provided under paragraphs (d)(2)(iv) and (d)(3) of this section, a national bank or Federal savings association must assign a risk weight to an exposure to a foreign bank, in accordance with Table 2 to § 3.32, based on the CRC that cor-

responds to the foreign bank's home country or the OECD membership status of the foreign bank's home country if there is no CRC applicable to the foreign bank's home country.

TABLE 2 TO § 3.32—RISK WEIGHTS FOR EXPOSURES TO FOREIGN BANKS

	Risk weight (in percent)
CRC:	
0-1	20
2	50
3	100
4-7	150
OECD Member with No CRC	20
Non-OECD Member with No CRC	100
Sovereign Default	150

(ii) A national bank or Federal savings association must assign a 20 percent risk weight to an exposure to a foreign bank whose home country is a member of the OECD and does not have a CRC.

(iii) A national bank or Federal savings association must assign a 100 percent risk weight to an exposure to a foreign bank whose home country is not a member of the OECD and does not have a CRC, with the exception of self-liquidating, trade-related contingent items that arise from the movement of goods, and that have a maturity of three months or less, which may be assigned a 20 percent risk weight.

(iv) A national bank or Federal savings association must assign a 150 percent risk weight to an exposure to a foreign bank immediately upon determining that an event of sovereign default has occurred in the bank's home country, or if an event of sovereign default has occurred in the foreign bank's home country during the previous five years.

(3) A national bank or Federal savings association must assign a 100 percent risk weight to an exposure to a financial institution if the exposure may be included in that financial institution's capital unless the exposure is:

- (i) An equity exposure;
- (ii) A significant investment in the capital of an unconsolidated financial institution in the form of common stock pursuant to § 3.22(d)(iii);
- (iii) Deducted from regulatory capital under § 3.22; or

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(iv) Subject to a 150 percent risk weight under paragraph (d)(2)(iv) or Table 2 of paragraph (d)(2) of this section.

(e) *Exposures to public sector entities (PSEs)*—(1) *Exposures to U.S. PSEs.* (i) A national bank or Federal savings association must assign a 20 percent risk weight to a general obligation exposure to a PSE that is organized under the laws of the United States or any state or political subdivision thereof.

(ii) A national bank or Federal savings association must assign a 50 percent risk weight to a revenue obligation exposure to a PSE that is organized under the laws of the United States or any state or political subdivision thereof.

(2) *Exposures to foreign PSEs.* (i) Except as provided in paragraphs (e)(1) and (e)(3) of this section, a national bank or Federal savings association must assign a risk weight to a general obligation exposure to a PSE, in accordance with Table 3 to § 3.32, based on the CRC that corresponds to the PSE's home country or the OECD membership status of the PSE's home country if there is no CRC applicable to the PSE's home country.

(ii) Except as provided in paragraphs (e)(1) and (e)(3) of this section, a national bank or Federal savings association must assign a risk weight to a revenue obligation exposure to a PSE, in accordance with Table 4 to § 3.32, based on the CRC that corresponds to the PSE's home country; or the OECD membership status of the PSE's home country if there is no CRC applicable to the PSE's home country.

(3) A national bank or Federal savings association may assign a lower risk weight than would otherwise apply under Tables 3 or 4 to § 3.32 to an exposure to a foreign PSE if:

(i) The PSE's home country supervisor allows banks under its jurisdiction to assign a lower risk weight to such exposures; and

(ii) The risk weight is not lower than the risk weight that corresponds to the PSE's home country in accordance with Table 1 to § 3.32.

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TABLE 3 TO § 3.32—RISK WEIGHTS FOR NON-U.S. PSE GENERAL OBLIGATIONS

	Risk weight (in percent)
CRC:	
0–1	20
2	50
3	100
4–7	150
OECD Member with No CRC	20
Non-OECD Member with No CRC	100
Sovereign Default	150

TABLE 4 TO § 3.32—RISK WEIGHTS FOR NON-U.S. PSE REVENUE OBLIGATIONS

	Risk weight (in percent)
CRC:	
0–1	50
2–3	100
4–7	150
OECD Member with No CRC	50
Non-OECD Member with No CRC	100
Sovereign Default	150

(4) *Exposures to PSEs from an OECD member sovereign with no CRC.* (i) A national bank or Federal savings association must assign a 20 percent risk weight to a general obligation exposure to a PSE whose home country is an OECD member sovereign with no CRC.

(ii) A national bank or Federal savings association must assign a 50 percent risk weight to a revenue obligation exposure to a PSE whose home country is an OECD member sovereign with no CRC.

(5) *Exposures to PSEs whose home country is not an OECD member sovereign with no CRC.* A national bank or Federal savings association must assign a 100 percent risk weight to an exposure to a PSE whose home country is not a member of the OECD and does not have a CRC.

(6) A national bank or Federal savings association must assign a 150 percent risk weight to a PSE exposure immediately upon determining that an event of sovereign default has occurred in a PSE's home country or if an event of sovereign default has occurred in the PSE's home country during the previous five years.

(f) *Corporate exposures.* A national bank or Federal savings association must assign a 100 percent risk weight to all its corporate exposures.

(g) *Residential mortgage exposures.* (1) A national bank or Federal savings association must assign a 50 percent risk weight to a first-lien residential mortgage exposure that:

- (i) Is secured by a property that is either owner-occupied or rented;
- (ii) Is made in accordance with prudent underwriting standards, including standards relating to the loan amount as a percent of the appraised value of the property;
- (iii) Is not 90 days or more past due or carried in nonaccrual status; and
- (iv) Is not restructured or modified.

(2) A national bank or Federal savings association must assign a 100 percent risk weight to a first-lien residential mortgage exposure that does not meet the criteria in paragraph (g)(1) of this section, and to junior-lien residential mortgage exposures.

(3) For the purpose of this paragraph (g), if a national bank or Federal savings association holds the first-lien and junior-lien(s) residential mortgage exposures, and no other party holds an intervening lien, the national bank or Federal savings association must combine the exposures and treat them as a single first-lien residential mortgage exposure.

(4) A loan modified or restructured solely pursuant to the U.S. Treasury's Home Affordable Mortgage Program is not modified or restructured for purposes of this section.

(h) *Pre-sold construction loans.* A national bank or Federal savings association must assign a 50 percent risk weight to a pre-sold construction loan unless the purchase contract is cancelled, in which case a national bank or Federal savings association must assign a 100 percent risk weight.

(i) *Statutory multifamily mortgages.* A national bank or Federal savings association must assign a 50 percent risk weight to a statutory multifamily mortgage.

(j) *High-volatility commercial real estate (HVCRE) exposures.* A national bank or Federal savings association must assign a 150 percent risk weight to an HVCRE exposure.

(k) *Past due exposures.* Except for a sovereign exposure or a residential mortgage exposure, a national bank or Federal savings association must de-

termine a risk weight for an exposure that is 90 days or more past due or on nonaccrual according to the requirements set forth in this paragraph (k).

(1) A national bank or Federal savings association must assign a 150 percent risk weight to the portion of the exposure that is not guaranteed or that is unsecured.

(2) A national bank or Federal savings association may assign a risk weight to the guaranteed portion of a past due exposure based on the risk weight that applies under § 3.36 if the guarantee or credit derivative meets the requirements of that section.

(3) A national bank or Federal savings association may assign a risk weight to the collateralized portion of a past due exposure based on the risk weight that applies under § 3.37 if the collateral meets the requirements of that section.

(1) *Other assets.* (1) A national bank or Federal savings association must assign a zero percent risk weight to cash owned and held in all offices of the national bank or Federal savings association or in transit; to gold bullion held in the national bank's or Federal savings association's own vaults or held in another depository institution's vaults on an allocated basis, to the extent the gold bullion assets are offset by gold bullion liabilities; and to exposures that arise from the settlement of cash transactions (such as equities, fixed income, spot foreign exchange and spot commodities) with a central counterparty where there is no assumption of ongoing counterparty credit risk by the central counterparty after settlement of the trade and associated default fund contributions.

(2) A national bank or Federal savings association must assign a 20 percent risk weight to cash items in the process of collection.

(3) A national bank or Federal savings association must assign a 100 percent risk weight to DTAs arising from temporary differences that the national bank or Federal savings association could realize through net operating loss carrybacks.

(4) A national bank or Federal savings association must assign a 250 percent risk weight to the portion of each

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of the following items that is not deducted from common equity tier 1 capital pursuant to § 3.22(d):

- (i) MSAs; and
- (ii) DTAs arising from temporary differences that the national bank or Federal savings association could not realize through net operating loss carrybacks.

(5) A national bank or Federal savings association must assign a 100 percent risk weight to all assets not specifically assigned a different risk weight under this subpart and that are not deducted from tier 1 or tier 2 capital pursuant to § 3.22.

(6) Notwithstanding the requirements of this section, a national bank or Federal savings association may assign an asset that is not included in one of the categories provided in this section to the risk weight category applicable under the capital rules applicable to bank holding companies and savings and loan holding companies at 12 CFR part 217, provided that all of the following conditions apply:

- (i) The national bank or Federal savings association is not authorized to hold the asset under applicable law other than debt previously contracted or similar authority; and
- (ii) The risks associated with the asset are substantially similar to the risks of assets that are otherwise assigned to a risk weight category of less than 100 percent under this subpart.

§ 3.33 Off-balance sheet exposures.

(a) *General.* (1) A national bank or Federal savings association must calculate the exposure amount of an off-balance sheet exposure using the credit conversion factors (CCFs) in paragraph (b) of this section.

(2) Where a national bank or Federal savings association commits to provide a commitment, the national bank or Federal savings association may apply the lower of the two applicable CCFs.

(3) Where a national bank or Federal savings association provides a commitment structured as a syndication or participation, the national bank or Federal savings association is only required to calculate the exposure amount for its pro rata share of the commitment.

(4) Where a national bank or Federal savings association provides a commitment, enters into a repurchase agreement, or provides a credit-enhancing representation and warranty, and such commitment, repurchase agreement, or credit-enhancing representation and warranty is not a securitization exposure, the exposure amount shall be no greater than the maximum contractual amount of the commitment, repurchase agreement, or credit-enhancing representation and warranty, as applicable.

(b) *Credit conversion factors*—(1) *Zero percent CCF.* A national bank or Federal savings association must apply a zero percent CCF to the unused portion of a commitment that is unconditionally cancelable by the national bank or Federal savings association.

(2) *20 percent CCF.* A national bank or Federal savings association must apply a 20 percent CCF to the amount of:

- (i) Commitments with an original maturity of one year or less that are not unconditionally cancelable by the national bank or Federal savings association; and
- (ii) Self-liquidating, trade-related contingent items that arise from the movement of goods, with an original maturity of one year or less.

(3) *50 percent CCF.* A national bank or Federal savings association must apply a 50 percent CCF to the amount of:

- (i) Commitments with an original maturity of more than one year that are not unconditionally cancelable by the national bank or Federal savings association; and
- (ii) Transaction-related contingent items, including performance bonds, bid bonds, warranties, and performance standby letters of credit.

(4) *100 percent CCF.* A national bank or Federal savings association must apply a 100 percent CCF to the amount of the following off-balance-sheet items and other similar transactions:

- (i) Guarantees;
- (ii) Repurchase agreements (the off-balance sheet component of which equals the sum of the current fair values of all positions the national bank or Federal savings association has sold subject to repurchase);

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(iii) Credit-enhancing representations and warranties that are not securitization exposures;

(iv) Off-balance sheet securities lending transactions (the off-balance sheet component of which equals the sum of the current fair values of all positions the national bank or Federal savings association has lent under the transaction);

(v) Off-balance sheet securities borrowing transactions (the off-balance sheet component of which equals the sum of the current fair values of all non-cash positions the national bank or Federal savings association has posted as collateral under the transaction);

(vi) Financial standby letters of credit; and

(vii) Forward agreements.

§ 3.34 OTC derivative contracts.

(a) *Exposure amount*—(1) *Single OTC derivative contract*. Except as modified by paragraph (b) of this section, the exposure amount for a single OTC derivative contract that is not subject to a qualifying master netting agreement is equal to the sum of the national bank’s or Federal savings association’s current credit exposure and potential future credit exposure (PFE) on the OTC derivative contract.

(i) *Current credit exposure*. The current credit exposure for a single OTC derivative contract is the greater of

the mark-to-fair value of the OTC derivative contract or zero.

(ii) *PFE*. (A) The PFE for a single OTC derivative contract, including an OTC derivative contract with a negative mark-to-fair value, is calculated by multiplying the notional principal amount of the OTC derivative contract by the appropriate conversion factor in Table 1 to § 3.34.

(B) For purposes of calculating either the PFE under this paragraph (a) or the gross PFE under paragraph (a)(2) of this section for exchange rate contracts and other similar contracts in which the notional principal amount is equivalent to the cash flows, notional principal amount is the net receipts to each party falling due on each value date in each currency.

(C) For an OTC derivative contract that does not fall within one of the specified categories in Table 1 to § 3.34, the PFE must be calculated using the appropriate “other” conversion factor.

(D) A national bank or Federal savings association must use an OTC derivative contract’s effective notional principal amount (that is, the apparent or stated notional principal amount multiplied by any multiplier in the OTC derivative contract) rather than the apparent or stated notional principal amount in calculating PFE.

(E) The PFE of the protection provider of a credit derivative is capped at the net present value of the amount of unpaid premiums.

TABLE 1 TO § 3.34—CONVERSION FACTOR MATRIX FOR DERIVATIVE CONTRACTS ¹

Remaining maturity ²	Interest rate	Foreign exchange rate and gold	Credit (investment grade reference asset) ³	Credit (non-investment-grade reference asset)	Equity	Precious metals (except gold)	Other
One year or less	0.00	0.01	0.05	0.10	0.06	0.07	0.10
Greater than one year and less than or equal to five years	0.005	0.05	0.05	0.10	0.08	0.07	0.12
Greater than five years	0.015	0.075	0.05	0.10	0.10	0.08	0.15

¹For a derivative contract with multiple exchanges of principal, the conversion factor is multiplied by the number of remaining payments in the derivative contract.

²For an OTC derivative contract that is structured such that on specified dates any outstanding exposure is settled and the terms are reset so that the fair value of the contract is zero, the remaining maturity equals the time until the next reset date. For an interest rate derivative contract with a remaining maturity of greater than one year that meets these criteria, the minimum conversion factor is 0.005.

³A national bank or Federal savings association must use the column labeled “Credit (investment-grade reference asset)” for a credit derivative whose reference asset is an outstanding unsecured long-term debt security without credit enhancement that is investment grade. A national bank or Federal savings association must use the column labeled “Credit (non-investment-grade reference asset)” for all other credit derivatives.

(2) *Multiple OTC derivative contracts subject to a qualifying master netting agreement.* Except as modified by paragraph (b) of this section, the exposure amount for multiple OTC derivative contracts subject to a qualifying master netting agreement is equal to the sum of the net current credit exposure and the adjusted sum of the PFE amounts for all OTC derivative contracts subject to the qualifying master netting agreement.

(i) *Net current credit exposure.* The net current credit exposure is the greater of the net sum of all positive and negative mark-to-fair values of the individual OTC derivative contracts subject to the qualifying master netting agreement or zero.

