credit derivative as a covered position under subpart F, in which case the national bank or Federal savings association must compute a supplemental counterparty credit risk capital requirement under this section.

(d) *Counterparty credit risk for OTC equity derivatives.* (1) A national bank or Federal savings association must treat an OTC equity derivative contract as an equity exposure and compute a risk-weighted asset amount for the OTC equity derivative contract under §§ 3.51 through 3.53 (unless the national bank or Federal savings association is treating the contract as a covered position under subpart F of this part).

(2) In addition, the national bank or Federal savings association must also calculate a risk-based capital requirement for the counterparty credit risk of an OTC equity derivative contract under this section if the national bank or Federal savings association is treating the contract as a covered position under subpart F of this part.

(3) If the national bank or Federal savings association risk weights the contract under the Simple Risk-Weight Approach (SRWA) in § 3.52, the national bank or Federal savings association may choose not to hold risk-based capital against the counterparty credit risk of the OTC equity derivative contract, as long as it does so for all such contracts. Where the OTC equity derivative contracts are subject to a qualified master netting agreement, a national bank or Federal savings association using the SRWA must either include all or exclude all of the contracts from any measure used to determine counterparty credit risk exposure.

(e) *Clearing member national bank's or Federal savings association's exposure amount.* A clearing member national bank's or Federal savings association's exposure amount for an OTC derivative contract or netting set of OTC derivative contracts where the national bank or Federal savings association is either acting as a financial intermediary and enters into an offsetting transaction with a QCCP or where the national bank or Federal savings association provides a guarantee to the QCCP on the performance of the client equals the exposure amount calculated according to paragraph (a)(1) or (2) of this section multiplied by the scaling factor 0.71. If the national bank or Federal savings association determines that a longer period is appropriate, the national bank or Federal savings association must use a larger scaling factor to adjust for a longer holding period as follows:

$$\text{Scaling factor} = \sqrt{\frac{H}{10}}$$

where

H = the holding period greater than five days. Additionally, the OCC may require the national bank or Federal savings association to set a longer holding period if the OCC determines that a longer period is appropriate due to the nature, structure, or characteristics of the transaction or is commensurate with the risks associated with the transaction.

§ 3.35 Cleared transactions.

(a) *General requirements*—(1) *Clearing member clients.* A national bank or Federal savings association that is a clearing member client must use the methodologies described in paragraph (b) of this section to calculate risk-weighted assets for a cleared transaction.

(2) *Clearing members.* A national bank or Federal savings association that is a clearing member must use the methodologies described in paragraph (c) of this section to calculate its risk-weighted assets for a cleared transaction and paragraph (d) of this section to calculate its risk-weighted assets for its default fund contribution to a CCP.

(b) *Clearing member client national banks or Federal savings associations*—(1) *Risk-weighted assets for cleared transactions.* (i) To determine the risk-weighted asset amount for a cleared transaction, a national bank or Federal

savings association that is a clearing member client must multiply the trade exposure amount for the cleared transaction, calculated in accordance with paragraph (b)(2) of this section, by the risk weight appropriate for the cleared transaction, determined in accordance with paragraph (b)(3) of this section.

(ii) A clearing member client national bank's or Federal savings association's total risk-weighted assets for cleared transactions is the sum of the risk-weighted asset amounts for all its cleared transactions.

(2) *Trade exposure amount.* (i) For a cleared transaction that is either a derivative contract or a netting set of derivative contracts, the trade exposure amount equals:

(A) The exposure amount for the derivative contract or netting set of derivative contracts, calculated using the methodology used to calculate exposure amount for OTC derivative contracts under § 3.34; plus

(B) The fair value of the collateral posted by the clearing member client national bank or Federal savings association and held by the CCP, clearing member, or custodian in a manner that is not bankruptcy remote.

(ii) For a cleared transaction that is a repo-style transaction or netting set of repo-style transactions, the trade exposure amount equals:

(A) The exposure amount for the repo-style transaction calculated using the methodologies under § 3.37(c); plus

(B) The fair value of the collateral posted by the clearing member client national bank or Federal savings association and held by the CCP, clearing member, or custodian in a manner that is not bankruptcy remote.

