

§ 324.2 Definitions.

As used in this part:

Additional tier 1 capital is defined in § 324.20(c).

Adjusted allowances for credit losses (AACL) means, with respect to an FDIC-supervised institution that has adopted CECL, valuation allowances that have been established through a charge against earnings or retained earnings for expected credit losses on financial assets measured at amortized cost and a lessor's net investment in leases that have been established to reduce the amortized cost basis of the assets to amounts expected to be collected as determined in accordance with GAAP. For purposes of this part, adjusted allowances for credit losses include allowances for expected credit losses on off-balance sheet credit exposures not accounted for as insurance as determined in accordance with GAAP. Adjusted allowances for credit losses exclude "allocated transfer risk reserves" and allowances created that reflect credit losses on purchased credit deteriorated assets and available-for-sale dbt securities.

Advanced approaches FDIC-supervised institution means an FDIC-supervised institution that is described in § 324.100(b)(1).

Advanced approaches total risk-weighted assets means:

- (1) The sum of:
 - (i) Credit-risk-weighted assets;
 - (ii) Credit valuation adjustment (CVA) risk-weighted assets;
 - (iii) Risk-weighted assets for operational risk; and
 - (iv) For a market risk FDIC-supervised institution only, advanced market risk-weighted assets; minus
- (2) Excess eligible credit reserves not included in the FDIC-supervised institution's tier 2 capital.

Advanced market risk-weighted assets means the advanced measure for market risk calculated under § 324.204 multiplied by 12.5.

Affiliate with respect to a company, means any company that controls, is controlled by, or is under common control with, the company.

Allocated transfer risk reserves means reserves that have been established in accordance with section 905(a) of the International Lending Supervision Act,

against certain assets whose value U.S. supervisory authorities have found to be significantly impaired by protracted transfer risk problems.

Allowances for loan and lease losses (ALLL) means valuation allowances that have been established through a charge against earnings to cover estimated credit losses on loans, lease financing receivables or other extensions of credit as determined in accordance with GAAP. ALLL excludes "allocated transfer risk reserves." For purposes of this part, ALLL includes allowances that have been established through a charge against earnings to cover estimated credit losses associated with off-balance sheet credit exposures as determined in accordance with GAAP.

Asset-backed commercial paper (ABCP) program means a program established primarily for the purpose of issuing commercial paper that is investment grade and backed by underlying exposures held in a bankruptcy-remote special purpose entity (SPE).

Asset-backed commercial paper (ABCP) program sponsor means an FDIC-supervised institution that:

- (1) Establishes an ABCP program;
- (2) Approves the sellers permitted to participate in an ABCP program;
- (3) Approves the exposures to be purchased by an ABCP program; or
- (4) Administers the ABCP program by monitoring the underlying exposures, underwriting or otherwise arranging for the placement of debt or other obligations issued by the program, compiling monthly reports, or ensuring compliance with the program documents and with the program's credit and investment policy.

Assets classified loss means:

- (1) When measured as of the date of examination of an FDIC-supervised institution, those assets that have been determined by an evaluation made by a state or Federal examiner as of that date to be a loss; and
- (2) When measured as of any other date, those assets:
 - (i) That have been determined—
 - (A) By an evaluation made by a state or Federal examiner at the most recent examination of an FDIC-supervised institution to be a loss; or
 - (B) By evaluations made by the FDIC-supervised institution since its

most recent examination to be a loss; and

(ii) That have not been charged off from the FDIC-supervised institution's books or collected.

Bank means an FDIC-insured, state-chartered commercial or savings bank that is not a member of the Federal Reserve System and for which the FDIC is the appropriate Federal banking agency pursuant to section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

Bank holding company means a bank holding company as defined in section 2 of the Bank Holding Company Act.

Bank Holding Company Act means the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*).

Bankruptcy remote means, with respect to an entity or asset, that the entity or asset would be excluded from an insolvent entity's estate in receivership, insolvency, liquidation, or similar proceeding.

Basis derivative contract means a non-foreign-exchange derivative contract (i.e., the contract is denominated in a single currency) in which the cash flows of the derivative contract depend on the difference between two risk factors that are attributable solely to one of the following derivative asset classes: Interest rate, credit, equity, or commodity.

Call Report means Consolidated Reports of Condition and Income.

Carrying value means, with respect to an asset, the value of the asset on the balance sheet of the FDIC-supervised institution as determined in accordance with GAAP. For all assets other than available-for-sale debt securities or purchased credit deteriorated assets, the carrying value is not reduced by any associated credit loss allowance that is determined in accordance with GAAP.

Category II FDIC-supervised institution means:

(1) An FDIC-supervised institution that is a consolidated subsidiary of a company that is identified as a Category II banking organization, as defined pursuant to 12 CFR 252.5 or 12 CFR 238.10, as applicable; or

(2) An FDIC-supervised institution that:

(i) Is not a subsidiary of a depository institution holding company;

(ii)(A) Has total consolidated assets, calculated based on the average of the FDIC-supervised institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to \$700 billion or more. If the FDIC-supervised institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets is calculated based on its total consolidated assets, as reported on the Call Report, for the most recent quarter or the average of the four most recent quarters, as applicable; or

(B) Has:

(1) Total consolidated assets, calculated based on the average of the FDIC-supervised institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, of \$100 billion or more but less than \$700 billion. If the FDIC-supervised institution has not filed the Call Report for each of the four most recent quarters, total consolidated assets is based on its total consolidated assets, as reported on the Call Report, for the most recent quarter or the average of the four most recent quarters, as applicable; and

(2) Cross-jurisdictional activity, calculated based on the average of its cross-jurisdictional activity for the four most recent calendar quarters, of \$75 billion or more. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y-15 or equivalent reporting form.