(ii) *Adjusted sum of the PFE amounts.* The adjusted sum of the PFE amounts, A_{net} , is calculated as $A_{net} = (0.4 \times A_{gross}) + (0.6 \times NGR \times A_{gross})$,

where:

(A) A_{gross} = the gross PFE (that is, the sum of the PFE amounts as determined under paragraph (a)(1)(ii) of this section for each individual derivative contract subject to the qualifying master netting agreement); and

(B) Net-to-gross Ratio (NGR) = the ratio of the net current credit exposure to the gross current credit exposure. In calculating the NGR, the gross current credit exposure equals the sum of the positive current credit exposures (as determined under paragraph (a)(1)(i) of this section) of all individual derivative contracts subject to the qualifying master netting agreement.

(b) *Recognition of credit risk mitigation of collateralized OTC derivative contracts:*

(1) A national bank or Federal savings association may recognize the credit risk mitigation benefits of financial collateral that secures an OTC derivative contract or multiple OTC derivative contracts subject to a qualifying master netting agreement (netting set) by using the simple approach in § 3.37(b).

(2) As an alternative to the simple approach, a national bank or Federal savings association may recognize the credit risk mitigation benefits of financial collateral that secures such a contract or netting set if the financial collateral is marked-to-fair value on a daily basis and subject to a daily mar-

gin maintenance requirement by applying a risk weight to the exposure as if it were uncollateralized and adjusting the exposure amount calculated under paragraph (a)(1) or (2) of this section using the collateral haircut approach in § 3.37(c). The national bank or Federal savings association must substitute the exposure amount calculated under paragraph (a)(1) or (2) of this section for ΣE in the equation in § 3.37(c)(2).

(c) *Counterparty credit risk for OTC credit derivatives.* (1) *Protection purchasers.* A national bank or Federal savings association that purchases an OTC credit derivative that is recognized under § 3.36 as a credit risk mitigant for an exposure that is not a covered position under subpart F is not required to compute a separate counterparty credit risk capital requirement under § 3.32 provided that the national bank or Federal savings association does so consistently for all such credit derivatives. The national bank or Federal savings association must either include all or exclude all such credit derivatives that are subject to a qualifying master netting agreement from any measure used to determine counterparty credit risk exposure to all relevant counterparties for risk-based capital purposes.

(2) *Protection providers.* (i) A national bank or Federal savings association that is the protection provider under an OTC credit derivative must treat the OTC credit derivative as an exposure to the underlying reference asset. The national bank or Federal savings association is not required to compute a counterparty credit risk capital requirement for the OTC credit derivative under § 3.32, provided that this treatment is applied consistently for all such OTC credit derivatives. The national bank or Federal savings association must either include all or exclude all such OTC credit derivatives that are subject to a qualifying master netting agreement from any measure used to determine counterparty credit risk exposure.

(ii) The provisions of this paragraph (c)(2) apply to all relevant counterparties for risk-based capital purposes unless the national bank or Federal savings association is treating the OTC

credit derivative as a covered position under subpart F, in which case the national bank or Federal savings association must compute a supplemental counterparty credit risk capital requirement under this section.

(d) *Counterparty credit risk for OTC equity derivatives.* (1) A national bank or Federal savings association must treat an OTC equity derivative contract as an equity exposure and compute a risk-weighted asset amount for the OTC equity derivative contract under §§ 3.51 through 3.53 (unless the national bank or Federal savings association is treating the contract as a covered position under subpart F of this part).

(2) In addition, the national bank or Federal savings association must also calculate a risk-based capital requirement for the counterparty credit risk of an OTC equity derivative contract under this section if the national bank or Federal savings association is treating the contract as a covered position under subpart F of this part.

(3) If the national bank or Federal savings association risk weights the contract under the Simple Risk-Weight Approach (SRWA) in § 3.52, the national bank or Federal savings association may choose not to hold risk-based capital against the counterparty credit risk of the OTC equity derivative con-

tract, as long as it does so for all such contracts. Where the OTC equity derivative contracts are subject to a qualified master netting agreement, a national bank or Federal savings association using the SRWA must either include all or exclude all of the contracts from any measure used to determine counterparty credit risk exposure.

(e) *Clearing member national bank's or Federal savings association's exposure amount.* A clearing member national bank's or Federal savings association's exposure amount for an OTC derivative contract or netting set of OTC derivative contracts where the national bank or Federal savings association is either acting as a financial intermediary and enters into an offsetting transaction with a QCCP or where the national bank or Federal savings association provides a guarantee to the QCCP on the performance of the client equals the exposure amount calculated according to paragraph (a)(1) or (2) of this section multiplied by the scaling factor 0.71. If the national bank or Federal savings association determines that a longer period is appropriate, the national bank or Federal savings association must use a larger scaling factor to adjust for a longer holding period as follows:

$$\text{Scaling factor} = \sqrt{\frac{H}{10}}$$

where

H = the holding period greater than five days. Additionally, the OCC may require the national bank or Federal savings association to set a longer holding period if the OCC determines that a longer period is appropriate due to the nature, structure, or characteristics of the transaction or is commensurate with the risks associated with the transaction.

§ 3.35 Cleared transactions.

(a) *General requirements*—(1) *Clearing member clients.* A national bank or Federal savings association that is a clearing member client must use the methodologies described in paragraph (b) of

this section to calculate risk-weighted assets for a cleared transaction.

(2) *Clearing members.* A national bank or Federal savings association that is a clearing member must use the methodologies described in paragraph (c) of this section to calculate its risk-weighted assets for a cleared transaction and paragraph (d) of this section to calculate its risk-weighted assets for its default fund contribution to a CCP.

(b) *Clearing member client national banks or Federal savings associations*—(1) *Risk-weighted assets for cleared transactions.* (i) To determine the risk-weighted asset amount for a cleared transaction, a national bank or Federal

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savings association that is a clearing member client must multiply the trade exposure amount for the cleared transaction, calculated in accordance with paragraph (b)(2) of this section, by the risk weight appropriate for the cleared transaction, determined in accordance with paragraph (b)(3) of this section.

(ii) A clearing member client national bank's or Federal savings association's total risk-weighted assets for cleared transactions is the sum of the risk-weighted asset amounts for all its cleared transactions.

(2) *Trade exposure amount.* (i) For a cleared transaction that is either a derivative contract or a netting set of derivative contracts, the trade exposure amount equals:

(A) The exposure amount for the derivative contract or netting set of derivative contracts, calculated using the methodology used to calculate exposure amount for OTC derivative contracts under § 3.34; plus

(B) The fair value of the collateral posted by the clearing member client national bank or Federal savings association and held by the CCP, clearing member, or custodian in a manner that is not bankruptcy remote.

(ii) For a cleared transaction that is a repo-style transaction or netting set of repo-style transactions, the trade exposure amount equals:

(A) The exposure amount for the repo-style transaction calculated using the methodologies under § 3.37(c); plus

(B) The fair value of the collateral posted by the clearing member client national bank or Federal savings association and held by the CCP, clearing member, or custodian in a manner that is not bankruptcy remote.

(3) *Cleared transaction risk weights.* (i) For a cleared transaction with a QCCP, a clearing member client national bank or Federal savings association must apply a risk weight of:

(A) 2 percent if the collateral posted by the national bank or Federal savings association to the QCCP or clearing member is subject to an arrangement that prevents any losses to the clearing member client national bank or Federal savings association due to the joint default or a concurrent insolvency, liquidation, or receivership proceeding of the clearing member and

any other clearing member clients of the clearing member; and the clearing member client national bank or Federal savings association has conducted sufficient legal review to conclude with a well-founded basis (and maintains sufficient written documentation of that legal review) that in the event of a legal challenge (including one resulting from an event of default or from liquidation, insolvency, or receivership proceedings) the relevant court and administrative authorities would find the arrangements to be legal, valid, binding and enforceable under the law of the relevant jurisdictions; or

(B) 4 percent if the requirements of § 3.35(b)(3)(A) are not met.

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member client national bank or Federal savings association must apply the risk weight appropriate for the CCP according to § 3.32.

(4) *Collateral.* (i) Notwithstanding any other requirements in this section, collateral posted by a clearing member client national bank or Federal savings association that is held by a custodian (in its capacity as custodian) in a manner that is bankruptcy remote from the CCP, the custodian, clearing member and other clearing member clients of the clearing member, is not subject to a capital requirement under this section.

(ii) A clearing member client national bank or Federal savings association must calculate a risk-weighted asset amount for any collateral provided to a CCP, clearing member, or custodian in connection with a cleared transaction in accordance with the requirements under § 3.32.

(c) *Clearing member national banks or Federal savings associations—(1) Risk-weighted assets for cleared transactions.*

(i) To determine the risk-weighted asset amount for a cleared transaction, a clearing member national bank or Federal savings association must multiply the trade exposure amount for the cleared transaction, calculated in accordance with paragraph (c)(2) of this section, by the risk weight appropriate for the cleared transaction, determined in accordance with paragraph (c)(3) of this section.

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(ii) A clearing member national bank's or Federal savings association's total risk-weighted assets for cleared transactions is the sum of the risk-weighted asset amounts for all of its cleared transactions.

(2) *Trade exposure amount.* A clearing member national bank or Federal savings association must calculate its trade exposure amount for a cleared transaction as follows:

(i) For a cleared transaction that is either a derivative contract or a netting set of derivative contracts, the trade exposure amount equals:

(A) The exposure amount for the derivative contract, calculated using the methodology to calculate exposure amount for OTC derivative contracts under § 3.34; plus

(B) The fair value of the collateral posted by the clearing member national bank or Federal savings association and held by the CCP in a manner that is not bankruptcy remote.

(ii) For a cleared transaction that is a repo-style transaction or netting set of repo-style transactions, trade exposure amount equals:

(A) The exposure amount for repo-style transactions calculated using methodologies under § 3.37(c); plus

(B) The fair value of the collateral posted by the clearing member national bank or Federal savings association and held by the CCP in a manner that is not bankruptcy remote.

(3) *Cleared transaction risk weight.* (i) A clearing member national bank or Federal savings association must apply a risk weight of 2 percent to the trade exposure amount for a cleared transaction with a QCCP.

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member national bank or Federal savings association must apply the risk weight appropriate for the CCP according to § 3.32.

(4) *Collateral.* (i) Notwithstanding any other requirement in this section, collateral posted by a clearing member national bank or Federal savings asso-

ciation that is held by a custodian in a manner that is bankruptcy remote from the CCP is not subject to a capital requirement under this section.

(ii) A clearing member national bank or Federal savings association must calculate a risk-weighted asset amount for any collateral provided to a CCP, clearing member, or a custodian in connection with a cleared transaction in accordance with requirements under § 3.32.

(d) *Default fund contributions.* (1) *General requirement.* A clearing member national bank or Federal savings association must determine the risk-weighted asset amount for a default fund contribution to a CCP at least quarterly, or more frequently if, in the opinion of the national bank or Federal savings association or the OCC, there is a material change in the financial condition of the CCP.

(2) *Risk-weighted asset amount for default fund contributions to non-qualifying CCPs.* A clearing member national bank's or Federal savings association's risk-weighted asset amount for default fund contributions to CCPs that are not QCCPs equals the sum of such default fund contributions multiplied by 1,250 percent, or an amount determined by the OCC, based on factors such as size, structure and membership characteristics of the CCP and riskiness of its transactions, in cases where such default fund contributions may be unlimited.

(3) *Risk-weighted asset amount for default fund contributions to QCCPs.* A clearing member national bank's or Federal savings association's risk-weighted asset amount for default fund contributions to QCCPs equals the sum of its capital requirement, K_{CM} for each QCCP, as calculated under the methodology set forth in paragraphs (d)(3)(i) through (iii) of this section (Method 1), multiplied by 1,250 percent or in paragraphs (d)(3)(iv) of this section (Method 2).

(i) *Method 1.* The hypothetical capital requirement of a QCCP (K_{CCP}) equals:

$$K_{CCP} = \sum_{\text{clearing member } i} \max (EBRM_i - VM_i - IM_i - DF_i; 0) \times RW \times 0.08$$

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(A) E_{BRM_i} = the exposure amount for each transaction cleared through the QCCP by clearing member i , calculated in accordance with § 3.34 for OTC derivative contracts and § 3.37(c)(2) for repo-style transactions, provided that:

(1) For purposes of this section, in calculating the exposure amount the national bank or Federal savings association may replace the formula provided in § 3.34(a)(2)(ii) with the following: $A_{net} = (0.15 \times A_{gross}) + (0.85 \times NGR \times A_{gross})$; and

(2) For option derivative contracts that are cleared transactions, the PFE described in § 3.34(a)(1)(ii) must be adjusted by multiplying the notional principal amount of the derivative contract by the appropriate conversion factor in Table 1 to § 3.34 and the absolute value of the option's delta, that is, the ratio of the change in the value of the derivative contract to the corresponding change in the price of the underlying asset.

(3) For repo-style transactions, when applying § 3.37(c)(2), the national bank or Federal savings association must use the methodology in § 3.37(c)(3);

(B) VM_i = any collateral posted by clearing member i to the QCCP that it is entitled to receive from the QCCP,

but has not yet received, and any collateral that the QCCP has actually received from clearing member i ;

(C) IM_i = the collateral posted as initial margin by clearing member i to the QCCP;

(D) DF_i = the funded portion of clearing member i 's default fund contribution that will be applied to reduce the QCCP's loss upon a default by clearing member i ;

(E) RW = 20 percent, except when the OCC has determined that a higher risk weight is more appropriate based on the specific characteristics of the QCCP and its clearing members; and

(F) Where a QCCP has provided its K_{CCP} , a national bank or Federal savings association must rely on such disclosed figure instead of calculating K_{CCP} under this paragraph (d), unless the national bank or Federal savings association determines that a more conservative figure is appropriate based on the nature, structure, or characteristics of the QCCP.

(ii) For a national bank or Federal savings association that is a clearing member of a QCCP with a default fund supported by funded commitments, K_{CM} equals:

$$K_{CM_i} = \left(1 + \beta \cdot \frac{N}{N-2}\right) \cdot \frac{DF_i}{DF_{CM}} \cdot K_{CM}^*$$

$$K_{CM}^* = \begin{cases} c_2 \cdot \mu \cdot (K_{CCP} - DF') + c_2 \cdot DF'_{CM} & \text{if } DF' < K_{CCP} \quad (i) \\ c_2 \cdot (K_{CCP} - DF_{CCP}) + c_1 \cdot (DF' - K_{CCP}) & \text{if } DF_{CCP} < K_{CCP} \leq DF' \quad (ii) \\ c_1 \cdot DF'_{CM} & \text{if } K_{CCP} \leq DF_{CCP} \quad (iii) \end{cases}$$

Where

$$(A) \beta = \frac{A_{Net,1} + A_{Net,2}}{\sum_i A_{Net,i}}$$

Subscripts 1 and 2 denote the clearing members with the two largest A_{Net} values. For purposes of this paragraph (d), for derivatives A_{Net} is defined in

§ 3.34(a)(2)(ii) and for repo-style transactions, A_{Net} means the exposure amount as defined in § 3.37(c)(2) using the methodology in § 3.37(c)(3);

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(B) N = the number of clearing members in the QCCP;

(C) DF_{CCP} = the QCCP's own funds and other financial resources that would be used to cover its losses before clearing members' default fund contributions are used to cover losses;

(D) DF_{CM} = funded default fund contributions from all clearing members and any other clearing member contributed financial resources that are available to absorb mutualized QCCP losses;

(E) $DF = DF_{CCP} + DF_{CM}$ (that is, the total funded default fund contribution);

(F) \overline{DF}_i = average \overline{DF}_i = the average funded default fund contribution from an individual clearing member;

(G) $DF'_{CM} = DF_{CM} - 2 \cdot \overline{DF}_i = \sum_i DF_i - 2 \cdot \overline{DF}_i$ (that is, the funded default fund contribution from surviving clearing members assuming that two average clearing members have defaulted and their default fund contributions and initial margins have been used to absorb the resulting losses);

$$(H) DF' = DF_{CCP} + DF'_{CM} = DF - 2 \cdot \overline{DF}_i$$

(that is, the total funded default fund contributions from the QCCP and the surviving clearing members that are available to mutualize losses, assuming that two average clearing members have defaulted);

$$(I) c_1 = \text{Max} \left\{ \frac{1.6\%}{(DF'/K_{CCP})^{0.3}}; 0.16\% \right\}$$

(that is, a decreasing capital factor, between 1.6 percent and 0.16 percent, applied to the excess funded default funds provided by clearing members);

(J) $c_2 = 100$ percent; and

(K) $\mu = 1.2$;

(iii) (A) For a [BANK] that is a clearing member of a QCCP with a default fund supported by unfunded commitments, K_{CM} equals:

$$K_{CM_i} = \frac{DF_i}{DF_{CM}} \cdot K_{CM}^*$$

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Where:

- (1) DF_i = the national bank’s or Federal savings association’s unfunded commitment to the default fund;
- (2) DF_{CM} = the total of all clearing members’ unfunded commitment to the default fund; and
- (3) K^*_{CM} as defined in paragraph (d)(3)(ii) of this section.

