

§ 1229.5

12 CFR Ch. XII (1–1–10 Edition)

(e) *Reservation of authority.* Nothing in this section shall prevent the Director from exercising any other authority under the Safety and Soundness Act, the Bank Act or any regulation to reclassify a Bank for reasons not set forth in paragraph (b) of this section or to take any other action against a Bank.

§ 1229.5 Capital distributions for adequately capitalized Banks.

(a) *Restriction.* An adequately capitalized Bank may not make a capital distribution if after doing so the Bank's capital would be insufficient to maintain a classification of adequately capitalized. A Bank may not make a capital distribution if such distribution would violate any restriction on the redemption or repurchase of capital stock or the payment of a dividend set forth in section 6 of the Bank Act (12 U.S.C. 1426) and any other applicable regulation.

(b) *Exception.* Notwithstanding the restriction in paragraph (a) of this section, the Director may permit a Bank to repurchase or redeem its shares of stock if the transaction is made in connection with the issuance of additional Bank shares or obligations in at least an equivalent amount to the shares that are redeemed or repurchased and will reduce the Bank's financial obligations or otherwise improve its financial condition. Any transaction under this paragraph also must conform with any restriction on the redemption or repurchase of Bank stock set forth in section 6 of the Bank Act (12 U.S.C. 1426) and in any other applicable regulation.

§ 1229.6 Mandatory actions applicable to undercapitalized Banks.

(a) *Mandatory Actions by the Bank.* A Bank that is classified as undercapitalized shall:

(1) Submit to the Director for approval a capital restoration plan that complies with the requirements and procedures established by § 1229.11 of this part and receive approval from the Director for such plan;

(2) Fulfill all terms, conditions and obligations contained in the capital restoration plan as approved by the Director;

(3) Not make any capital distribution that would result in the Bank being reclassified as significantly undercapitalized or critically undercapitalized, nor make a capital distribution if such distribution would violate any restriction on the redemption or repurchase of capital stock or the declaration or payment of a dividend set forth in section 6 of the Bank Act (12 U.S.C. 1426) or in any other applicable regulation;

(4) Not permit its average total assets in any calendar quarter to exceed its average total assets during the preceding calendar quarter, where such average is calculated based on the total amount of assets held by the Bank for each day in a quarter, unless:

(i) The Director has approved the Bank's capital restoration plan; and

(ii) The Director determines that:

(A) The increase in total assets is consistent with the approved capital restoration plan; and

(B) The ratio of tangible equity to the Bank's total assets is increasing at a rate sufficient to enable the Bank to become adequately capitalized within a reasonable time and consistent with any schedule established in the capital restoration plan; and

(5) Not acquire, directly or indirectly, an equity interest in any operating entity (other than as necessary to enforce a security interest granted to the Bank) nor engage in any new business activity unless:

(i) The Director has approved the Bank's capital restoration plan, the Bank is implementing the capital restoration plan and the Director determines that proposed acquisition or activity will further achievement of the goals set forth in that plan; or

(ii) The Director determines that the proposed acquisition or activity will be consistent with the safe and sound operation of the Bank and will further the Bank's compliance with its risk-based and minimum capital requirements in a reasonable period of time.

(b) *Mandatory reclassification by the Director.* The Director shall reclassify an undercapitalized Bank as significantly undercapitalized if:

(1) The Bank does not submit a capital restoration plan that is substantially in compliance with § 1229.11 of