DEPARTMENT OF THE TREASURY
Office of the Comptroller of the Currency
12 CFR Part 3
Docket No. OCC-2010-0009
RIN Number 1557-AD33

FEDERAL RESERVE SYSTEM
12 CFR Parts 208 and 225
Regulations H and Y; Docket No. R-XXXX

FEDERAL DEPOSIT INSURANCE CORPORATION
12 CFR Part 325
RIN 3064-AD58

Risk-Based Capital Standards: Advanced Capital Adequacy Framework—Basel II; Establishment of a Risk-Based Capital Floor

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; and the Federal Deposit Insurance Corporation.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) propose to: (1) amend the advanced risk-based capital adequacy standards (advanced approaches rules)[1] to be consistent with certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act) and (2) amend the general risk-based capital rules[2] to provide limited flexibility consistent with section 171(b) of the Act for recognizing the relative risk of certain assets generally not held by depository institutions.

[1] 12 CFR part 3, Appendix C (OCC); 12 CFR part 208, Appendix F and 12 CFR part 225, Appendix G (Board); and 12 CFR part 325 Appendix D (FDIC).

[2] 12 CFR part 3, Appendix A (OCC); 12 CFR parts 208 and 225, Appendix A (Board); 12 CFR part 325, and Appendix A (FDIC)).

DATES: Comments on this notice of proposed rulemaking must be received by [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER], 2010.

ADDRESSES: Comments should be directed to:

OCC: Because paper mail in the Washington, DC area and at the Agencies is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or e-mail, if possible. Please use the title "Risk-Based Capital Standards: Advanced Capital Adequacy Framework—Basel II; Revisions to the Transitional Floors" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- **Federal eRulemaking Portal—"regulations.gov":** Go to http://www.regulations.gov. Select "Document Type" of "Proposed Rules," and in "Enter Keyword or ID Box," enter Docket ID "OCC-2010-0009," and click "Search." On "View By Relevance" tab at bottom of screen, in the "Agency" column, locate the proposed rule for OCC, in the "Action" column, click on "Submit a Comment" or "Open Docket Folder" to submit or view public comments and to view supporting and related materials for this rulemaking action.
- Click on the "Help" tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- **E-mail:** regs.comments@occ.treas.gov.

- **Mail:** Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 2-3, Washington, DC 20219.
- **Fax:** (202) 874-5274.
- **Hand Delivery/Courier:** 250 E Street, SW., Mail Stop 2-3, Washington, DC 20219.

Instructions: You must include "OCC" as the agency name and "Docket ID OCC-2010-0009" in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this proposed rule by any of the following methods:

- **Viewing Comments Electronically:** Go to http://www.regulations.gov. Select "Document Type" of "Public Submissions," in "Enter Keyword or ID Box," enter Docket ID "OCC-2010-0009," and click "Search." Comments will be listed under "View By Relevance" tab at bottom of screen. If comments from more than one agency are listed, the "Agency" column will indicate which comments were received by the OCC.

- **Viewing Comments Personally:** You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874-4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

- **Docket:** You may also view or request available background documents and project summaries using the methods described above.

Board: You may submit comments, identified by Docket No. R-xxxx, by any of the following methods:

- *Agency Web Site:* http://www.federalreserve.gov. Follow the instructions for submitting comments at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.
- *Federal eRulemaking Portal*: http://www.regulations.gov. Follow the instructions for submitting comments.
- *E-mail*: regs.comments@federalreserve.gov. Include docket number in the subject line of the message.
- *FAX*: (202) 452-3819 or (202) 452-3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551.

All public comments are available from the Board's Web site at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP-500 of the Board's Martin Building (20th and C Streets, NW) between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit by any of the following methods:

- *Federal eRulemaking Portal*: http://www.regulations.gov. Follow the instructions for submitting comments.
- *Agency Web site*: http://www.FDIC.gov/regulations/laws/federal/propose.html.
- *Mail*: Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.
- *Hand Delivered/Courier*: The guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.
- *E-mail*: comments@FDIC.gov.

Instructions: Submissions received must include "FDIC" and "PIN XXXX-XXXX." Comments received will be posted without change to http://www.FDIC.gov/regulations/laws/federal/propose.html, including any personal information provided.