(B) For a national bank or Federal savings association that is a clearing member of a QCCP with a default fund supported by unfunded commitments and is unable to calculate K_{CM} using the methodology described in paragraph (d)(3)(iii) of this section, K_{CM} equals:

$$K_{CM_i} = \frac{IM_i}{IM_{CM}} \cdot K^*_{CM}$$

Where:

- (1) IM_i = the national bank’s or Federal savings association’s initial margin posted to the QCCP;
- (2) IM_{CM} = the total of initial margin posted to the QCCP; and
- (3) K^*_{CM} as defined in paragraph (d)(3)(ii) of this section.
- (iv) *Method 2.* A clearing member national bank’s or Federal savings association’s risk-weighted asset amount for its default fund contribution to a QCCP, RWA_{DF} , equals:

$$RWA_{DF} = \text{Min} \{12.5 * DF; 0.18 * TE\}$$

Where:

- (A) TE = the national bank’s or Federal savings association’s trade exposure amount to the QCCP, calculated according to section 35(c)(2);
- (B) DF = the funded portion of the national bank’s or Federal savings association’s default fund contribution to the QCCP.
- (4) *Total risk-weighted assets for default fund contributions.* Total risk-weighted assets for default fund contributions is the sum of a clearing member national bank’s or Federal savings association’s risk-weighted assets for all of its default fund contributions to all CCPs of which the national bank or Federal savings association is a clearing member.

§ 3.36 Guarantees and credit derivatives: substitution treatment.

(a) *Scope—(1) General.* A national bank or Federal savings association may recognize the credit risk mitigation benefits of an eligible guarantee or eligible credit derivative by sub-

stituting the risk weight associated with the protection provider for the risk weight assigned to an exposure, as provided under this section.

(2) This section applies to exposures for which:

- (i) Credit risk is fully covered by an eligible guarantee or eligible credit derivative; or
- (ii) Credit risk is covered on a pro rata basis (that is, on a basis in which the national bank or Federal savings association and the protection provider share losses proportionately) by an eligible guarantee or eligible credit derivative.

(3) Exposures on which there is a tranching of credit risk (reflecting at least two different levels of seniority) generally are securitization exposures subject to §§ 3.41 through 3.45.

(4) If multiple eligible guarantees or eligible credit derivatives cover a single exposure described in this section, a national bank or Federal savings association may treat the hedged exposure as multiple separate exposures each covered by a single eligible guarantee or eligible credit derivative and may calculate a separate risk-weighted asset amount for each separate exposure as described in paragraph (c) of this section.

(5) If a single eligible guarantee or eligible credit derivative covers multiple hedged exposures described in paragraph (a)(2) of this section, a national bank or Federal savings association must treat each hedged exposure as covered by a separate eligible guarantee or eligible credit derivative and

must calculate a separate risk-weighted asset amount for each exposure as described in paragraph (c) of this section.

(b) *Rules of recognition.* (1) A national bank or Federal savings association may only recognize the credit risk mitigation benefits of eligible guarantees and eligible credit derivatives.

(2) A national bank or Federal savings association may only recognize the credit risk mitigation benefits of an eligible credit derivative to hedge an exposure that is different from the credit derivative's reference exposure used for determining the derivative's cash settlement value, deliverable obligation, or occurrence of a credit event if:

(i) The reference exposure ranks *pari passu* with, or is subordinated to, the hedged exposure; and

(ii) The reference exposure and the hedged exposure are to the same legal entity, and legally enforceable cross-default or cross-acceleration clauses are in place to ensure payments under the credit derivative are triggered when the obligated party of the hedged exposure fails to pay under the terms of the hedged exposure.

(c) *Substitution approach*—(1) *Full coverage.* If an eligible guarantee or eligible credit derivative meets the conditions in paragraphs (a) and (b) of this section and the protection amount (P) of the guarantee or credit derivative is greater than or equal to the exposure amount of the hedged exposure, a national bank or Federal savings association may recognize the guarantee or credit derivative in determining the risk-weighted asset amount for the hedged exposure by substituting the risk weight applicable to the guarantor or credit derivative protection provider under § 3.32 for the risk weight assigned to the exposure.

(2) *Partial coverage.* If an eligible guarantee or eligible credit derivative meets the conditions in §§ 3.36(a) and 3.37(b) and the protection amount (P) of the guarantee or credit derivative is less than the exposure amount of the hedged exposure, the national bank or Federal savings association must treat the hedged exposure as two separate exposures (protected and unprotected) in order to recognize the credit risk

mitigation benefit of the guarantee or credit derivative.

(i) The national bank or Federal savings association may calculate the risk-weighted asset amount for the protected exposure under § 3.32, where the applicable risk weight is the risk weight applicable to the guarantor or credit derivative protection provider.

(ii) The national bank or Federal savings association must calculate the risk-weighted asset amount for the unprotected exposure under § 3.32, where the applicable risk weight is that of the unprotected portion of the hedged exposure.

(iii) The treatment provided in this section is applicable when the credit risk of an exposure is covered on a partial pro rata basis and may be applicable when an adjustment is made to the effective notional amount of the guarantee or credit derivative under paragraphs (d), (e), or (f) of this section.

(d) *Maturity mismatch adjustment.* (1) A national bank or Federal savings association that recognizes an eligible guarantee or eligible credit derivative in determining the risk-weighted asset amount for a hedged exposure must adjust the effective notional amount of the credit risk mitigant to reflect any maturity mismatch between the hedged exposure and the credit risk mitigant.

(2) A maturity mismatch occurs when the residual maturity of a credit risk mitigant is less than that of the hedged exposure(s).

(3) The residual maturity of a hedged exposure is the longest possible remaining time before the obligated party of the hedged exposure is scheduled to fulfil its obligation on the hedged exposure. If a credit risk mitigant has embedded options that may reduce its term, the national bank or Federal savings association (protection purchaser) must use the shortest possible residual maturity for the credit risk mitigant. If a call is at the discretion of the protection provider, the residual maturity of the credit risk mitigant is at the first call date. If the call is at the discretion of the national bank or Federal savings association (protection purchaser), but the terms of the arrangement at origination of

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the credit risk mitigant contain a positive incentive for the national bank or Federal savings association to call the transaction before contractual maturity, the remaining time to the first call date is the residual maturity of the credit risk mitigant.

(4) A credit risk mitigant with a maturity mismatch may be recognized only if its original maturity is greater than or equal to one year and its residual maturity is greater than three months.

(5) When a maturity mismatch exists, the national bank or Federal savings association must apply the following adjustment to reduce the effective notional amount of the credit risk mitigant: $P_m = E \times (t - 0.25) / (T - 0.25)$, where:

(i) P_m = effective notional amount of the credit risk mitigant, adjusted for maturity mismatch;

(ii) E = effective notional amount of the credit risk mitigant;

(iii) t = the lesser of T or the residual maturity of the credit risk mitigant, expressed in years; and

(iv) T = the lesser of five or the residual maturity of the hedged exposure, expressed in years.

(e) *Adjustment for credit derivatives without restructuring as a credit event.* If a national bank or Federal savings association recognizes an eligible credit derivative that does not include as a credit event a restructuring of the hedged exposure involving forgiveness or postponement of principal, interest, or fees that results in a credit loss event (that is, a charge-off, specific provision, or other similar debit to the profit and loss account), the national bank or Federal savings association must apply the following adjustment to reduce the effective notional amount of the credit derivative: $P_r = P_m \times 0.60$, where:

(1) P_r = effective notional amount of the credit risk mitigant, adjusted for

lack of restructuring event (and maturity mismatch, if applicable); and

(2) P_m = effective notional amount of the credit risk mitigant (adjusted for maturity mismatch, if applicable).

(f) *Currency mismatch adjustment.* (1) If a national bank or Federal savings association recognizes an eligible guarantee or eligible credit derivative that is denominated in a currency different from that in which the hedged exposure is denominated, the national bank or Federal savings association must apply the following formula to the effective notional amount of the guarantee or credit derivative: $P_c = P_r \times (1 - H_{FX})$, where:

(i) P_c = effective notional amount of the credit risk mitigant, adjusted for currency mismatch (and maturity mismatch and lack of restructuring event, if applicable);

(ii) P_r = effective notional amount of the credit risk mitigant (adjusted for maturity mismatch and lack of restructuring event, if applicable); and

(iii) H_{FX} = haircut appropriate for the currency mismatch between the credit risk mitigant and the hedged exposure.

(2) A national bank or Federal savings association must set H_{FX} equal to eight percent unless it qualifies for the use of and uses its own internal estimates of foreign exchange volatility based on a ten-business-day holding period. A national bank or Federal savings association qualifies for the use of its own internal estimates of foreign exchange volatility if it qualifies for the use of its own-estimates haircuts in § 3.37(c)(4).

(3) A national bank or Federal savings association must adjust H_{FX} calculated in paragraph (f)(2) of this section upward if the national bank or Federal savings association revalues the guarantee or credit derivative less frequently than once every 10 business days using the following square root of time formula:

$$H_{FX} = 8\% \sqrt{\frac{T_M}{10}}, \text{ where } T_M \text{ equals the greater of 10 or the number of days between}$$

revaluation.

§ 3.37 Collateralized transactions.

(a) *General.* (1) To recognize the risk-mitigating effects of financial collateral, a national bank or Federal savings association may use:

(i) The simple approach in paragraph (b) of this section for any exposure; or

(ii) The collateral haircut approach in paragraph (c) of this section for repo-style transactions, eligible margin loans, collateralized derivative contracts, and single-product netting sets of such transactions.

(2) A national bank or Federal savings association may use any approach described in this section that is valid for a particular type of exposure or transaction; however, it must use the same approach for similar exposures or transactions.

(b) *The simple approach—(1) General requirements.* (i) A national bank or Federal savings association may recognize the credit risk mitigation benefits of financial collateral that secures any exposure.

(ii) To qualify for the simple approach, the financial collateral must meet the following requirements:

(A) The collateral must be subject to a collateral agreement for at least the life of the exposure;

(B) The collateral must be revalued at least every six months; and

(C) The collateral (other than gold) and the exposure must be denominated in the same currency.

(2) *Risk weight substitution.* (i) A national bank or Federal savings association may apply a risk weight to the portion of an exposure that is secured by the fair value of financial collateral (that meets the requirements of paragraph (b)(1) of this section) based on the risk weight assigned to the collateral under § 3.32. For repurchase agreements, reverse repurchase agreements, and securities lending and borrowing transactions, the collateral is the instruments, gold, and cash the national bank or Federal savings association has borrowed, purchased subject to resale, or taken as collateral from the counterparty under the transaction. Except as provided in paragraph (b)(3) of this section, the risk weight assigned to the collateralized portion of the exposure may not be less than 20 percent.

(ii) A national bank or Federal savings association must apply a risk weight to the unsecured portion of the exposure based on the risk weight applicable to the exposure under this subpart.

(3) *Exceptions to the 20 percent risk-weight floor and other requirements.* Notwithstanding paragraph (b)(2)(i) of this section:

(i) A national bank or Federal savings association may assign a zero percent risk weight to an exposure to an OTC derivative contract that is marked-to-market on a daily basis and subject to a daily margin maintenance requirement, to the extent the contract is collateralized by cash on deposit.

(ii) A national bank or Federal savings association may assign a 10 percent risk weight to an exposure to an OTC derivative contract that is marked-to-market daily and subject to a daily margin maintenance requirement, to the extent that the contract is collateralized by an exposure to a sovereign that qualifies for a zero percent risk weight under § 3.32.

(iii) A national bank or Federal savings association may assign a zero percent risk weight to the collateralized portion of an exposure where:

(A) The financial collateral is cash on deposit; or

(B) The financial collateral is an exposure to a sovereign that qualifies for a zero percent risk weight under § 3.32, and the national bank or Federal savings association has discounted the fair value of the collateral by 20 percent.

(c) *Collateral haircut approach—(1) General.* A national bank or Federal savings association may recognize the credit risk mitigation benefits of financial collateral that secures an eligible margin loan, repo-style transaction, collateralized derivative contract, or single-product netting set of such transactions, and of any collateral that secures a repo-style transaction that is included in the national bank's or Federal savings association's VaR-based measure under subpart F of this part by using the collateral haircut approach in this section. A national bank or Federal savings association may use the standard supervisory haircuts in paragraph (c)(3) of this section or, with

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prior written approval of the OCC, its own estimates of haircuts according to paragraph (c)(4) of this section.

(2) *Exposure amount equation.* A national bank or Federal savings association must determine the exposure amount for an eligible margin loan, repo-style transaction, collateralized derivative contract, or a single-product netting set of such transactions by setting the exposure amount equal to $\max\{0, [(\Sigma E - \Sigma C) + \Sigma(Es \times Hs) + \Sigma(Efx \times Hfx)]\}$, where:

(i)(A) For eligible margin loans and repo-style transactions and netting sets thereof, ΣE equals the value of the exposure (the sum of the current fair values of all instruments, gold, and cash the national bank or Federal savings association has lent, sold subject to repurchase, or posted as collateral to the counterparty under the transaction (or netting set)); and

(B) For collateralized derivative contracts and netting sets thereof, ΣE equals the exposure amount of the OTC derivative contract (or netting set) calculated under § 3.34 (a)(1) or (2).

