collecting a debt previously contracted in good faith, until two years after the
date of acquisition. The two-year pe-
riod may be extended at the discretion
of the appropriate Federal banking
agency for up to three one-year peri-
ods.

(b) **Controlling person** means any per-
son having control of an insured depos-
itory institution and any company con-
trolled by that person.

(c) **Leverage ratio** means the ratio of
Tier 1 capital to average total consol-
dated assets, as calculated in accord-
ance with the Board’s Capital Ade-
quacy Guidelines for State Member
Banks: Tier 1 Leverage Measure (Ap-
pendix B to this part).

(d) **Management fee** means any pay-
ment of money or provision of any
other thing of value to a company or
individual for the provision of manage-
ment services or advice to the bank, or
related overhead expenses, including
payments related to supervisory, exec-
utive, managerial, or policy making
functions, other than compensation to
an individual in the individual’s capac-
ty as an officer or employee of the
bank.

(e) **Risk-weighted assets** means total
weighted risk assets, as calculated in
accordance with the Board’s Capital Ade-
quacy Guidelines for State Member
Banks: Risk-Based Measure (Appendix
A to this part).

(f) **Tangible equity** means the amount
of core capital elements as defined in
the Board’s Capital Adequacy Guide-
lines for State Member Banks: Risk-
Based Measure (Appendix A to this
part).
purposes of section 38 and this subpart on the basis of the bank’s most recent Call Report or report of examination.

(2) Determination by Board to change capital category. After receiving notice pursuant to paragraph (c)(1) of this section, the Board shall determine whether to change the capital category of the bank and shall notify the bank of the Board’s determination.

§ 208.43 Capital measures and capital category definitions.

(a) Capital measures. For purposes of section 38 and this subpart, the relevant capital measures are:

(1) The total risk-based capital ratio;

(2) The Tier 1 risk-based capital ratio; and

(3) The leverage ratio.

(b) Capital categories. For purposes of section 38 and this subpart, a member bank is deemed to be:

(1) “Well capitalized” if the bank:

(i) Has a total risk-based capital ratio of 10.0 percent or greater; and

(ii) Has a Tier 1 risk-based capital ratio of 6.0 percent or greater; and

(iii) Has a leverage ratio of 5.0 percent or greater; and

(iv) Is not subject to any written agreement, order, capital directive, or prompt corrective action directive issued by the Board pursuant to section 8 of the FDI Act, the International Lending Supervision Act of 1983 (12 U.S.C. 3907), or section 38 of the FDI Act, or any regulation thereunder, to meet and maintain a specific capital level for any capital measure.

(2) “Adequately capitalized” if the bank:

(i) Has a total risk-based capital ratio of 8.0 percent or greater; and

(ii) Has a Tier 1 risk-based capital ratio of 4.0 percent or greater; and

(iii) Has:

(A) A leverage ratio of 4.0 percent or greater; or

(B) A leverage ratio of 3.0 percent or greater if the bank is rated composite 1 under the CAMELS rating system in the most recent examination of the bank and is not experiencing or anticipating significant growth; and

(iv) Does not meet the definition of a “well capitalized” bank.

(3) “Undercapitalized” if the bank has:

(i) A total risk-based capital ratio that is less than 8.0 percent; or

(ii) A Tier 1 risk-based capital ratio that is less than 4.0 percent; or

(iii) Except as provided in paragraph (b)(2)(iii)(B) of this section, has a leverage ratio that is less than 4.0 percent; or

(iv) A leverage ratio that is less than 3.0 percent, if the bank is rated composite 1 under the CAMELS rating system in the most recent examination of the bank and is not experiencing or anticipating significant growth.

(4) “Significantly undercapitalized” if the bank has:

(i) A total risk-based capital ratio that is less than 6.0 percent; or

(ii) A Tier 1 risk-based capital ratio that is less than 3.0 percent; or

(iii) A leverage ratio that is less than 3.0 percent.

(5) “Critically undercapitalized” if the bank has a ratio of tangible equity to total assets that is equal to or less than 2.0 percent.

(c) Reclassification based on supervisory criteria other than capital. The Board may reclassify a well capitalized member bank as adequately capitalized and may require an adequately-capitalized or an undercapitalized member bank to comply with certain mandatory or discretionary supervisory actions as if the bank were in the next lower capital category (except that the Board may not reclassify a significantly undercapitalized bank as critically undercapitalized) (each of these actions are hereinafter referred to generally as “reclassifications”) in the following circumstances:

(1) Unsafe or unsound condition. The Board has determined, after notice and opportunity for hearing pursuant to 12 CFR 263.203, that the bank is in unsafe or unsound condition; or

(2) Unsafe or unsound practice. The Board has determined, after notice and opportunity for hearing pursuant to 12 CFR 263.203, that, in the most recent examination of the bank, the bank received and has not corrected, a less-than-satisfactory rating for any of the categories of asset quality, management, earnings, liquidity, or sensitivity to market risk.