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217.10(b)(3), 12 CFR 217.10(c)(3)), as applicable.

(q) *Total risk-weighted assets* means standardized total risk-weighted assets, and for an advanced approaches bank also includes advanced approaches total risk-weighted assets, as defined in §217.2 of Regulation Q (12 CFR 217.2).

[Regulation H, 78 FR 62282, Oct. 11, 2013, as amended at 80 FR 49102, Aug. 14, 2015; 80 FR 70672, Nov. 16, 2015]

§ 208.42 Notice of capital category.

(a) *Effective date of determination of capital category.* A member bank shall be deemed to be within a given capital category for purposes of section 38 of the FDI Act and this subpart as of the date the bank is notified of, or is deemed to have notice of, its capital category, pursuant to paragraph (b) of this section.

(b) *Notice of capital category.* A member bank shall be deemed to have been notified of its capital levels and its capital category as of the most recent date:

(1) A Report of Condition and Income (Call Report) is required to be filed with the Board;

(2) A final report of examination is delivered to the bank; or

(3) Written notice is provided by the Board to the bank of its capital category for purposes of section 38 of the FDI Act and this subpart or that the bank's capital category has changed as provided in paragraph (c) of this section or §208.43(c).

(c) *Adjustments to reported capital levels and capital category*—(1) *Notice of adjustment by bank.* A member bank shall provide the Board with written notice that an adjustment to the bank's capital category may have occurred no later than 15 calendar days following the date that any material event occurred that would cause the bank to be placed in a lower capital category from the category assigned to the bank for purposes of section 38 and this subpart on the basis of the bank's most recent Call Report or report of examination.

(2) *Determination by Board to change capital category.* After receiving notice pursuant to paragraph (c)(1) of this section, the Board shall determine whether to change the capital category of the

bank and shall notify the bank of the Board's determination.

§ 208.43 Capital measures and capital category definitions.

(a) *Capital measures.* (1) For purposes of section 38 of the FDI Act and this subpart, the relevant capital measures are:

(i) Total Risk-Based Capital Measure: The total risk-based capital ratio;

(ii) Tier 1 Risk-Based Capital Measure: The tier 1 risk-based capital ratio;

(iii) Common Equity Tier 1 Capital Measure: The common equity tier 1 risk-based capital ratio; and

(iv) Leverage Measure:

(A) The leverage ratio; and

(B) With respect to an advanced approaches bank, on January 1, 2018, and thereafter, the supplementary leverage ratio.

(C) With respect to any bank that is a subsidiary (as defined in §217.2 of this chapter) of a global systemically important BHC, on Jan. 1, 2018, and thereafter, the supplementary leverage ratio.

(2) For a qualifying community banking organization (as defined in §217.12 of this chapter), that has elected to use the community bank leverage ratio framework (as defined in §217.12 of this chapter), the leverage ratio calculated in accordance with §217.12(b) of this chapter is used to determine the well capitalized capital category under paragraph (b)(1)(i)(A) through (D) of this section.

(b) *Capital categories.* For purposes of section 38 of the FDI Act and this subpart, a member bank is deemed to be:

(1)(i) "Well capitalized" if:

(A) Total Risk-Based Capital Measure: The bank has a total risk-based capital ratio of 10.0 percent or greater; and

(B) Tier 1 Risk-Based Capital Measure: The bank has a tier 1 risk-based capital ratio of 8.0 percent or greater; and

(C) Common Equity Tier 1 Capital Measure: The bank has a common equity tier 1 risk-based capital ratio of 6.5 percent or greater; and

(D) Leverage Measure:

(I) The bank has a leverage ratio of 5.0 percent or greater; and

(2) Beginning on January 1, 2018, with respect to any bank that is a subsidiary of a global systemically important BHC under the definition of “subsidiary” in §217.2 of this chapter, the bank has a supplementary leverage ratio of 6.0 percent or greater; and

(E) The bank is not subject to any written agreement, order, capital directive, or prompt corrective action directive issued by the Board pursuant to section 8 of the FDI Act, the International Lending Supervision Act of 1983 (12 U.S.C. 3907), or section 38 of the FDI Act, or any regulation thereunder, to meet and maintain a specific capital level for any capital measure.

(ii) A qualifying community banking organization, as defined in §217.12 of this chapter, that has elected to use the community bank leverage ratio framework under §217.12 of this chapter, shall be considered to have met the capital ratio requirements for the well capitalized capital category in paragraph (b)(1)(i)(A) through (D) of this section.

(2) “Adequately capitalized” if:

(i) Total Risk-Based Capital Measure: the bank has a total risk-based capital ratio of 8.0 percent or greater;

(ii) Tier 1 Risk-Based Capital Measure: the bank has a tier 1 risk-based capital ratio of 6.0 percent or greater;

(iii) Common Equity Tier 1 Capital Measure: the bank has a common equity tier 1 risk-based capital ratio of 4.5 percent or greater;

(iv) Leverage Measure:

(A) The bank has a leverage ratio of 4.0 percent or greater; and

(B) With respect to an advanced approaches bank or bank that is a Category III Board-regulated institution (as defined in §217.2 of this chapter), the bank has a supplementary leverage ratio of 3.0 percent or greater; and

(v) The bank does not meet the definition of a “well capitalized” bank.