(ii) ΣC equals the value of the collateral (the sum of the current fair values of all instruments, gold and cash the national bank or Federal savings association has borrowed, purchased subject to resale, or taken as collateral from the counterparty under the transaction (or netting set));

(iii) Es equals the absolute value of the net position in a given instrument or in gold (where the net position in the instrument or gold equals the sum of the current fair values of the instrument or gold the national bank or Fed-

eral savings association has lent, sold subject to repurchase, or posted as collateral to the counterparty minus the sum of the current fair values of that same instrument or gold the national bank or Federal savings association has borrowed, purchased subject to resale, or taken as collateral from the counterparty);

(iv) Hs equals the market price volatility haircut appropriate to the instrument or gold referenced in Es;

(v) Efx equals the absolute value of the net position of instruments and cash in a currency that is different from the settlement currency (where the net position in a given currency equals the sum of the current fair values of any instruments or cash in the currency the national bank or Federal savings association has lent, sold subject to repurchase, or posted as collateral to the counterparty minus the sum of the current fair values of any instruments or cash in the currency the national bank or Federal savings association has borrowed, purchased subject to resale, or taken as collateral from the counterparty); and

(vi) Hfx equals the haircut appropriate to the mismatch between the currency referenced in Efx and the settlement currency.

(3) *Standard supervisory haircuts.* (i) A national bank or Federal savings association must use the haircuts for market price volatility (Hs) provided in Table 1 to § 3.37, as adjusted in certain circumstances in accordance with the requirements of paragraphs (c)(3)(iii) and (iv) of this section.

TABLE 1 TO § 3.37—STANDARD SUPERVISORY MARKET PRICE VOLATILITY HAIRCUTS ¹

Residual maturity	Haircut (in percent) assigned based on:						Investment grade securitization exposures (in percent)
	Sovereign issuers risk weight under § 3.32 (in percent) ²			Non-sovereign issuers risk weight under § 3.32 (in percent)			
	Zero	20 or 50	100	20	50	100	
Less than or equal to 1 year	0.5	1.0	15.0	1.0	2.0	4.0	4.0
Greater than 1 year and less than or equal to 5 years	2.0	3.0	15.0	4.0	6.0	8.0	12.0
Greater than 5 years	4.0	6.0	15.0	8.0	12.0	16.0	24.0
Main index equities (including convertible bonds) and gold	15.0						
Other publicly traded equities (including convertible bonds)	25.0						
Mutual funds	Highest haircut applicable to any security in which the fund can invest.						

TABLE 1 TO § 3.37—STANDARD SUPERVISORY MARKET PRICE VOLATILITY HAIRCUTS¹—Continued

Residual maturity	Haircut (in percent) assigned based on:						Investment grade securitization exposures (in percent)
	Sovereign issuers risk weight under § 3.32 (in percent) ²			Non-sovereign issuers risk weight under § 3.32 (in percent)			
	Zero	20 or 50	100	20	50	100	
Cash collateral held	Zero.						
Other exposure types	25.0						

¹ The market price volatility haircuts in Table 1 to § 3.37 are based on a 10 business-day holding period.
² Includes a foreign PSE that receives a zero percent risk weight.

(ii) For currency mismatches, a national bank or Federal savings association must use a haircut for foreign exchange rate volatility (Hfx) of 8.0 percent, as adjusted in certain circumstances under paragraphs (c)(3)(iii) and (iv) of this section.

(iii) For repo-style transactions, a national bank or Federal savings association may multiply the standard supervisory haircuts provided in paragraphs (c)(3)(i) and (ii) of this section by the square root of ½ (which equals 0.707107).

(iv) If the number of trades in a netting set exceeds 5,000 at any time during a quarter, a national bank or Federal savings association must adjust the supervisory haircuts provided in paragraphs (c)(3)(i) and (ii) of this section upward on the basis of a holding period of twenty business days for the following quarter except in the calculation of the exposure amount for purposes of § 3.35. If a netting set contains one or more trades involving illiquid collateral or an OTC derivative that cannot be easily replaced, a national bank or Federal savings association must adjust the supervisory haircuts upward on the basis of a holding period of twenty business days. If over the two previous quarters more than two margin disputes on a netting set have occurred that lasted more than the holding period, then the national bank or Federal savings association must adjust the supervisory haircuts upward for that netting set on the basis of a holding period that is at least two times the minimum holding period for that netting set. A national bank or Federal savings association must adjust the standard supervisory haircuts upward using the following formula:

$$H_A = H_S \sqrt{\frac{T_M}{T_S}}, \text{ where}$$

(A) T_M equals a holding period of longer than 10 business days for eligible margin loans and derivative contracts or longer than 5 business days for repo-style transactions;

(B) H_S equals the standard supervisory haircut; and

(C) T_S equals 10 business days for eligible margin loans and derivative contracts or 5 business days for repo-style transactions.

(v) If the instrument a national bank or Federal savings association has lent, sold subject to repurchase, or posted as collateral does not meet the definition

of financial collateral, the national bank or Federal savings association must use a 25.0 percent haircut for market price volatility (H_S).

(4) *Own internal estimates for haircuts.* With the prior written approval of the OCC, a national bank or Federal savings association may calculate haircuts (H_s and H_{fx}) using its own internal estimates of the volatilities of market prices and foreign exchange rates:

(i) To receive OCC approval to use its own internal estimates, a national bank or Federal savings association

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must satisfy the following minimum standards:

(A) A national bank or Federal savings association must use a 99th percentile one-tailed confidence interval.

(B) The minimum holding period for a repo-style transaction is five business days and for an eligible margin loan is ten business days except for transactions or netting sets for which para-

graph (c)(4)(i)(C) of this section applies. When a national bank or Federal savings association calculates an own-estimates haircut on a T_N -day holding period, which is different from the minimum holding period for the transaction type, the applicable haircut (H_M) is calculated using the following square root of time formula:

$$H_M = H_N \sqrt{\frac{T_M}{T_N}}, \text{ where}$$

(1) T_M equals 5 for repo-style transactions and 10 for eligible margin loans;

(2) T_N equals the holding period used by the national bank or Federal savings association to derive H_N ; and

(3) H_N equals the haircut based on the holding period T_N .

(C) If the number of trades in a netting set exceeds 5,000 at any time during a quarter, a national bank or Federal savings association must calculate the haircut using a minimum holding period of twenty business days for the following quarter except in the calculation of the exposure amount for purposes of § 3.35. If a netting set contains one or more trades involving illiquid collateral or an OTC derivative that cannot be easily replaced, a national bank or Federal savings association must calculate the haircut using a minimum holding period of twenty business days. If over the two previous quarters more than two margin disputes on a netting set have occurred that lasted more than the holding period, then the national bank or Federal savings association must calculate the haircut for transactions in that netting set on the basis of a holding period that is at least two times the minimum holding period for that netting set.

(D) A national bank or Federal savings association is required to calculate its own internal estimates with inputs calibrated to historical data from a continuous 12-month period that reflects a period of significant financial stress appropriate to the security or category of securities.

(E) A national bank or Federal savings association must have policies and procedures that describe how it determines the period of significant financial stress used to calculate the national bank's or Federal savings association's own internal estimates for haircuts under this section and must be able to provide empirical support for the period used. The national bank or Federal savings association must obtain the prior approval of the OCC for, and notify the OCC if the national bank or Federal savings association makes any material changes to, these policies and procedures.

(F) Nothing in this section prevents the OCC from requiring a national bank or Federal savings association to use a different period of significant financial stress in the calculation of own internal estimates for haircuts.

(G) A national bank or Federal savings association must update its data sets and calculate haircuts no less frequently than quarterly and must also reassess data sets and haircuts whenever market prices change materially.

(ii) With respect to debt securities that are investment grade, a national bank or Federal savings association may calculate haircuts for categories of securities. For a category of securities, the national bank or Federal savings association must calculate the haircut on the basis of internal volatility estimates for securities in that category that are representative of the

securities in that category that the national bank or Federal savings association has lent, sold subject to repurchase, posted as collateral, borrowed, purchased subject to resale, or taken as collateral. In determining relevant categories, the national bank or Federal savings association must at a minimum take into account:

- (A) The type of issuer of the security;
- (B) The credit quality of the security;
- (C) The maturity of the security; and
- (D) The interest rate sensitivity of the security.

(iii) With respect to debt securities that are not investment grade and equity securities, a national bank or Federal savings association must calculate a separate haircut for each individual security.

(iv) Where an exposure or collateral (whether in the form of cash or securities) is denominated in a currency that differs from the settlement currency, the national bank or Federal savings association must calculate a separate currency mismatch haircut for its net position in each mismatched currency based on estimated volatilities of foreign exchange rates between the mismatched currency and the settlement currency.

(v) A national bank's or Federal savings association's own estimates of market price and foreign exchange rate volatilities may not take into account the correlations among securities and foreign exchange rates on either the exposure or collateral side of a transaction (or netting set) or the correlations among securities and foreign exchange rates between the exposure and collateral sides of the transaction (or netting set).

RISK-WEIGHTED ASSETS FOR UNSETTLED TRANSACTIONS

§ 3.38 Unsettled transactions.

(a) *Definitions.* For purposes of this section:

(1) *Delivery-versus-payment (DvP) transaction* means a securities or commodities transaction in which the buyer is obligated to make payment only if the seller has made delivery of the securities or commodities and the seller is obligated to deliver the securi-

ties or commodities only if the buyer has made payment.

(2) *Payment-versus-payment (PvP) transaction* means a foreign exchange transaction in which each counterparty is obligated to make a final transfer of one or more currencies only if the other counterparty has made a final transfer of one or more currencies.

(3) A transaction has a normal settlement period if the contractual settlement period for the transaction is equal to or less than the market standard for the instrument underlying the transaction and equal to or less than five business days.

(4) Positive current exposure of a national bank or Federal savings association for a transaction is the difference between the transaction value at the agreed settlement price and the current market price of the transaction, if the difference results in a credit exposure of the national bank or Federal savings association to the counterparty.

(b) *Scope.* This section applies to all transactions involving securities, foreign exchange instruments, and commodities that have a risk of delayed settlement or delivery. This section does not apply to:

(1) Cleared transactions that are marked-to-market daily and subject to daily receipt and payment of variation margin;

(2) Repo-style transactions, including unsettled repo-style transactions;

(3) One-way cash payments on OTC derivative contracts; or

(4) Transactions with a contractual settlement period that is longer than the normal settlement period (which are treated as OTC derivative contracts as provided in § 3.34).

(c) *System-wide failures.* In the case of a system-wide failure of a settlement, clearing system or central counterparty, the OCC may waive risk-based capital requirements for unsettled and failed transactions until the situation is rectified.

(d) *Delivery-versus-payment (DvP) and payment-versus-payment (PvP) transactions.* A national bank or Federal savings association must hold risk-based capital against any DvP or PvP transaction with a normal settlement

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period if the national bank’s or Federal savings association’s counterparty has not made delivery or payment within five business days after the settlement date. The national bank or Federal savings association must determine its risk-weighted asset amount for such a transaction by multiplying the positive current exposure of the transaction for the national bank or Federal savings association by the appropriate risk weight in Table 1 to § 3.38.

after counterparty delivery was due, the national bank or Federal savings association must assign a 1,250 percent risk weight to the current fair value of the deliverables owed to the national bank or Federal savings association.

(f) *Total risk-weighted assets for unsettled transactions.* Total risk-weighted assets for unsettled transactions is the sum of the risk-weighted asset amounts of all DvP, PvP, and non-DvP/non-PvP transactions.

TABLE 1 TO § 3.38—RISK WEIGHTS FOR UNSETTLED DVP AND PVP TRANSACTIONS

Number of business days after contractual settlement date	Risk weight to be applied to positive current exposure (in percent)
From 5 to 15	100.0
From 16 to 30	625.0
From 31 to 45	937.5
46 or more	1,250.0

(e) *Non-DvP/non-PvP (non-delivery-versus-payment/non-payment-versus-payment) transactions.* (1) A national bank or Federal savings association must hold risk-based capital against any non-DvP/non-PvP transaction with a normal settlement period if the national bank or Federal savings association has delivered cash, securities, commodities, or currencies to its counterparty but has not received its corresponding deliverables by the end of the same business day. The national bank or Federal savings association must continue to hold risk-based capital against the transaction until the national bank or Federal savings association has received its corresponding deliverables.

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RISK-WEIGHTED ASSETS FOR SECURITIZATION EXPOSURES

§ 3.41 Operational requirements for securitization exposures.

(a) *Operational criteria for traditional securitizations.* A national bank or Federal savings association that transfers exposures it has originated or purchased to a securitization SPE or other third party in connection with a traditional securitization may exclude the exposures from the calculation of its risk-weighted assets only if each condition in this section is satisfied. A national bank or Federal savings association that meets these conditions must hold risk-based capital against any credit risk it retains in connection with the securitization. A national bank or Federal savings association that fails to meet these conditions must hold risk-based capital against the transferred exposures as if they had not been securitized and must deduct from common equity tier 1 capital any after-tax gain-on-sale resulting from the transaction. The conditions are:

(2) From the business day after the national bank or Federal savings association has made its delivery until five business days after the counterparty delivery is due, the national bank or Federal savings association must calculate the risk-weighted asset amount for the transaction by treating the current fair value of the deliverables owed to the national bank or Federal savings association as an exposure to the counterparty and using the applicable counterparty risk weight under § 3.32.

(3) If the national bank or Federal savings association has not received its deliverables by the fifth business day

(1) The exposures are not reported on the national bank’s or Federal savings association’s consolidated balance sheet under GAAP;

(2) The national bank or Federal savings association has transferred to one or more third parties credit risk associated with the underlying exposures;

(3) Any clean-up calls relating to the securitization are eligible clean-up calls; and

(4) The securitization does not:

(1) Include one or more underlying exposures in which the borrower is permitted to vary the drawn amount within an agreed limit under a line of credit; and

(ii) Contain an early amortization provision.

(b) *Operational criteria for synthetic securitizations.* For synthetic securitizations, a national bank or Federal savings association may recognize for risk-based capital purposes the use of a credit risk mitigant to hedge underlying exposures only if each condition in this paragraph (b) is satisfied. A national bank or Federal savings association that meets these conditions must hold risk-based capital against any credit risk of the exposures it retains in connection with the synthetic securitization. A national bank or Federal savings association that fails to meet these conditions or chooses not to recognize the credit risk mitigant for purposes of this section must instead hold risk-based capital against the underlying exposures as if they had not been synthetically securitized. The conditions are:

(1) The credit risk mitigant is:

(i) Financial collateral;

(ii) A guarantee that meets all criteria as set forth in the definition of “eligible guarantee” in § 3.2, except for the criteria in paragraph (3) of that definition; or

(iii) A credit derivative that meets all criteria as set forth in the definition of “eligible credit derivative” in § 3.2, except for the criteria in paragraph (3) of the definition of “eligible guarantee” in § 3.2.

(2) The national bank or Federal savings association transfers credit risk associated with the underlying exposures to one or more third parties, and the terms and conditions in the credit risk mitigants employed do not include provisions that:

(i) Allow for the termination of the credit protection due to deterioration in the credit quality of the underlying exposures;

(ii) Require the national bank or Federal savings association to alter or replace the underlying exposures to improve the credit quality of the underlying exposures;

(iii) Increase the national bank’s or Federal savings association’s cost of credit protection in response to deterioration in the credit quality of the underlying exposures;

(iv) Increase the yield payable to parties other than the national bank or Federal savings association in response to a deterioration in the credit quality of the underlying exposures; or

(v) Provide for increases in a retained first loss position or credit enhancement provided by the national bank or Federal savings association after the inception of the securitization;

(3) The national bank or Federal savings association obtains a well-reasoned opinion from legal counsel that confirms the enforceability of the credit risk mitigant in all relevant jurisdictions; and

(4) Any clean-up calls relating to the securitization are eligible clean-up calls.

