

## Comptroller of the Currency, Treasury

## § 6.3

assigned the bank to a particular capital category.

### § 6.2 Definitions.

For purposes of section 38 and this part, the definitions related to capital in part 3 of this chapter shall apply. In addition, except as modified in this section or unless the context otherwise requires, the terms used in this subpart have the same meanings as set forth in section 38 and section 3 of the FDI Act.

(a) *Bank* means all insured national banks and all insured federal branches, except where otherwise provided in this subpart.

(b)(1) *Control* has the same meaning assigned to it in section 2 of the Bank Holding Company Act (12 U.S.C. 1841), and the term controlled shall be construed consistently with the term control.

(2) *Exclusion for fiduciary ownership.* No insured depository institution or company controls another insured depository institution or company by virtue of its ownership or control of shares in a fiduciary capacity. Shares shall not be deemed to have been acquired in a fiduciary capacity if the acquiring insured depository institution or company has sole discretionary authority to exercise voting rights with respect thereto.

(3) *Exclusion for debts previously contracted.* No insured depository institution or company controls another insured depository institution or company by virtue of its ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith, until two years after the date of acquisition. The two-year period may be extended at the discretion of the appropriate federal banking agency for up to three one-year periods.

(c) *Controlling person* means any person having control of an insured depository institution and any company controlled by that person.

(d) *Leverage ratio* means the ratio of Tier 1 capital to adjusted total assets, as calculated in accordance with the OCC's Minimum Capital Ratios in part 3 of this chapter.

(e) *Management fee* means any payment of money or provision of any other thing of value to a company or

individual for the provision of management services or advice to the bank or related overhead expenses, including payments related to supervisory, executive, managerial, or policymaking functions, other than compensation to an individual in the individual's capacity as an officer or employee of the bank.

(f) *Risk-weighted assets* means total risk weighted assets, as calculated in accordance with the OCC's Minimum Capital Ratios in part 3 of this chapter.

(g) *Tangible equity* means the amount of Tier 1 capital elements in the OCC's Risk-Based Capital Guidelines (appendix A to part 3 of this chapter) plus the amount of outstanding cumulative perpetual preferred stock (including related surplus) minus all intangible assets except mortgage servicing assets to the extent permitted in Tier 1 capital under section 2(c)(2) in appendix A to part 3 of this chapter.

(h) *Tier 1 capital* means the amount of Tier 1 capital as defined in the OCC's Minimum Capital Ratios in part 3 of this chapter.

(i) *Tier 1 risk-based capital ratio* means the ratio of Tier 1 capital to risk weighted assets, as calculated in accordance with the OCC's Minimum Capital Ratios in part 3 of this chapter.

(j) *Total assets* means quarterly average total assets as reported in a bank's Consolidated Reports of Condition and Income (Call Report), minus intangible assets as provided in the definition of tangible equity. 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 computing tangible equity.

(k) *Total risk-based capital ratio* means the ratio of qualifying total capital to risk-weighted assets, as calculated in accordance with the OCC's Minimum Capital Ratios in part 3 of this chapter.

[57 FR 44891, Sept. 29, 1992, as amended at 60 FR 39229, Aug. 1, 1995; 63 FR 42674, Aug. 10, 1998]

### § 6.3 Notice of capital category.

(a) *Effective date of determination of capital category.* A bank shall be deemed to be within a given capital category for purposes of section 38 of the FDI Act and this part as of the date the bank is notified of, or is deemed to