

## Comptroller of the Currency, Treasury

## § 6.1

6.25 Enforcement of directive.

AUTHORITY: 12 U.S.C. 93a, 1831o, 5412(b)(2)(B).

SOURCE: 78 FR 62275, Oct. 11, 2013, unless otherwise noted.

### Subpart A—Capital Categories

#### § 6.1 Authority, purpose, scope, other supervisory authority, disclosure of capital categories, and transition procedures.

(a) *Authority.* This part is issued by the Office of the Comptroller of the Currency (OCC) pursuant to section 38 (section 38) of the Federal Deposit Insurance Act (FDI Act) as added by section 131 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102-242, 105 Stat. 2236 (1991)) (12 U.S.C. 1831o).

(b) *Purpose.* Section 38 of the FDI Act establishes a framework of supervisory actions for insured depository institutions that are not adequately capitalized. The principal purpose of this subpart is to define, for insured national banks and insured Federal savings associations, the capital measures and capital levels, and for insured Federal branches, comparable asset-based measures and levels, that are used for determining the supervisory actions authorized under section 38 of the FDI Act. This part 6 also establishes procedures for submission and review of capital restoration plans and for issuance and review of directives and orders pursuant to section 38.

(c) *Scope.* This subpart implements the provisions of section 38 of the FDI Act as they apply to insured national banks, insured Federal branches, and insured Federal savings associations. Certain of these provisions also apply to officers, directors, and employees of these insured institutions. Other provisions apply to any company that controls an insured national bank, insured Federal branch, or insured Federal savings association and to the affiliates of an insured national bank, insured Federal branch, or insured Federal savings association.

(d) *Other supervisory authority.* Neither section 38 nor this part in any way limits the authority of the OCC under any other provision of law to take supervisory actions to address unsafe or

unsound practices, deficient capital levels, violations of law, unsafe or unsound conditions, or other practices. Action under section 38 of the FDI Act and this part may be taken independently of, in conjunction with, or in addition to any other enforcement action available to the OCC, including issuance of cease and desist orders, capital directives, approval or denial of applications or notices, assessment of civil money penalties, or any other actions authorized by law.

(e) *Disclosure of capital categories.* The assignment of an insured national bank, insured Federal branch, or insured Federal savings association under this subpart within a particular capital category is for purposes of implementing and applying the provisions of section 38. Unless permitted by the OCC or otherwise required by law, no national bank or Federal savings association may state in any advertisement or promotional material its capital category under this subpart or that the OCC or any other Federal banking agency has assigned the national bank or Federal savings association to a particular capital category.

(f) *Transition procedures—(1) Definitions applicable before January 1, 2015, for certain national banks and Federal savings associations.* Before January 1, 2015, notwithstanding any other requirement in this subpart and with respect to any national bank that is not an advanced approaches bank and any Federal savings association that is not an advanced approaches Federal savings association:

(i) The definitions of leverage ratio, tangible equity, tier 1 capital, tier 1 risk-based capital, and total risk-based capital as calculated or defined under appendix A to part 3 of this chapter, remain in effect for purposes of this subpart; and

(ii) The definition of total assets means quarterly average total assets as reported in a national bank's or Federal savings association's Consolidated Reports of Condition and Income (Call Report), minus intangible assets except mortgage servicing assets as provided in the definition of tangible equity. The OCC reserves the right to require a national bank or Federal savings association to compute and maintain its

capital ratios on the basis of actual, rather than average, total assets when computing tangible equity.

(2) *Timing.* On January 1, 2015 and thereafter, the calculation of the definitions of common equity tier 1 capital, the common equity tier 1 risk-based capital ratio, the leverage ratio, the supplementary leverage ratio, tangible equity, tier 1 capital, the tier 1 risk-based capital ratio, total assets, total leverage exposure, the total risk-based capital ratio, and total risk-weighted assets under this subpart is subject to the timing provisions at 12 CFR §3.1(f) and the transitions at 12 CFR part 3, subpart G.

#### §6.2 Definitions.

For purposes of this subpart, except as modified in this section or unless the context otherwise requires, the terms used have the same meanings as set forth in section 38 and section 3 of the FDI Act.

*Advanced approaches national bank or advanced approaches Federal savings association* means a national bank or Federal savings association that is subject to subpart E of part 3 of this chapter.

*Common equity tier 1 capital* means common equity tier 1 capital, as defined in accordance with the OCC's definition in subpart A of part 3 of this chapter.

*Common equity tier 1 risk-based capital ratio* means the ratio of common equity tier 1 capital to total risk-weighted assets, as calculated in accordance with subpart B of part 3 of this chapter, as applicable.

*Control.* (1) *Control* has the same meaning assigned to it in section 2 of the Bank Holding Company Act (12 U.S.C. 1841), and the term controlled shall be construed consistently with the term control.

(2) *Exclusion for fiduciary ownership.* No insured depository institution or company controls another insured depository institution or company by virtue of its ownership or control of shares in a fiduciary capacity. Shares shall not be deemed to have been acquired in a fiduciary capacity if the acquiring insured depository institution or company has sole discretionary authority to exercise voting rights with respect thereto.

(3) *Exclusion for debts previously contracted.* No insured depository institution or company controls another insured depository institution or company by virtue of its ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith, until two years after the date of acquisition. The two-year period may be extended at the discretion of the appropriate Federal banking agency for up to three one-year periods.

*Controlling person* means any person having control of an insured depository institution and any company controlled by that person.

*Federal savings association* means an insured Federal savings association or an insured Federal savings bank chartered under section 5 of the Home Owners' Loan Act of 1933.

*Leverage ratio* means the ratio of tier 1 capital to average total consolidated assets, as calculated in accordance with subpart B of part 3 of this chapter.<sup>30</sup>

*Management fee* means any payment of money or provision of any other thing of value to a company or individual for the provision of management services or advice to the national bank or Federal savings association or related overhead expenses, including payments related to supervisory, executive, managerial, or policymaking functions, other than compensation to an individual in the individual's capacity as an officer or employee of the national bank or Federal savings association.

*National bank* means all insured national banks and all insured Federal branches, except where otherwise provided in this subpart.

*Supplementary leverage ratio* means the ratio of tier 1 capital to total leverage exposure, as calculated in accordance with subpart B of part 3 of this chapter.

<sup>30</sup> Before January 1, 2015, the leverage ratio of a national bank or Federal savings association that is not an advanced approaches national bank or advanced approaches Federal savings association is the ratio of tier 1 capital to average total consolidated assets, as calculated in accordance with appendix A to part 3 of this chapter.