(c) *Due diligence requirements for securitization exposures.* (1) Except for exposures that are deducted from common equity tier 1 capital and exposures subject to § 3.42(h), if a national bank or Federal savings association is unable to demonstrate to the satisfaction of the OCC a comprehensive understanding of the features of a securitization exposure that would materially affect the performance of the exposure, the national bank or Federal savings association must assign the securitization exposure a risk weight of 1,250 percent. The national bank’s or Federal savings association’s analysis must be commensurate with the complexity of the securitization exposure and the materiality of the exposure in relation to its capital.

(2) A national bank or Federal savings association must demonstrate its comprehensive understanding of a securitization exposure under paragraph (c)(1) of this section, for each securitization exposure by:

(i) Conducting an analysis of the risk characteristics of a securitization exposure prior to acquiring the exposure, and documenting such analysis within three business days after acquiring the exposure, considering:

(A) Structural features of the securitization that would materially impact the performance of the exposure, for example, the contractual cash flow waterfall, waterfall-related triggers, credit enhancements, liquidity enhancements, fair value triggers, the

performance of organizations that service the exposure, and deal-specific definitions of default;

(B) Relevant information regarding the performance of the underlying credit exposure(s), for example, the percentage of loans 30, 60, and 90 days past due; default rates; prepayment rates; loans in foreclosure; property types; occupancy; average credit score or other measures of creditworthiness; average LTV ratio; and industry and geographic diversification data on the underlying exposure(s);

(C) Relevant market data of the securitization, for example, bid-ask spread, most recent sales price and historic price volatility, trading volume, implied market rating, and size, depth and concentration level of the market for the securitization; and

(D) For resecuritization exposures, performance information on the underlying securitization exposures, for example, the issuer name and credit quality, and the characteristics and performance of the exposures underlying the securitization exposures; and

(ii) On an on-going basis (no less frequently than quarterly), evaluating, reviewing, and updating as appropriate the analysis required under paragraph (c)(1) of this section for each securitization exposure.

§ 3.42 Risk-weighted assets for securitization exposures.

(a) *Securitization risk weight approaches.* Except as provided elsewhere in this section or in § 3.41:

(1) A national bank or Federal savings association must deduct from common equity tier 1 capital any after-tax gain-on-sale resulting from a securitization and apply a 1,250 percent risk weight to the portion of a CEIO that does not constitute after-tax gain-on-sale.

(2) If a securitization exposure does not require deduction under paragraph (a)(1) of this section, a national bank or Federal savings association may assign a risk weight to the securitization exposure using the simplified supervisory formula approach (SSFA) in accordance with §§ 3.43(a) through 3.43(d) and subject to the limitation under paragraph (e) of this section. Alternatively, a national bank or Federal

savings association that is not subject to subpart F of this part may assign a risk weight to the securitization exposure using the gross-up approach in accordance with § 3.43(e), provided, however, that such national bank or Federal savings association must apply either the SSFA or the gross-up approach consistently across all of its securitization exposures, except as provided in paragraphs (a)(1), (a)(3), and (a)(4) of this section.

(3) If a securitization exposure does not require deduction under paragraph (a)(1) of this section and the national bank or Federal savings association cannot, or chooses not to apply the SSFA or the gross-up approach to the exposure, the national bank or Federal savings association must assign a risk weight to the exposure as described in § 3.44.

(4) If a securitization exposure is a derivative contract (other than protection provided by a national bank or Federal savings association in the form of a credit derivative) that has a first priority claim on the cash flows from the underlying exposures (notwithstanding amounts due under interest rate or currency derivative contracts, fees due, or other similar payments), a national bank or Federal savings association may choose to set the risk-weighted asset amount of the exposure equal to the amount of the exposure as determined in paragraph (c) of this section.

(b) *Total risk-weighted assets for securitization exposures.* A national bank's or Federal savings association's total risk-weighted assets for securitization exposures equals the sum of the risk-weighted asset amount for securitization exposures that the national bank or Federal savings association risk weights under §§ 3.41(c), 3.42(a)(1), and 3.43, 3.44, or 3.45, and paragraphs (e) through (j) of this section, as applicable.

(c) *Exposure amount of a securitization exposure—(1) On-balance sheet securitization exposures.* The exposure amount of an on-balance sheet securitization exposure (excluding an available-for-sale or held-to-maturity security where the national bank or Federal savings association has made an AOCI opt-out election under

§ 3.22(b)(2), a repo-style transaction, eligible margin loan, OTC derivative contract, or cleared transaction) is equal to the carrying value of the exposure.

(2) *On-balance sheet securitization exposures held by a national bank or Federal savings association that has made an AOCI opt-out election.* The exposure amount of an on-balance sheet securitization exposure that is an available-for-sale or held-to-maturity security held by a national bank or Federal savings association that has made an AOCI opt-out election under § 3.22(b)(2) is the national bank's or Federal savings association's carrying value (including net accrued but unpaid interest and fees), less any net unrealized gains on the exposure and plus any net unrealized losses on the exposure.

(3) *Off-balance sheet securitization exposures.* (i) Except as provided in paragraph (j) of this section, the exposure amount of an off-balance sheet securitization exposure that is not a repo-style transaction, eligible margin loan, cleared transaction (other than a credit derivative), or an OTC derivative contract (other than a credit derivative) is the notional amount of the exposure. For an off-balance sheet securitization exposure to an ABCP program, such as an eligible ABCP liquidity facility, the notional amount may be reduced to the maximum potential amount that the national bank or Federal savings association could be required to fund given the ABCP program's current underlying assets (calculated without regard to the current credit quality of those assets).

(ii) A national bank or Federal savings association must determine the exposure amount of an eligible ABCP liquidity facility for which the SSFA does not apply by multiplying the notional amount of the exposure by a CCF of 50 percent.

(iii) A national bank or Federal savings association must determine the exposure amount of an eligible ABCP liquidity facility for which the SSFA applies by multiplying the notional amount of the exposure by a CCF of 100 percent.

(4) *Repo-style transactions, eligible margin loans, and derivative contracts.* The exposure amount of a securitization ex-

posure that is a repo-style transaction, eligible margin loan, or derivative contract (other than a credit derivative) is the exposure amount of the transaction as calculated under § 3.34 or § 3.37, as applicable.

(d) *Overlapping exposures.* If a national bank or Federal savings association has multiple securitization exposures that provide duplicative coverage to the underlying exposures of a securitization (such as when a national bank or Federal savings association provides a program-wide credit enhancement and multiple pool-specific liquidity facilities to an ABCP program), the national bank or Federal savings association is not required to hold duplicative risk-based capital against the overlapping position. Instead, the national bank or Federal savings association may apply to the overlapping position the applicable risk-based capital treatment that results in the highest risk-based capital requirement.

(e) *Implicit support.* If a national bank or Federal savings association provides support to a securitization in excess of the national bank's or Federal savings association's contractual obligation to provide credit support to the securitization (implicit support):

(1) The national bank or Federal savings association must include in risk-weighted assets all of the underlying exposures associated with the securitization as if the exposures had not been securitized and must deduct from common equity tier 1 capital any after-tax gain-on-sale resulting from the securitization; and

(2) The national bank or Federal savings association must disclose publicly:

(i) That it has provided implicit support to the securitization; and

(ii) The risk-based capital impact to the national bank or Federal savings association of providing such implicit support.

(f) *Undrawn portion of a servicer cash advance facility.* (1) Notwithstanding any other provision of this subpart, a national bank or Federal savings association that is a servicer under an eligible servicer cash advance facility is not required to hold risk-based capital against potential future cash advance payments that it may be required to

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provide under the contract governing the facility.

(2) For a national bank or Federal savings association that acts as a servicer, the exposure amount for a servicer cash advance facility that is not an eligible servicer cash advance facility is equal to the amount of all potential future cash advance payments that the national bank or Federal savings association may be contractually required to provide during the subsequent 12 month period under the contract governing the facility.

(g) *Interest-only mortgage-backed securities.* Regardless of any other provisions in this subpart, the risk weight for a non-credit-enhancing interest-only mortgage-backed security may not be less than 100 percent.

(h) *Small-business loans and leases on personal property transferred with retained contractual exposure.* (1) Regardless of any other provision of this subpart, a national bank or Federal savings association that has transferred small-business loans and leases on personal property (small-business obligations) with recourse must include in risk-weighted assets only its contractual exposure to the small-business obligations if all the following conditions are met:

(i) The transaction must be treated as a sale under GAAP.

(ii) The national bank or Federal savings association establishes and maintains, pursuant to GAAP, a non-capital reserve sufficient to meet the national bank's or Federal savings association's reasonably estimated liability under the contractual obligation.

(iii) The small-business obligations are to businesses that meet the criteria for a small-business concern established by the Small Business Administration under section 3(a) of the Small Business Act (15 U.S.C. 632 et seq.).

(iv) The national bank or Federal savings association is well capitalized, as defined in 12 CFR 6.4. For purposes of determining whether a national bank or Federal savings association is well capitalized for purposes of this paragraph (h), the national bank's or Federal savings association's capital ratios must be calculated without regard to the capital treatment for trans-

fers of small-business obligations under this paragraph (h).

(2) The total outstanding amount of contractual exposure retained by a national bank or Federal savings association on transfers of small-business obligations receiving the capital treatment specified in paragraph (h)(1) of this section cannot exceed 15 percent of the national bank's or Federal savings association's total capital.

(3) If a national bank or Federal savings association ceases to be well capitalized under 12 CFR 6.4 or exceeds the 15 percent capital limitation provided in paragraph (h)(2) of this section, the capital treatment under paragraph (h)(1) of this section will continue to apply to any transfers of small-business obligations with retained contractual exposure that occurred during the time that the national bank or Federal savings association was well capitalized and did not exceed the capital limit.

(4) The risk-based capital ratios of the national bank or Federal savings association must be calculated without regard to the capital treatment for transfers of small-business obligations specified in paragraph (h)(1) of this section for purposes of:

(i) Determining whether a national bank or Federal savings association is adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized under the OCC's prompt corrective action regulations; and

(ii) Reclassifying a well-capitalized national bank or Federal savings association to adequately capitalized and requiring an adequately capitalized national bank or Federal savings association to comply with certain mandatory or discretionary supervisory actions as if the national bank or Federal savings association were in the next lower prompt-corrective-action category.

(i) *Nth-to-default credit derivatives*—(1) *Protection provider.* A national bank or Federal savings association may assign a risk weight using the SSFA in §3.43 to an nth-to-default credit derivative in accordance with this paragraph (i). A national bank or Federal savings association must determine its exposure in the nth-to-default credit derivative as

the largest notional amount of all the underlying exposures.

(2) For purposes of determining the risk weight for an n^{th} -to-default credit derivative using the SSFA, the national bank or Federal savings association must calculate the attachment point and detachment point of its exposure as follows:

(i) The attachment point (parameter A) is the ratio of the sum of the notional amounts of all underlying exposures that are subordinated to the national bank's or Federal savings association's exposure to the total notional amount of all underlying exposures. The ratio is expressed as a decimal value between zero and one. In the case of a first-to-default credit derivative, there are no underlying exposures that are subordinated to the national bank's or Federal savings association's exposure. In the case of a second-or-subsequent-to-default credit derivative, the smallest (n-1) notional amounts of the underlying exposure(s) are subordinated to the national bank's or Federal savings association's exposure.

(ii) The detachment point (parameter D) equals the sum of parameter A plus the ratio of the notional amount of the national bank's or Federal savings association's exposure in the n^{th} -to-default credit derivative to the total notional amount of all underlying exposures. The ratio is expressed as a decimal value between zero and one.

(3) A national bank or Federal savings association that does not use the SSFA to determine a risk weight for its n^{th} -to-default credit derivative must assign a risk weight of 1,250 percent to the exposure.

(4) *Protection purchaser*—(i) *First-to-default credit derivatives*. A national bank or Federal savings association that obtains credit protection on a group of underlying exposures through a first-to-default credit derivative that meets the rules of recognition of § 3.36(b) must determine its risk-based capital requirement for the underlying exposures as if the national bank or Federal savings association synthetically securitized the underlying exposure with the smallest risk-weighted asset amount and had obtained no credit risk mitigant on the other underlying exposures. A national

bank or Federal savings association must calculate a risk-based capital requirement for counterparty credit risk according to § 3.34 for a first-to-default credit derivative that does not meet the rules of recognition of § 3.36(b).

(ii) *Second-or-subsequent-to-default credit derivatives*. (A) A national bank or Federal savings association that obtains credit protection on a group of underlying exposures through a n^{th} -to-default credit derivative that meets the rules of recognition of § 3.36(b) (other than a first-to-default credit derivative) may recognize the credit risk mitigation benefits of the derivative only if:

(1) The national bank or Federal savings association also has obtained credit protection on the same underlying exposures in the form of first-through-(n-1)-to-default credit derivatives; or

(2) If n-1 of the underlying exposures have already defaulted.

(B) If a national bank or Federal savings association satisfies the requirements of paragraph (i)(4)(ii)(A) of this section, the national bank or Federal savings association must determine its risk-based capital requirement for the underlying exposures as if the national bank or Federal savings association had only synthetically securitized the underlying exposure with the n^{th} smallest risk-weighted asset amount and had obtained no credit risk mitigant on the other underlying exposures.

(C) A national bank or Federal savings association must calculate a risk-based capital requirement for counterparty credit risk according to § 3.34 for a n^{th} -to-default credit derivative that does not meet the rules of recognition of § 3.36(b).

(j) *Guarantees and credit derivatives other than n^{th} -to-default credit derivatives*—(1) *Protection provider*. For a guarantee or credit derivative (other than an n^{th} -to-default credit derivative) provided by a national bank or Federal savings association that covers the full amount or a pro rata share of a securitization exposure's principal and interest, the national bank or Federal savings association must risk weight the guarantee or credit derivative as if it holds the portion of the reference exposure covered by the guarantee or credit derivative.

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(2) *Protection purchaser.* (i) A national bank or Federal savings association that purchases a guarantee or OTC credit derivative (other than an nth-to-default credit derivative) that is recognized under § 3.45 as a credit risk mitigant (including via collateral recognized under § 3.37) is not required to compute a separate counterparty credit risk capital requirement under § 3.31, in accordance with 34(c).

(ii) If a national bank or Federal savings association cannot, or chooses not to, recognize a purchased credit derivative as a credit risk mitigant under § 3.45, the national bank or Federal savings association must determine the exposure amount of the credit derivative under § 3.34.

(A) If the national bank or Federal savings association purchases credit protection from a counterparty that is not a securitization SPE, the national bank or Federal savings association must determine the risk weight for the exposure according to general risk weights under § 3.32.

(B) If the national bank or Federal savings association purchases the credit protection from a counterparty that is a securitization SPE, the national bank or Federal savings association must determine the risk weight for the exposure according to section § 3.42, including § 3.42(a)(4) for a credit derivative that has a first priority claim on the cash flows from the underlying exposures of the securitization SPE (notwithstanding amounts due under interest rate or currency derivative contracts, fees due, or other similar payments).

§ 3.43 Simplified supervisory formula approach (SSFA) and the gross-up approach.

(a) *General requirements for the SSFA.* To use the SSFA to determine the risk weight for a securitization exposure, a national bank or Federal savings association must have data that enables it to assign accurately the parameters described in paragraph (b) of this section. Data used to assign the parameters described in paragraph (b) of this section must be the most currently available data; if the contracts governing the underlying exposures of the securitization require payments on a monthly or

quarterly basis, the data used to assign the parameters described in paragraph (b) of this section must be no more than 91 calendar days old. A national bank or Federal savings association that does not have the appropriate data to assign the parameters described in paragraph (b) of this section must assign a risk weight of 1,250 percent to the exposure.

