

### § 3.1

AUTHORITY: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

SOURCE: 50 FR 10216, Mar. 14, 1985, unless otherwise noted.

## Subpart A—Authority and Definitions

### § 3.1 Authority.

This part is issued under the authority of 12 U.S.C. 1 *et seq.*, 93a, 161, 1818, 3907 and 3909.

[59 FR 64563, Dec. 15, 1994]

### § 3.2 Definitions.

For the purposes of this part:

(a) *Adjusted total assets* means the average total assets figure required to be computed for and stated in a bank's most recent quarterly *Consolidated Report of Condition and Income* (Call Report) minus end-of-quarter intangible assets and deferred tax assets that are deducted from Tier 1 capital. The OCC reserves the right to require a bank to compute and maintain its capital ratios on the basis of actual, rather than average, total assets when necessary to carry out the purposes of this part.

(b) *Bank* means a national banking association or District of Columbia Bank.

(c) *Tier 1 capital* means *Tier 1 capital* as determined according to section 2 of appendix A of this part, including the deductions described therein.

(d) *Tier 2 capital* means *Tier 2 capital* as determined according to section 2 of appendix A of this part, including the limitations described therein.

(e) *Total capital* means *Total capital* as determined according to section 1(25) and section 2 of appendix A of this part, including the deductions described therein.

[55 FR 38800, Sept. 21, 1990, as amended at 60 FR 7907, Feb. 10, 1995]

### § 3.3 Transitional rules.

Intangible assets, other than mortgage servicing rights, purchased prior to April 15, 1985, and accounted for in accordance with the instruction of the OCC, need not be deducted from Tier 1 capital until December 31, 1992. However, when combined with other qualifying intangible assets, these intangibles may not exceed 25 percent of Tier

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1 capital. After December 31, 1992, only those intangible assets that meet the criteria contained in section 2(c)(2) of appendix A will not be deducted from Tier 1 capital.

[55 FR 38800, Sept. 21, 1990]

### § 3.4 Reservation of authority.

(a) *Deductions from capital.* Notwithstanding the definitions of *Tier 1 capital* and *Tier 2 capital* in § 3.2 (c) and (d), the OCC may find that a newly developed or modified capital instrument constitutes *Tier 1 capital* or *Tier 2 capital*, and may permit one or more banks to include all or a portion of funds obtained through such capital instruments as Tier 1 or Tier 2 capital, permanently or on a temporary basis, for the purposes of compliance with this part or for other purposes. Similarly, the OCC may find that a particular intangible asset, deferred tax asset or credit-enhancing interest-only strip need not be deducted from Tier 1 or Tier 2 capital. Conversely, the OCC may find that a particular intangible asset, deferred tax asset, credit-enhancing interest-only strip or other Tier 1 or Tier 2 capital component has characteristics or terms that diminish its contribution to a bank's ability to absorb losses, and may require the deduction from Tier 1 or Tier 2 capital of all of the component or of a greater portion of the component than is otherwise required.

(b) *Risk weight categories.* Notwithstanding the risk categories in sections 3 and 4 of appendix A to this part, the OCC will look to the substance of the transaction and may find that the assigned risk weight for any asset or the credit equivalent amount or credit conversion factor for any off-balance sheet item does not appropriately reflect the risks imposed on a bank and may require another risk weight, credit equivalent amount, or credit conversion factor that the OCC deems appropriate. Similarly, if no risk weight, credit equivalent amount, or credit conversion factor is specifically assigned, the OCC may assign any risk weight, credit equivalent amount, or credit conversion factor that the OCC deems appropriate. In making its determination, the OCC considers risks associated

with the asset or off-balance sheet item as well as other relevant factors.

[55 FR 38800, Sept. 21, 1990, as amended at 66 FR 59630, Nov. 29, 2001]

### Subpart B—Minimum Capital Ratios

#### § 3.5 Applicability.

This subpart is applicable to all banks unless the Office determines, pursuant to the procedures set forth in subpart C, that different minimum capital ratios are appropriate for an individual bank based upon its particular circumstances, or unless different minimum capital ratios have been established or are established for an individual bank in a written agreement or a temporary or final order pursuant to 12 U.S.C. 1818 (b) or (c), or as a condition for approval of an application.

#### § 3.6 Minimum capital ratios.

(a) *Risk-based capital ratio.* All national banks must have and maintain the minimum risk-based capital ratio as set forth in appendix A (and, for certain banks, in appendix B).

(b) *Total assets leverage ratio.* All national banks must have and maintain Tier 1 capital in an amount equal to at least 3.0 percent of adjusted total assets.

(c) *Additional leverage ratio requirement.* An institution operating at or near the level in paragraph (b) of this section should have well-diversified risks, including no undue interest rate risk exposure; excellent control systems; good earnings; high asset quality; high liquidity; and well managed on-and off-balance sheet activities; and in general be considered a strong banking organization, rated composite 1 under the Uniform Financial Institutions Rating System (CAMELS) rating system of banks. For all but the most highly-rated banks meeting the conditions set forth in this paragraph (c), the minimum Tier 1 leverage ratio is 4 percent. In all cases, banking institutions should hold capital commensurate with the level and nature of all risks.

[55 FR 38800, Sept. 21, 1990, as amended at 61 FR 47367, Sept. 6, 1996; 64 FR 10199, Mar. 2, 1999]

#### § 3.7 Plan to achieve minimum capital ratios.

Effective December 31, 1990, any bank having capital ratios less than the minimums required under § 3.6 (a) and (b) shall, within 60 days, submit to the OCC a plan describing the means and schedule by which the bank shall achieve the applicable minimum capital ratios. The plan may be considered acceptable unless the bank is notified to the contrary by the OCC. A bank in compliance with an acceptable plan to achieve the applicable minimum capital ratios will not be deemed to be in violation of § 3.6.

[55 FR 38800, Sept. 21, 1990]

#### § 3.8 Reservation of authority.

When, in the opinion of the Office the circumstances so require, a bank may be authorized to have less than the minimum capital ratios in § 3.6 during a time period specified by the Office.

### Subpart C—Establishment of Minimum Capital Ratios for an Individual Bank

#### § 3.9 Purpose and scope.

The rules and procedures specified in this subpart are applicable to a proceeding to establish required minimum capital ratios that would otherwise be applicable to a bank under § 3.6. The OCC is authorized under 12 U.S.C. 3907 (a)(2) to establish such minimum capital requirements for a bank as the OCC, in its discretion, deems appropriate in light of the particular circumstances at that bank. Proceedings under this subpart also may be initiated to require a bank having capital ratios above those set forth in § 3.6, or other legal authority to continue to maintain those higher ratios.

[55 FR 38800, Sept. 21, 1990]

#### § 3.10 Applicability.

The OCC may require higher minimum capital ratios for an individual bank in view of its circumstances. For example, higher capital ratios may be appropriate for:

- (a) A newly chartered bank;
- (b) A bank receiving special supervisory attention;