

Federal Deposit Insurance Corporation

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paid to senior executive officers of the institution (section 38(f)(4)).

(4) *Additional provisions applicable to critically undercapitalized institutions.* (i) In addition to the provisions of section 38 of the FDI Act described in paragraphs (a)(2) and (a)(3) of this section, immediately upon receiving notice or being deemed to have notice, as provided in § 325.102 of this subpart, that the insured depository institution is critically undercapitalized, the institution is prohibited from doing any of the following without the FDIC's prior written approval:

(A) Entering into any material transaction other than in the usual course of business, including any investment, expansion, acquisition, sale of assets, or other similar action with respect to which the depository institution is required to provide notice to the appropriate Federal banking agency;

(B) Extending credit for any highly leveraged transaction;

(C) Amending the institution's charter or bylaws, except to the extent necessary to carry out any other requirement of any law, regulation, or order;

(D) Making any material change in accounting methods;

(E) Engaging in any covered transaction (as defined in section 23A(b) of the Federal Reserve Act (12 U.S.C. 371c(b)));

(F) Paying excessive compensation or bonuses;

(G) Paying interest on new or renewed liabilities at a rate that would increase the institution's weighted average cost of funds to a level significantly exceeding the prevailing rates of interest on insured deposits in the institution's normal market areas; and

(H) Making any principal or interest payment on subordinated debt beginning 60 days after becoming critically undercapitalized except that this restriction shall not apply, until July 15, 1996, with respect to any subordinated debt outstanding on July 15, 1991, and not extended or otherwise renegotiated after July 15, 1991.

(ii) In addition, the FDIC may further restrict the activities of any critically undercapitalized institution to carry out the purposes of section 38 of the FDI Act.

(5) *Exception for certain savings associations.* The restrictions in paragraph (a)(4) of this section shall not apply, before July 1, 1994, to any insured savings association if:

(i) The savings association had submitted a plan meeting the requirements of section 5(t)(6)(A)(ii) of the Home Owners' Loan Act (12 U.S.C. 1464(t)(6)(A)(ii)) prior to December 19, 1991;

(ii) The Director of OTS had accepted the plan prior to December 19, 1991; and

(iii) The savings association remains in compliance with the plan or is operating under a written agreement with the appropriate federal banking agency.

(b) *Discretionary supervisory actions.* In taking any action under section 38 that is within the FDIC's discretion to take in connection with:

(1) An insured depository institution that is deemed to be undercapitalized, significantly undercapitalized, or critically undercapitalized, or has been reclassified as undercapitalized, or significantly undercapitalized; or

(2) An officer or director of such institution, the FDIC shall follow the procedures for issuing directives under §§ 308.201 and 308.203 of this chapter, unless otherwise provided in section 38 or this subpart.

Subpart C—Annual Stress Test

SOURCE: 77 FR 62424, Oct. 15, 2012, unless otherwise noted.

§ 325.201 Authority, purpose, and reservation of authority.

(a) *Authority.* This subpart is issued by the Federal Deposit Insurance Corporation (the "Corporation" or "FDIC") under 12 U.S.C. 5365(i)(2), 12 U.S.C. 5412(b)(2)(B), 12 U.S.C. 1818, 12 U.S.C. 1819(a)(Tenth), 12 U.S.C. 1831o, and 12 U.S.C. 1831p-1.

(b) *Purpose.* This subpart implements 12 U.S.C. 5365(i)(2), which requires the Corporation (in coordination with the Board of Governors of the Federal Reserve System ("Board") and the Federal Insurance Office) to issue regulations that require each covered bank to conduct annual stress tests and establishes a definition of stress test, methodologies for conducting stress tests,

and reporting and disclosure requirements.

(c) *Reservation of authority.* Notwithstanding any other provisions of this subpart, the Corporation may modify some or all of the requirements of this subpart.

(1) The Corporation may accelerate or extend any deadline for stress testing, reporting, or publication of the stress test results.