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FOR FURTHER INFORMATION CONTACT:

OCC: Mark Ginsberg, Risk Expert, (202) 874-5070, Capital Policy Division; or Carl Kaminski, Senior Attorney, or Stuart Feldstein, Director, Legislative and Regulatory Activities, (202) 874-5090.

Board: Anna Lee Hewko, (202) 530–6260, Assistant Director, or Brendan Burke, (202) 452–2987 Supervisory Financial Analyst, Division of Banking Supervision and Regulation, or April C. Snyder, (202) 452–3099, Counsel, or Benjamin W. McDonough, (202) 452–2036, Counsel, Legal Division. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

FDIC: George French, Deputy Director, Policy, (202) 898-3929, Nancy Hunt, Associate Director, Capital Markets Branch, (202) 898-6643, or Bobby Bean, Chief, Policy Section (202) 898-6705, Division of Supervision and Consumer Protection; or Mark Handzlik, Counsel (202) 898-3990, or Michael Phillips, Counsel (202) 898-3581, Supervision and Legislation Branch, Legal Division.

SUPPLEMENTAL INFORMATION

I. Background

A. The Dodd-Frank Wall Street Reform and Consumer Protection Act

Section 171(b)(2) of the of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act)[3] states that the agencies[4] shall establish minimum risk-based capital requirements applicable to insured depository institutions, depository institution holding companies, and nonbank financial companies supervised by the Federal Reserve (covered institutions). In particular, and as described in more detail below, sections 171(b)(1) and (2) specify that the minimum leverage and risk-based capital requirements established under section 171 shall not be less than "generally applicable" capital

[3] Pub. L. 111-203, § 171, 124 Stat. 1376, 1435-38 (July 21, 2010) (the Act).

[4] Even though the Office of Thrift Supervision (OTS) is not issuing this notice of proposed rulemaking (NPR), OTS plans to issue an NPR that parallels the substance of this notice to amend its capital regulations at 12 CFR part 567. OTS's parallel notice is subject to review by the Office of Management and Budget pursuant to Executive Order 12866.

requirements, which shall serve as a floor for any capital requirements the agencies may require. Moreover, sections 171(b)(1) and (2) specify that the Federal banking agencies may not establish leverage or risk-based capital requirements for covered institutions that are quantitatively lower than the generally applicable leverage or risk-based capital requirements in effect for insured depository institutions as of the date of enactment of the Act.

B. Advanced approaches rules.

On December 7, 2007, the agencies implemented the advanced approaches rules, which are mandatory for U.S. depository institutions and bank holding companies (collectively, banking organizations) meeting certain thresholds for total consolidated assets or foreign exposure.[5] The advanced approaches rules incorporate a series of proposals released by the Basel Committee on Banking Supervision (Basel Committee or BCBS), including the Basel Committee's comprehensive June 2006 release entitled "International Convergence of Capital Measurement and Capital Standards: A Revised Framework" (New Accord).[6]

The advanced approaches rules establish a series of transitional floors to provide a smooth transition to the advanced approaches rules and to limit temporarily the amount by which a banking organization's risk-based capital requirements could decline relative

[5] 72 FR 69288 (December 7, 2007). Subject to prior supervisory approval, other banking organizations can opt to use the advanced approaches rules. See 72 FR 69397 (December 7, 2007).

[6] The BCBS is a committee of banking supervisory authorities established by the central bank governors of the G-10 countries in 1975. The BCBS issued the New Accord to modernize its first capital Accord, which was endorsed by the BCBS members in 1988 and implemented by the agencies in 1989. The New Accord, the 1988 Accord, and other documents issued by the BCBS are available through the Bank for International Settlements' Web site at www.bis.org.

to the general risk-based capital rules over a period of at least three years following completion of a satisfactory parallel run. The advanced approaches rules place limits on the amount by which a banking organization's risk-based capital requirements may decline. Under the advanced approaches rules, the banking organization must take the risk-based capital ratios equal to the lesser of (i) the organization's ratios calculated under the advanced approaches rules and (ii) its ratios calculated under the general risk-based capital rules,[7] with risk-weighted assets multiplied by 95 percent, 90 percent, and 85 percent during the first, second, and third transitional floor periods, respectively and compare these ratios to its minimum risk-based capital ratio requirements under section 3 of the advanced approaches rules.[8] Under this approach, banking organizations that use the advanced approaches rule could operate with lower minimum risk-based capital requirements during a transitional floor period, and potentially thereafter, than would be required under the general risk-based capital rules. At this time, no banking organization has entered a transitional floor period and all organizations are required to compute their risk-based capital requirements using the general risk-based capital rules.

C. Requirements of section 171 of the Act

Section 171(a)(2) of the Act defines the term ''generally applicable risk-based capital requirements'' to mean: "(A) the risk-based capital requirements, as established by the appropriate Federal banking agencies to apply to insured depository institutions under the prompt corrective action regulations implementing section 38 of the Federal

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[7] 12 CFR part 3, Appendix A (OCC); 12 CFR parts 208 and 225, Appendix A (Board); and 12 CFR part 325, Appendix A (FDIC).

[8] Under the advanced approaches rules, the minimum tier 1 risk-based capital requirement is 4 percent and the total risk-based capital requirement is 8 percent. See 12 CFR part 208, appendix F section 3 and 12 CFR part 225, appendix G section 3(Board); [other cites].

Deposit Insurance Act, regardless of total consolidated asset size or foreign financial exposure; and (B) includes the regulatory capital components in the numerator of those capital requirements, the risk-weighted assets in the denominator of those capital requirements, and the required ratio of the numerator to the denominator." Section 171(b)(2) of the Act further provides that "[t]he appropriate Federal banking agencies shall establish minimum risk-based capital requirements on a consolidated basis for insured depository institutions, depository institution holding companies, and nonbank financial companies supervised by the Board of Governors. The minimum risk-based capital requirements established under this paragraph shall not be less than the generally applicable risk-based capital requirements, which shall serve as a floor for any capital requirements that the agency may require, nor quantitatively lower than the generally applicable risk-based capital requirements that were in effect for insured depository institutions as of the date of enactment of this Act."

In accordance with section 38 of the Federal Deposit Insurance Act, the Federal banking agencies established minimum leverage and risk-based capital requirements for insured depository institutions for prompt corrective action (PCA rules).[9] All insured institutions, regardless of their total consolidated assets or foreign exposure, must compute their minimum risk-based capital requirements for PCA purposes using the general risk-based capital rules, which currently are the "generally applicable risk-based capital requirements" defined by Section 171(a)(2) of the Act.

D. Effect on Applications by Foreign Banking Organizations

[9] Pub. L. 102-242; 105 Stat. 2242 (1991).

In approving an application by a foreign bank to establish a branch or agency in the United States or to make a bank or nonbank acquisition, the Board considers, among other factors, whether the capital of the foreign bank is equivalent to the capital that would be required of a U.S. banking organization.[10] Similarly, in order to make effective a foreign bank's declaration under the BHC Act to be treated as an FHC, the Board must apply comparable capital and management standards to the foreign bank "giving due regard to the principle of national treatment and equality of competitive opportunity."[11] National treatment generally means treatment that is no less favorable than that provided to domestic institutions that are in like circumstances. The Board has broad discretion to take any relevant factors into account in determining standards that are both comparable and provide national treatment.

The Board has been making capital equivalency findings for foreign banks under the International Banking Act and the Bank Holding Company Act since 1992 pursuant to guidelines developed as part of a joint study by the Board and Treasury on capital equivalency.[12] The study acknowledged the Basel Committee on Banking Supervision's

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[10] See 12 USC §§ 1842(c); 1843(j); and 3105(d)(3)(B), (j)(2).. In addition, in approving an application to establish an interstate branch, the OCC must make a similar capital equivalency determination. See 12 U.S.C. § 3103 (a)(3)(B)(i).

[11] 12 USC § 1843(*l*)(3). A foreign bank that operates a branch, agency or commercial lending company in the United States and any company that owns such a foreign bank, is subject to the BHC Act as if it were a bank holding company. The BHC Act, as amended by the Gramm-Leach Bliley Act, provides that a bank holding company may become a FHC if its depository institutions meet certain capital and management standards. See 12 USC § 1843(*l*)(1); 12 CFR 225. Under section 606 of the Act, this requirement will be modified to require the bank holding company to be well capitalized and well managed. See the Act at § 606.

[12] "Capital Equivalency Report," Board of Governors of the Federal Reserve System and Secretary of the U.S. Department of the Treasury (June 19, 1992) (Capital Equivalency Report). See 12 U.S.C. §3105(j).

1988 capital accord (Basel I)[13] as the prevailing capital standard for internationally active banks and found that implementation of Basel I was broadly equivalent across countries. Until 2007, the Board generally accepted as equivalent the capital of foreign banks from countries adhering to Basel I within the bounds of national discretion allowed under the Basel I framework. For foreign banks that have begun operating under the New Accord's capital standards in making capital equivalency determinations, the Board has evaluated the capital of the foreign bank as reported in compliance with the New Accord, while also taking into account a range of factors including compliance with the New Accord's capital requirement floors linked to Basel I, where applicable.

At this time, many foreign bank applicants are operating under Basel II advanced approaches that have been implemented by their home country authorities. In many cases, home country authorities have adopted floors based on Basel I standards using discretion and flexibility as provided in the Accord. However, in some cases, Basel I floors are no longer in effect, or are expected to be phased out in the near term.

<u>Question 1. How should the new proposed rule should be applied to foreign banks in evaluating capital equivalency in the context of applications to establish branches or make bank or nonbank acquisitions in the United States, and in evaluating capital comparability in the context of foreign bank FHC declarations?</u>

E. Effect of section 171 of the Act on certain institutions and their assets.

Certain covered institutions may not previously have been subject to consolidated risk-based capital requirements. Some of these companies are very likely to be similar in nature to most depository institutions and bank holding companies subject to the general

[13] International Convergence of Capital Measurement and Capital Standard, 1988.

risk-based capital rules. Others, may be different, with exposure types and risks that were not contemplated when the general risk-based capital rules were developed. The Financial Stability Oversight Council has not yet designated any nonbank financial companies to be supervised by the Board; over time it is conceivable that it will designate one or more companies whose activities are quite different than those addressed in the general risk-based capital rules. The Board will be supervising these institutions for the first time and expects that there will be cases when it needs to evaluate the risk-based capital treatment of specific exposures not typically held by depository institutions, and that do not have a specific risk weight under the generally applicable risk-based capital requirements.

Under the general risk-based capital rules, exposures are generally assigned to five risk weight categories, that is, 0 percent, 20 percent, 50 percent, 100 percent, and 200 percent, according to their relative riskiness. Assets not explicitly included in a lower risk weight category are assigned to the 100 percent risk weight category. Going forward, there may be situations where exposures of a depository institution holding company or nonbank financial company supervised by the Board not only do not wholly fit within the terms of a risk weight category, but also impose risk that are incommensurate with the risk weight otherwise specified in the generally applicable risk-based capital requirements.

For example, there are some material exposures of insurance companies that, while not riskless, would be assigned to a 100 percent risk weight category because they are not explicitly assigned to a lower risk weight category. An automatic assignment to the 100 percent risk weight category without consideration of an exposure's economic substance could overstate the risk of the exposure and produce uneconomic capital requirements for a covered institution.

II. Proposed Rule

A. Generally Applicable Risk-based Capital Requirement Floor.

The OCC, Board, and FDIC are proposing to modify their respective advanced approaches rules consistent with section 171(b)(2). In particular, the agencies are proposing to revise the advanced approaches rules by replacing the transitional floors in section 21(e) of the advanced approaches rule with a permanent floor equal to the tier 1 and total risk-based capital requirements under the current generally applicable risk-based capital rules. Thus, the agencies are proposing to require each banking organization subject to the advanced approaches rules to maintain the systems and records necessary to calculate its required minimum risk-based capital under both the general risk-based capital rules and the advanced approaches rules. Each quarter, each banking organization subject to the advanced approaches rules must calculate and compare its minimum tier 1 and total risk-based capital ratios as calculated under the general risk-based capital rules and the advanced approaches risk-based capital rules and then use the lower of the two tier 1 risk-based capital ratios and the lower of the two total risk-based capital ratios. For bank holding companies, the proposal also incorporates the phase-in of restrictions on the regulatory capital treatment of debt or equity instruments issued before May 19, 2010 as described in section 171(4)(B) of the Act.

The agencies are also proposing to eliminate the paragraphs of the advanced approaches rules dealing with the transitional floor periods, and the interagency study.

These parts of the advanced approaches rules no longer serve a purpose. Question 2: The agencies seek comment generally on the impact of a permanent floor on the minimum risk-based capital requirements for banking organizations subject to the advanced approaches rules, and on the manner in which the agencies are proposing to implement the provisions of section 171(b) of the Act.

B. Change to Generally Applicable Risk-based Capital Requirements

The proposed floor consistent with the requirements of section 171(b)(2) is based on the generally applicable risk-based capital requirements for depository institutions. To address the appropriate capital requirement for low risk assets non-depository institutions may hold for which there is no explicit capital treatment in the general risk-based capital rules, the agencies propose that such exposures receive the capital treatment applicable under the capital guidelines for bank holding companies under limited circumstances. The circumstances are intended to allow for an appropriate capital requirement for low risk nonbanking exposures without creating unintended new opportunities for depository institutions to engage in capital arbitrage. The agencies therefore propose to limit this treatment to cases in which a depository institution is not authorized to hold the asset under applicable law other than under debt previously contracted or similar authority, and the risks associated with the asset are substantially similar to the risks of assets that receive a lower risk weight. The agencies therefore propose a change to the general risk- based capital rules for depository institutions to permit this limited flexibility to appropriately address exposures of depository institution holding companies and nonbank financial companies supervised by the Board. The agencies request comment on this change to the general risk-based capital rules.

Question 3. For what specific types of exposures do commenters believe this treatment is appropriate? Does the proposal provide sufficient flexibility to address the exposures of depository institution holding companies and nonbank financial companies supervised by the Federal Reserve? If not, how should the proposal be changed to recognize the considerations outlined in this section?

Consistent with the joint efforts of the U.S. banking agencies and the Basel Committee to enhance the regulatory capital rules, the agencies anticipate that the generally applicable risk-based capital requirements and advanced approaches rule will be amended from time to time. These amendments would reflect advances in risk sensitivity and other potentially substantive changes to fundamental aspects of the New Accord such as the definition of capital, treatment of counterparty credit risk, and new regulatory capital elements such as an international leverage ratio and prudential capital buffers.

The agencies will consider each proposed change to the risk-based capital rules and determine whether it is appropriate to implement the change by rulemaking based on the implications of each proposal for the capital adequacy of banks, the implementation costs of such proposals, and the nature of any unintended consequences or competitive issues. The generally applicable risk-based capital requirements and generally applicable leverage capital requirements that the agencies may establish in the future would, as required under the Act, become the minimum leverage and risk-based capital requirements for all banking organizations. Furthermore, as provided under the Act, any future amendments to the leverage requirements or risk-based capital requirements established by the agencies may not result in capital requirements that are "quantitatively lower" than the generally applicable leverage requirements or risk-based capital requirements in effect as of the date of enactment of the Act.

To comply with this provision of the Act, the agencies propose to perform a quantitative analysis of the likely effect on capital requirements as part of developing future amendments to the capital rules to ensure that any new capital framework is not quantitatively lower than the requirements in effect as of the date of enactment of the Act. The agencies therefore would not anticipate proposing to require banking organizations to compute two sets of generally applicable capital requirements from current and historic frameworks as the generally applicable requirements are amended over time. The agencies have not yet determined the quantitative method for measuring the equivalence of current, historic, and proposed future capital frameworks.

Question 4: The agencies request comment on the most appropriate method of conducting the aforementioned analysis, including potential quantitative methods for comparing future capital requirements to ensure that any new capital framework is not quantitatively lower than the requirements in effect as of the date of the enactment of the Act.

The agencies anticipate addressing aspects of Section 171 not addressed in this proposed rule in a subsequent rulemaking.

<u>Question 5: The agencies seek comment on all other aspects of this proposed rule, including the costs and benefits. What, if any, changes should the agencies make to the proposed rule or the risk-based capital framework to better balance costs and benefits?</u>

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act,[14] (RFA), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banks with assets less than or equal to $175 million) and publishes its certification and a short, explanatory statement in the Federal Register along with its rule. .

This proposal would impact bank holding companies, national banks, state member banks, state nonmember banks, and savings associations that use the advanced approaches rules to calculate their risk-based capital requirements according to certain internal ratings-based and internal model approaches. A bank holding company, bank, or savings association must use the advanced approaches rules only if: (i) it has consolidated total assets (as reported on its most recent year-end regulatory report) equal to $250 billion or more; (ii) it has consolidated total on-balance sheet foreign exposures at the most recent year-end equal to $10 billion or more; or (iii) it is a subsidiary of a bank holding company, bank, or savings association that would be required to use the advanced approaches rules to calculate its risk-based capital requirements.

With respect to the proposed changes to the general risk-based capital rules, the proposal has the potential to affect the risk weights applicable only to assets that generally are impermissible for banks or savings associations to hold. These proposed changes are accordingly unlikely to have a significant impact on banking organizations. The agencies also note that the changes to the general risk-based capital rules would not impose any additional obligations, restrictions, burdens, or reporting, recordkeeping or

[14] 5 U.S.C. 605(b)

compliance requirements on banks or savings associations, including small banking organizations, nor do they duplicate, overlap or conflict with other Federal rules.

The agencies estimate that zero small bank holding companies (out of a total of approximately 2,471 small bank holding companies), one small national bank (out of a total of approximately 713 small national banks), one small state member bank (out of a total of approximately 412 small state member banks), one small state nonmember bank (out of a total of approximately 2,778 small state nonmember banks), and zero small savings associations (out of a total of approximately 378 small savings associations) are required to use the advanced approaches rules.[15] In addition, each of the small banks that is required to use the advanced approaches rules is a subsidiary of a bank holding company with over $250 billion in consolidated total assets or over $10 billion in consolidated total on-balance sheet foreign exposures. Therefore, the agencies believe that the proposed rule will not result in a significant economic impact on a substantial number of small entities.

OCC Unfunded Mandates Reform Act of 1995 Determinations

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104-4 (UMRA) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation) in any one year. If a budgetary impact statement is required, section 205 of the UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The

[15] [All totals are as of December 31, 2009—to be updated.]

OCC has determined that its proposed rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of $100 million or more. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995,[16] the agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. Each of the agencies has an established information collection for the paperwork burden imposed by the advanced approaches rule. This notice of proposed rulemaking would substitute a floor of 100 percent of the capital ratios under the risk-based capital rules, instead of floors of 95, 90, and 85 percent, respectively, for the first, second, and third transition periods under the advanced approaches rules. The proposed change to transitional floors would change the basis for calculating a data element that must be reported to the agencies under an existing requirement. However, it would have no impact on the frequency or response time for the reporting requirement and, therefore, does not constitute a substantive or material change subject to OMB review.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the agencies to use plain language in all proposed and final rules published after January 1, 2000. In light of this requirement, the agencies have sought to present the proposed rule in a simple and

[16] 44 U.S.C. 3501-3521

straightforward manner. The agencies invite comment on whether the agencies could take additional steps to make the proposed rule easier to understand.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Banks, Banking, Capital, National banks, Reporting and record keeping requirements, Risk.

12 CFR Part 208

Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and record keeping requirements, Risk.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and record keeping requirements, Securities.

12 CFR Part 325

Administrative practice and procedure, Banks, banking, Capital Adequacy, Reporting and recordkeeping requirements, Savings associations, State nonmember banks.

12 CFR Part 567

Capital, Reporting and record keeping requirements, Risk, Savings associations.

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons stated in the common preamble, the Office of the Comptroller of the Currency proposes to amend part 3 of chapter I of Title 12, Code of Federal Regulations as follows:

PART 3- MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

2. In appendix C to part 3, in section 21, revise ____ to read as follows:

Appendix C to Part 3 – Capital Adequacy Guidelines for Banks: Internal Ratings-based and Advanced Measurement Approaches

[Placeholder for OCC rule text.]

Federal Reserve System

12 CFR CHAPTER II

Authority and Issuance

For the reasons set forth in the common preamble, parts 208 and 225 of chapter II of title 12 of the Code of Federal Regulations is amended as follows:

PART 208 – MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 208 continues to read as follows:

Authority: Subpart A of Regulation H (12 CFR part 208, Subpart A) is issued by the Board of Governors of the Federal Reserve System (Board) under 12 U.S.C. 24, 36; sections 9, 11,21,25 and 25A of the Federal Reserve Act (12 U.S.C. 321-338a, 248(a), 248(c), 481-486, 601 and 611); sections 1814, 1816, 1818, 1831o, 1831p-l, 1831r-l and

1835a of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1814, 1816, 1818, 1831o, 1831p-l, 1831r-l and 1835); and 12 U.S.C. 3906-3909.

2. In Appendix A to part 208, revise section III.C. 4. to read as follows:

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

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III. Procedures for Computing Weighted Risk Assets and Off-Balance Sheet Items

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C. Risk Weights

* * *

4. <u>Category 4: 100 percent.</u> a. Except as provided in section III.C. 4.e, all assets not included in the categories above are assigned to this category, which comprises standard risk assets. The bulk of the assets typically found in a loan portfolio would be assigned to the 100 percent category. * * *

e. Subject to the requirements below a bank, may assign an asset not included in the categories above to the risk weight category applicable under the capital guidelines for bank holding companies,[17] provided that all of the following conditions apply:

<u>i</u>. The bank is not authorized to hold the asset under applicable law other than under debt previously contracted or other similar authority; and

<u>ii</u>. The risks associated with the asset are substantially similar to the risks of assets that are otherwise assigned to a risk weight category of less than 100 percent under this appendix.

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[17] See 12 CFR part 225, appendix A.

3. In Appendix F to part 208, revise section 3 to read as set forth below:

Appendix F to Part 208—Capital Adequacy Guidelines for Banks: Internal Ratings-Based and Advanced Measurement Approaches

Part I. General Provisions

* * * * *

Section 3. Minimum Risk-Based Capital Requirements

(a) (1) Except as modified by paragraph (c) of this section or by section 23 of this appendix, each bank must meet a minimum:

(i) Total risk-based capital ratio of 8.0 percent; and

(ii) Tier 1 risk-based capital ratio of 4.0 percent.

(2) A bank's total risk-based capital ratio is the lower of:

(i) Its total qualifying capital to total risk-weighted assets, and

(ii) Its total risk-based capital ratio as calculated under Appendix A of this part.

(3) A bank's tier 1 risk-based capital ratio is the lower of:

(i) Its tier 1 capital to total risk-weighted assets, and

(ii) Its tier 1 risk-based capital ratio as calculated under Appendix A of this part.

(b) Each bank must hold capital commensurate with the level and nature of all risks to which the bank is exposed.

(c) When a bank subject to [the market risk rule] calculates its risk-based capital requirements under this appendix, the bank must also refer to [the market risk rule] for supplemental rules to calculate risk-based capital requirements adjusted for market risk.

* * * * *

4. In Appendix F to part 208, revise section 21 by deleting paragraph (e) in its entirety.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p-1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331-3351, 3907, and 3909; 15 U.S.C. 6801 and 6805.

2. In Appendix G to part 225, revise section 3 and to read as set forth below:

Appendix G to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Internal Ratings-Based and Advanced Measurement Approaches

Part I. General Provisions

*   *   *   *   *

Section 3. Minimum Risk-Based Capital Requirements

(a)(1) Except as modified by paragraph (c) of this section or by section 23 of this appendix, each bank holding company must meet a minimum:

(i) Total risk-based capital ratio of 8.0 percent; and

(ii) Tier 1 risk-based capital ratio of 4.0 percent.

(2) A bank holding company's total risk-based capital ratio is the lower of:

(i) Its total qualifying capital to total risk-weighted assets, and

(ii) Its total risk-based capital ratio as calculated under 12 CFR part 208, appendix A, as adjusted to include certain debt or equity instruments issued before May 19, 2010 as described in section 171(4)(B) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

(3) A bank holding company's tier 1 risk-based capital ratio is the lower of:

(i) Its tier 1 capital to total risk-weighted assets, and

(ii) Its tier 1 risk-based capital ratio as calculated under 12 CFR part 208, appendix A, as adjusted to include certain debt or equity instruments issued before May 19, 2010 as described in section 171(4)(B) of the Dodd-Frank Act.

(b) Each bank holding company must hold capital commensurate with the level and nature of all risks to which the bank holding company is exposed.

(c) When a bank holding company subject to [the market risk rule] calculates its risk-based capital requirements under this appendix, the bank holding company must also refer to [the market risk rule] for supplemental rules to calculate risk-based capital requirements adjusted for market risk.

* * * * *

3. In Appendix G to part 225, revise section 21 by deleting paragraph (e) in its entirety.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority for Issuance

For the reasons stated in the common preamble, the Federal Deposit Insurance Corporation amends Part 325 of Chapter III of Title 12, Code of the Federal Regulations as follows:

PART 325 – CAPITAL MAINTENANCE

1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102-233, 105 Stat. 1761, 1789, 1790, (12 U.S.C. 1831n note); Pub. L. 102-242, 105 Stat. 2236, as amended by Pub. L. 103-325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102-242, 105 Stat. 2236, 2386, as amended by Pub. L. 102-550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note).

2. In Appendix A to part 325, revise section II.C., to read as follows:

APPENDIX A TO PART 325 – STATEMENT OF POLICY ON RISK-BASED CAPITAL

* * * * *

II. PROCEDURES FOR COMPUTING RISK-WEIGHTED ASSETS

* * * * *

C. Risk Weights for Balance Sheet Assets (see Table II)

The risk based capital framework contains five risk weight categories—0 percent, 20 percent, 50 percent, 100 percent, and 200 percent. * * *

Category 4 – 100 Percent Risk Weight. * * *

(d) Subject to the requirements below, a bank may assign an asset not included in the categories above to the risk weight category applicable under the capital guidelines for bank holding companies[18], provided that all of the following conditions apply:

a. The bank is not authorized to hold the asset under applicable law other than debt previously contracted or similar authority; and

b. The risks associated with the asset are substantially similar to the risks of assets that are otherwise assigned to a risk weight category less than 100 percent under this appendix.

[18] See 12 CFR part 225, appendix A.

3. In Appendix D to part 325, revise section 3 to read as set forth below:

APPENDIX D TO PART 325—CAPITAL ADEQUACY GUIDELINES FOR BANKS: INTERNAL RATINGS-BASED AND ADVANCED MEASUREMENT APPROACHES

Part I. General Provisions

* * * * *

Section 3. Minimum Risk-Based Capital Requirements

(a) (1) Except as modified by paragraph (c) of this section or by section 23 of this appendix, each bank must meet a minimum:

(i) Total risk-based capital ratio of 8.0 percent; and

(ii) Tier 1 risk-based capital ratio of 4.0 percent.

(2) A bank's total risk-based capital ratio is the lower of:

(i) Its total qualifying capital to total risk-weighted assets, and

(ii) Its total risk-based capital ratio as calculated under appendix A of this part.

(3) A bank's tier 1 risk-based capital ratio is the lower of:

(i) Its tier 1 capital to total risk-weighted assets, and

(ii) Its tier 1 risk-based capital ratio as calculated under appendix A of this part.

(b) Each bank must hold capital commensurate with the level and nature of all risks to which the bank is exposed.

(c) When a bank subject to appendix C of this part calculates its risk-based capital requirements under this appendix, the bank must also refer to appendix C of this part for supplemental rules to calculate risk-based capital requirements adjusted for market risk.

* * * * *

In Appendix D to part 325, revise section 21 by deleting paragraph (e) in its entirety:

[THIS SIGNATURE PAGE RELATES TO THE NOTICE OF PROPOSED RULEMAKING TITLED "RISK-BASED CAPITAL STANDARDS: ADVANCED CAPITAL ADEQUACY FRAMEWORK—BASEL II; REVISIONS TO THE TRANSTIONAL FLOORS"]

Dated: ______________ ___, 2010

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John Walsh,
Comptroller of the Currency

By order of the Board of Governors of the Federal Reserve System, _________ ___, 2010

___

Jennifer J. Johnson
Secretary of the Board

Dated at Washington, D.C., this ___ day of ______ 2010.
By order of the Board of Directors.
Federal Deposit Insurance Corporation.

Robert E. Feldman,
Executive Secretary

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