(b) *SSFA parameters.* To calculate the risk weight for a securitization exposure using the SSFA, a national bank or Federal savings association must have accurate information on the following five inputs to the SSFA calculation:

(1) K_G is the weighted-average (with unpaid principal used as the weight for each exposure) total capital requirement of the underlying exposures calculated using this subpart. K_G is expressed as a decimal value between zero and one (that is, an average risk weight of 100 percent represents a value of K_G equal to 0.08).

(2) Parameter W is expressed as a decimal value between zero and one. Parameter W is the ratio of the sum of the dollar amounts of any underlying exposures of the securitization that meet any of the criteria as set forth in paragraphs (b)(2)(i) through (vi) of this section to the balance, measured in dollars, of underlying exposures:

- (i) Ninety days or more past due;
- (ii) Subject to a bankruptcy or insolvency proceeding;
- (iii) In the process of foreclosure;
- (iv) Held as real estate owned;
- (v) Has contractually deferred payments for 90 days or more, other than principal or interest payments deferred on:

(A) Federally-guaranteed student loans, in accordance with the terms of those guarantee programs; or

(B) Consumer loans, including non-federally-guaranteed student loans, provided that such payments are deferred pursuant to provisions included in the contract at the time funds are disbursed that provide for period(s) of deferral that are not initiated based on changes in the creditworthiness of the borrower; or

- (vi) Is in default.

(3) Parameter A is the attachment point for the exposure, which represents the threshold at which credit losses will first be allocated to the exposure. Except as provided in § 3.42(i) for n^{th} -to-default credit derivatives, parameter A equals the ratio of the current dollar amount of underlying exposures that are subordinated to the exposure of the national bank or Federal savings association to the current dollar amount of underlying exposures. Any reserve account funded by the accumulated cash flows from the underlying exposures that is subordinated to the national bank's or Federal savings association's securitization exposure may be included in the calculation of parameter A to the extent that cash is present in the account. Parameter A is expressed as a decimal value between zero and one.

(4) Parameter D is the detachment point for the exposure, which represents the threshold at which credit losses of principal allocated to the exposure would result in a total loss of principal. Except as provided in section 42(i) for n^{th} -to-default credit derivatives, parameter D equals parameter A plus the ratio of the current dollar amount of the securitization exposures that are *pari passu* with the exposure (that is, have equal seniority with respect to credit risk) to the current dollar amount of the underlying exposures. Parameter D is expressed as a decimal value between zero and one.

(5) A supervisory calibration parameter, p , is equal to 0.5 for securitization

exposures that are not resecuritization exposures and equal to 1.5 for resecuritization exposures.

(c) *Mechanics of the SSFA.* K_G and W are used to calculate K_A , the augmented value of K_G , which reflects the observed credit quality of the underlying exposures. K_A is defined in paragraph (d) of this section. The values of parameters A and D, relative to K_A determine the risk weight assigned to a securitization exposure as described in paragraph (d) of this section. The risk weight assigned to a securitization exposure, or portion of a securitization exposure, as appropriate, is the larger of the risk weight determined in accordance with this paragraph (c) or paragraph (d) of this section and a risk weight of 20 percent.

(1) When the detachment point, parameter D, for a securitization exposure is less than or equal to K_A , the exposure must be assigned a risk weight of 1,250 percent.

(2) When the attachment point, parameter A, for a securitization exposure is greater than or equal to K_A , the national bank or Federal savings association must calculate the risk weight in accordance with paragraph (d) of this section.

(3) When A is less than K_A and D is greater than K_A , the risk weight is a weighted-average of 1,250 percent and 1,250 percent times K_{SSFA} calculated in accordance with paragraph (d) of this section. For the purpose of this weighted-average calculation:

(i) The weight assigned to 1,250 percent equals $\frac{K_A - A}{D - A}$.

(ii) The weight assigned to 1,250 percent times K_{SSFA} equals $\frac{D - K_A}{D - A}$.

(iii) The risk weight will be set equal to:

$$RW = \left[\left(\frac{K_A - A}{D - A} \right) \cdot 1,250 \text{ percent} \right] + \left[\left(\frac{D - K_A}{D - A} \right) \cdot 1,250 \text{ percent} \cdot K_{SSFA} \right]$$

(d) SSFA equation. (1) The [BANK] must define the following parameters:

$$K_A = (1 - W) \cdot K_G + (0.5 \cdot W)$$

$$a = -\frac{1}{p \cdot K_A}$$

$$u = D - K_A$$

$$l = \max(A - K_A, 0)$$

$e = 2.71828$, the base of the natural logarithms.

(2) Then the [BANK] must calculate K_{SSFA} according to the following equation:

$$K_{SSFA} = \frac{e^{a \cdot u} - e^{a \cdot l}}{a(u - l)}$$

(3) The risk weight for the exposure (expressed as a percent) is equal to

$$K_{SSFA} \times 1,250.$$

(e) *Gross-up approach*—(1) *Applicability.* A national bank or Federal savings association that is not subject to subpart F of this part may apply the gross-up approach set forth in this section instead of the SSFA to determine the risk weight of its securitization exposures, provided that it applies the gross-up approach to all of its securitization exposures, except as oth-

erwise provided for certain securitization exposures in §§3.44 and 3.45.

(2) To use the gross-up approach, a national bank or Federal savings association must calculate the following four inputs:

(i) Pro rata share, which is the par value of the national bank's or Federal

savings association's securitization exposure as a percent of the par value of the tranche in which the securitization exposure resides;

(ii) Enhanced amount, which is the par value of tranches that are more senior to the tranche in which the national bank's or Federal savings association's securitization resides;

(iii) Exposure amount of the national bank's or Federal savings association's securitization exposure calculated under § 3.42(c); and

(iv) Risk weight, which is the weighted-average risk weight of underlying exposures of the securitization as calculated under this subpart.

(3) *Credit equivalent amount.* The credit equivalent amount of a securitization exposure under this section equals the sum of:

(i) The exposure amount of the national bank's or Federal savings association's securitization exposure; and

(ii) The pro rata share multiplied by the enhanced amount, each calculated in accordance with paragraph (e)(2) of this section.

(4) *Risk-weighted assets.* To calculate risk-weighted assets for a securitization exposure under the gross-up approach, a national bank or Federal savings association must apply the risk weight required under paragraph (e)(2) of this section to the credit equivalent amount calculated in paragraph (e)(3) of this section.

(f) *Limitations.* Notwithstanding any other provision of this section, a national bank or Federal savings association must assign a risk weight of not less than 20 percent to a securitization exposure.

§ 3.44 Securitization exposures to which the SSFA and gross-up approach do not apply.

(a) *General requirement.* A national bank or Federal savings association must assign a 1,250 percent risk weight to all securitization exposures to which the national bank or Federal savings association does not apply the SSFA or the gross-up approach under § 3.43, except as set forth in this section.

(b) *Eligible ABCP liquidity facilities.* A national bank or Federal savings association may determine the risk-weighted asset amount of an eligible ABCP li-

quidity facility by multiplying the exposure amount by the highest risk weight applicable to any of the individual underlying exposures covered by the facility.

(c) *A securitization exposure in a second loss position or better to an ABCP program—(1) Risk weighting.* A national bank or Federal savings association may determine the risk-weighted asset amount of a securitization exposure that is in a second loss position or better to an ABCP program that meets the requirements of paragraph (c)(2) of this section by multiplying the exposure amount by the higher of the following risk weights:

(i) 100 percent; and

(ii) The highest risk weight applicable to any of the individual underlying exposures of the ABCP program.

(2) *Requirements.* (i) The exposure is not an eligible ABCP liquidity facility;

(ii) The exposure must be economically in a second loss position or better, and the first loss position must provide significant credit protection to the second loss position;

(iii) The exposure qualifies as investment grade; and

(iv) The national bank or Federal savings association holding the exposure must not retain or provide protection to the first loss position.

§ 3.45 Recognition of credit risk mitigants for securitization exposures.

(a) *General.* (1) An originating national bank or Federal savings association that has obtained a credit risk mitigant to hedge its exposure to a synthetic or traditional securitization that satisfies the operational criteria provided in § 3.41 may recognize the credit risk mitigant under §§ 3.36 or 3.37, but only as provided in this section.

(2) An investing national bank or Federal savings association that has obtained a credit risk mitigant to hedge a securitization exposure may recognize the credit risk mitigant under §§ 3.36 or 3.37, but only as provided in this section.

(b) *Mismatches.* A national bank or Federal savings association must make

any applicable adjustment to the protection amount of an eligible guarantee or credit derivative as required in §3.36(d), (e), and (f) for any hedged securitization exposure. In the context of a synthetic securitization, when an eligible guarantee or eligible credit derivative covers multiple hedged exposures that have different residual maturities, the national bank or Federal savings association must use the longest residual maturity of any of the hedged exposures as the residual maturity of all hedged exposures.

§§ 3.46–3.50 [Reserved]

RISK-WEIGHTED ASSETS FOR EQUITY EXPOSURES

§ 3.51 Introduction and exposure measurement.

(a) *General.* (1) To calculate its risk-weighted asset amounts for equity exposures that are not equity exposures to an investment fund, a national bank or Federal savings association must use the Simple Risk-Weight Approach (SRWA) provided in 3.52. A national bank or Federal savings association must use the look-through approaches provided in §3.53 to calculate its risk-weighted asset amounts for equity exposures to investment funds.

(2) A national bank or Federal savings association must treat an investment in a separate account (as defined in §3.2) as if it were an equity exposure to an investment fund as provided in §3.53.

(3) *Stable value protection.* (i) Stable value protection means a contract where the provider of the contract is obligated to pay:

(A) The policy owner of a separate account an amount equal to the shortfall between the fair value and cost basis of the separate account when the policy owner of the separate account surrenders the policy; or

(B) The beneficiary of the contract an amount equal to the shortfall between the fair value and book value of a specified portfolio of assets.

(ii) A national bank or Federal savings association that purchases stable value protection on its investment in a separate account must treat the portion of the carrying value of its investment in the separate account attrib-

utable to the stable value protection as an exposure to the provider of the protection and the remaining portion of the carrying value of its separate account as an equity exposure to an investment fund.

(iii) A national bank or Federal savings association that provides stable value protection must treat the exposure as an equity derivative with an adjusted carrying value determined as the sum of paragraphs (b)(1) and (3) of this section.

(b) *Adjusted carrying value.* For purposes of §§3.51 through 3.53, the adjusted carrying value of an equity exposure is:

(1) For the on-balance sheet component of an equity exposure (other than an equity exposure that is classified as available-for-sale where the national bank or Federal savings association has made an AOCI opt-out election under §3.22(b)(2)), the national bank's or Federal savings association's carrying value of the exposure;

(2) For the on-balance sheet component of an equity exposure that is classified as available-for-sale where the national bank or Federal savings association has made an AOCI opt-out election under §3.22(b)(2), the national bank's or Federal savings association's carrying value of the exposure less any net unrealized gains on the exposure that are reflected in such carrying value but excluded from the national bank's or Federal savings association's regulatory capital components;

(3) For the off-balance sheet component of an equity exposure that is not an equity commitment, the effective notional principal amount of the exposure, the size of which is equivalent to a hypothetical on-balance sheet position in the underlying equity instrument that would evidence the same change in fair value (measured in dollars) given a small change in the price of the underlying equity instrument, minus the adjusted carrying value of the on-balance sheet component of the exposure as calculated in paragraph (b)(1) of this section; and

(4) For a commitment to acquire an equity exposure (an equity commitment), the effective notional principal amount of the exposure is multiplied

by the following conversion factors (CFs):

- (i) Conditional equity commitments with an original maturity of one year or less receive a CF of 20 percent.
- (ii) Conditional equity commitments with an original maturity of over one year receive a CF of 50 percent.
- (iii) Unconditional equity commitments receive a CF of 100 percent.

§ 3.52 Simple risk-weight approach (SRWA).

(a) *General.* Under the SRWA, a national bank's or Federal savings association's total risk-weighted assets for equity exposures equals the sum of the risk-weighted asset amounts for each of the national bank's or Federal savings association's individual equity exposures (other than equity exposures to an investment fund) as determined under this section and the risk-weighted asset amounts for each of the national bank's or Federal savings association's individual equity exposures to an investment fund as determined under § 3.53.

(b) *SRWA computation for individual equity exposures.* A national bank or Federal savings association must determine the risk-weighted asset amount for an individual equity exposure (other than an equity exposure to an investment fund) by multiplying the adjusted carrying value of the equity exposure or the effective portion and ineffective portion of a hedge pair (as defined in paragraph (c) of this section) by the lowest applicable risk weight in this paragraph (b).

(1) *Zero percent risk weight equity exposures.* An equity exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, an MDB, and any other entity whose credit exposures receive a zero percent risk weight under § 3.32 may be assigned a zero percent risk weight.

(2) *20 percent risk weight equity exposures.* An equity exposure to a PSE, Federal Home Loan Bank or the Federal Agricultural Mortgage Corporation (Farmer Mac) must be assigned a 20 percent risk weight.

(3) *100 percent risk weight equity exposures.* The equity exposures set forth in

this paragraph (b)(3) must be assigned a 100 percent risk weight.

(i) *Community development equity exposures.* An equity exposure that qualifies as a community development investment under section 24 (Eleventh) of the National Bank Act, excluding equity exposures to an unconsolidated small business investment company and equity exposures held through a consolidated small business investment company described in section 302 of the Small Business Investment Act.

(ii) *Effective portion of hedge pairs.* The effective portion of a hedge pair.

(iii) *Non-significant equity exposures.* Equity exposures, excluding significant investments in the capital of an unconsolidated financial institution in the form of common stock and exposures to an investment firm that would meet the definition of a traditional securitization were it not for the application of paragraph (8) of that definition in § 3.2 and has greater than immaterial leverage, to the extent that the aggregate adjusted carrying value of the exposures does not exceed 10 percent of the national bank's or Federal savings association's total capital.

(A) To compute the aggregate adjusted carrying value of a national bank's or Federal savings association's equity exposures for purposes of this section, the national bank or Federal savings association may exclude equity exposures described in paragraphs (b)(1), (b)(2), (b)(3)(i), and (b)(3)(ii) of this section, the equity exposure in a hedge pair with the smaller adjusted carrying value, and a proportion of each equity exposure to an investment fund equal to the proportion of the assets of the investment fund that are not equity exposures or that meet the criterion of paragraph (b)(3)(i) of this section. If a national bank or Federal savings association does not know the actual holdings of the investment fund, the national bank or Federal savings association may calculate the proportion of the assets of the fund that are not equity exposures based on the terms of the prospectus, partnership agreement, or similar contract that defines the fund's permissible investments. If the sum of the investment limits for all exposure classes within

the fund exceeds 100 percent, the national bank or Federal savings association must assume for purposes of this section that the investment fund invests to the maximum extent possible in equity exposures.

(B) When determining which of a national bank's or Federal savings association's equity exposures qualify for a 100 percent risk weight under this paragraph (b), a national bank or Federal savings association first must include equity exposures to unconsolidated small business investment companies or held through consolidated small business investment companies described in section 302 of the Small Business Investment Act, then must include publicly traded equity exposures (including those held indirectly through investment funds), and then must include non-publicly traded equity exposures (including those held indirectly through investment funds).

