

(e) *Change in circumstances.* If, after the OCC's decision in paragraph (c) of this section, there is a change in the circumstances affecting the national bank's or Federal savings association's capital adequacy or its ability to reach the required minimum capital ratios by the specified date, the national bank or Federal savings association may propose to the OCC, or the OCC may propose to the national bank or Federal savings association, a change in the minimum capital ratios for the national bank or Federal savings association, the date when the minimums must be achieved, or the national bank's or Federal savings association's plan (if applicable). The OCC 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 OCC's original decision and any plan required under that decision shall continue in full force and effect.

#### § 3.405 Relation to other actions.

In lieu of, or in addition to, the procedures in this subpart, the required minimum capital ratios for a national bank or Federal savings association 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 for national banks and 12 CFR part 109 for Federal savings associations) or as a condition for approval of an application.

### Subpart I—Enforcement

SOURCE: 78 FR 62269, Oct. 11, 2013, unless otherwise noted.

#### § 3.501 Remedies.

A national bank or Federal savings association that does not have or maintain the minimum capital ratios applicable to it, whether required in subpart B of this part, in a decision pursuant to subpart H of this part, in a written agreement or temporary or final order under 12 U.S.C. 1818 (b) or (c), or in a condition for approval of an application, or a national bank or Federal savings association that has failed to submit or comply with an acceptable plan to attain those ratios, will be subject

to such administrative action or sanctions as the OCC considers appropriate. These sanctions may include the issuance of a Directive pursuant to subpart J of this part or other enforcement action, assessment of civil money penalties, and/or the denial, conditioning, or revocation of applications. A national bank's or Federal savings association's failure to achieve or maintain minimum capital ratios in subpart B of this part may also be the basis for an action by the Federal Deposit Insurance Corporation

### Subpart J—Issuance of a Directive

SOURCE: 78 FR 62269, Oct. 11, 2013, unless otherwise noted.

#### § 3.601 Purpose and scope.

(a) This subpart is applicable to proceedings by the OCC to issue a directive under 12 U.S.C. 3907(b)(2) or 12 U.S.C. 1464(s), as appropriate. A directive is an order issued to a national bank or Federal savings association that does not have or maintain capital at or above the minimum ratios set forth in subpart B of this part, or established for the national bank or Federal savings association under subpart H of this part, 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 national bank or Federal savings association to:

- (1) Achieve the minimum capital ratios applicable to it by a specified date;
- (2) Adhere to a previously submitted plan to achieve the applicable capital ratios;
- (3) Submit and adhere to a plan acceptable to the OCC describing the means and time schedule by which the national bank or Federal savings association shall achieve the applicable capital ratios;
- (4) 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
- (5) A combination of any of these or similar actions.

(b) 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

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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).

### § 3.602 Notice of intent to issue a directive.

The OCC will notify a national bank or Federal savings association 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.

### § 3.603 Response to notice.

(a) A national bank or Federal savings association 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 national bank or Federal savings association would have the OCC 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 national bank or Federal savings association. The response must be in writing and delivered to the designated OCC official within 30 days after the date on which the national bank or Federal savings association received the notice. The OCC may shorten the 30-day time period:

(1) When, in the opinion of the OCC, the condition of the national bank or Federal savings association so requires, provided that the national bank or Federal savings association shall be informed promptly of the new time period;

(2) With the consent of the national bank or Federal savings association; or

(3) When the national bank or Federal savings association already has advised the OCC that it cannot or will not achieve its applicable minimum capital ratios.

(b) In its discretion, the OCC may extend the time period for good cause.

(c) Failure to respond within 30 days or such other time period as may be

specified by the OCC shall constitute a waiver of any objections to the proposed directive.

### § 3.604 Decision.

After the closing date of the national bank's or Federal savings association's response period, or receipt of the national bank's or Federal savings association's response, if earlier, the OCC will consider the national bank's or Federal savings association's response, and may seek additional information or clarification of the response. Thereafter, the OCC will determine whether or not to issue a directive, and if one is to be issued, whether it should be as originally proposed or in modified form.

### § 3.605 Issuance of a directive.

(a) A directive will be served by delivery to the national bank or Federal savings association. It will include or be accompanied by a statement of reasons for its issuance.

(b) A directive is effective immediately upon its receipt by the national bank or Federal savings association, or upon such later date as may be specified therein, and shall remain effective and enforceable until it is stayed, modified, or terminated by the OCC.

### § 3.606 Change in circumstances.

Upon a change in circumstances, a national bank or Federal savings association may request the OCC to reconsider the terms of its directive or may propose changes in the plan to achieve the national bank's or Federal savings association's applicable minimum capital ratios. The OCC also may take such action on its own motion. The OCC may decline to consider requests or proposals that are not based on a significant change in circumstances or are repetitive or frivolous. Pending a decision on reconsideration, the directive and plan shall continue in full force and effect.

### § 3.607 Relation to other administrative actions.

A directive may be issued in addition to, or in lieu of, any other action authorized by law, including cease and desist proceedings, civil money penalties, or the conditioning or denial of