(3) *Cleared transaction risk weights.* (i) For a cleared transaction with a QCCP, a clearing member client national bank or Federal savings association must apply a risk weight of:

(A) 2 percent if the collateral posted by the national bank or Federal savings association to the QCCP or clearing member is subject to an arrangement that prevents any losses to the clearing member client national bank or Federal savings association due to the joint default or a concurrent insolvency, liquidation, or receivership proceeding of the clearing member and any other clearing member clients of the clearing member; and the clearing member client national bank or Federal savings association has conducted sufficient legal review to conclude with a well-founded basis (and maintains sufficient written documentation of that legal review) that in the event of a legal challenge (including one resulting from an event of default or from liquidation, insolvency, or receivership proceedings) the relevant court and administrative authorities would find the arrangements to be legal, valid, binding and enforceable under the law of the relevant jurisdictions; or

(B) 4 percent if the requirements of §3.35(b)(3)(A) are not met.

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member client national bank or Federal savings association must apply the risk weight appropriate for the CCP according to § 3.32.

(4) *Collateral.* (i) Notwithstanding any other requirements in this section, collateral posted by a clearing member client national bank or Federal savings association that is held by a custodian (in its capacity as custodian) in a manner that is bankruptcy remote from the CCP, the custodian, clearing member and other clearing member clients of the clearing member, is not subject to a capital requirement under this section.

(ii) A clearing member client national bank or Federal savings association must calculate a risk-weighted asset amount for any collateral provided to a CCP, clearing member, or custodian in connection with a cleared transaction in accordance with the requirements under § 3.32.

(c) *Clearing member national banks or Federal savings associations*—(1) *Risk-weighted assets for cleared transactions.*

(i) To determine the risk-weighted asset amount for a cleared transaction, a clearing member national bank or Federal savings association must multiply the trade exposure amount for the cleared transaction, calculated in accordance with paragraph (c)(2) of this section, by the risk weight appropriate for the cleared transaction, determined in accordance with paragraph (c)(3) of this section.

(ii) A clearing member national bank's or Federal savings association's total risk-weighted assets for cleared transactions is the sum of the risk-weighted asset amounts for all of its cleared transactions.

(2) *Trade exposure amount.* A clearing member national bank or Federal savings association must calculate its trade exposure amount for a cleared transaction as follows:

(i) For a cleared transaction that is either a derivative contract or a netting set of derivative contracts, the trade exposure amount equals:

(A) The exposure amount for the derivative contract, calculated using the methodology to calculate exposure amount for OTC derivative contracts under § 3.34; plus

(B) The fair value of the collateral posted by the clearing member national bank or Federal savings association and held by the CCP in a manner that is not bankruptcy remote.

(ii) For a cleared transaction that is a repo-style transaction or netting set of repo-style transactions, trade exposure amount equals:

(A) The exposure amount for repo-style transactions calculated using methodologies under § 3.37(c); plus

(B) The fair value of the collateral posted by the clearing member national bank or Federal savings association and held by the CCP in a manner that is not bankruptcy remote.

(3) *Cleared transaction risk weight.* (i) A clearing member national bank or Federal savings association must apply a risk weight of 2 percent to the trade exposure amount for a cleared transaction with a QCCP.

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member national bank or Federal savings association must apply the risk weight appropriate for the CCP according to § 3.32.

(4) *Collateral.* (i) Notwithstanding any other requirement in this section, collateral posted by a clearing member national bank or Federal savings association that is held by a custodian in a manner that is bankruptcy remote from the CCP is not subject to a capital requirement under this section.

(ii) A clearing member national bank or Federal savings association must calculate a risk-weighted asset amount for any collateral provided to a CCP, clearing member, or a custodian in connection with a cleared transaction in accordance with requirements under § 3.32.

(d) *Default fund contributions.* (1) *General requirement.* A clearing member national bank or Federal savings association must determine the risk-weighted asset amount for a default fund contribution to a CCP at least quarterly, or more frequently if, in the opinion of the national bank or Federal savings association or the OCC, there is a material change in the financial condition of the CCP.

(2) *Risk-weighted asset amount for default fund contributions to non-qualifying CCPs.* A clearing member national bank's or Federal savings association's risk-weighted asset amount for default fund contributions to CCPs that are not QCCPs equals the sum of such default fund contributions multiplied by 1,250 percent, or an amount determined by the OCC, based on factors such as size, structure and membership characteristics of the CCP and riskiness of its transactions, in cases where such default fund contributions may be unlimited.

