(i) The banking organization must consolidate the VIE on its balance sheet beginning as of the implementation date as a result of its implementation of FAS 167, and
(ii) The banking organization excludes all assets held by VIEs described in paragraphs C.1.a.1. (i) through (iii) of this section IV.C.1.a.1; and
(iii) Subject to the limitations in section IV.C.3, assets held by a VIE that is a consolidated ABCP program, provided that the following conditions are met:
   (1) The banking organization is the sponsor of the ABCP program,
   (2) Prior to the implementation date, the banking organization consolidated the VIE onto its balance sheet under GAAP and excluded the VIE’s assets from the banking organization’s risk-weighted assets, and
   (3) The banking organization chooses to exclude all assets held by ABCP program VIEs described in paragraphs (i) and (ii) of this section IV.C.1.a.

b. Risk-weighted assets during exclusion period. During the exclusion period, including the two calendar quarter-end regulatory report dates during the exclusion period, a banking organization adopting the optional provisions in section IV.C.1.a must calculate risk-weighted assets for its contractual exposures to the VIEs referenced in section IV.C.1.a on the implementation date and include this calculated amount in its risk-weighted assets. Such contractual exposures may include direct-credit substitutes, recourse obligations, residual interests, liquidity facilities, and loans.

c. Inclusion of allowance for loan and lease losses in tier 2 capital for the first and second quarters. During the exclusion period, including for the two calendar quarter-end regulatory report dates within the exclusion period, a banking organization that excludes VIE assets from risk-weighted assets pursuant to section IV.C.1.a may include in tier 2 capital the full amount of the allowance for loan and lease losses (ALLL) calculated as of the implementation date that is attributable to the assets it excludes pursuant to section IV.C.1.a (inclusion amount). The amount of ALLL includable in tier 2 capital in accordance with this paragraph shall not be subject to the limitations set forth in section II.A.2.a of this Appendix.

2. Phase-In Period

a. Exclusion amount. For purposes of this section IV.C., exclusion amount is defined as the amount of risk-weighted assets excluded in section IV.C.1.a as of the implementation date.

b. Risk-weighted assets for the third and fourth quarters. A banking organization that excludes assets of consolidated VIEs from risk-weighted assets pursuant to section IV.C.1.a, may, for the third and fourth quarters after the implementation date (phase-in period), including for the two calendar quarter-end regulatory report dates within those quarters, exclude from risk-weighted assets 50 percent of the exclusion amount, provided that the banking organization may not include in risk-weighted assets pursuant to this paragraph an amount less than the aggregate risk-weighted assets calculated pursuant to section IV.C.1.b.

c. Inclusion of ALLL in tier 2 capital for the third and fourth quarters. A banking organization that excludes assets of consolidated VIEs from risk-weighted assets pursuant to section IV.C.2.b, may, for the phase-in period, include in tier 2 capital 50 percent of the inclusion amount it included in tier 2 capital during the exclusion period, notwithstanding the limit on including ALLL in tier 2 capital in section II.A.2.a. of this Appendix.

3. Implicit recourse limitation. Notwithstanding any other provision in this section IV.C., assets held by a VIE to which the banking organization has provided recourse through credit enhancement beyond any contractual obligation to support assets it has sold may not be excluded from risk-weighted assets.

(Reg. Y, 54 FR 4209, Jan. 27, 1989)

EDITORIAL NOTE: For Federal Register citations affecting appendix A to part 225, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

EFFECTIVE DATE NOTE: At 78 FR 62291, Oct. 11, 2013, appendix A was removed and reserved, effective Jan. 1, 2019.

APPENDIX B TO PART 225 [RESERVED]

APPENDIX C TO PART 225—SMALL BANK HOLDING COMPANY POLICY STATEMENT

Policy Statement on Assessment of Financial and Managerial Factors

In acting on applications filed under the Bank Holding Company Act, the Board has adopted, and continues to follow, the principle that bank holding companies should serve as a source of strength for their subsidiary banks. When bank holding companies incur debt and rely upon the earnings of their subsidiary banks as the means of repaying such debt, a question arises as to the probable effect upon the financial condition of the holding company and its subsidiary bank or banks.