(2) The Corporation may require different or additional tests not otherwise required by this subpart or may require or permit different or additional analytical techniques and methodologies, different or additional scenarios (including components for the scenarios), or different assumptions for the covered bank to use in meeting the requirements of this subpart. In addition, the FDIC may specify a different as-of date for any or all categories of financial data used by the stress test.

(3) The Corporation may modify the reporting requirements of a report under this subpart or may require additional reports. The Corporation may modify the publication requirements of this subpart and or may require different or additional publication disclosures.

(4) *Factors considered:* Any exercise of authority under this section by the Corporation will be in writing and will consider the activities, level of complexity, risk profile, scope of operations, and the regulatory capital of the covered bank, in addition to any other relevant factors.

(5) *Notice and comment procedures:* In exercising its authority to require different or additional stress tests and different or additional scenarios (including components for the scenarios) under paragraph (c)(2) of this section, the Corporation will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in 12 CFR 325.6, as appropriate.

(6) Nothing in this subpart limits the authority of the Corporation under any other provision of law or regulation to take supervisory or enforcement action, including action to address unsafe and unsound practices or conditions, or violations of law or regulation.

§ 325.202 Definitions.

For purposes of this subpart—

(a) *Adverse scenario* means a set of conditions that affect the U.S. economy or the financial condition of a covered bank that are more adverse than those associated with the baseline scenario and may include trading or other additional components.

(b) *Average total consolidated assets* means the average of the covered bank's total consolidated assets, as reported on the covered bank's Consolidated Report of Condition and Income (Call Report) for the four most recent consecutive quarters. If the covered bank has not filed a Call Report for each of the four most recent consecutive quarters, the covered bank's average total consolidated assets means the average of the covered bank's total consolidated assets, as reported on the covered bank's Call Reports, for the most recent one or more consecutive quarters. The date on which the state nonmember bank or the state savings association becomes a covered bank will be the as-of date of the most recent Call Report used in the calculation of the average.

(c) *Baseline scenario* means a set of conditions that affect the U.S. economy or the financial condition of a covered bank, and that reflect the consensus views of the economic and financial outlook.

(d) *Covered bank* means any state nonmember bank or state savings association subject to the following categories:

(1) *\$10 billion to \$50 billion covered bank.* Any state nonmember bank or state savings association with average total consolidated assets calculated as required under this subpart that are greater than \$10 billion but less than \$50 billion.

(2) *Over \$50 billion covered bank.* Any state nonmember bank or state savings association with average total consolidated assets calculated as required under this subpart that are not less than \$50 billion.

(e) *Planning horizon* means the period of at least nine quarters over which the relevant projections extend.

(f) *Pre-provision net revenue* means the sum of net interest income and non-interest income, less expenses, before adjusting for loss provisions.

(g) *Provision for loan and lease losses* means the provision for loan and lease losses as reported by the covered bank on its Call Report.

(h) *Regulatory capital ratio* means a capital ratio for which the Corporation established minimum requirements by regulation or order, including the leverage ratio and tier 1 and total risk-based capital ratios applicable to that covered bank as calculated under the Corporation's regulations.

(i) *Scenarios* are those sets of conditions that affect the U.S. economy or the financial condition of a covered bank that the Corporation annually determines are appropriate for use in the company-run stress tests, including, but not limited to, baseline, adverse, and severely adverse scenarios.

(j) *Severely adverse scenario* means a set of conditions that affect the U.S. economy or the financial condition of a covered bank and that overall are more severe than those associated with the adverse scenario and may include trading or other additional components.

(k) *State nonmember bank* and *state savings association* have the same meanings as those terms are defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(l) *Stress test* means the process to assess the potential impact of scenarios on the consolidated earnings, losses, and capital of a covered bank over the planning horizon, taking into account the current condition of the covered bank and the covered bank's risks, exposures, strategies, and activities.

(m) *Stress test cycle* means:

(1) Until October 1, 2015, the period beginning October 1 of a calendar year and ending on September 30 of the following calendar year; and

(2) Beginning October 1, 2015, the period beginning January 1 of a calendar year and ending on December 31 of that year.