(4) *250 percent risk weight equity exposures.* Significant investments in the capital of unconsolidated financial institutions in the form of common stock that are not deducted from capital pursuant to § 3.22(d) are assigned a 250 percent risk weight.

(5) *300 percent risk weight equity exposures.* A publicly traded equity exposure (other than an equity exposure described in paragraph (b)(7) of this section and including the ineffective portion of a hedge pair) must be assigned a 300 percent risk weight.

(6) *400 percent risk weight equity exposures.* An equity exposure (other than an equity exposure described in paragraph (b)(7)) of this section that is not publicly traded must be assigned a 400 percent risk weight.

(7) *600 percent risk weight equity exposures.* An equity exposure to an investment firm must be assigned a 600 percent risk weight, provided that the investment firm:

(i) Would meet the definition of a traditional securitization were it not

for the application of paragraph (8) of that definition; and

(ii) Has greater than immaterial leverage.

(c) *Hedge transactions*—(1) *Hedge pair.* A hedge pair is two equity exposures that form an effective hedge so long as each equity exposure is publicly traded or has a return that is primarily based on a publicly traded equity exposure.

(2) *Effective hedge.* Two equity exposures form an effective hedge if the exposures either have the same remaining maturity or each has a remaining maturity of at least three months; the hedge relationship is formally documented in a prospective manner (that is, before the national bank or Federal savings association acquires at least one of the equity exposures); the documentation specifies the measure of effectiveness (E) the national bank or Federal savings association will use for the hedge relationship throughout the life of the transaction; and the hedge relationship has an E greater than or equal to 0.8. A national bank or Federal savings association must measure E at least quarterly and must use one of three alternative measures of E as set forth in this paragraph (c).

(i) Under the dollar-offset method of measuring effectiveness, the national bank or Federal savings association must determine the ratio of value change (RVC). The RVC is the ratio of the cumulative sum of the changes in value of one equity exposure to the cumulative sum of the changes in the value of the other equity exposure. If RVC is positive, the hedge is not effective and E equals 0. If RVC is negative and greater than or equal to -1 (that is, between zero and -1), then E equals the absolute value of RVC. If RVC is negative and less than -1 , then E equals 2 plus RVC.

(ii) Under the variability-reduction method of measuring effectiveness:

$$E = 1 - \frac{\sum_{t=1}^T (X_t - X_{t-1})^2}{\sum_{t=1}^T (A_t - A_{t-1})^2}, \text{ where}$$

- (A) $X_t = A_t - B_t$;
- (B) $A_t =$ the value at time t of one exposure in a hedge pair; and
- (C) $B_t =$ the value at time t of the other exposure in a hedge pair.

(iii) Under the regression method of measuring effectiveness, E equals the coefficient of determination of a regression in which the change in value of one exposure in a hedge pair is the dependent variable and the change in value of the other exposure in a hedge pair is the independent variable. However, if the estimated regression coefficient is positive, then E equals zero.

(3) The effective portion of a hedge pair is E multiplied by the greater of the adjusted carrying values of the equity exposures forming a hedge pair.

(4) The ineffective portion of a hedge pair is (1-E) multiplied by the greater of the adjusted carrying values of the equity exposures forming a hedge pair.

§ 3.53 Equity exposures to investment funds.

(a) *Available approaches.* (1) Unless the exposure meets the requirements for a community development equity exposure under § 3.52(b)(3)(i), a national bank or Federal savings association must determine the risk-weighted asset amount of an equity exposure to an investment fund under the full look-through approach described in paragraph (b) of this section, the simple modified look-through approach described in paragraph (c) of this section, or the alternative modified look-through approach described paragraph (d) of this section, provided, however, that the minimum risk weight that may be assigned to an equity exposure under this section is 20 percent.

(2) The risk-weighted asset amount of an equity exposure to an investment fund that meets the requirements for a community development equity exposure in § 3.52(b)(3)(i) is its adjusted carrying value.

(3) If an equity exposure to an investment fund is part of a hedge pair and the national bank or Federal savings association does not use the full look-through approach, the national bank or Federal savings association must use the ineffective portion of the hedge pair as determined under § 3.52(c) as the adjusted carrying value for the equity exposure to the investment fund. The risk-weighted asset amount of the effective portion of the hedge pair is equal to its adjusted carrying value.

(b) *Full look-through approach.* A national bank or Federal savings association that is able to calculate a risk-weighted asset amount for its proportional ownership share of each exposure held by the investment fund (as calculated under this subpart as if the proportional ownership share of the adjusted carrying value of each exposure were held directly by the national bank or Federal savings association) may set the risk-weighted asset amount of the national bank's or Federal savings association's exposure to the fund equal to the product of:

(1) The aggregate risk-weighted asset amounts of the exposures held by the fund as if they were held directly by

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the national bank or Federal savings association; and

(2) The national bank's or Federal savings association's proportional ownership share of the fund.

(c) *Simple modified look-through approach.* Under the simple modified look-through approach, the risk-weighted asset amount for a national bank's or Federal savings association's equity exposure to an investment fund equals the adjusted carrying value of the equity exposure multiplied by the highest risk weight that applies to any exposure the fund is permitted to hold under the prospectus, partnership agreement, or similar agreement that defines the fund's permissible investments (excluding derivative contracts that are used for hedging rather than speculative purposes and that do not constitute a material portion of the fund's exposures).

(d) *Alternative modified look-through approach.* Under the alternative modified look-through approach, a national bank or Federal savings association may assign the adjusted carrying value of an equity exposure to an investment fund on a pro rata basis to different risk weight categories under this subpart based on the investment limits in the fund's prospectus, partnership agreement, or similar contract that defines the fund's permissible investments. The risk-weighted asset amount for the national bank's or Federal savings association's equity exposure to the investment fund equals the sum of each portion of the adjusted carrying value assigned to an exposure type multiplied by the applicable risk weight under this subpart. If the sum of the investment limits for all exposure types within the fund exceeds 100 percent, the national bank or Federal savings association must assume that the fund invests to the maximum extent permitted under its investment limits in the exposure type with the highest applicable risk weight under this subpart and continues to make investments in order of the exposure type with the next highest applicable risk weight under this subpart until the maximum total investment level is reached. If more than one exposure type applies to an exposure, the national bank or Federal savings associa-

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tion must use the highest applicable risk weight. A national bank or Federal savings association may exclude derivative contracts held by the fund that are used for hedging rather than for speculative purposes and do not constitute a material portion of the fund's exposures.

§§ 3.54–3.60 [Reserved]

DISCLOSURES

§ 3.61 Purpose and scope.

Sections 3.61–3.63 of this subpart establish public disclosure requirements related to the capital requirements described in subpart B of this part for a national bank or Federal savings association with total consolidated assets of \$50 billion or more as reported on the national bank's or Federal savings association's most recent year-end Call Report that is not an advanced approaches national bank or Federal savings association making public disclosures pursuant to §3.172. An advanced approaches national bank or Federal savings association that has not received approval from the OCC to exit parallel run pursuant to §3.121(d) is subject to the disclosure requirements described in §§3.62 and 3.63. Such a national bank or Federal savings association must comply with §3.62 unless it is a consolidated subsidiary of a bank holding company, savings and loan holding company, or depository institution that is subject to these disclosure requirements or a subsidiary of a non-U.S. banking organization that is subject to comparable public disclosure requirements in its home jurisdiction. For purposes of this section, total consolidated assets are determined based on the average of the national bank's or Federal savings association's total consolidated assets in the four most recent quarters as reported on the Call Report; or the average of the national bank's or Federal savings association's total consolidated assets in the most recent consecutive quarters as reported quarterly on the national bank's or Federal savings association's Call Report if the national bank or Federal savings association has not filed such a report for each of the most recent four quarters.

§ 3.62 Disclosure requirements.

(a) A national bank or Federal savings association described in § 3.61 must provide timely public disclosures each calendar quarter of the information in the applicable tables in § 3.63. If a significant change occurs, such that the most recent reported amounts are no longer reflective of the national bank's or Federal savings association's capital adequacy and risk profile, then a brief discussion of this change and its likely impact must be disclosed as soon as practicable thereafter. Qualitative disclosures that typically do not change each quarter (for example, a general summary of the national bank's or Federal savings association's risk management objectives and policies, reporting system, and definitions) may be disclosed annually after the end of the fourth calendar quarter, provided that any significant changes are disclosed in the interim. The national bank's or Federal savings association's management may provide all of the disclosures required by §§ 3.61 through 3.63 in one place on the national bank's or Federal savings association's public Web site or may provide the disclosures in more than one public financial report or other regulatory reports, provided that the national bank or Federal savings association publicly provides a summary table specifically indicating the location(s) of all such disclosures.

(b) A national bank or Federal savings association described in § 3.61 must have a formal disclosure policy approved by the board of directors that addresses its approach for determining the disclosures it makes. The policy must address the associated internal controls and disclosure controls and procedures. The board of directors and senior management are responsible for establishing and maintaining an effective internal control structure over financial reporting, including the disclosures required by this subpart, and must ensure that appropriate review of the disclosures takes place. One or more senior officers of the national bank or Federal savings association must attest that the disclosures meet the requirements of this subpart.

(c) If a national bank or Federal savings association described in § 3.61 concludes that specific commercial or financial information that it would otherwise be required to disclose under this section would be exempt from disclosure by the OCC under the Freedom of Information Act (5 U.S.C. 552), then the national bank or Federal savings association is not required to disclose that specific information pursuant to this section, but must disclose more general information about the subject matter of the requirement, together with the fact that, and the reason why, the specific items of information have not been disclosed.

§ 3.63 Disclosures by national banks or Federal savings associations described in § 3.61.

(a) Except as provided in § 3.62, a national bank or Federal savings association described in § 3.61 must make the disclosures described in Tables 1 through 10 of this section. The national bank or Federal savings association must make these disclosures publicly available for each of the last three years (that is, twelve quarters) or such shorter period beginning on January 1, 2015.

(b) A national bank or Federal savings association must publicly disclose each quarter the following:

(1) Common equity tier 1 capital, additional tier 1 capital, tier 2 capital, tier 1 and total capital ratios, including the regulatory capital elements and all the regulatory adjustments and deductions needed to calculate the numerator of such ratios;

(2) Total risk-weighted assets, including the different regulatory adjustments and deductions needed to calculate total risk-weighted assets;

(3) Regulatory capital ratios during any transition periods, including a description of all the regulatory capital elements and all regulatory adjustments and deductions needed to calculate the numerator and denominator of each capital ratio during any transition period; and

(4) A reconciliation of regulatory capital elements as they relate to its balance sheet in any audited consolidated financial statements.

TABLE 1 TO § 3.63—SCOPE OF APPLICATION

Qualitative Disclosures	(a)	The name of the top corporate entity in the group to which subpart D of this part applies.
	(b)	A brief description of the differences in the basis for consolidating entities ¹ for accounting and regulatory purposes, with a description of those entities: (1) That are fully consolidated; (2) That are deconsolidated and deducted from total capital; (3) For which the total capital requirement is deducted; and (4) That are neither consolidated nor deducted (for example, where the investment in the entity is assigned a risk weight in accordance with this subpart).
	(c)	Any restrictions, or other major impediments, on transfer of funds or total capital within the group.
	(d)	The aggregate amount of surplus capital of insurance subsidiaries included in the total capital of the consolidated group.
	(e)	The aggregate amount by which actual total capital is less than the minimum total capital requirement in all subsidiaries, with total capital requirements and the name(s) of the subsidiaries with such deficiencies.

¹ Entities include securities, insurance and other financial subsidiaries, commercial subsidiaries (where permitted), and significant minority equity investments in insurance, financial and commercial entities.

TABLE 2 TO § 3.63—CAPITAL STRUCTURE

Qualitative Disclosures	(a)	Summary information on the terms and conditions of the main features of all regulatory capital instruments.
Quantitative Disclosures	(b)	The amount of common equity tier 1 capital, with separate disclosure of: (1) Common stock and related surplus; (2) Retained earnings; (3) Common equity minority interest; (4) AOCI; and (5) Regulatory adjustments and deductions made to common equity tier 1 capital.
	(c)	The amount of tier 1 capital, with separate disclosure of: (1) Additional tier 1 capital elements, including additional tier 1 capital instruments and tier 1 minority interest not included in common equity tier 1 capital; and (2) Regulatory adjustments and deductions made to tier 1 capital.
	(d)	The amount of total capital, with separate disclosure of: (1) Tier 2 capital elements, including tier 2 capital instruments and total capital minority interest not included in tier 1 capital; and (2) Regulatory adjustments and deductions made to total capital.

TABLE 3 TO § 3.63—CAPITAL ADEQUACY

Qualitative disclosures	(a)	A summary discussion of the national bank's or Federal savings association's approach to assessing the adequacy of its capital to support current and future activities.
Quantitative disclosures	(b)	Risk-weighted assets for: (1) Exposures to sovereign entities; (2) Exposures to certain supranational entities and MDBs; (3) Exposures to depository institutions, foreign banks, and credit unions; (4) Exposures to PSEs; (5) Corporate exposures; (6) Residential mortgage exposures; (7) Statutory multifamily mortgages and pre-sold construction loans; (8) HVCRE loans; (9) Past due loans; (10) Other assets; (11) Cleared transactions; (12) Default fund contributions; (13) Unsettled transactions; (14) Securitization exposures; and (15) Equity exposures.
	(c)	Standardized market risk-weighted assets as calculated under subpart F of this part.
	(d)	Common equity tier 1, tier 1 and total risk-based capital ratios: (1) For the top consolidated group; and (2) For each depository institution subsidiary.
	(e)	Total standardized risk-weighted assets.

TABLE 4 TO § 3.63—CAPITAL CONSERVATION BUFFER

Quantitative Disclosures	(a)	At least quarterly, the national bank or Federal savings association must calculate and publicly disclose the capital conservation buffer as described under § 3.11.
	(b)	At least quarterly, the national bank or Federal savings association must calculate and publicly disclose the eligible retained income of the national bank or Federal savings association, as described under § 3.11.
	(c)	At least quarterly, the national bank or Federal savings association must calculate and publicly disclose any limitations it has on distributions and discretionary bonus payments resulting from the capital conservation buffer framework described under § 3.11, including the maximum payout amount for the quarter.

(c) *General qualitative disclosure requirement.* For each separate risk area described in Tables 5 through 10, the national bank or Federal savings association must describe its risk management objectives and policies, including: Strategies and processes; the structure and organization of the relevant risk

management function; the scope and nature of risk reporting and/or measurement systems; policies for hedging and/or mitigating risk and strategies and processes for monitoring the continuing effectiveness of hedges/mitigants.

