

Comptroller of the Currency, Treasury

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APPENDIX A TO PART 3—RISK-BASED CAPITAL GUIDELINES

APPENDIX B TO PART 3— RISK-BASED CAPITAL GUIDELINES; MARKET RISK

AUTHORITY: 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, 3909, and 5412(b)(2)(B).

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

Subpart A—General Provisions

SOURCE: 78 FR 62157, 62273, Oct. 11, 2013, unless otherwise noted.

§ 3.1 Purpose, applicability, reservations of authority, and timing.

(a) *Purpose.* This part establishes minimum capital requirements and overall capital adequacy standards for national banks or Federal savings associations. This part includes methodologies for calculating minimum capital requirements, public disclosure requirements related to the capital requirements, and transition provisions for the application of this part.

(b) *Limitation of authority.* Nothing in this part shall be read to limit the authority of the OCC to take action under other provisions of law, including action to address unsafe or unsound practices or conditions, deficient capital levels, or violations of law or regulation, under section 8 of the Federal Deposit Insurance Act.

(c) *Applicability.* Subject to the requirements in paragraphs (d) and (f) of this section:

(1) *Minimum capital requirements and overall capital adequacy standards.* Each national bank or Federal savings association must calculate its minimum capital requirements and meet the overall capital adequacy standards in subpart B of this part.

(2) *Regulatory capital.* Each national bank or Federal savings association must calculate its regulatory capital in accordance with subpart C of this part.

(3) *Risk-weighted assets.* (i) Each national bank or Federal savings association must use the methodologies in subpart D of this part (and subpart F of this part for a market risk national bank or Federal savings association) to calculate standardized total risk-weighted assets.

(ii) Each advanced approaches national bank or Federal savings association must use the methodologies in subpart E (and subpart F of this part for a market risk national bank or Federal savings association) to calculate advanced approaches total risk-weighted assets.

(4) *Disclosures.* (i) Except for an advanced approaches national bank or Federal savings association that is making public disclosures pursuant to the requirements in subpart E of this part, each national bank or Federal savings association with total consolidated assets of \$50 billion or more must make the public disclosures described in subpart D of this part.

(ii) Each market risk national bank or Federal savings association must make the public disclosures described in subpart F of this part.

(iii) Each advanced approaches national bank or Federal savings association must make the public disclosures described in subpart E of this part.

(d) *Reservation of authority—(1) Additional capital in the aggregate.* The OCC may require a national bank or Federal savings association to hold an amount of regulatory capital greater than otherwise required under this part if the OCC determines that the national bank's or Federal savings association's capital requirements under this part

are not commensurate with the national bank's or Federal savings association's credit, market, operational, or other risks.

(2) *Regulatory capital elements.* (i) If the OCC determines that a particular common equity tier 1, additional tier 1, or tier 2 capital element has characteristics or terms that diminish its ability to absorb losses, or otherwise present safety and soundness concerns, the OCC may require the national bank or Federal savings association to exclude all or a portion of such element from common equity tier 1 capital, additional tier 1 capital, or tier 2 capital, as appropriate.

(ii) Notwithstanding the criteria for regulatory capital instruments set forth in subpart C of this part, the OCC may find that a capital element may be included in a national bank's or Federal savings association's common equity tier 1 capital, additional tier 1 capital, or tier 2 capital on a permanent or temporary basis consistent with the loss absorption capacity of the element and in accordance with § 3.20(e).

(3) *Risk-weighted asset amounts.* If the OCC determines that the risk-weighted asset amount calculated under this part by the national bank or Federal savings association for one or more exposures is not commensurate with the risks associated with those exposures, the OCC may require the national bank or Federal savings association to assign a different risk-weighted asset amount to the exposure(s) or to deduct the amount of the exposure(s) from its regulatory capital.

(4) *Total leverage.* If the OCC determines that the leverage exposure amount, or the amount reflected in the national bank's or Federal savings association's reported average total consolidated assets, for an on- or off-balance sheet exposure calculated by a national bank or Federal savings association under § 3.10 is inappropriate for the exposure(s) or the circumstances of the national bank or Federal savings association, the OCC may require the national bank or Federal savings association to adjust this exposure amount in the numerator and the denominator for purposes of the leverage ratio calculations.

