Office of Thrift Supervision, Treasury

§ 567.11 Reservation of authority.

(a) Transactions for purposes of evasion. The Director or the Regional Director for the region in which a savings association is located may disregard any transaction entered into primarily for the purpose of reducing the minimum required amount of regulatory capital or otherwise evading the requirements of this part.

(b) Average versus period-end figures. The Office reserves the right to require a savings association to compute its capital ratios on the basis of average, rather than period-end, assets when the Office determines appropriate to carry out the purposes of this part.

(c)(1) Reservation of authority. Notwithstanding the definitions of core and supplementary capital in §567.5 of this part, OTS may find that a particular type of purchased intangible asset or capital instrument constitutes or may constitute core or supplementary capital, and may permit one or more savings associations to include all or a portion of such intangible asset or funds obtained through such capital instrument as core or supplementary capital, permanently or on a temporary basis, for the purposes of compliance with this part or for any other purposes. Similarly, the Office may find that a particular asset or core or supplementary capital component has characteristics or terms that diminish

(8) Limit operational expenditures to specified levels;
(9) Increase liquid assets and maintain such increased liquidity at specified levels; or
(10) Take such other action or actions as the Director may deem necessary or appropriate for the safety and soundness of the savings association, or depositors or investors in the savings association.

(f) The Director shall treat as an unsafe and unsound practice any material failure by a savings association to comply with any plan, regulation, written agreement undertaken under this section or order or directive issued to comply with the requirements of this part.

§ 567.11 Reservation of authority.

(a) Transactions for purposes of evasion. The Director or the Regional Director for the region in which a savings association is located may disregard any transaction entered into primarily for the purpose of reducing the minimum required amount of regulatory capital or otherwise evading the requirements of this section:

(1) The savings association obtains the Director's prior approval;
(2) Any increase in assets is accompanied by an increase in tangible capital in an amount not less than 3% of the increase in assets;
(3) Any increase in assets is accompanied by an increase in capital not less in percentage amount than required under the risk-based capital standards then applicable;
(4) Any increase in assets is invested in low-risk assets; and
(5) The savings association’s ratio of core capital to total assets is not less than the ratio existing on January 1, 1991.

(e) If a savings association fails to meet the risk-based capital requirement, the leverage ratio requirement, or the tangible capital requirement established under this part, the Director may, through enforcement proceedings or otherwise, require such savings association to take one or more of the following corrective actions:

(1) Increase the amount of its regulatory capital to a specified level or levels;
(2) Convene a meeting or meetings with the Office’s supervision staff for the purpose of accomplishing the objectives of this section;
(3) Reduce the rate of earnings that may be paid on savings accounts;
(4) Limit the receipt of deposits to those made to existing accounts;
(5) Cease or limit the issuance of new accounts of any or all classes or categories, except in exchange for existing accounts;
(6) Cease or limit lending or the making of a particular type or category of loan;
(7) Cease or limit the purchase of loans or the making of specified other investments;

(8) Limit operational expenditures to specified levels;
(9) Increase liquid assets and maintain such increased liquidity at specified levels; or
(10) Take such other action or actions as the Director may deem necessary or appropriate for the safety and soundness of the savings association, or depositors or investors in the savings association.

(f) The Director shall treat as an unsafe and unsound practice any material failure by a savings association to comply with any plan, regulation, written agreement undertaken under this section or order or directive issued to comply with the requirements of this part.

its contribution to a savings association’s ability to absorb losses, and the Office may require the discounting or deduction of such asset or component from the computation of core, supplementary, or total capital.

(2) Notwithstanding §567.6 of this part, OTS will look to the substance of a transaction and may find that the assigned risk weight for any asset, or credit equivalent amount or credit conversion factor for any off-balance sheet item does not appropriately reflect the risks imposed on the savings association. OTS may require the savings association to apply another risk-weight, credit equivalent amount, or credit conversion factor that OTS deems appropriate.

(3) OTS may find that the capital treatment for an exposure to a transaction not subject to consolidation on the savings association’s balance sheet does not appropriately reflect the risks imposed on the savings association. Accordingly, OTS may require the savings association to treat the transaction as if it were consolidated on the savings association’s balance sheet. OTS will look to the substance of and risk associated with the transaction as well as other relevant factors in determining whether to require such treatment and in calculating risk based capital as OTS deems appropriate.

(4) If this part does not specifically assign a risk weight, credit equivalent amount, or credit conversion factor, OTS may assign any risk weight, credit equivalent amount, or credit conversion factor that it deems appropriate. In making this determination, OTS will consider the risks associated with the asset or off-balance sheet item as well as other relevant factors.

(d) In making a determination under this paragraph (c) of this section, the OTS will notify the savings association of the determination and solicit a response from the savings association. After review of the response by the savings association, the OTS shall issue a final supervisory decision regarding the determination made under paragraph (c) of this section.