The Board believes that a high level of debt at the parent holding company impairs the ability of a bank holding company to provide financial assistance to its subsidiary bank(s) and, in some cases, the servicing requirements on such debt may be a significant drain on the resources of the bank(s). For these reasons, the Board has not favored the use of acquisition debt in the formation
of bank holding companies or in the acquisition of additional banks. Nevertheless, the Board has recognized that the transfer of ownership of small banks often requires the use of acquisition debt. The Board, therefore, has permitted the formation and expansion of small bank holding companies with debt levels higher than would be permitted for larger holding companies. Approval of these applications has been given on the condition that small bank holding companies demonstrate the ability to service acquisition debt without straining the capital of their subsidiary banks and, further, that such companies restore their ability to serve as a source of strength for their subsidiary banks within a relatively short period of time.

In the interest of continuing its policy of facilitating the transfer of ownership in banks without compromising bank safety and soundness, the Board has, as described below, adopted the following procedures and standards for the formation and expansion of small bank holding companies subject to this policy statement.

1. APPLICABILITY OF POLICY STATEMENT

This policy statement applies only to bank holding companies with pro forma consolidated assets of less than $500 million that (i) are not engaged in significant nonbanking activities either directly or through a nonbank subsidiary; (ii) do not conduct significant off-balance sheet activities (including securitization and asset management or administration) either directly or through a nonbank subsidiary; and (iii) do not have a material amount of debt or equity securities outstanding (other than trust preferred securities) that are registered with the Securities and Exchange Commission. The Board may, in its discretion exclude any bank holding company, regardless of asset size, from the policy statement if such action is warranted for supervisory purposes.1

While this policy statement primarily applies to the formation of small bank holding companies, it also applies to existing small bank holding companies that wish to acquire an additional bank or company and to transactions involving changes in control, stock redemptions, or other shareholder transactions.2

2. ONGOING REQUIREMENTS

The following guidelines must be followed on an ongoing basis for all organizations operating under this policy statement.

A. Reduction in parent company leverage: Small bank holding companies are to reduce their parent company debt consistent with the requirement that all debt be retired within 25 years of being incurred. The Board also expects that these bank holding companies reach a debt to equity ratio of .30:1 or less within 12 years of the incurrence of the debt.3 The bank holding company must also

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1 The term debt, as used in the ratio of debt to equity, means any borrowed funds (exclusive of short-term borrowings that arise out of current transactions, the proceeds of which are used for current transactions), and any securities issued by, or obligations of, the holding company that are the functional equivalent of borrowed funds.

2 The appropriate Reserve Bank should be contacted to determine the manner in which a specific situation may qualify for treatment under this policy statement.

3 The term debt, as used in the ratio of debt to equity, means any borrowed funds (exclusive of short-term borrowings that arise out of current transactions, the proceeds of which are used for current transactions), and any securities issued by, or obligations of, the holding company that are the functional equivalent of borrowed funds.

Subordinated debt associated with trust preferred securities generally would be treated as debt for purposes of paragraphs 2.C., 3.A., 4.A.i., and 4.B.i. of this policy statement. A bank holding company, however, may exclude from debt an amount of subordinated debt associated with trust preferred securities up to 25 percent of the holding company’s equity (as defined below) less goodwill on the parent company’s balance sheet in determining compliance with the requirements of such paragraphs of the policy statement. In addition, a bank holding company subject to this policy statement that has not issued subordinated debt associated with a new issuance of trust preferred securities after December 31, 2005, may exclude from debt any subordinated debt associated with trust preferred securities until December 31, 2010. Bank holding companies subject to this policy statement also may exclude from debt any subordinated debt associated with refinanced issuances of trust preferred securities originally issued on or prior to December 31, 2005, provided that the refinancing does not increase the bank holding company’s outstanding amount of subordinated debt. Subordinated debt associated with trust preferred securities will not be included as debt in determining compliance with any other requirements of this policy statement.

In addition, notwithstanding any other provision of this policy statement and for purposes of compliance with paragraphs 2.C., 3.A., 4.A.i., and 4.B.i. of this policy statement, both a bank holding company that is organized in mutual form and a bank holding company that has made a valid election to be taxed under Subchapter S of Chapter 1 of the U.S. Internal Revenue Code may exclude from debt subordinated debentures issued to the United States Department of the Treasury under (i) the Troubled Asset Relief Program established by the Emergency Economic Stabilization Act of 2008, Division A of Public Law 110–343, 122 Stat. 3765 (2008), and (ii) the Small Business Lending Fund established by the Small Business Jobs Act of [25x20]
comply with debt servicing and other requirements imposed by its creditors.