(5) *Consolidation of certain exposures.* The OCC may determine that the risk-based capital treatment for an exposure or the treatment provided to an entity that is not consolidated on the national bank's or Federal savings association's balance sheet is not commensurate with the risk of the exposure and the relationship of the national bank or Federal savings association to the entity. Upon making this determination, the OCC may require the national bank or Federal savings association to treat the exposure or entity as if it were consolidated on the balance sheet of the national bank or Federal savings association for purposes of determining the national bank's or Federal savings association's risk-based capital requirements and calculating the national bank's or Federal savings association's risk-based capital ratios accordingly. The OCC will look to the substance of, and risk associated with, the transaction, as well as other relevant factors the OCC deems appropriate in determining whether to require such treatment.

(6) *Other reservation of authority.* With respect to any deduction or limitation required under this part, the OCC may require a different deduction or limitation, provided that such alternative deduction or limitation is commensurate with the national bank's or Federal savings association's risk and consistent with safety and soundness.

(e) *Notice and response procedures.* In making a determination under this section, the OCC will apply notice and response procedures in the same manner as the notice and response procedures in § 3.404.

(f) *Timing.* (1) Subject to the transition provisions in subpart G of this part, an advanced approaches national bank or Federal savings association that is not a savings and loan holding company must:

(i) Except as described in paragraph (f)(1)(ii) of this section, beginning on January 1, 2014, calculate advanced approaches total risk-weighted assets in accordance with subpart E and, if applicable, subpart F of this part and, beginning on January 1, 2015, calculate standardized total risk-weighted assets in accordance with subpart D and, if applicable, subpart F of this part;

(ii) From January 1, 2014 to December 31, 2014:

(A) Calculate risk-weighted assets in accordance with the general risk-based capital rules under appendix A to this part and, if applicable, subpart F of this part (national banks), or 12 CFR part 167 and, if applicable, subpart F of this part (Federal savings associations)¹ and substitute such risk-weighted assets for standardized total risk-weighted assets for purposes of § 3.10;

(B) If applicable, calculate general market risk equivalent assets in accordance with appendix B to this part, section 4(a)(3) (national banks) and substitute such general market risk equivalent assets for standardized market risk-weighted assets for purposes of § 3.20(d)(3); and

(C) Substitute the corresponding provision or provisions of appendix A to this part, and, if applicable, appendix B to this part (national banks), or 12 CFR part 167 (Federal savings associations) for any reference to subpart D of this part in: § 3.121(c); § 3.124(a) and (b); § 3.144(b); § 3.154(c) and (d); § 3.202(b) (definition of covered position in paragraph (b)(3)(iv)); and § 3.211(b);²

(iii) Beginning on January 1, 2014, calculate and maintain minimum cap-

¹For the purpose of calculating its general risk-based capital ratios from January 1, 2014 to December 31, 2014, an advanced approaches national bank or Federal savings association shall adjust, as appropriate, its risk-weighted asset measure (as that amount is calculated under appendix A to this part, Sec. 3 and, if applicable, subpart F of this part (national banks), or 12 CFR part 167 and, if applicable, subpart F of this part (Federal savings associations) in the general risk-based capital rules) by excluding those assets that are deducted from its regulatory capital under § 3.22.

²In addition, for purposes of § 3.201(c)(3), from January 1, 2014 to December 31, 2014, for any circumstance in which the OCC may require a national bank or Federal savings association to calculate risk-based capital requirements for specific positions or portfolios under subpart D of this part, the OCC will instead require the national bank or Federal savings association to make such calculations according to appendix A to this part and, if applicable, subpart F of this part (national banks), or 12 CFR part 167 and, if applicable, subpart F of this part (Federal savings associations).

ital ratios in accordance with subparts A, B, and C of this part, provided, however, that such national bank or Federal savings association must:

(A) From January 1, 2014 to December 31, 2014, maintain a minimum common equity tier 1 capital ratio of 4 percent, a minimum tier 1 capital ratio of 5.5 percent, a minimum total capital ratio of 8 percent, and a minimum leverage ratio of 4 percent; and

(B) From January 1, 2015 to December 31, 2017, an advanced approaches national bank or Federal savings association:

(1) Is not required to maintain a supplementary leverage ratio; and

(2) Must calculate a supplementary leverage ratio in accordance with § 3.10(c), and must report the calculated supplementary leverage ratio on any applicable regulatory reports.