(3) “Undercapitalized” if:

(i) Total Risk-Based Capital Measure: the bank has a total risk-based capital ratio of less than 8.0 percent;

(ii) Tier 1 Risk-Based Capital Measure: the bank has a tier 1 risk-based capital ratio of less than 6.0 percent;

(iii) Common Equity Tier 1 Capital Measure: the bank has a common equity

tier 1 risk-based capital ratio of less than 4.5 percent; or

(iv) Leverage Measure:

(A) The bank has a leverage ratio of less than 4.0 percent; or

(B) With respect to an advanced approaches bank or bank that is a Category III Board-regulated institution (as defined in §217.2 of this chapter), the bank has a supplementary leverage ratio of less than 3.0 percent.

(4) “Significantly undercapitalized” if:

(i) Total Risk-Based Capital Measure: the bank has a total risk-based capital ratio of less than 6.0 percent;

(ii) Tier 1 Risk-Based Capital Measure: the bank has a tier 1 risk-based capital ratio of less than 4.0 percent;

(iii) Common Equity Tier 1 Capital Measure: the bank has a common equity tier 1 risk-based capital ratio of less than 3.0 percent; or

(iv) Leverage Measure: the bank has a leverage ratio of less than 3.0 percent.

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

(c) *Reclassification based on supervisory criteria other than capital.* The Board may reclassify a well capitalized member bank as adequately capitalized and may require an adequately-capitalized or an undercapitalized member bank to comply with certain mandatory or discretionary supervisory actions as if the bank were in the next lower capital category (except that the Board may not reclassify a significantly undercapitalized bank as critically undercapitalized) (each of these actions are hereinafter referred to generally as “reclassifications”) in the following circumstances:

(1) *Unsafe or unsound condition.* The Board has determined, after notice and opportunity for hearing pursuant to 12 CFR 263.203, that the bank is in unsafe or unsound condition; or

(2) *Unsafe or unsound practice.* The Board has determined, after notice and opportunity for hearing pursuant to 12 CFR 263.203, that, in the most recent examination of the bank, the bank received and has not corrected, a less-than-satisfactory rating for any of the

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categories of asset quality, management, earnings, liquidity, or sensitivity to market risk.

[63 FR 37652, July 13, 1998, as amended by Reg. H, 78 FR 62283, Oct. 11, 2013; 79 FR 24540, May 1, 2014; 80 FR 49102, Aug. 14, 2015; 80 FR 70672, Nov. 16, 2015; 84 FR 61796, Nov. 13, 2019; 84 FR 70887, Dec. 26, 2019; 85 FR 32989, June 1, 2020]

§ 208.44 Capital restoration plans.

(a) *Schedule for filing plan*—(1) *In general*. A member bank shall file a written capital restoration plan with the appropriate Reserve Bank 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, unless the Board notifies the bank in writing that the plan is to be filed within a different period. An adequately capitalized bank that has been required, pursuant to § 208.43(c), to comply with supervisory actions as if the bank were undercapitalized is not required to submit a capital restoration plan solely by virtue of the reclassification.

(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 § 208.43(c), unless the Board 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 Reserve Bank within 45 days of receiving such notice, unless the Board notifies the bank in writing that the plan is to 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 Board 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 the result of a reclassification of the bank pursuant to § 208.43(c) shall include a description of the steps the bank will take to correct the unsafe or unsound condition or practice. No plan shall be accepted unless it includes any performance guarantee described in section 38(e)(2)(C) of that Act by each company that controls the bank.

(c) *Review of capital restoration plans*. Within 60 days after receiving a capital restoration plan under this subpart, the Board shall provide written notice to the bank of whether the plan has been approved. The Board may extend the time within which notice regarding approval of a plan shall be provided.

(d) *Disapproval of capital plan*. If the Board does not approve a capital restoration plan, the bank shall submit a revised capital restoration plan within the time specified by the Board. Upon receiving notice that its capital restoration plan has not been approved, any undercapitalized member bank (as defined in § 208.43(b)(3)) shall be subject to all of the provisions of section 38 and this subpart applicable to significantly undercapitalized institutions. These provisions shall be applicable until such time as the Board approves a new or revised capital restoration plan submitted by the bank.

(e) *Failure to submit capital restoration plan*. A member bank that is undercapitalized (as defined in § 208.43(b)(3)) and that fails to submit a written capital restoration plan within the period provided in this section shall, upon the expiration of that period, be subject to all of the provisions of section 38 and this subpart applicable to significantly undercapitalized institutions.

(f) *Failure to implement capital restoration plan*. Any undercapitalized member bank that fails in any material respect to implement a capital restoration plan shall be subject to all of the provisions of section 38 and this subpart applicable to significantly undercapitalized institutions.

(g) *Amendment of capital plan*. A bank that has filed an approved capital restoration plan may, after prior written notice to and approval by the Board, amend the plan to reflect a change in