[77 FR 62424, Oct. 15, 2012, as amended at 79 FR 69368, Nov. 21, 2014]

§ 325.203 Applicability.

(a) *First stress test for covered banks subject to stress testing requirements as of October 15, 2012.*

(1) A \$10 billion to \$50 billion covered bank as of October 15, 2012 must conduct its first stress test under this subpart using financial statement data as of September 30, 2013, and report the results of its stress test on or before March 31, 2014.

(2) A \$10 billion to \$50 billion covered bank that is subject to its first annual stress test pursuant to section 203(a)(1) of this subpart must make its initial public disclosure in the period starting June 15 and ending June 30 of 2015, by disclosing the results of a stress test conducted in 2014, using financial statement data as of September 30, 2014.

(3) A state nonmember bank or state savings association that is an over \$50 billion covered bank as of October 15, 2012, must conduct its first stress test under this subpart using financial statement data as of September 30, 2012, and report the results of its stress test on or before January 5, 2013.

(b)(1) A state nonmember bank or state savings association that becomes a covered bank after October 15, 2012 and on or before March 31, 2014 shall conduct its first annual stress test under this subpart beginning in the next calendar year after the date the state nonmember bank or state savings association becomes a covered bank.

(2) A state nonmember bank or state savings association that becomes a covered bank after March 31, 2014 and on or before March 31, 2015 shall conduct its first annual stress test under this subpart in the January 1, 2016 stress testing cycle.

(3) A state nonmember bank or state savings association that becomes a covered bank on or before March 31 in years following 2015 shall conduct its first annual stress test under this subpart in the stress testing cycle in the next calendar year after the date the state nonmember bank or state savings association becomes a covered bank. A state nonmember bank or state savings association that becomes a covered bank after March 31 in years following 2015 shall conduct its first annual stress test under this subpart in the

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second calendar year after the date the state

(c) *Ceasing to be a covered bank or changing categories.* (1) A covered bank will remain subject to the stress test requirements based on its applicable category unless and until total consolidated assets of the covered bank falls below the relevant size threshold for each of four consecutive quarters as reported on the covered bank's most recent Call Reports. The calculation will be effective on the as-of date of the fourth consecutive Call Report.

(2) Notwithstanding paragraph (c)(1) of this section, a state nonmember bank or state savings association that migrates from a \$10 billion to \$50 billion covered bank to an over \$50 billion covered bank will be subject to the stress test requirements applicable to an over \$50 billion covered bank immediately as of the date the state nonmember bank or state savings association satisfies the size threshold for an over \$50 billion covered bank.

(d) *Covered bank subsidiaries of a bank holding company or savings and loan holding company subject to annual stress test requirements.* (1) Notwithstanding the requirements applicable to covered banks under this section, a covered bank that is a consolidated subsidiary of a bank holding company or savings and loan holding company that is required to conduct an annual company-run stress test under applicable regulations of the Board of Governors of the Federal Reserve System may elect to conduct its stress test and report to the FDIC on the same timeline as its parent bank holding company or savings and loan holding company.

(2) A covered bank that elects to conduct its stress test under paragraph (d)(1) of this section will remain subject to the same timeline requirements of its parent company until otherwise approved by the FDIC.

[77 FR 62424, Oct. 15, 2012, as amended at 79 FR 69368, Nov. 21, 2014]

§ 325.204 Annual stress tests required.

(a) *General requirements—(1) \$10 billion to \$50 billion covered bank.* Prior to January 1, 2016, a \$10 billion to \$50 billion covered bank must conduct a stress test on or before March 31 of each calendar year based on financial data as of

September 30 of the preceding calendar year. Beginning January 1, 2016, a \$10 billion to \$50 billion covered bank must conduct a stress test on or before July 31 of each calendar year based on financial data as of December 31 of the preceding calendar year.