TABLE 5 TO § 3.63¹—CREDIT RISK: GENERAL DISCLOSURES

Qualitative Disclosures	(a)	The general qualitative disclosure requirement with respect to credit risk (excluding counterparty credit risk disclosed in accordance with Table 6), including the: (1) Policy for determining past due or delinquency status; (2) Policy for placing loans on nonaccrual; (3) Policy for returning loans to accrual status; (4) Definition of and policy for identifying impaired loans (for financial accounting purposes); (5) Description of the methodology that the national bank or Federal savings association uses to estimate its allowance for loan and lease losses, including statistical methods used where applicable; (6) Policy for charging-off uncollectible amounts; and (7) Discussion of the national bank's or Federal savings association's credit risk management policy.
Quantitative Disclosures	(b)	Total credit risk exposures and average credit risk exposures, after accounting offsets in accordance with GAAP, without taking into account the effects of credit risk mitigation techniques (for example, collateral and netting not permitted under GAAP), over the period categorized by major types of credit exposure. For example, national banks or Federal savings associations could use categories similar to that used for financial statement purposes. Such categories might include, for instance (1) Loans, off-balance sheet commitments, and other non-derivative off-balance sheet exposures; (2) Debt securities; and (3) OTC derivatives. ²
	(c)	Geographic distribution of exposures, categorized in significant areas by major types of credit exposure. ³
	(d)	Industry or counterparty type distribution of exposures, categorized by major types of credit exposure.
	(e)	By major industry or counterparty type: (1) Amount of impaired loans for which there was a related allowance under GAAP; (2) Amount of impaired loans for which there was no related allowance under GAAP; (3) Amount of loans past due 90 days and on nonaccrual; (4) Amount of loans past due 90 days and still accruing; ⁴ (5) The balance in the allowance for loan and lease losses at the end of each period, disaggregated on the basis of the national bank's or Federal savings association's impairment method. To disaggregate the information required on the basis of impairment methodology, an entity shall separately disclose the amounts based on the requirements in GAAP; and (6) Charge-offs during the period.

TABLE 5 TO § 3.63¹—CREDIT RISK: GENERAL DISCLOSURES—Continued

	(f)	Amount of impaired loans and, if available, the amount of past due loans categorized by significant geographic areas including, if practical, the amounts of allowances related to each geographical area, ⁵ further categorized as required by GAAP.
	(g)	Reconciliation of changes in ALLL. ⁶
	(h)	Remaining contractual maturity delineation (for example, one year or less) of the whole portfolio, categorized by credit exposure.

¹ Table 5 does not cover equity exposures, which should be reported in Table 9.
² See, for example, ASC Topic 815–10 and 210, as they may be amended from time to time.
³ Geographical areas may consist of individual countries, groups of countries, or regions within countries. A national bank or Federal savings association might choose to define the geographical areas based on the way the national bank’s or Federal savings association’s portfolio is geographically managed. The criteria used to allocate the loans to geographical areas must be specified.
⁴ A national bank or Federal savings association is encouraged also to provide an analysis of the aging of past-due loans.
⁵ The portion of the general allowance that is not allocated to a geographical area should be disclosed separately.
⁶ The reconciliation should include the following: A description of the allowance; the opening balance of the allowance; charge-offs taken against the allowance during the period; amounts provided (or reversed) for estimated probable loan losses during the period; any other adjustments (for example, exchange rate differences, business combinations, acquisitions and disposals of subsidiaries), including transfers between allowances; and the closing balance of the allowance. Charge-offs and recoveries that have been recorded directly to the income statement should be disclosed separately.

TABLE 6 TO § 3.63—GENERAL DISCLOSURE FOR COUNTERPARTY CREDIT RISK-RELATED EXPOSURES

Qualitative Disclosures	(a)	The general qualitative disclosure requirement with respect to OTC derivatives, eligible margin loans, and repo-style transactions, including a discussion of: (1) The methodology used to assign credit limits for counterparty credit exposures; (2) Policies for securing collateral, valuing and managing collateral, and establishing credit reserves; (3) The primary types of collateral taken; and (4) The impact of the amount of collateral the national bank or Federal savings association would have to provide given a deterioration in the national bank’s or Federal savings association’s own creditworthiness.
Quantitative Disclosures	(b)	Gross positive fair value of contracts, collateral held (including type, for example, cash, government securities), and net unsecured credit exposure. ¹ A national bank or Federal savings association also must disclose the notional value of credit derivative hedges purchased for counterparty credit risk protection and the distribution of current credit exposure by exposure type. ²
	(c)	Notional amount of purchased and sold credit derivatives, segregated between use for the national bank’s or Federal savings association’s own credit portfolio and in its intermediation activities, including the distribution of the credit derivative products used, categorized further by protection bought and sold within each product group.

¹ Net unsecured credit exposure is the credit exposure after considering both the benefits from legally enforceable netting agreements and collateral arrangements without taking into account haircuts for price volatility, liquidity, etc.
² This may include interest rate derivative contracts, foreign exchange derivative contracts, equity derivative contracts, credit derivatives, commodity or other derivative contracts, repo-style transactions, and eligible margin loans.

TABLE 7 TO § 3.63—CREDIT RISK MITIGATION^{1 2}

Qualitative Disclosures	(a)	The general qualitative disclosure requirement with respect to credit risk mitigation, including: (1) Policies and processes for collateral valuation and management; (2) A description of the main types of collateral taken by the national bank or Federal savings association; (3) The main types of guarantors/credit derivative counterparties and their creditworthiness; and (4) Information about (market or credit) risk concentrations with respect to credit risk mitigation.
Quantitative Disclosures	(b)	For each separately disclosed credit risk portfolio, the total exposure that is covered by eligible financial collateral, and after the application of haircuts.
	(c)	For each separately disclosed portfolio, the total exposure that is covered by guarantees/credit derivatives and the risk-weighted asset amount associated with that exposure.

¹ At a minimum, a national bank or Federal savings association must provide the disclosures in Table 7 in relation to credit risk mitigation that has been recognized for the purposes of reducing capital requirements under this subpart. Where relevant, national banks or Federal savings associations are encouraged to give further information about mitigants that have not been recognized for that purpose.
² Credit derivatives that are treated, for the purposes of this subpart, as synthetic securitization exposures should be excluded from the credit risk mitigation disclosures and included within those relating to securitization (Table 8).

TABLE 8 TO § 3.63—SECURITIZATION

Qualitative Disclosures	(a)	<p>The general qualitative disclosure requirement with respect to a securitization (including synthetic securitizations), including a discussion of:</p> <ol style="list-style-type: none"> (1) The national bank's or Federal savings association's objectives for securitizing assets, including the extent to which these activities transfer credit risk of the underlying exposures away from the national bank or Federal savings association to other entities and including the type of risks assumed and retained with resecuritization activity;¹ (2) The nature of the risks (e.g. liquidity risk) inherent in the securitized assets; (3) The roles played by the national bank or Federal savings association in the securitization process² and an indication of the extent of the national bank's or Federal savings association's involvement in each of them; (4) The processes in place to monitor changes in the credit and market risk of securitization exposures including how those processes differ for resecuritization exposures; (5) The national bank's or Federal savings association's policy for mitigating the credit risk retained through securitization and resecuritization exposures; and (6) The risk-based capital approaches that the national bank or Federal savings association follows for its securitization exposures including the type of securitization exposure to which each approach applies.
	(b)	<p>A list of:</p> <ol style="list-style-type: none"> (1) The type of securitization SPEs that the national bank or Federal savings association, as sponsor, uses to securitize third-party exposures. The national bank or Federal savings association must indicate whether it has exposure to these SPEs, either on- or off-balance sheet; and (2) Affiliated entities: <ol style="list-style-type: none"> (i) That the national bank or Federal savings association manages or advises; and (ii) That invest either in the securitization exposures that the national bank or Federal savings association has securitized or in securitization SPEs that the national bank or Federal savings association sponsors.³
	(c)	<p>Summary of the national bank's or Federal savings association's accounting policies for securitization activities, including:</p> <ol style="list-style-type: none"> (1) Whether the transactions are treated as sales or financings; (2) Recognition of gain-on-sale; (3) Methods and key assumptions applied in valuing retained or purchased interests; (4) Changes in methods and key assumptions from the previous period for valuing retained interests and impact of the changes; (5) Treatment of synthetic securitizations; (6) How exposures intended to be securitized are valued and whether they are recorded under subpart D of this part; and (7) Policies for recognizing liabilities on the balance sheet for arrangements that could require the national bank or Federal savings association to provide financial support for securitized assets.
	(d)	<p>An explanation of significant changes to any quantitative information since the last reporting period.</p>
Quantitative Disclosures	(e)	<p>The total outstanding exposures securitized by the national bank or Federal savings association in securitizations that meet the operational criteria provided in § 3.41 (categorized into traditional and synthetic securitizations), by exposure type, separately for securitizations of third-party exposures for which the bank acts only as sponsor.⁴</p>
	(f)	<p>For exposures securitized by the national bank or Federal savings association in securitizations that meet the operational criteria in § 3.41:</p> <ol style="list-style-type: none"> (1) Amount of securitized assets that are impaired/past due categorized by exposure type;⁵ and (2) Losses recognized by the national bank or Federal savings association during the current period categorized by exposure type.⁶
	(g)	<p>The total amount of outstanding exposures intended to be securitized categorized by exposure type.</p>
	(h)	<p>Aggregate amount of:</p> <ol style="list-style-type: none"> (1) On-balance sheet securitization exposures retained or purchased categorized by exposure type; and (2) Off-balance sheet securitization exposures categorized by exposure type.

TABLE 8 TO § 3.63—SECURITIZATION—Continued

(i)		(1) Aggregate amount of securitization exposures retained or purchased and the associated capital requirements for these exposures, categorized between securitization and resecuritization exposures, further categorized into a meaningful number of risk weight bands and by risk-based capital approach (e.g., SSFA); and (2) Exposures that have been deducted entirely from tier 1 capital, CEIOs deducted from total capital (as described in § 3.42(a)(1)), and other exposures deducted from total capital should be disclosed separately by exposure type.
(j)		Summary of current year's securitization activity, including the amount of exposures securitized (by exposure type), and recognized gain or loss on sale by exposure type.
(k)		Aggregate amount of resecuritization exposures retained or purchased categorized according to: (1) Exposures to which credit risk mitigation is applied and those not applied; and (2) Exposures to guarantors categorized according to guarantor creditworthiness categories or guarantor name.

¹The national bank or Federal savings association should describe the structure of resecuritizations in which it participates; this description should be provided for the main categories of resecuritization products in which the national bank or Federal savings association is active.

²For example, these roles may include originator, investor, servicer, provider of credit enhancement, sponsor, liquidity provider, or swap provider.

³Such affiliated entities may include, for example, money market funds, to be listed individually, and personal and private trusts, to be noted collectively.

⁴“Exposures securitized” include underlying exposures originated by the bank, whether generated by them or purchased, and recognized in the balance sheet, from third parties, and third-party exposures included in sponsored transactions. Securitization transactions (including underlying exposures originally on the bank's balance sheet and underlying exposures acquired by the bank from third-party entities) in which the originating bank does not retain any securitization exposure should be shown separately but need only be reported for the year of inception. Banks are required to disclose exposures regardless of whether there is a capital charge under this part.

⁵Include credit-related other than temporary impairment (OTTI).

⁶For example, charge-offs/allowances (if the assets remain on the bank's balance sheet) or credit-related OTTI of interest-only strips and other retained residual interests, as well as recognition of liabilities for probable future financial support required of the bank with respect to securitized assets.

TABLE 9 TO § 3.63—EQUITIES NOT SUBJECT TO SUBPART F OF THIS PART

Qualitative Disclosures	(a)	The general qualitative disclosure requirement with respect to equity risk for equities not subject to subpart F of this part, including: (1) Differentiation between holdings on which capital gains are expected and those taken under other objectives including for relationship and strategic reasons; and (2) Discussion of important policies covering the valuation of and accounting for equity holdings not subject to subpart F of this part. This includes the accounting techniques and valuation methodologies used, including key assumptions and practices affecting valuation as well as significant changes in these practices.
Quantitative Disclosures	(b)	Value disclosed on the balance sheet of investments, as well as the fair value of those investments; for securities that are publicly traded, a comparison to publicly-quoted share values where the share price is materially different from fair value.
	(c)	The types and nature of investments, including the amount that is: (1) Publicly traded; and (2) Non publicly traded.
	(d)	The cumulative realized gains (losses) arising from sales and liquidations in the reporting period.
	(e)	(1) Total unrealized gains (losses). ¹ (2) Total latent revaluation gains (losses). ² (3) Any amounts of the above included in tier 1 or tier 2 capital.
	(f)	Capital requirements categorized by appropriate equity groupings, consistent with the national bank's or Federal savings association's methodology, as well as the aggregate amounts and the type of equity investments subject to any supervisory transition regarding regulatory capital requirements.

¹Unrealized gains (losses) recognized on the balance sheet but not through earnings.

²Unrealized gains (losses) not recognized either on the balance sheet or through earnings.

TABLE 10 TO § 3.63—INTEREST RATE RISK FOR NON-TRADING ACTIVITIES

Qualitative disclosures	(a)	The general qualitative disclosure requirement, including the nature of interest rate risk for non-trading activities and key assumptions, including assumptions regarding loan prepayments and behavior of non-maturity deposits, and frequency of measurement of interest rate risk for non-trading activities.
Quantitative disclosures	(b)	The increase (decline) in earnings or economic value (or relevant measure used by management) for upward and downward rate shocks according to management's method for measuring interest rate risk for non-trading activities, categorized by currency (as appropriate).

§§ 3.64–3.99 [Reserved]

**Subpart E—Risk-Weighted Assets—
Internal Ratings-Based and
Advanced Measurement Ap-
proaches**

SOURCE: 78 FR 62157, 62273, Oct. 11, 2013, unless otherwise noted.

§ 3.100 Purpose, applicability, and principle of conservatism.

(a) *Purpose.* This subpart E establishes:

(1) Minimum qualifying criteria for national banks or Federal savings associations using institution-specific internal risk measurement and management processes for calculating risk-based capital requirements; and

(2) Methodologies for such national banks or Federal savings associations to calculate their total risk-weighted assets.

(b) *Applicability.* (1) This subpart applies to a national bank or Federal savings association that:

(i) Has consolidated total assets, as reported on its most recent year-end Call Report equal to \$250 billion or more;

(ii) Has consolidated total on-balance sheet foreign exposure on its most recent year-end Call Report equal to \$10 billion or more (where total on-balance sheet foreign exposure equals total cross-border claims less claims with a head office or guarantor located in another country plus redistributed guaranteed amounts to the country of head office or guarantor plus local country claims on local residents plus revaluation gains on foreign exchange and derivative products, calculated in accordance with the Federal Financial Insti-

tutions Examination Council (FFIEC) 009 Country Exposure Report);

(iii) Is a subsidiary of a depository institution that uses the advanced approaches pursuant to subpart E of 12 CFR part 3 (OCC), 12 CFR part 217 (Board), or 12 CFR part 325 (FDIC) to calculate its total risk-weighted assets;

(iv) Is a subsidiary of a bank holding company or savings and loan holding company that uses the advanced approaches pursuant to 12 CFR part 217 to calculate its total risk-weighted assets; or

(v) Elects to use this subpart to calculate its total risk-weighted assets.

(2) A national bank or Federal savings association that is subject to this subpart shall remain subject to this subpart unless the OCC determines in writing that application of this subpart is not appropriate in light of the national bank's or Federal savings association's asset size, level of complexity, risk profile, or scope of operations. In making a determination under this paragraph (b), the OCC will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in 12 CFR 3.404.

(3) A market risk national bank or Federal savings association must exclude from its calculation of risk-weighted assets under this subpart the risk-weighted asset amounts of all covered positions, as defined in subpart F of this part (except foreign exchange positions that are not trading positions, over-the-counter derivative positions, cleared transactions, and unsettled transactions).

(c) *Principle of conservatism.* Notwithstanding the requirements of this subpart, a national bank or Federal savings association may choose not to