Comptroller of the Currency, Treasury

§ 3.12 Procedures.

(a) Notice. When the OCC determines that minimum capital ratios above those set forth in §3.6 or other legal authority are necessary or appropriate for a particular bank, the OCC will notify the bank in writing of the proposed minimum capital ratios and the date by which they should be reached (if applicable) and will provide an explanation of why the ratios proposed are considered necessary or appropriate for the bank.

(b) Response. (1) The bank may respond to any or all of the items in the notice. The response should include any matters which the bank would have the Office consider in deciding whether individual minimum capital ratios should be established for the bank, what those capital ratios should be, and, if applicable, when they should be achieved. The response must be in writing and delivered to the designated OCC official within 30 days after the date on which the bank received the notice. The Office may shorten the time period when, in the opinion of the Office, the condition of the bank so requires, provided that the bank is informed promptly of the new time period, or with the consent of the bank. In its discretion, the Office may extend the time period for good cause.

(2) Failure to respond within 30 days or such other time period as may be specified by the Office shall constitute a waiver of any objections to the proposed minimum capital ratios or the deadline for their achievement.

(c) Decision. After the close of the bank’s response period, the Office will decide, based on a review of the bank’s response and other information concerning the bank, whether individual minimum capital ratios should be established for the bank and, if so, the ratios and the date the requirements will become effective. The bank will be notified of the decision in writing. The notice will include an explanation of the decision, except for a decision not to establish individual minimum capital requirements for the bank.

(d) Submission of plan. The decision may require the bank to develop and submit to the Office, within a time period specified, an acceptable plan to reach the minimum capital ratios established for the bank by the date required.

(e) Change in circumstances. If, after the Office’s decision in paragraph (c) of this section, there is a change in the circumstances affecting the bank’s capital adequacy or its ability to reach the required minimum capital ratios by the specified date, either the bank or the Office may propose to the other a change in the minimum capital ratios for the bank, the date when the minimums must be achieved, or the bank’s plan (if applicable). The Office may decline to consider proposals that are not based on a significant change in circumstances or are repetitive or frivolous. Pending a decision on reconsideration, the Office’s original decision and any plan required under that decision shall continue in full force and effect.

§ 3.13 Relation to other actions.

In lieu of, or in addition to, the procedures in this subpart, the required minimum capital ratios for a bank may be established or revised through a written agreement or cease and desist proceedings under 12 U.S.C. 1818 (b) or (c) (12 CFR 19.0 through 19.21), or as a condition for approval of an application.

Subpart D—Enforcement

§ 3.14 Remedies.

A bank that does not have or maintain the minimum capital ratios applicable to it, whether required in subpart
§ 3.15 Purpose and scope.

This subpart is applicable to proceedings by the Office to issue a directive under 12 U.S.C. 3907(b)(2). A directive is an order issued to a bank that does not have or maintain capital at or above the minimum ratios set forth in §3.6, or established for the bank under subpart C, by a written agreement under 12 U.S.C. 1818(b), or as a condition for approval of an application. A directive may order the bank to:

(a) Achieve the minimum capital ratios applicable to it by a specified date;
(b) Adhere to a previously submitted plan to achieve the applicable capital ratios;
(c) Submit and adhere to a plan acceptable to the Office describing the means and time schedule by which the bank shall achieve the applicable capital ratios;
(d) Take other action, such as reduction of assets or the rate of growth of assets, or restrictions on the payment of dividends, to achieve the applicable capital ratios; or
(e) A combination of any of these or similar actions.

A directive issued under this rule, including a plan submitted under a directive, is enforceable in the same manner and to the same extent as an effective and outstanding cease and desist order which has become final as defined in 12 U.S.C. 1818(k). Violation of a directive may result in assessment of civil money penalties in accordance with 12 U.S.C. 3909(d).

§ 3.16 Notice of intent to issue a directive.

The Office will notify a bank in writing of its intention to issue a directive. The notice will state:
(a) Reasons for issuance of the directive; and
(b) The proposed contents of the directive.

§ 3.17 Response to notice.

(a) A bank may respond to the notice by stating why a directive should not be issued and/or by proposing alternative contents for the directive. The response should include any matters which the bank would have the Office consider in deciding whether to issue a directive and/or what the contents of the directive should be. The response may include a plan for achieving the minimum capital ratios applicable to the bank. The response must be in writing and delivered to the designated OCC official within 30 days after the date on which the bank received the notice. The Office may shorten the 30-day time period:
(1) When, in the opinion of the Office, the condition of the bank so requires, provided that the bank shall be informed promptly of the new time period;
(2) With the consent of the bank; or
(3) When the bank already has advised the Office that it cannot or will not achieve its applicable minimum capital ratios. In its discretion, the Office may extend the time period for good cause.
(b) Failure to respond within 30 days or such other time period as may be specified by the Office shall constitute a waiver of any objections to the proposed directive.

§ 3.18 Decision.

After the closing date of the bank’s response period, or receipt of the bank’s response, if earlier, the Office will consider the bank’s response, and