(2) *Over \$50 billion covered bank.* Prior to January 1, 2016, an over \$50 billion covered bank must conduct a stress test on or before January 5 of each calendar year based on financial data as of September 30 of the preceding calendar year. Beginning January 1, 2016, an over \$50 billion covered bank must conduct a stress test on or before April 5 of each calendar year based on financial data as of December 31 of the preceding calendar year.

(b) *Scenarios provided by the Corporation.* In conducting the stress test under this subpart, each covered bank must use the scenarios provided the Corporation. The scenarios provided by the Corporation will reflect a minimum of three sets of economic and financial conditions, including baseline, adverse, and severely adverse scenarios. The Corporation will provide a description of the scenarios required under this section to each covered bank no later than November 15 (for stress test cycle beginning October 1, 2014) or February 15 (for stress test cycle beginning January 1, 2016, and all stress test cycles thereafter) of that calendar year.

(c) *Significant trading activities.* The Corporation may require a covered bank with significant trading activities, as determined by the Corporation, to include trading and counterparty components in its adverse and severely adverse scenarios. The trading and counterparty position data used in these components will be as of a date between October 1 and December 1 (for the stress test cycle beginning October 1, 2014) or between January 1 and March 1 (for the stress test cycle beginning January 1, 2016, and all stress test cycles thereafter) of that calendar year selected by the Corporation and communicated to the covered bank no later than December 1 (for the stress test cycle beginning October 1, 2014) or

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March 1 (for the stress test cycle beginning January 1, 2016, and all stress test cycles thereafter) of the calendar year.

[79 FR 69368, Nov. 21, 2014]

§ 325.205 Methodologies and practices.

(a) *Potential impact on capital.* In conducting a stress test under this subpart, during each quarter of the planning horizon, each covered bank must estimate the following for each scenario required to be used:

(1) Pre-provision net revenues, losses, loan loss provisions and net income; and

(2) The potential impact on the regulatory capital levels and ratios applicable to the covered bank, and any other capital ratios specified by the Corporation, incorporating the effects of any capital action over the planning horizon and maintenance of an allowance for loan losses appropriate for credit exposures throughout the planning horizon.

(b) *Controls and oversight of stress testing processes.* (1) The senior management of a covered bank must establish and maintain a system of controls, oversight, and documentation, including policies and procedures, that are designed to ensure that its stress test processes satisfy the requirements in this subpart. These policies and procedures must, at a minimum, describe the covered bank's stress test practices and methodologies, and processes for validating and updating the covered bank's stress test practices and methodologies consistent with applicable laws, regulations, and supervisory guidance.

(2) The board of directors, or a committee thereof, of a covered bank must approve and review the policies and procedures of the stress testing processes as frequently as economic conditions or the condition of the covered bank may warrant, but no less than annually. The board of directors and senior management of the covered bank must receive a summary of the results of the stress test.

(3) The board of directors and senior management of each covered bank must consider the results of the stress tests in the normal course of business, including but not limited to, the covered bank's capital planning, assess-

ment of capital adequacy, and risk management practices.

§ 325.206 Required reports of stress test results to the FDIC and the Board of Governors of the Federal Reserve System.

(a) *Report required for annual stress test results*—(1) *\$10 billion to \$50 billion covered bank.* Prior to January 1, 2016, a \$10 billion to \$50 billion covered bank must report to the FDIC and to the Board on or before March 31 the results of the stress test in the manner and form specified by the FDIC. Beginning January 1, 2016, a \$10 billion to \$50 billion covered bank must report to the FDIC and to the Board on or before July 31 the results of the stress test in the manner and form specified by the FDIC.

(2) *Over \$50 billion covered bank.* Prior to January 1, 2016, an over \$50 billion covered bank must report to the FDIC and to the Board, on or before January 5, the results of the stress test in the manner and form specified by the FDIC. Beginning January 1, 2016, an over \$50 billion covered bank must report to the FDIC and to the Board, on or before April 5, the results of the stress test in the manner and form specified by the FDIC.

