

(7) The underlying exposures are not owned by a firm an investment in which qualifies as a community development investment under section 24(Eleventh) of the National Bank Act;

(8) The OCC may determine that a transaction in which the underlying exposures are owned by an investment firm that exercises substantially unfettered control over the size and composition of its assets, liabilities, and off-balance sheet exposures is not a traditional securitization based on the transaction's leverage, risk profile, or economic substance;

(9) The OCC may deem a transaction that meets the definition of a traditional securitization, notwithstanding paragraph (5), (6), or (7) of this definition, to be a traditional securitization based on the transaction's leverage, risk profile, or economic substance; and

(10) The transaction is not:

(i) An investment fund;

(ii) A collective investment fund (as defined in 12 CFR 9.18 (national banks), 12 CFR 151.40 (Federal saving associations));

(iii) An employee benefit plan (as defined in paragraphs (3) and (32) of section 3 of ERISA), a "governmental plan" (as defined in 29 U.S.C. 1002(32)) that complies with the tax deferral qualification requirements provided in the Internal Revenue Code, or any similar employee benefit plan established under the laws of a foreign jurisdiction;

(iv) A synthetic exposure to the capital of a financial institution to the extent deducted from capital under § 3.22; or

(v) Registered with the SEC under the Investment Company Act of 1940 (15 U.S.C. 80a-1) or foreign equivalents thereof.

*Tranche* means all securitization exposures associated with a securitization that have the same seniority level.

*Two-way market* means a market where there are independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined within one day and settled at that price within a relatively short

time frame conforming to trade custom.

*Unconditionally cancelable* means with respect to a commitment, that a national bank or Federal savings association may, at any time, with or without cause, refuse to extend credit under the commitment (to the extent permitted under applicable law).

*Underlying exposures* means one or more exposures that have been securitized in a securitization transaction.

*Unregulated financial institution* means, for purposes of § 3.131, a financial institution that is not a regulated financial institution, including any financial institution that would meet the definition of "financial institution" under this section but for the ownership interest thresholds set forth in paragraph (4)(i) of that definition.

*U.S. Government agency* means an instrumentality of the U.S. Government whose obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the U.S. Government.

*Value-at-Risk (VaR)* means the estimate of the maximum amount that the value of one or more exposures could decline due to market price or rate movements during a fixed holding period within a stated confidence interval.

*Wrong-way risk* means the risk that arises when an exposure to a particular counterparty is positively correlated with the probability of default of such counterparty itself.

[78 FR 62157, 62273, Oct. 11, 2013, as amended at 79 FR 44123, July 30, 2014; 79 FR 57740, Sept. 26, 2014; 79 FR 78293, Dec. 30, 2014; 80 FR 41415, July 15, 2015]

### § 3.3 Operational requirements for counterparty credit risk.

For purposes of calculating risk-weighted assets under subparts D and E of this part:

(a) *Cleared transaction*. In order to recognize certain exposures as cleared transactions pursuant to paragraphs (1)(ii), (iii) or (iv) of the definition of "cleared transaction" in § 3.2, the exposures must meet the applicable requirements set forth in this paragraph (a).

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(1) The offsetting transaction must be identified by the CCP as a transaction for the clearing member client.

(2) The collateral supporting the transaction must be held in a manner that prevents the national bank or Federal savings association from facing any loss due to an event of default, including from a liquidation, receivership, insolvency, or similar proceeding of either the clearing member or the clearing member's other clients. Omnibus accounts established under 17 CFR parts 190 and 300 satisfy the requirements of this paragraph (a).

(3) The national bank or Federal savings association must conduct sufficient legal review to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that in the event of a legal challenge (including one resulting from a default or receivership, insolvency, liquidation, or similar proceeding) the relevant court and administrative authorities would find the arrangements of paragraph (a)(2) of this section to be legal, valid, binding and enforceable under the law of the relevant jurisdictions.

(4) The offsetting transaction with a clearing member must be transferable under the transaction documents and applicable laws in the relevant jurisdiction(s) to another clearing member should the clearing member default, become insolvent, or enter receivership, insolvency, liquidation, or similar proceedings.

(b) *Eligible margin loan.* In order to recognize an exposure as an eligible margin loan as defined in §3.2, a national bank or Federal savings association must conduct sufficient legal review to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that the agreement underlying the exposure:

(1) Meets the requirements of paragraph (1)(iii) of the definition of eligible margin loan in §3.2, and

(2) Is legal, valid, binding, and enforceable under applicable law in the relevant jurisdictions.

(c) *Qualifying cross-product master netting agreement.* In order to recognize an agreement as a qualifying cross-product master netting agreement as de-

defined in §3.101, a national bank or Federal savings association must obtain a written legal opinion verifying the validity and enforceability of the agreement under applicable law of the relevant jurisdictions if the counterparty fails to perform upon an event of default, including upon receivership, insolvency, liquidation, or similar proceeding.