(3) *Risk-weighted asset amount for default fund contributions to QCCPs.* A clearing member national bank's or Federal savings association's risk-weighted asset amount for default fund contributions to QCCPs equals the sum of its capital requirement, K_{CM} for each QCCP, as calculated under the methodology set forth in paragraphs (d)(3)(i) through (iii) of this section (Method 1), multiplied by 1,250 percent or in paragraphs (d)(3)(iv) of this section (Method 2).

(i) *Method 1.* The hypothetical capital requirement of a QCCP (K_{CCP}) equals:

$$K_{CCP} = \sum_{clearing\ member\ i} \max\left(EBRM_i - VM_i - IM_i - DF_i; 0\right) \times RW \times 0.08$$

(A) $EBRM_i$ = the exposure amount for each transaction cleared through the QCCP by clearing member i, calculated in accordance with §3.34 for OTC derivative contracts and §3.37(c)(2) for repo-style transactions, provided that:

(*1*) For purposes of this section, in calculating the exposure amount the national bank or Federal savings association may replace the formula provided in §3.34(a)(2)(ii) with the following: Anet = (0.15 × Agross) + (0.85 × NGR × Agross); and

(*2*) For option derivative contracts that are cleared transactions, the PFE described in §3.34(a)(1)(ii) must be adjusted by multiplying the notional principal amount of the derivative contract by the appropriate conversion factor in Table 1 to §3.34 and the absolute value of the option's delta, that is, the ratio of the change in the value of the derivative contract to the corresponding change in the price of the underlying asset.

(*3*) For repo-style transactions, when applying §3.37(c)(2), the national bank or Federal savings association must use the methodology in §3.37(c)(3);

(B) VM_i = any collateral posted by clearing member i to the QCCP that it is entitled to receive from the QCCP, but has not yet received, and any collateral that the QCCP has actually received from clearing member i;

(C) IM_i = the collateral posted as initial margin by clearing member i to the QCCP;

(D) DF_i = the funded portion of clearing member i's default fund contribution that will be applied to reduce the QCCP's loss upon a default by clearing member i;

(E) RW = 20 percent, except when the OCC has determined that a higher risk weight is more appropriate based on the specific characteristics of the QCCP and its clearing members; and

(F) Where a QCCP has provided its K_{CCP}, a national bank or Federal savings association must rely on such disclosed figure instead of calculating K_{CCP} under this paragraph (d), unless the national bank or Federal savings association determines that a more conservative figure is appropriate based on the nature, structure, or characteristics of the QCCP.

(ii) For a national bank or Federal savings association that is a clearing member of a QCCP with a default fund supported by funded commitments, K_{CM} equals:

$$K_{CM_i} = \left(1 + \beta \cdot \frac{N}{N-2}\right) \cdot \frac{DF_i}{DF_{CM}} \cdot K^*_{CM}$$

$$K^*_{CM} = \begin{cases} c_2 \cdot \mu \cdot (K_{CCP} - DF') + c_2 \cdot DF'_{CM} & if \quad DF' < K_{CCP} \quad (i) \\ c_2 \cdot (K_{CCP} - DF_{CCP}) + c_1 \cdot (DF' - K_{CCP}) & if \quad DF_{CCP} < K_{CCP} \le DF' \quad (ii) \\ c_1 \cdot DF'_{CM} & if \quad K_{CCP} \le DF_{CCP} \quad (iii) \end{cases}$$

Where

(A) $$\beta = \frac{A_{Net,1} + A_{Net,2}}{\sum_i A_{Net,i}}$$

Subscripts 1 and 2 denote the clearing members with the two largest A_{Net} values. For purposes of this paragraph (d), for derivatives A_{Net} is defined in §3.34(a)(2)(ii) and for repo-style transactions, A_{Net} means the exposure amount as defined in §3.37(c)(2) using the methodology in §3.37(c)(3);

(B) N = the number of clearing members in the QCCP;

(C) DF_{CCP} = the QCCP's own funds and other financial resources that would be used to cover its losses before clearing members' default fund contributions are used to cover losses;

(D) DF_{CM} = funded default fund contributions from all clearing members and any other clearing member contributed financial resources that are available to absorb mutualized QCCP losses;

(E) $DF = DF_{CCP} + DF_{CM}$ (that is, the total funded default fund contribution);