(b) *Content of reports.* (1) The reports required under paragraph (a) of this section must include under the baseline scenario, adverse scenario, severely adverse scenario and any other scenario required by the Corporation under this subpart, a description of the types of risks being included in the stress test, a summary description of the methodologies used in the stress test, and, for each quarter of the planning horizon, estimates of aggregate losses, pre-provision net revenue, provision for loan and lease losses, net income, and pro forma capital ratios (including regulatory and any other capital ratios specified by the FDIC). In addition, the report must include an explanation of the most significant causes for the changes in regulatory capital ratios and any other information required by the Corporation.

(2) The description of aggregate losses and net income must include the cumulative losses and cumulative net income over the planning horizon, and

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the description of each regulatory capital ratio must include the beginning value, ending value, and minimum value of each ratio over the planning horizon.

(c) *Confidential treatment of information submitted.* The confidentiality of information submitted to the Corporation under this subpart and related materials will be determined in accordance with applicable law including any available exemptions under the Freedom of Information Act (5 U.S.C. 552(b)) and the FDIC's Rules and Regulations regarding the Disclosure of Information (12 CFR Part 309).

[77 FR 62424, Oct. 15, 2012, as amended at 79 FR 69368, Nov. 21, 2014]

§ 325.207 Publication of stress test results.

(a) *Publication date*—(1) *\$10 billion to \$50 billion covered bank.* (i) Prior to January 1, 2016, a \$10 billion to \$50 billion covered bank must publish a summary of the results of its annual stress test in the period starting June 15 and ending June 30 (for the stress test cycle beginning October 1, 2014).

(ii) Beginning January 1, 2016, a \$10 billion to \$50 billion covered bank must publish a summary of the results of its annual stress test in the period starting October 15 and ending October 31 (for the stress test cycle beginning January 1, 2016 and for all stress test cycles thereafter).

(2) *Over \$50 billion covered bank.* (i) Prior to January 1, 2016, an over \$50 billion covered bank must publish a summary of the results of its annual stress tests in the period starting March 15 and ending March 31 (for the stress test cycle beginning October 1, 2014).

(ii) Beginning January 1, 2016, an over \$50 billion covered bank must publish a summary of the results of its annual stress tests in the period starting June 15 and ending July 15 (for the stress test cycle beginning January 1 2016, and for all stress test cycles thereafter) provided:

(A) Unless the Corporation determines otherwise, if the over \$50 billion covered bank is a consolidated subsidiary of a bank holding company or savings and loan holding company subject to supervisory stress tests conducted by the Board of Governors of

the Federal Reserve System under 12 CFR part 252, then, within the June 15 to July 15 period, such covered bank may not publish the required summary of its annual stress test earlier than the date that the Board of Governors of the Federal Reserve System publishes the supervisory stress test results of the covered bank's parent holding company.

(B) If the Board of Governors of the Federal Reserve System publishes the supervisory stress test results of the covered bank's parent holding company prior to June 15, then such covered bank may publish its stress test results prior to June 15, but no later than July 15, through actual publication by the covered bank or through publication by the parent holding company under paragraph (b) of this section.

(b) *Publication method.* The summary required under this section may be published on the covered bank's Web site or in any other forum that is reasonably accessible to the public. A covered bank that is a consolidated subsidiary of a bank holding company or savings and loan holding company that is required to conduct an annual company-run stress test under applicable regulations of the Board of Governors of the Federal Reserve System will be deemed to have satisfied the public disclosure requirements under this subpart if it publishes a summary of its stress test results with its parent bank holding company's or savings and loan holding company's summary of stress test results. Subsidiary covered banks electing to satisfy their public disclosure requirement in this manner must include a summary of changes in regulatory capital ratios of such covered bank over the planning horizon, and an explanation of the most significant causes for the changes in regulatory capital ratios.

