§ 325.103 Capital measures and capital category definitions.

(a) Capital measures. For purposes of section 38 and this subpart, the relevant capital measures shall be:

(1) The total risk-based capital ratio;
(2) The Tier 1 risk-based capital ratio; and
(3) The leverage ratio.

(b) Capital categories. For purposes of section 38 and this subpart, a bank shall be deemed to be:

(1) Well capitalized if the bank:
   (i) Has a total risk-based capital ratio of 10.0 percent or greater; and
   (ii) Has a Tier 1 risk-based capital ratio of 6.0 percent or greater; and
   (iii) Has a leverage ratio of 5.0 percent or greater; and
   (iv) Is not subject to any written agreement, order, capital directive, or prompt corrective action directive issued by the FDIC pursuant to section 8 of the FDI Act (12 U.S.C. 1818), the International Lending Supervision Act of 1983 (12 U.S.C. 3907), or section 38 of the FDI Act (12 U.S.C. 1831o), or any regulation thereunder, to meet and maintain a specific capital level for any capital measure.

(2) Adequately capitalized if the bank:
   (i) Has a total risk-based capital ratio of 8.0 percent or greater; and
   (ii) Has a Tier 1 risk-based capital ratio of 4.0 percent or greater; and
   (iii) Has: (A) A leverage ratio of 4.0 percent or greater; or (B) A leverage ratio of 3.0 percent or greater if the bank is rated composite 1 under the CAMELS rating system in the most recent examination of the bank and is not experiencing or anticipating significant growth.

(3) Undercapitalized if the bank:
   (i) Has a total risk-based capital ratio that is less than 8.0 percent; or
   (ii) Has a Tier 1 risk-based capital ratio that is less than 4.0 percent; or
   (iii) Has a leverage ratio that is less than 4.0 percent; or
   (iv) Has a leverage ratio that is less than 3.0 percent if the bank is rated composite 1 under the CAMELS rating system in the most recent examination of the bank and is not experiencing or anticipating significant growth.

(4) Significantly undercapitalized if the bank has:
   (i) A total risk-based capital ratio that is less than 6.0 percent; or
   (ii) A Tier 1 risk-based capital ratio that is less than 3.0 percent; or
   (iii) A leverage ratio that is less than 3.0 percent.

(5) Critically undercapitalized if the insured depository institution has a ratio of tangible equity to total assets that is equal to or less than 2.0 percent.

(c) Capital categories for insured branches of foreign banks. For purposes of the provisions of section 38 and this subpart, an insured branch of a foreign bank shall be deemed to be:

(1) Well capitalized if the insured branch:
   (i) Maintains the pledge of assets required under §347.209 of this chapter; and
   (ii) Maintains the eligible assets prescribed under §347.210 of this chapter at 108 percent or more of the preceding quarter’s average book value of the insured branch’s third-party liabilities; and
   (iii) Has not received written notification from the OCC to increase its capital equivalency deposit pursuant to 12 CFR 28.15(b), or to comply with asset maintenance requirements pursuant to 12 CFR 28.20; or
   (B) The FDIC to pledge additional assets pursuant to §347.209 of this chapter or to maintain a higher ratio of eligible assets pursuant to §347.210 of this chapter.

(2) Adequately capitalized if the insured branch:
   (i) Maintains the pledge of assets required under §347.209 of this chapter; and
   (ii) Maintains the eligible assets prescribed under §347.210 of this chapter at 106 percent or more of the preceding quarter’s average book value of the insured branch’s third-party liabilities; and
   (iii) Does not meet the definition of a well capitalized insured branch.

(3) Undercapitalized if the insured branch:
   (i) Maintains the pledge of assets required under §347.209 of this chapter; and
   (ii) Maintains the eligible assets prescribed under §347.210 of this chapter at 104 percent or more of the preceding quarter’s average book value of the insured branch’s third-party liabilities; and
   (iii) Does not meet the definition of a well capitalized insured branch.
§ 325.104 Capital restoration plans.

(a) Schedule for filing plan—(1) In general. A bank shall file a written capital restoration plan with the appropriate FDIC regional director within 45 days of the date that the bank receives notice or is deemed to have notice that the bank is undercapitalized, significantly undercapitalized, or critically undercapitalized.

(2) Additional capital restoration plans. Notwithstanding paragraph (a)(1) of this section, a bank that has already submitted and is operating under a capital restoration plan approved under section 38 and this subpart is not required to submit an additional capital restoration plan based on a revised calculation of its capital measures or a reclassification of the institution under §325.103 unless the FDIC notifies the bank that it must submit a new or revised capital plan. A bank that is notified that it must submit a new or revised capital restoration plan shall file the plan in writing with the appropriate FDIC regional director within 45 days of receiving such notice, unless the FDIC notifies the bank that the plan must be filed within a different period.

(b) Contents of plan. All financial data submitted in connection with a capital restoration plan shall be prepared in accordance with the instructions provided on the Call Report, unless the FDIC instructs otherwise. The capital restoration plan shall include all of the information required to be filed under section 38(e)(2) of the FDI Act. A bank that is required to submit a capital restoration plan as a result of a reclassification of the bank pursuant to §325.103(d) of this subpart shall include a description of the steps the bank will take to correct the unsafe or unsound condition or practice. No plan shall be

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