(F) $\overline{DF_i}$ = average $\overline{DF_i}$ = the average funded default fund contribution from an individual clearing member;

(G) $DF'_{CM} = DF_{CM} - 2 \cdot \overline{DF_i} = \sum_i DF_i - 2 \cdot \overline{DF_i}$ (that is, the funded default fund contribution from surviving clearing members assuming that two average clearing members have defaulted and their default fund contributions and initial margins have been used to absorb the resulting losses);

(H) $DF' = DF_{CCP} + DF'_{CM} = DF - 2 \cdot \overline{DF_i}$

(that is, the total funded default fund contributions from the QCCP and the surviving clearing members that are available to mutualize losses, assuming that two average clearing members have defaulted);

(I) $c_1 = Max\left\{\frac{1.6\%}{(DF'/K_{CCP})^{0.3}}; 0.16\%\right\}$

(that is, a decreasing capital factor, between 1.6 percent and 0.16 percent, applied to the excess funded default funds provided by clearing members);

(J) c_2 = 100 percent; and

(K) μ= 1.2;

(iii) (A) For a [BANK] that is a clearing member of a QCCP with a default fund supported by unfunded commitments, K_{CM} equals:

$$K_{CM_i} = \frac{DF_i}{DF_{CM}} \cdot K^*_{CM}$$

Where:

(*1*) DF_i = the national bank's or Federal savings association's unfunded commitment to the default fund;

(*2*) DF_{CM} = the total of all clearing members' unfunded commitment to the default fund; and

(*3*) K^*_{CM} as defined in paragraph (d)(3)(ii) of this section.

(B) For a national bank or Federal savings association that is a clearing member of a QCCP with a default fund supported by unfunded commitments and is unable to calculate K_{CM} using the methodology described in paragraph (d)(3)(iii) of this section, K_{CM} equals:

$$K_{CM_i} = \frac{IM_i}{IM_{CM}} \cdot K^*_{CM}$$

Where:

(*1*) IM_i = the national bank's or Federal savings association's initial margin posted to the QCCP;

(*2*) IM_{CM} = the total of initial margin posted to the QCCP; and

(*3*)K^*_{CM} as defined in paragraph (d)(3)(ii) of this section.

(iv) *Method 2.* A clearing member national bank's or Federal savings association's risk-weighted asset amount for its default fund contribution to a QCCP, RWA_{DF}, equals:

RWA_{DF} = Min {12.5 * DF; 0.18 * TE}

Where:

(A) TE = the national bank's or Federal savings association's trade exposure amount to the QCCP, calculated according to section 35(c)(2);

(B) DF = the funded portion of the national bank's or Federal savings association's default fund contribution to the QCCP.

(4) *Total risk-weighted assets for default fund contributions.* Total risk-weighted assets for default fund contributions is the sum of a clearing member national bank's or Federal savings association's risk-weighted assets for all of its default fund contributions to all CCPs of which the national bank or Federal savings association is a clearing member.

§ 3.36 Guarantees and credit derivatives: substitution treatment.

(a) *Scope*—(1) *General.* A national bank or Federal savings association may recognize the credit risk mitigation benefits of an eligible guarantee or eligible credit derivative by substituting the risk weight associated with the protection provider for the risk weight assigned to an exposure, as provided under this section.

(2) This section applies to exposures for which:

(i) Credit risk is fully covered by an eligible guarantee or eligible credit derivative; or

(ii) Credit risk is covered on a pro rata basis (that is, on a basis in which the national bank or Federal savings association and the protection provider share losses proportionately) by an eligible guarantee or eligible credit derivative.

(3) Exposures on which there is a tranching of credit risk (reflecting at least two different levels of seniority) generally are securitization exposures subject to §§ 3.41 through 3.45.

(4) If multiple eligible guarantees or eligible credit derivatives cover a single exposure described in this section, a national bank or Federal savings association may treat the hedged exposure as multiple separate exposures each covered by a single eligible guarantee or eligible credit derivative and may calculate a separate risk-weighted asset amount for each separate exposure as described in paragraph (c) of this section.

(5) If a single eligible guarantee or eligible credit derivative covers multiple hedged exposures described in paragraph (a)(2) of this section, a national bank or Federal savings association must treat each hedged exposure as covered by a separate eligible guarantee or eligible credit derivative and