B. Capital adequacy: Each insured depository subsidiary of a small bank holding company is expected to be well-capitalized. Any institution that is not well-capitalized is expected to become well-capitalized within a brief period of time.

C. Dividend restrictions: A small bank holding company whose debt to equity ratio is greater than 1.0:1 is not expected to pay corporate dividends until such time as it reduces its debt to equity ratio to 1.0:1 or less and otherwise meets the criteria set forth in §§225.14(c)(1)(ii), 225.14(c)(2), and 225.14(c)(7) of Regulation Y. 4

Small bank holding companies formed before the effective date of this policy statement may switch to a plan that adheres to the intent of this statement provided they comply with the requirements set forth above.

3. CORE REQUIREMENTS FOR ALL APPLICANTS

In assessing applications or notices by organizations subject to this policy statement, the Board will continue to take into account a full range of financial and other information about the applicant, and its current and proposed subsidiaries, including the recent trend and stability of earnings, past and prospective growth, asset quality, the ability to meet debt servicing requirements without placing an undue strain on the resources of the bank(s), and the record and competency of management. In addition, the Board will require applicants to meet the following requirements:

A. Minimum down payment: The amount of acquisition debt should not exceed 75 percent of the purchase price of the bank(s) or company to be acquired. When the owner(s) of the holding company incurs debt to finance the purchase of the bank(s) or company, such debt will be considered acquisition debt even though it does not represent an obligation of the bank holding company, unless the owner(s) can demonstrate that such debt can be serviced without reliance on the resources of the bank(s) or bank holding company.

B. Ability to reduce parent company leverage: The bank holding company must clearly be able to reduce its debt to equity ratio and comply with its loan agreement(s) as set forth in paragraph 2A above.

Failure to meet the criteria in this section would normally result in denial of an application.

4. ADDITIONAL APPLICATION REQUIREMENTS FOR EXPEDITED/WAIVED PROCESSING

A. Expeditied notices under §§225.14 and 225.23 of Regulation Y: A small bank holding company proposal will be eligible for the expedited processing procedures set forth in §§225.14 and 225.23 of Regulation Y if the bank holding company meets the core requirements for all applicants noted above, and the following requirements are met:

i. The parent bank holding company has a pro forma debt to equity ratio of 1.0:1 or less.

ii. The bank holding company meets all of the criteria for expedited action set forth in §§225.14 or 225.23 of Regulation Y.

B. Waiver of stock redemption filing: A small bank holding company will be eligible for the stock redemption filing exception for well-capitalized bank holding companies contained in §225.4(b)(6) if the following requirements are met:

i. The parent bank holding company has a pro forma debt to equity ratio of 1.0:1 or less.
APPENDIX D TO PART 225—CAPITAL ADEQUACY GUIDELINES FOR BANK HOLDING COMPANIES: TIER 1 LEVERAGE MEASURE

I. OVERVIEW

a. The Board of Governors of the Federal Reserve System has adopted a minimum ratio of Tier 1 capital to total assets to assist in the assessment of the capital adequacy of bank holding companies (banking organizations). The principal objectives of this measure is to place a constraint on the maximum degree to which a banking organization can leverage its equity capital base. It is intended to be used as a supplement to the risk-based capital measure.

b. The tier 1 leverage guidelines apply on a consolidated basis to any bank holding company with consolidated assets of $500 million or more. The tier 1 leverage guidelines also apply on a consolidated basis to any bank holding company with consolidated assets of less than $500 million if the holding company (i) is engaged in significant nonbanking activities either directly or through a nonbank subsidiary; (ii) conducts significant off-balance-sheet activities (including securitization and asset management or administration) either directly or through a nonbank subsidiary; or (iii) has a material amount of debt or equity securities outstanding (other than trust preferred securities) that are registered with the Securities and Exchange Commission. The Federal Reserve may apply the tier 1 leverage guidelines at its discretion to any bank holding company, regardless of asset size, if such action is warranted for supervisory purposes.

c. The tier 1 leverage guidelines are to be used in the inspection and supervisory process as well as in the analysis of applications acted upon by the Federal Reserve. The Board will review the guidelines from time to time and will consider the need for possible adjustments in light of any significant changes in the economy, financial markets, and banking practices.

1 Supervisory ratios that related capital to total assets for state member banks are outlined in appendix B of this part.

2 [Reserved]