

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.

*Tangible equity* means the amount of tier 1 capital, as calculated in accordance with subpart B of part 3 of this chapter, plus the amount of outstanding perpetual preferred stock (including related surplus) not included in tier 1 capital.<sup>31</sup>

*Tier 1 capital* means the amount of tier 1 capital as defined in subpart B of part 3 of this chapter.<sup>32</sup>

*Tier 1 risk-based capital ratio* means the ratio of tier 1 capital to risk-weighted assets, as calculated in accordance with subpart B of part 3 of this chapter.<sup>33</sup>

*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 any deductions as provided in § 3.22(a), (c), and (d) of this chapter. 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.<sup>34</sup>

*Total leverage exposure* means the total leverage exposure, as calculated in accordance with subpart B of part 3 of this chapter.

*Total risk-based capital ratio* means the ratio of total capital to total risk-weighted assets, as calculated in accordance with subpart B of part 3 of this chapter.<sup>35</sup>

*Total risk-weighted assets* means standardized total risk-weighted assets, and for an advanced approaches national bank or advanced approaches Federal savings association also includes advanced approaches total risk-weighted assets, as defined in subpart B of part 3 of this chapter.

### § 6.3 Notice of capital category.

(a) *Effective date of determination of capital category.* A national bank or Federal savings association shall be deemed to be within a given capital category for purposes of section 38 of the FDI Act and this part as of the date the national bank or Federal savings association is notified of, or is deemed to have notice of, its capital category

<sup>31</sup> Before January 1, 2015, the tangible equity of a national bank or Federal savings association that is not an advanced approaches national bank or advanced approaches Federal savings association is the amount of tier 1 capital elements as defined in appendix A to part 3 of this chapter, plus the amount of outstanding cumulative perpetual preferred stock (including related surplus) minus all intangible assets except mortgage servicing assets to the extent permitted in tier 1 capital, as calculated in accordance with appendix A to part 3 of this chapter. 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.

<sup>32</sup> Before January 1, 2015, the tier 1 capital of a national bank or Federal savings association that is not an advanced approaches national bank or advanced approaches Federal savings association (as an advanced approaches national bank or advanced approaches Federal savings association is defined in this § 6.2) is calculated in accordance with appendix A to part 3 of this chapter.

<sup>33</sup> Before January 1, 2015, the tier 1 risk-based capital ratio of a national bank or Federal savings association that is not an advanced approaches national bank or advanced approaches Federal savings association (as an advanced approaches national bank or advanced approaches Federal savings association is defined in this § 6.2) is calculated in accordance with appendix A to part 3 of this chapter.

<sup>34</sup> Before January 1, 2015, total assets means, for a national bank or Federal savings association that is not an advanced approaches national bank or advanced approaches Federal savings association (as an advanced approaches national bank or advanced approaches Federal savings association is defined in this § 6.2), quarterly average total assets as reported in a bank's or savings association's Call Report, minus all intangible assets except mortgage servicing assets to the extent permitted in tier 1 capital, as calculated in accordance with appendix A to part 3 of this chapter. 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.

<sup>35</sup> Before January 1, 2015, the total risk-based capital ratio of a national bank or Federal savings association that is not an advanced approaches national bank or advanced approaches Federal savings association (as an advanced approaches national bank or advanced approaches Federal savings association is defined in this § 6.2) is calculated in accordance with appendix A to part 3 of this chapter.