(d) *Qualifying master netting agreement.* In order to recognize an agreement as a qualifying master netting agreement as defined in §3.2, a national bank or Federal savings association must:

(1) Conduct sufficient legal review to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that:

(i) The agreement meets the requirements of paragraph (2) of the definition of qualifying master netting agreement in §3.2; and

(ii) In the event of a legal challenge (including one resulting from default or from receivership, insolvency, liquidation, or similar proceeding) the relevant court and administrative authorities would find the agreement to be legal, valid, binding, and enforceable under the law of the relevant jurisdictions; and

(2) Establish and maintain written procedures to monitor possible changes in relevant law and to ensure that the agreement continues to satisfy the requirements of the definition of qualifying master netting agreement in §3.2.

(e) *Repo-style transaction.* In order to recognize an exposure as a repo-style transaction as defined in §3.2, a national bank or Federal savings association must conduct sufficient legal review to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that the agreement underlying the exposure:

(1) Meets the requirements of paragraph (3) of the definition of repo-style transaction in §3.2, and

(2) Is legal, valid, binding, and enforceable under applicable law in the relevant jurisdictions.

(f) *Failure of a QCCP to satisfy the rule's requirements.* If a national bank or Federal savings association determines that a CCP ceases to be a QCCP

due to the failure of the CCP to satisfy one or more of the requirements set forth in paragraphs (2)(i) through (2)(iii) of the definition of a QCCP in § 3.2, the national bank or Federal savings association may continue to treat the CCP as a QCCP for up to three months following the determination. If the CCP fails to remedy the relevant deficiency within three months after the initial determination, or the CCP fails to satisfy the requirements set forth in paragraphs (2)(i) through (2)(iii) of the definition of a QCCP continuously for a three-month period after remedying the relevant deficiency, a national bank or Federal savings association may not treat the CCP as a QCCP for the purposes of this part until after the national bank or Federal savings association has determined that the CCP has satisfied the requirements in paragraphs (2)(i) through (2)(iii) of the definition of a QCCP for three continuous months.

§§ 3.4–3.9 [Reserved]

**Subpart B—Capital Ratio Requirements and Buffers**

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

**§ 3.10 Minimum capital requirements.**

(a) *Minimum capital requirements.* A national bank or Federal savings association must maintain the following minimum capital ratios:

- (1) A common equity tier 1 capital ratio of 4.5 percent.
- (2) A tier 1 capital ratio of 6 percent.
- (3) A total capital ratio of 8 percent.
- (4) A leverage ratio of 4 percent.
- (5) For advanced approaches national banks or Federal savings associations, a supplementary leverage ratio of 3 percent.
- (6) For Federal savings associations, a tangible capital ratio of 1.5 percent.

(b) *Standardized capital ratio calculations.* Other than as provided in paragraph (c) of this section:

(1) *Common equity tier 1 capital ratio.* A national bank's or Federal savings association's common equity tier 1 capital ratio is the ratio of the national bank's or Federal savings association's

common equity tier 1 capital to standardized total risk-weighted assets;

(2) *Tier 1 capital ratio.* A national bank's or Federal savings association's tier 1 capital ratio is the ratio of the national bank's or Federal savings association's tier 1 capital to standardized total risk-weighted assets;

(3) *Total capital ratio.* A national bank's or Federal savings association's total capital ratio is the ratio of the national bank's or Federal savings association's total capital to standardized total risk-weighted assets; and

(4) *Leverage ratio.* A national bank's or Federal savings association's leverage ratio is the ratio of the national bank's or Federal savings association's tier 1 capital to the national bank's or Federal savings association's average total consolidated assets as reported on the national bank's or Federal savings association's Call Report minus amounts deducted from tier 1 capital under § 3.22(a), (c) and (d).

(5) *Federal savings association tangible capital ratio.* A Federal savings association's tangible capital ratio is the ratio of the Federal savings association's core capital (tier 1 capital) to average total assets as calculated under this subpart B. For purposes of this paragraph (b)(5), the term "total assets" means "total assets" as defined in part 6, subpart A of this chapter, subject to subpart G of this part.

(c) *Advanced approaches capital ratio calculations.* An advanced approaches national bank or Federal savings association that has completed the parallel run process and received notification from the OCC pursuant to § 3.121(d) must determine its regulatory capital ratios as described in paragraphs (c)(1) through (3) of this section. An advanced approaches national bank or Federal savings association must determine its supplementary leverage ratio in accordance with paragraph (c)(4) of this section, beginning with the calendar quarter immediately following the quarter in which the national bank or Federal savings association meets any of the criteria in § 3.100(b)(1).

(1) *Common equity tier 1 capital ratio.* The national bank's or Federal savings association's common equity tier 1 capital ratio is the lower of: