OCC BULLETIN 2011-32

Subject: Permanent Floor for the Advanced Approaches Risk-Based Capital Rule
Date: July 8, 2011

To: Chief Executive Officers of All National Banks, Federal Branches and Agencies, ...sion Heads, and All ...amining Personnel

Transmittal - See OCC 2015-38
Applicable only to advanced approaches banks

Description: Final Rule

The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (the federal banking agencies) have published a final rule to establish a permanent floor for the advanced approaches risk-based capital rules (applicable to the largest internationally active banking organizations), which is consistent with section 171(b)(2) of the Dodd-Frank Act.

BACKGROUND

Section 171(b)(2) of the Dodd-Frank Act states that the agencies 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 (i.e., systemically important financial institutions, or SIFIs). In particular, section 171(b)(2) specifies that the minimum risk-based capital requirements established under section 171 shall not be less than the "generally applicable" risk-based capital requirements for depository institutions, which shall serve as a floor for any capital requirements the federal banking agencies may require.

SUMMARY

The final rule amends the federal banking agencies' advanced approaches risk-based capital regulations to eliminate the transitional floor provisions and replace them with a permanent floor. Under the final rule, each national bank subject to the advanced approaches risk-based capital rules must calculate its required minimum risk-based capital under both the general risk-based capital rules and the advanced approaches rules. Each quarter, an advanced approaches bank will have to calculate its minimum Tier 1 and total risk-based capital ratios under each set of rules, compare the results, and use the lower of the two Tier 1 risk-based capital ratios and the lower of the two total risk-based capital ratios to determine compliance with its minimum risk-based capital requirements, which are set forth at 12 CFR part 3, appendix C, section 3, for national banks.

The final rule was published in the *Federal Register* on June 28, 2011.

FURTHER INFORMATION

For further information about this bulletin, contact the Office of the Chief National Bank Examiner (202) 649-6370.

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel

Related Link

- Final Rule (PDF)

assessments. The authority for this action is provided in § 955.42 of the order. This change amends § 955.142. The Committee unanimously recommended this action at its February 17, 2011, meeting.

This rule does not impose any additional costs on handlers that are complying with the requirements under the order. This action only represents additional costs for handlers who are delinquent in submitting their reports and assessments. A 10 day grace period is also provided before the late penalty is applied, giving delinquent handlers additional time to avoid the costs associated with the late payment charge. In addition, the late charge and interest rate were considered reasonable by industry members who participated in the discussion of this issue. Since the late payment charge and interest rate are percentages of amounts due, the costs, when applicable, are proportionate and will not place an extra burden on small entities as compared to large entities. In addition, the industry overall benefits if handler reports and assessments are collected on time and the Committee's compliance costs are reduced, regardless of entity size.

The Committee discussed alternatives to this change, including not making a change to the delinquent assessment requirements. However, a number of members commented that if some handlers are not paying on time, a change was necessary. The Committee also considered increasing the interest rate accrual to daily rather than monthly, but this option could result in an interest charge that was disproportionately large and considered to be beyond the scope of what is reasonable and customary under marketing order programs. Thus, these alternatives were rejected.

This action will not impose any additional reporting or recordkeeping requirements on either small or large Vidalia onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the Initial Regulatory Flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, the Committee's meeting was widely publicized throughout the Vidalia onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the February 17, 2011, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on May 13, 2011 (76 FR 27919). Copies of the rule were mailed or sent via facsimile to all Committee members and Vidalia onion handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 15-day comment period ending May 31, 2011, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because handlers are already shipping Vidalia onions from the 2011 crop and the Committee wants to implement these changes as soon as possible. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 15-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 955 is amended as follows:

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

■ 1. The authority citation for 7 CFR part 955 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 955.142 is amended by designating the first paragraph as paragraph (a) and the second paragraph as paragraph (b), and revising newly designated paragraph (b) to read as follows:

§ 955.142 Delinquent assessments.

* * * * *

(b) Each handler shall pay interest of 1.5 percent per month on any assessments levied pursuant to § 955.42 and on any accrued unpaid interest beginning the day immediately after the date the monthly assessments were due, until the delinquent handler's assessments, plus applicable interest, have been paid in full. In addition to the interest charge, the Committee shall impose a late payment charge on any handler whose assessment payment has not been received within 10 days of the due date. The late payment charge shall be 10 percent of the late assessments.

Dated: June 22, 2011.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2011–16139 Filed 6–27–11; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. –2010–0009]

RIN 1557–AD33

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–1402]

RIN 7100–AD62

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

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

ACTION: Final rule.

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) are amending the advanced risk-based capital adequacy standards (advanced approaches rules) in a manner that is consistent with certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act), and the general risk-based capital rules 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.

DATES: This final rule is effective July 28, 2011.

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, Senior 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, Division of Risk Management Supervision; or Mark Handzlik, Counsel, (202) 898–3990, or Michael Phillips, Counsel, (202) 898–3581, Supervision and Legislation Branch, Legal Division.

SUPPLEMENTARY INFORMATION:

I. Background

A. Overview of the Requirements of the Act

Section 171(b)(2) of the Act [1] states that the 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 Federal Reserve (covered institutions).[2] 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 the ''generally applicable'' capital 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.[3]

B. Advanced Approaches Rules [4]

On December 7, 2007, the agencies published in the **Federal Register** a final rule to implement the advanced approaches rules, which are mandatory for banks 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]

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 to the general risk-based capital rules, the advanced approaches rules established a series of transitional floors over a period of at least three years following a banking organization's completion of a satisfactory parallel run.[7] During the transitional floor periods, a banking organization's risk-based capital ratios are 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, with tier 1 and total risk-weighted assets as calculated under the general risk-based capital rules multiplied by 95 percent, 90 percent, and 85 percent during the first, second, and third transitional floor periods, respectively.[8] Under this approach, a banking organization that uses the advanced approaches rules is permitted to 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. To date, no U.S.-domiciled banking organization has entered a transitional floor period and all U.S-domiciled banking 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 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

[1] Public Law 111–203, section 171, 124 Stat. 1376, 1435–38 (2010).

[2] 12 U.S.C. 5371, Public Law 111–203, section 171, 124 Stat. 1376, 1435–38 (2010).

[3] On March 8, 2011, in an NPR that paralleled the agencies' rulemaking, the Office of Thrift Supervision (OTS) issued a notice in which OTS proposed to amend 12 CFR part 567, which sets forth the capital regulations applicable to savings associations. 45 FR 12,611 (March 8, 2011). OTS received one comment on its proposal. The Act specifies that the regulatory authority and other functions of OTS will transfer to OCC on the transfer date provided in the Act, which is expected to be July 21, 2011. Given that the OTS's parallel rulemaking is subject to a 90 day review by the Office of Management and Budget pursuant to Executive Order 12866, it would be impracticable for OTS to issue a final rule before the transfer date. The OTS and OCC anticipate that OCC would issue a final rule to amend the capital regulations applicable to savings associations, after the transfer date.

[4] 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).

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

[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 (''International Convergence of Capital Measurement and Capital Standards'' or ''Basel I''), 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 *http://www.bis.org.*

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

[8] Under the advanced approaches rules, the minimum tier 1 risk-based capital ratio is 4 percent and the minimum total risk-based capital ratio is 8 percent. *See* 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).

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. The Proposed Rule

By notice in the **Federal Register** dated December 30, 2010, the agencies issued a notice of proposed rulemaking[10] (NPR) to modify the advanced approaches rules consistent with section 171(b)(2) of the Act. In particular, the agencies proposed to revise the advanced approaches rules by replacing the transitional floors in section 21(e) of the advanced approaches rules with a permanent floor equal to the tier 1 and total risk-based capital requirements of the generally applicable risk-based capital rules (''permanent floor''). Under the proposal, each quarter, each banking organization subject to the advanced approaches rules would be required to calculate and compare its minimum tier 1 and total risk-based capital ratios as calculated under the general risk-based capital rules with the same ratios as calculated under the advanced approaches risk-based capital rules. The banking organization would then compare the lower of the two tier 1 risk-based capital ratios and the lower of the two total risk-based capital ratios to the minimum tier 1 ratio requirement of 4 percent and total risk-based capital ratio requirement of 8 percent in section 3 of the advanced approaches rules[11] to determine whether it meets its minimum risk-based capital requirements.[12]

For bank holding companies subject to the advanced approaches rule, the proposal stated that in calculating their risk-based capital ratios, these organizations must calculate their floor requirements under the general risk-based capital rules for state member banks.[13] However, in accordance with the Act, they may include certain debt or equity instruments issued before May 19, 2010 as described in section 171(b)(4)(B) of the Dodd-Frank Act. The agencies also proposed to eliminate the provisions of the advanced approaches rules relating to transitional floor periods and the interagency study of any material deficiencies in the rules.[14] If the proposed permanent floor were implemented, these provisions of the advanced approaches rules would no longer serve a purpose.

The proposal also included a modification to the general risk-based capital rules to address the appropriate capital requirement for low-risk assets held by depository institution holding companies[15] or by nonbank financial companies supervised by the Board pursuant to a designation by the Financial Stability Oversight Council (FSOC), in situations where there is no explicit capital treatment for such exposures under the general risk-based capital rules. The agencies proposed 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. Accordingly, the agencies proposed to limit this treatment to cases in which a depository institution is not authorized to hold the asset under applicable law other than under the authority to hold an asset in connection with the satisfaction of a debt previously contracted or similar authority, and the risks associated with the asset are substantially similar to the risks of assets that otherwise are assigned a risk weight of less than 100 percent under the general risk-based capital rules.[16]

II. Comments Received

A. Overview

The agencies collectively received 16 comments from both domestic and international trade associations and from individual financial institutions, including insurance companies. Groups representing large banking organizations generally argued against the proposed permanent floor. These commenters asserted that it would place large U.S. banking organizations at a disadvantage relative to their international competitors, increase their costs, and undermine the risk sensitivity of the advanced approaches capital rules. In contrast, a trade organization for community banks and a financial reform advocacy organization supported the proposal.

Commenters representing insurance companies generally supported the proposed revisions to the general risk-based capital rules for selected nonbank assets, arguing that insurance companies have different risk profiles and their liabilities and assets are of different durations compared to banks. These commenters said it would not be appropriate to mechanically apply bank capital regulations to insurance companies.

B. Impact on Banking Organizations That Use the Advanced Approaches Rules

In response to the agencies' question on how the proposal would affect U.S.

[9] *See* 12 U.S.C. 1831o, Public Law 102–242, 105 Stat. 2242 (1991); *see also* 12 CFR part 208, subpart D (Board).

[10] 75 FR 82317 (December 30, 2010).

[11] 12 CFR part 3, Appendix C, section 3 (OCC); 12 CFR part 208, Appendix F, section 3 and 12 CFR part 225, Appendix G, section 3 (Board); and 12 CFR part 325, section 3 Appendix D (FDIC).

[12] Banking organizations that use the advanced approaches rules are subject to the same minimum leverage requirements that apply to other banking organizations. That is, advanced approaches banks calculate only one leverage ratio using the numerator as calculated under the generally risk-based capital rules. Accordingly, the agencies did not propose any change to the calculation of the leverage ratio requirements for banking organizations that use the advanced approaches rules.

[13] 12 CFR part 208, appendix A.

[14] Supra, section 21(e)(6) Interagency study. For any primary Federal supervisor to authorize any institution to exit the third transitional floor period, the study must determine that there are no such material deficiencies that cannot be addressed by then-existing tools, or, if such deficiencies are found, they are first remedied by changes to this appendix.

[15] Section 171 of the Act defines ''depository institution holding company'' to mean a bank holding company or a savings and loan holding company (as those terms are defined in section 3 of the Federal Deposit Insurance Act) that is organized in the United States, including any bank or savings and loan holding company that is owned or controlled by a foreign organization, but does not include the foreign organization. *See* section 171 of the Act, 12 U.S.C. 5371.

[16] *See* 12 U.S.C. 24 (Seventh) and 12 U.S.C. 29 (national banks); 12 U.S.C. 335; and 12 U.S.C. 1831a(a) (state nonmember banks).

banking organizations that use the advanced approaches rules, several commenters, mostly representing the largest U.S. financial institutions, expressed strong concerns about the proposed permanent floor, while acknowledging that the agencies were acting in response to a statutory requirement.[17] These commenters generally asserted that the proposal exceeds the requirements of the Act, and would undermine the risk sensitivity of the risk-based capital rules, encourage banking organizations to invest more in higher risk assets, and distort decisions regarding capital allocation. These commenters also contended that the proposal would put U.S. banks at a disadvantage relative to their foreign competitors. Some of these commenters expressed a preference for alternative approaches to implement section 171 of the Act, including a Pillar 2 supervisory approach under the New Accord.

Some of the commenters who opposed the permanent floor also criticized the proposal for retaining two regulatory capital regimes, causing confusion, and diverting significant resources into developing systems to comply with the advanced rules, without a corresponding reduction in capital costs due to the imposition of the proposed permanent floor. These commenters also expressed concern and asked the agencies to clarify how the proposal would interact with Basel III [18] (particularly, the Basel III leverage ratio and capital conservation buffer), prompt corrective action, and other Dodd-Frank Act provisions relating to capital adequacy, such as those required by section 165.[19] In particular, these commenters expressed concern about what they viewed as negative consequences of maintaining a Basel I-based floor after full implementation of Basel III.

In contrast, one commenter representing community banks and another representing a financial reform advocacy organization expressed strong support for modifying the advanced approaches rules by replacing the transitional floors with the permanent floor. These commenters asserted that it is not appropriate for the agencies to allow large banking organizations to determine their capital requirements based on internal models because it may allow them to reduce their capital levels and give them a competitive advantage over community banks, and could also increase negative procyclical outcomes.

C. Effect on Applications by Foreign Banking Organizations

The preamble to the proposed rule noted that in approving an application by a foreign banking organization 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 banking organization is equivalent to the capital that would be required of a U.S. banking organization.[20] In addition, in approving an application by a foreign banking organization to establish a federal branch or agency, the OCC must make a similar capital equivalency determination.[21] Similarly, in order to make effective a foreign banking organization's declaration under the Bank Holding Company Act (BHC Act) to be treated as a financial holding company (FHC), the Board must apply comparable capital and management standards to the foreign banking organization ''giving due regard to the principle of national treatment and equality of competitive opportunity.'' [22] National treatment generally means treatment that is no less favorable than that provided to domestic institutions that are in like circumstances. The agencies have broad discretion to consider relevant factors in making these determinations.

The Board has been making capital equivalency findings for foreign banking organizations under the International Banking Act and the BHC Act since 1992 pursuant to guidelines developed as part of a joint study by the Board and Treasury on capital equivalency.[23] The study acknowledged the Basel Committee on Banking Supervision's 1988 Accord (Basel I) as the prevailing capital standard for internationally active banks and found that implementation of Basel I was broadly equivalent across countries. Until 2007, the agencies had generally accepted as equivalent the capital of foreign banking organizations from countries adhering to Basel I within the bounds of national discretion allowed under the Basel I framework. For foreign banking organizations that have begun operating under the New Accord's capital standards, the agencies have evaluated the capital of the foreign banking organization 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. In some countries, Basel I floors are no longer in effect, or are expected to be phased out in the near term.

The NPR sought commenters' views on how the proposed rule should be applied to foreign banking organizations 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 banking organization FHC declarations. In raising this question, the agencies recognized the challenge of administering capital equivalency determinations where the foreign banking organization is not subject to the same floor requirement as its U.S. counterpart.

In responding to this question, most commenters asserted that extending U.S. capital requirements to a foreign banking organization operating outside of the United States would not be appropriate and would be inconsistent with the Board's supervisory practice regarding the recognition of home country capital regulations. Several commenters noted that subjecting a foreign banking organization to the proposed rule contradicts the language of the Act, which excludes foreign banking organizations from the requirements of section 171. Several commenters supported applying the proposed rule to the U.S. operations of foreign banking organizations operating in the United States to be consistent with requirements for domestic banking organizations.

Some commenters noted that foreign banking organizations operating under the advanced approaches rules would receive a competitive advantage over U.S. banking organizations subject to the proposal's permanent floor requirement. In addition, several commenters expressed concern that the applying the proposed floor to foreign banking organizations may incentivize

[17] *Id.* at 82319.

[18] The term ''Basel III'' refers to the new comprehensive set of reform measures developed by the BCBS to strengthen the regulation, supervision, and risk management of the banking sector. These releases are available on the BIS Web site, *http://www.bis.org.*

[19] *See* section 165 of the Act; 12 U.S.C. 5365.

[20] *See* 12 U.S.C. 1842(c); 1843(j); and 3105(d)(3)(B), (j)(2).

[21] *See* 12 U.S.C. 3103(a)(3)(B)(i).

[22] 12 U.S.C. 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 an FHC if its depository institutions meet certain capital and management standards. *See* 12 U.S.C. 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, section 606.

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

home country supervisors to impose reciprocal arrangements for U.S. banking organizations operating abroad.

The agencies acknowledge that section 171, by its terms, does not apply to foreign banking organizations. Rather, the question on capital equivalency and comparability determinations was intended to seek views on practical ways to administer such determinations in the context of certain foreign bank organization applications to enter or expand operations within the United States given the proposal's requirements and longstanding supervisory practice. One of the agencies' supervisory objectives is to establish a consistent means for making capital equivalency determinations in the context of foreign banking organization applications to establish branches or to acquire banks or nonbanks in the United States, and in evaluating capital comparability in the context of foreign banking organization FHC declarations. The agencies recognize the challenges of establishing a consistent process for evaluating capital equivalency in cases where, among other things, the foreign banking organization applicant operating under advanced approaches no longer has the Basel I floor in place in its home country, and therefore no longer produces financial information based on Basel I requirements. The agencies believe that it is important to take into consideration the competitive issues highlighted by commenters. The agencies will continue to evaluate equivalency issues on a case-by-case basis taking into consideration the comments received.

D. Proposed Capital Requirements for Certain Nonbanking Exposures

In the NPR, the agencies sought comment on whether the proposed treatment of nonbanking exposures described above was appropriate, whether this treatment was sufficiently flexible to address the exposures of depository institution holding companies and nonbank financial companies supervised by the Board, and, if not, how the treatment should be modified.[24] Most commenters generally supported allowing flexibility for the capital treatment of nonbanking assets and agreed with the agencies' observation that automatically assigning such assets to the 100 percent risk weight category because they are not explicitly assigned to a lower risk weight category may not always be appropriate based on the economic substance of the exposure. One commenter broadly agreed with the proposal but stated that the proposed treatment needed further clarification. Another commenter noted that the rule also should provide for higher capital requirements, particularly for those exposures that that are impermissible for banks. One commenter noted that the proposal's limited flexibility to allow certain assets to receive the capital treatment applicable under the capital guidelines for bank holding companies should not include the condition that the asset be held under debt previously contracted or similar authority. This commenter stated that assignment to a risk category should be based on the risk of the asset and not on the underlying authority to own the asset.

The agencies received substantial comments from insurance companies about the capital requirements for these entities in general as well as on the proposed modifications to the general risk-based capital rules to address certain nonbank assets. These commenters argued that it would not be appropriate to apply capital requirements applicable to banking organizations to insurance companies because their risk profiles, balance sheet characteristics, and business models fundamentally differ. Several of these commenters were concerned that applying capital requirements for banking organizations to insurance companies without taking these differences into account is overly simplistic and may lead to distorted incentives, undermine efficient use of capital, curtail insurance underwriting capacity, and negatively impact insurance markets.

Some commenters suggested that significant adjustments to the risk weights applicable to banking organizations' exposures would be necessary when considering applicability to insurance companies' exposures. Other commenters suggested that adjustments to risk weights alone would be insufficient. Several commenters suggested that the agencies recognize and incorporate established insurance capital standards into any new capital regime that may apply to insurance companies. Some commenters suggested that the agencies use a principle of equivalence to evaluate insurance companies' capital adequacy similar to the practice used by the Board to determine if the capital of a foreign bank is equivalent to the capital required of a U.S. banking organization. Certain insurance industry commenters provided specific examples of exposures that should be given consideration for a lower risk weight under the general risk-based capital rules, including non-guaranteed separate accounts based on the rationale that the insurance policyholder and not the institution bears the investment risk associated with the contract. Other assets for which commenters suggested consideration regarding the capital treatment included guaranteed separate accounts, corporate debt, and private placements.

Some commenters expressed concern that the Board may require insurance companies to use U.S. generally accepted accounting principles for preparing financial statements instead of the statutory accounting principles applicable to insurance companies. These commenters noted the burden and costs associated with using two accounting systems.

E. Quantitative Methods for Comparing Capital Frameworks

The NPR sought comment on how the agencies should, in the future, evaluate changes to the general risk-based capital requirements to ensure they are not quantitatively lower than the ''generally applicable capital requirements'' in effect as of the enactment of section 171 of the Act.[25] Commenters generally supported looking at industry-wide aggregate capital levels, in order to conduct the analysis, rather than basing the calculation on an item-by-item comparison of capital requirements for each class of exposures. These commenters asserted that this approach would allow individual organizations to adjust their business models appropriately while satisfying the test. One commenter suggested that in comparing proposed changes to the generally applicable capital requirements, the agencies should assume a stable risk profile within the industry while assessing levels of capital. This commenter points out maintaining reliable comparative data over time could make quantitative methods for this purpose difficult. For example, evaluating asset categories with current and historic data would be difficult if banks have not maintained consistent tracking methods, or common definitions over time. This commenter also suggested that it would be misguided to compare future capital requirements without regard to risk.

F. Costs and Benefits and Other Comments

Several commenters were concerned about the operational expense and burden associated with determining compliance with two sets of capital rules. One stated that requiring two sets

[24] *Id.* at 82320.

[25] 75 FR at 82320–21.

of capital rules would result in permanently higher operating costs for banking organizations under the advanced approaches rules. This commenter also suggested that the proposed risk-based capital floor will reduce the incentive for banking organizations considering whether to undertake the expense and effort necessary to adopt the advanced approaches rules if minimum capital levels are determined by a less risk-sensitive capital framework. Some commenters also expressed concerns about the cost of continuing to implement the advanced approaches rules. One said that banks already have spent hundreds of millions of dollars on implementing the advanced approaches rules, and the proposal would eliminate the opportunity for banks to realize cost savings from potentially lower capital requirements under the advanced approaches rules. Another commenter suggested the agencies consider exempting from the permanent floor requirement any banking organization whose risk-weighted assets in the trading book exceeded a certain percent of total risk-weighted assets. This commenter also suggested ways of reducing the cost of compliance under the advanced approaches rules by, for example, raising the materiality standards to exempt small, relatively low-risk portfolios to save significant time and money at minimal cost in terms of lessened risk sensitivity.

Commenters generally indicated that keeping track of two sets of capital regulations (the advanced approaches rules and the generally applicable risk-based capital rules then in effect) was preferable to tracking three capital rules (the above two capital regimes and the general risk-based capital rules in effect on July 21, 2010).

Two commenters also suggested that because the FSOC has not designated any systemically important nonbank financial companies, potential designees were not provided sufficient notice and opportunity to comment on the proposal.

G. Analysis of Comments

As described in the preceding section, a number of the commenters expressed opinions about the appropriateness of the policy underlying section 171 of the Act. The agencies note that they are required by law to comply with the Act and sought comment in the NPR on the manner in which the agencies proposed to implement certain requirements of section 171, and on ways to mitigate banking organizations' burden in meeting the proposed requirements.

In response to comments on the burden of maintaining two systems to calculate capital requirements under both the risk-based capital rules and the advanced approaches rules, the agencies note that banking organizations in parallel run are currently reporting their capital requirements under both sets of rules. The agencies recognize that reporting capital calculations under two capital frameworks beyond the transitional floor arrangement was not expected at the onset of the advanced approaches rules. However, as discussed above, the agencies are issuing the final rule to be consistent with the requirements under section 171(b)(2) of the Act.

Generally commenters supported the proposal's amendment to the general risk-based capital rules to address the appropriate capital requirement for low risk assets that non-depository institutions may hold and for which there is no explicit capital treatment in the general risk-based capital rules. This change was focused on providing limited flexibility for future changes to the risk-based capital rules applicable to bank holding companies following an evaluation of the exposures of covered institutions that may not previously have been subject to consolidated risk-based capital requirements applicable to banking organizations. Several commenters provided specific examples of assets that warrant consideration for a risk weight lower than 100 percent. The Board will consider the risk characteristics for such assets on a case-by-case basis as it considers potential changes to the risk-based capital rules applicable to bank holding companies.

One commenter recommended that the agencies remove from this treatment the condition that the bank holds the asset in connection with the satisfaction of a debt previously contracted or similar authority. This commenter suggests that the assignment to a risk category should be based on the risk of the asset, not an authority to own the asset. The agencies agree that in the cases where this limited treatment is used, the assignment of a capital requirement in this situation would be based on an evaluation of the asset's risk profile. The condition related to legal authority is intended to limit the scope for assignments of capital requirements under this provision to assets not typically held by depository institutions, whose risks and characteristics were not contemplated when the general risk-based capital rules were developed.

Insurance-related commenters noted that some large insurance companies which engage predominantly in insurance activities have depository institution subsidiaries or affiliates that represent a relatively small portion of the consolidated entity. These commenters highlighted fundamental differences in risk profiles, balance sheet characteristics, and business models between insurance companies and banking organizations. In response to these comments, the agencies note that section 171(b)(2) of the Act does not take into account the size or other differences between a holding company and its subsidiary depository institution(s). Consistent with this section of the Act, the ''generally applicable'' capital requirements serves as a floor for any capital requirements the agencies may require.

Some commenters suggested that foreign banking organizations operating under the advanced approaches rules could hold less capital and therefore, receive a competitive advantage compared to U.S banking organizations. The agencies agree that without the proposal's floor requirement, a banking organization that uses the advanced approaches rules could theoretically operate with lower minimum risk-based capital requirements than would be required under the general risk-based capital rules. The agencies will consider these competitive equity concerns when working with the BCBS and other supervisory authorities to mitigate potential competitive inequities across jurisdictions, as appropriate.

In explaining their concern about how the proposal would interact with Basel III, a number of commenters focused on the proposed rule and future changes to regulatory capital requirements, including those related to U.S. implementation of Basel III. These commenters stated that it is not possible to understand the consequences of implementing section 171 without addressing the broader range of changes in capital regulations, such as changes to the leverage ratio and PCA provisions.

The agencies agree that implementing section 171 will require careful consideration and diligence over time, as the agencies propose and implement various enhancements to the regulatory capital rules. Consistent with the joint efforts of the U.S. banking agencies and the Basel Committee to enhance the regulatory capital rules applicable to internationally active banking organizations, the agencies anticipate that their capital requirements will be amended, establishing different minimum and ''generally applicable'' capital requirements. These amendments would reflect advances in risk sensitivity and potentially other

substantive changes to international agreements on capital requirements and capital policy changes generally.

Thus, the ''generally applicable'' capital requirements as defined under section 171 will evolve over time, and as they evolve, continue to serve as a floor for all banking organizations' risk-based capital requirements. Section 171 also requires that the minimum capital requirements established under section 171 not be ''quantitatively lower'' than the ''generally applicable'' capital requirements in effect for insured depository institutions as of the date of the Act.

The agencies anticipate performing a quantitative analysis of any new capital framework developed in the future for purposes of ensuring that future changes to the agencies' capital requirements result in minimum capital requirements that are not ''quantitatively lower'' than the ''generally applicable'' capital requirements for insured depository institutions in effect as of the date of enactment of the Act. By performing such an analysis, the agencies would ensure that all minimum capital requirements established under section 171 meet this requirement, including minimum requirements that become the new ''generally applicable'' capital requirements under section 171.

The agencies are currently considering how that analysis may be performed for anticipated changes to the capital rules. As some commenters noted, comparing capital requirements on an aggregate basis is an effective way of conducting the ''quantitatively lower'' analysis and the agencies expect to propose this method as appropriate in future rulemakings. The agencies anticipate that before proposing future changes to their capital requirements, the agencies will consider the implications for the capital adequacy of banking organizations, the implementation costs, and the nature of any unintended consequences or competitive issues. The agencies note that section 171 does not require a ''permanent Basel-I based floor'' as some commenters have suggested. The agencies also note that they do 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.

In addition, the agencies agree with commenters that the relationship between the requirements of section 171 and other aspects of the Act, including section 165, must be considered carefully and that all aspects of the Act should be implemented so as to avoid imposing conflicting or inconsistent regulatory capital requirements.

III. Final Rule

A. Implementation of a Risk-Based Capital Floor

The agencies have considered the comments received on the NPR, and continue to believe that the rule as proposed is consistent with the requirements of section 171 of the Act with respect to risk-based capital requirements. Therefore, the agencies have decided to implement the rule as proposed, effective July 28, 2011.

Thus, each organization implementing the advanced approaches rules will continue to calculate its risk-based capital requirements under the agencies' general risk-based capital rules, and the capital requirement it computes under those rules will serve as a floor for its risk-based capital requirement computed under the advanced approaches rules. The agencies note that the effect of this rule on banking organizations is to preclude certain reductions in capital requirements that might have occurred in the future, absent the rule and absent any further changes to the capital rules. The agencies also note that in practice, the rule will not have an immediate effect on banking organizations' capital requirements because all organizations subject to the advanced approaches rules are currently computing their capital requirements under the general risk-based capital rules.

For bank holding companies subject to the advanced approaches rule, as noted above, the final rule provides that they must calculate their floor requirement under the general risk-based capital rules for state member banks.[26] However, in accordance with the Act, these organizations may include certain debt or equity instruments issued before May 19, 2010 as described in section 171(b)(4)(B) of the Act. The agencies expect the phase-in of restrictions on the regulatory capital treatment of the debt or equity instruments described in section 171(b)(4)(B) of the Act will be addressed in more detail in a subsequent rule. As indicated in the proposal, other aspects of section 171 are not addressed in this final rule.

B. Capital Requirements for Certain Nonbanking Exposures

Commenters generally supported the agencies' proposed treatment of certain low-risk, nonbanking exposures. The agencies believe the proposed treatment provides flexibility to address situations where exposures of a depository institution holding company or a nonbank financial company supervised by the Board not only do not wholly fit within the terms of a risk weight category applicable to banking organizations, but also impose risks that are not commensurate with the risk weight otherwise specified in the generally applicable risk-based capital requirements. Therefore, the final rule retains the proposed rule's treatment for these assets without modification.

As a general matter, the Board and the other federal banking agencies retain a reservation of authority to assign alternate risk-based capital requirements if such action is warranted.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), generally requires that an agency prepare and make available for public comment an initial regulatory flexibility analysis in connection with a notice of proposed rulemaking.[27] 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.

As discussed in greater detail above, the purpose of the final rule is to establish a risk-based capital floor for the advanced approaches rules in a manner that is consistent with section 171 of the Act. In addition, the final rule also amends the general risk-based capital rules for depository institutions to provide flexibility consistent with section 171 of the Act for addressing the appropriate capital requirement for low-risk assets held by depository institution holding companies or by nonbank financial companies supervised by the Board, in situations where there is no explicit capital treatment for such exposures under the general risk-based capital rules.

As discussed above, the agencies solicited public comment on the rule in a notice of proposed rulemaking. The agencies did not receive any comments regarding burden to small banking organizations. After considering the comments on the proposal, the agencies decided to issue the proposed rule text as a final rule without change.

[26] 12 CFR part 208, appendix A.

[27] *See* 5 U.S.C. 603(a).

The final rule would affect bank holding companies, national banks, state member banks, and state nonmember banks 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 or bank 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 or bank that would be required to use the advanced approaches rules to calculate its risk-based capital requirements.

With respect to the changes to the general risk-based capital rules, the final rule has the potential to affect the risk weights applicable only to assets that generally are impermissible for banks to hold. These 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 compliance requirements on banks 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 4,493 small bank holding companies), one small national bank (out of a total of approximately 664 small national banks), one small state member bank (out of a total of approximately 398 small state member banks), and one small state nonmember bank (out of a total of approximately 2,639 small state nonmember banks) are required to use the advanced approaches rules.[28] 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 final 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 OCC has determined that its final 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,[29] 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.[30] This final rule would replace 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. 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 (Pub. L. 106–102, 113 Stat. 1338, 1471) 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 final rule in a simple and straightforward manner.

[28] All totals are as of December 31, 2010.

[29] 44 U.S.C. 3501–3521.

[30] *See* Risk-Based Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework, FFIEC 101, OCC OMB Number 1557–0239, Federal Reserve OMB Number 7100–0319, FDIC OMB Number 3064–0159.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Banks, banking, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 208

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

12 CFR Part 225

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

12 CFR Part 325

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

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 amends 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 A to part 3, in section 3, add new paragraph (a)(4)(xi) as follows:

Appendix A to Part 3—Risk-Based Capital Guidelines

* * * * *

Section 3. Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items

* * * * *

(a) * * *

(4) * * *

(xi) 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 (see 12 CFR part 225, appendix A), 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.

* * * * *

■ 3. In Appendix C to part 3:

■ a. Revise Part I, section 3 to read as set forth below.

■ b. Remove section 21(e).

Appendix C to Part 3—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 12 CFR part 3, Appendix B, calculates its risk-based capital requirements under this appendix, the bank must also refer to 12 CFR part 3, Appendix B, for supplemental rules to calculate risk-based capital requirements adjusted for market risk.

* * * * *

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 are amended as follows:

PART 208—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

■ 4. 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.

■ 5. In Appendix A to part 208, revise section III.C. 4.a and add section III.C. 4.e to read as follows:

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

* * * * *

III. * * *

C. * * *

4. *Category 4: 100 percent.* a. Except as provided in section III.C. 4.e of this appendix, 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 (*See* 12 CFR part 225, appendix A), provided that all of the following conditions apply:

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

ii. 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.

* * * * *

■ 6. In Appendix F to part 208:

■ a. Revise section 3 to read as set forth below; and

■ b. Remove section 21(e).

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 12 CFR part 208, appendix E calculates its risk-based capital requirements under this appendix, the bank must also refer to 12 CFR part 208 for supplemental rules to calculate risk-based capital requirements adjusted for market risk.

* * * * *

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

■ 7. 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.

■ 8. In Appendix G to part 225:

■ a. Revise section 3 to read as set forth below; and

■ b. Remove section 21(e).

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(b)(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(b)(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 12 CFR part 225, appendix E calculates its risk-based capital requirements under this appendix, the bank holding company must also refer to 12 CFR part 225, appendix E for supplemental rules to calculate risk-based capital requirements adjusted for market risk.

* * * * *

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

■ 9. 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).

■ 10. Amend Appendix A to part 325 as follows:

■ a. In section II.C, revise the first sentence of the introductory text;

■ b. In sections II.D, and II.E, redesignate footnotes 45 through 50 as footnotes 46 through 51.

■ c. In section II.C, Category 4, add new paragraph (d) and a new footnote 45.

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

* * * * *

II. * * *

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 (12 CFR part 225, appendix A), provided that all of the following conditions apply:

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

(2) 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.

* * * * *

■ 11. In Appendix D to part 325:

■ a. Revise section 3 to read as set forth below; and

■ b. Remove section 21(e).

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.

* * * * *

Dated: June 14, 2011.

John Walsh,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, June 14, 2011.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 14th day of June 2011.

By order of the Board of Directors. Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–15669 Filed 6–27–11; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0126; Directorate Identifier 2011–NE–03–AD; Amendment 39–16726; AD 2011–13–03]

RIN 2120–AA64

Airworthiness Directives: Lycoming Engines (Type Certificate Previously Held by Textron Lycoming) and Teledyne Continental Motors (TCM) Turbocharged Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires inspecting certain Lycoming and TCM reciprocating engines with certain Hartzell Engine Technologies, LLC (HET) turbochargers installed, and disassembly and cleaning of the turbocharger center housing and rotating assembly (CHRA) cavities of affected turbochargers. This AD was prompted by a turbocharger failure due to machining debris left in the cavities of the CHRA during manufacture. We are issuing this AD to prevent seizure of the turbocharger turbine, which could result in damage to the engine, and smoke in the airplane cabin.

DATES: This AD is effective July 13, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 13, 2011.

We must receive comments on this AD by August 12, 2011.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–