(c) *Information to be disclosed in the summary.* A covered bank must disclose the following information regarding the severely adverse scenario if it is not a consolidated subsidiary of a parent bank holding company or savings and loan holding company that has elected to make its disclosure under section 203(d):

(1) A description of the types of risks included in the stress test;

(2) A summary description of the methodologies used in the stress test;

(3) Estimates of aggregate losses, pre-provision net revenue, provision for loan and lease losses, net income, and pro forma capital ratios (including regulatory and any other capital ratios specified by the FDIC); and

(4) An explanation of the most significant causes for the changes in the regulatory capital ratios.

(d) *Content of results.* (1) The disclosure of aggregate losses, pre-provision net revenue, provisions for loan and lease losses, and net income under this section must be on a cumulative basis over the planning horizon.

(2) The disclosure of regulatory capital ratios and any other capital ratios specified by the Corporation under this section must include the beginning value, ending value, and minimum value of each ratio over the planning horizon.

[77 FR 62424, Oct. 15, 2012, as amended at 79 FR 69369, Nov. 21, 2014]

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

Capital adequacy is one of the critical factors that the FDIC is required to analyze when taking action on various types of applications and when conducting supervisory activities related to the safety and soundness of individual banks and the banking system. In view of this, the FDIC's Board of Directors has adopted part 325 of its regulations, which sets forth (1) minimum standards of capital adequacy for insured state non-member banks and (2) standards for determining when an insured bank is in an unsafe or unsound condition by reason of the amount of its capital.

This capital maintenance regulation was designed to establish, in conjunction with other Federal bank regulatory agencies, uniform capital standards for all federally-regulated banking organizations, regardless of size. The uniform capital standards were based on ratios of capital to total assets. While those leverage ratios have served as a useful tool for assessing capital adequacy, the FDIC believes there is a need for a capital measure that is more explicitly and systematically sensitive to the risk profiles of individual banks. As a result, the FDIC's Board of Directors has adopted this Statement of Policy on Risk-Based Capital to supplement the part 325 regulation. This statement of policy does not replace or eliminate the existing part 325 capital-to-total assets leverage ratios.

The framework set forth in this statement of policy consists of (1) a definition of capital for risk-based capital purposes, and (2) a system for calculating risk-weighted assets by assigning assets and off balance sheet items to broad risk categories. A bank's risk-based capital ratio is calculated by dividing its qualifying total capital base (the numerator of the ratio) by its risk-weighted assets (the denominator).¹ Table I outlines the definition of capital and provides a general explanation of how the risk-based capital ratio is calculated, Table II summarizes the risk weights and risk categories, and Table III sets forth the credit conversation factors for off-balance sheet items. Additional explanations of the capital definitions, the risk-weighted asset calculations, and the minimum risk-based capital ratio guidelines are provided in Sections I, II and III of this statement of policy.

In addition, when certain banks that engage in trading activities calculate their risk-based capital ratio under this appendix A, they must also refer to appendix C of this part, which incorporates capital charges for certain market risks into the risk-based capital ratio. When calculating their risk-based capital ratio under this appendix A, such banks are required to refer to appendix C of this part for supplemental rules to determine qualifying and excess capital, calculate risk-weighted assets, calculate market risk equivalent assets and add them to risk-weighted assets, and calculate risk-based capital ratios as adjusted for market risk.

This statement of policy applies to all *FDIC-insured state-chartered banks* (excluding insured branches of foreign banks) that are *not* members of the Federal Reserve System, hereafter referred to as *state nonmember banks*, regardless of size, and to all circumstances in which the FDIC is required to evaluate the capital of a banking organization. Therefore, the risk-based capital framework set forth in this statement of policy will be used in the examination and supervisory process as well as in the analysis of applications that the FDIC is required to act upon.

The risk-based capital ratio focuses principally on broad categories of credit risk, however, the ratio does not take account of many other factors that can affect a bank's financial condition. These factors include overall interest rate risk exposure, liquidity, funding and market risks; the quality and level of earnings; investment, loan portfolio,

¹Period-end amounts, rather than average balances, normally will be used when calculating risk-based capital ratios. However, on a case-by-case basis, ratios based on average balances may also be required if supervisory concerns render it appropriate.