(2) Subject to the transition provisions in subpart G of this part, a national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association or a savings and loan holding company that is an advanced approaches national bank or Federal savings association must:

(i) Beginning on January 1, 2015, calculate standardized total risk-weighted assets in accordance with subpart D, and if applicable, subpart F of this part; and

(ii) Beginning on January 1, 2015, calculate and maintain minimum capital ratios in accordance with subparts A, B and C of this part, provided, however, that from January 1, 2015 to December 31, 2017, a savings and loan holding company that is an advanced approaches national bank or Federal savings association:

(A) Is not required to maintain a supplementary leverage ratio; and

(B) Must calculate a supplementary leverage ratio in accordance with § 3.10(c), and must report the calculated supplementary leverage ratio on any applicable regulatory reports.

(3) Beginning on January 1, 2016, and subject to the transition provisions in subpart G of this part, a national bank or Federal savings association is subject to limitations on distributions and discretionary bonus payments with respect to its capital conservation buffer

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and any applicable countercyclical capital buffer amount, in accordance with subpart B of this part.

(4) No national bank or Federal savings association that is not an advanced approaches bank or advanced approaches savings association is subject to this part 3 until January 1, 2015.

§ 3.2 Definitions.

As used in this part:

Additional tier 1 capital is defined in § 3.20(c).

Advanced approaches national bank or Federal savings association means a national bank or Federal savings association that is described in § 3.100(b)(1).

Advanced approaches total risk-weighted assets means:

- (1) The sum of:
 - (i) Credit-risk-weighted assets;
 - (ii) Credit valuation adjustment (CVA) risk-weighted assets;
 - (iii) Risk-weighted assets for operational risk; and
 - (iv) For a market risk national bank or Federal savings association only, advanced market risk-weighted assets; minus
- (2) Excess eligible credit reserves not included in the national bank's or Federal savings association's tier 2 capital.

Advanced market risk-weighted assets means the advanced measure for market risk calculated under § 3.204 multiplied by 12.5.

Affiliate with respect to a company, means any company that controls, is controlled by, or is under common control with, the company.

Allocated transfer risk reserves means reserves that have been established in accordance with section 905(a) of the International Lending Supervision Act, against certain assets whose value U.S. supervisory authorities have found to be significantly impaired by protracted transfer risk problems.

Allowances for loan and lease losses (ALLL) means valuation allowances that have been established through a charge against earnings to cover estimated credit losses on loans, lease financing receivables or other extensions of credit as determined in accordance with GAAP. ALLL excludes "allocated transfer risk reserves." For purposes of this part, ALLL includes allowances that have been established through a

charge against earnings to cover estimated credit losses associated with off-balance sheet credit exposures as determined in accordance with GAAP.

Asset-backed commercial paper (ABCP) program means a program established primarily for the purpose of issuing commercial paper that is investment grade and backed by underlying exposures held in a bankruptcy-remote special purpose entity (SPE).

Asset-backed commercial paper (ABCP) program sponsor means a national bank or Federal savings association that:

- (1) Establishes an ABCP program;
- (2) Approves the sellers permitted to participate in an ABCP program;
- (3) Approves the exposures to be purchased by an ABCP program; or
- (4) Administers the ABCP program by monitoring the underlying exposures, underwriting or otherwise arranging for the placement of debt or other obligations issued by the program, compiling monthly reports, or ensuring compliance with the program documents and with the program's credit and investment policy.

Bank holding company means a bank holding company as defined in section 2 of the Bank Holding Company Act.

Bank Holding Company Act means the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*).

Bankruptcy remote means, with respect to an entity or asset, that the entity or asset would be excluded from an insolvent entity's estate in receivership, insolvency, liquidation, or similar proceeding.

Call Report means Consolidated Reports of Condition and Income.

Carrying value means, with respect to an asset, the value of the asset on the balance sheet of the national bank or Federal savings association, determined in accordance with GAAP.

Central counterparty (CCP) means a counterparty (for example, a clearing house) that facilitates trades between counterparties in one or more financial markets by either guaranteeing trades or novating contracts.

CFTC means the U.S. Commodity Futures Trading Commission.

Clean-up call means a contractual provision that permits an originating national bank or Federal savings association or servicer to call