

(d) *Qualifying master netting agreement.* In order to recognize an agreement as a qualifying master netting agreement as defined in §628.2, a System institution must:

(1) Conduct sufficient legal review to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that:

(i) The agreement meets the requirements of paragraph (2) of the definition of “qualifying master netting agreement” in §628.2; and

(ii) In the event of a legal challenge (including one resulting from default or from receivership, insolvency, liquidation, or similar proceeding) the relevant court and administrative authorities would find the agreement to be legal, valid, binding, and enforceable under the law of the relevant jurisdictions; and

(2) Establish and maintain written procedures to monitor possible changes in relevant law and to ensure that the agreement continues to satisfy the requirements of the definition of “qualifying master netting agreement” in §628.2.

(e) *Repo-style transaction.* In order to recognize an exposure as a repo-style transaction as defined in §628.2, a System institution must conduct sufficient legal review to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that the agreement underlying the exposure:

(1) Meets the requirements of paragraph (3) of the definition of “repo-style transaction” in §628.2, and

(2) Is legal, valid, binding, and enforceable under applicable law in the relevant jurisdictions.

(f) *Failure of a QCCP to satisfy the rule’s requirements.* If a System institution determines that a CCP ceases to be a QCCP due to the failure of the CCP to satisfy one or more of the requirements set forth in paragraph (2)(i) through (iii) of the definition of a “QCCP” in §628.2, the System institution may continue to treat the CCP as a QCCP for up to 3 months following the determination. If the CCP fails to remedy the relevant deficiency within 3 months after the initial determination, or the CCP fails to satisfy the requirements set forth in paragraph (2)(i)

through (iii) of the definition of a QCCP continuously for a 3-month period after remedying the relevant deficiency, a System institution may not treat the CCP as a QCCP for the purposes of this part until after the System institution has determined that the CCP has satisfied the requirements in paragraph (2)(i) through (iii) of the definition of a QCCP for 3 continuous months.

§§ 628.4–628.9 [Reserved]

Subpart B—Capital Ratio Requirements and Buffers

§ 628.10 Minimum capital requirements.

(a) *Computation of regulatory capital ratios.* A System institution’s regulatory capital ratios are determined on the basis of the financial statements of the institution prepared in accordance with GAAP using average daily balances for the most recent 3 months.

(b) *Minimum capital requirements.* A System institution must maintain the following minimum capital ratios:

(1) A common equity tier 1 (CET1) capital ratio of 4.5 percent.

(2) A tier 1 capital ratio of 6 percent.

(3) A total capital ratio of 8 percent.

(4) A tier 1 leverage ratio of 4 percent, of which at least 1.5 percent must be composed of URE and URE equivalents.

(5) [Reserved]

(6) A permanent capital ratio of 7 percent.

(c) *Capital ratio calculations.* A System institution’s regulatory capital ratios are as follows:

(1) *CET1 capital ratio.* A System institution’s CET1 capital ratio is the ratio of the System institution’s CET1 capital to total risk-weighted assets;

(2) *Tier 1 capital ratio.* A System institution’s tier 1 capital ratio is the ratio of the System institution’s tier 1 capital to total risk-weighted assets;

(3) *Total capital ratio.* A System institution’s total capital ratio is the ratio of the System institution’s total (tier 1 and tier 2) capital to total risk-weighted assets; and

(4) *Tier 1 leverage ratio.* (i) A System institution’s leverage ratio is the ratio of the institution’s tier 1 capital to the

institution's average total consolidated assets as reported on the institution's Call Report net of deductions and adjustments from tier 1 capital under §§ 628.22(a), (b), and (c) and 628.23.

(ii) To calculate the measure of URE and URE equivalents described in paragraph (b)(4) of this section, a System institution must adjust URE and URE equivalents to reflect all the deductions and adjustments required under § 628.22(a), (b), and (c), and must use the denominator of the tier 1 leverage ratio.

(5) *Permanent capital ratio.* A System institution's permanent capital ratio is the ratio of the institution's permanent capital to its total risk-adjusted asset base as reported on the institution's Call Report, calculated in accordance with the regulations in part 615, subpart H, of this chapter.

(d) [Reserved]

(e) *Capital adequacy.* (1) Notwithstanding the minimum requirements in this part, a System institution must maintain capital commensurate with the level and nature of all risks to which the System institution is exposed. FCA may evaluate a System institution's capital adequacy and require the institution to maintain higher minimum regulatory capital ratios using the factors listed in § 615.5350 of this chapter.

(2) A System institution must have a process for assessing its overall capital adequacy in relation to its risk profile and a comprehensive strategy for maintaining an appropriate level of capital under § 615.5200 of this chapter.

[81 FR 49779, July 28, 2016, as amended at 86 FR 54358, Oct. 1, 2021]

§ 628.11 Capital buffer amounts.

(a) *Capital conservation buffer and leverage buffer—(1) Composition of the capital conservation buffer and leverage buffer.* (i) The capital conservation buffer for the CET1 capital ratio, tier 1 capital ratio, and total capital ratio is composed solely of CET1 capital.

(ii) The leverage buffer for the tier 1 leverage ratio is composed solely of tier 1 capital.

(2) *Definitions.* For purposes of this section, the following definitions apply:

(i) *Eligible retained income.* The eligible retained income of a System institution is the System institution's net income for the 4 calendar quarters preceding the current calendar quarter, based on the System institution's quarterly Call Reports, net of any capital distributions and associated tax effects not already reflected in net income.

(ii) *Maximum payout ratio.* The maximum payout ratio is the percentage of eligible retained income that a System institution can pay out in the form of capital distributions and discretionary bonus payments during the current calendar quarter. The maximum payout ratio is based on the System institution's capital conservation buffer, calculated as of the last day of the previous calendar quarter, as set forth in Table 1 to § 628.11.

(iii) *Maximum payout amount.* A System institution's maximum payout amount for the current calendar quarter is equal to the System institution's eligible retained income, multiplied by the applicable maximum payout ratio, as set forth in Table 1 to § 628.11.

(iv) [Reserved]

(v) *Maximum leverage payout ratio.* The maximum leverage payout ratio is the percentage of eligible retained income that a System institution can pay out in the form of capital distributions and discretionary bonus payments during the current quarter. The maximum leverage payout ratio is based on the System institution's leverage buffer, calculated as of the last day of the previous quarter, as set forth in Table 2 to § 628.11.

(vi) *Maximum leverage payout amount.* A System institution's maximum leverage payout amount for the current calendar quarter is equal to the System institution's eligible retained income, multiplied by the applicable maximum leverage payout ratio, as set forth in Table 2 of § 628.11.

(vii) *Capital distribution* means:

(A) A reduction of tier 1 capital through the repurchase, redemption, or revivement of a tier 1 capital instrument or by other means, except when a System institution, within the same quarter when the repurchase is announced, fully replaces a tier 1 capital