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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, deferred tax assets, and credit-enhancing interest-only strips, that are

deducted from Tier 1 capital, and minus nonfinancial equity investments for which a Tier 1 capital deduction is required pursuant to section 2(c)(5) of appendix A of this part 3. 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.

(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; 67 FR 3795, Jan. 25, 2002; 73 FR 22236, Apr. 24, 2008]

§ 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 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