(iii) After meeting the criteria in paragraph (2)(ii) of this definition, an FDIC-supervised institution continues to be a Category II FDIC-supervised institution until the FDIC-supervised institution has:

(A)(1) Less than \$700 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; and

(2) Less than \$75 billion in cross-jurisdictional activity for each of the four most recent calendar quarters. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and

cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y-15 or equivalent reporting form; or

(B) Less than \$100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters.

Category III FDIC-supervised institution means:

(1) An FDIC-supervised institution that is a subsidiary of a Category III banking organization, as defined pursuant to 12 CFR 252.5 or 12 CFR 238.10, as applicable;

(2) An FDIC-supervised institution that is a subsidiary of a depository institution that meets the criteria in paragraph (3)(iii)(A) or (B) of this definition; or

(3) A depository institution that:

(i) Is an FDIC-supervised institution;

(ii) Is not a subsidiary of a depository institution holding company; and

(iii)(A) Has total consolidated assets, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to \$250 billion or more. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets is calculated based on its total consolidated assets, as reported on the Call Report, for the most recent quarter or the average of the four most recent quarters, as applicable; or

(B) Has:

(1) Total consolidated assets, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, of \$100 billion or more but less than \$250 billion. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets is calculated based on its total consolidated assets, as reported on the Call Report, for the most recent quarter or the average of the four most recent quarters, as applicable; and

(2) At least one of the following in paragraphs (3)(iii)(B)(2)(i) through (iii) of this definition, each calculated as the average of the four most recent cal-

endar quarters, or if the depository institution has not filed each applicable reporting form for each of the four most recent calendar quarters, for the most recent quarter or quarters, as applicable:

(i) Total nonbank assets, calculated in accordance with the instructions to the FR Y-9LP or equivalent reporting form, equal to \$75 billion or more;

(ii) Off-balance sheet exposure equal to \$75 billion or more. Off-balance sheet exposure is a depository institution's total exposure, calculated in accordance with the instructions to the FR Y-15 or equivalent reporting form, minus the total consolidated assets of the depository institution, as reported on the Call Report; or

(iii) Weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y-15 or equivalent reporting form, equal to \$75 billion or more.

(iv) After meeting the criteria in paragraph (3)(iii) of this definition, an FDIC-supervised institution continues to be a Category III FDIC-supervised institution until the FDIC-supervised institution:

(A) Has:

(1) Less than \$250 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters;

(2) Less than \$75 billion in total nonbank assets, calculated in accordance with the instructions to the FR Y-9LP or equivalent reporting form, for each of the four most recent calendar quarters;

(3) Less than \$75 billion in weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y-15 or equivalent reporting form, for each of the four most recent calendar quarters; and

(4) Less than \$75 billion in off-balance sheet exposure for each of the four most recent calendar quarters. Off-balance sheet exposure is an FDIC-supervised institution's total exposure, calculated in accordance with the instructions to the FR Y-15 or equivalent reporting form, minus the total consolidated assets of the FDIC-supervised institution, as reported on the Call Report; or

§ 324.2

12 CFR Ch. III (1–1–23 Edition)

(B) Has less than \$100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; or

(C) Is a Category II FDIC-supervised institution.

Central counterparty (CCP) means a counterparty (for example, a clearing house) that facilitates trades between counterparties in one or more financial markets by either guaranteeing trades or novating contracts.

CFTC means the U.S. Commodity Futures Trading Commission.

Clean-up call means a contractual provision that permits an originating FDIC-supervised institution or servicer to call securitization exposures before their stated maturity or call date.

Cleared transaction means an exposure associated with an outstanding derivative contract or repo-style transaction that an FDIC-supervised institution or clearing member has entered into with a central counterparty (that is, a transaction that a central counterparty has accepted).

(1) The following transactions are cleared transactions:

(i) A transaction between a CCP and an FDIC-supervised institution that is a clearing member of the CCP where the FDIC-supervised institution enters into the transaction with the CCP for the FDIC-supervised institution's own account;

(ii) A transaction between a CCP and an FDIC-supervised institution that is a clearing member of the CCP where the FDIC-supervised institution is acting as a financial intermediary on behalf of a clearing member client and the transaction offsets another transaction that satisfies the requirements set forth in § 324.3(a);

(iii) A transaction between a clearing member client FDIC-supervised institution and a clearing member where the clearing member acts as a financial intermediary on behalf of the clearing member client and enters into an offsetting transaction with a CCP, provided that the requirements set forth in § 324.3(a) are met; or

(iv) A transaction between a clearing member client FDIC-supervised institution and a CCP where a clearing member guarantees the performance of the clearing member client FDIC-supervised institution to the CCP and the transaction meets the requirements of § 324.3(a)(2) and (3).

pervised institution to the CCP and the transaction meets the requirements of § 324.3(a)(2) and (3).

(2) The exposure of an FDIC-supervised institution that is a clearing member to its clearing member client is not a cleared transaction where the FDIC-supervised institution is either acting as a financial intermediary and enters into an offsetting transaction with a CCP or where the FDIC-supervised institution provides a guarantee to the CCP on the performance of the client.³

Clearing member means a member of, or direct participant in, a CCP that is entitled to enter into transactions with the CCP.

Clearing member client means a party to a cleared transaction associated with a CCP in which a clearing member acts either as a financial intermediary with respect to the party or guarantees the performance of the party to the CCP.

Client-facing derivative transaction means a derivative contract that is not a cleared transaction where the FDIC-supervised institution is either acting as a financial intermediary and enters into an offsetting transaction with a qualifying central counterparty (QCCP) or where the FDIC-supervised institution provides a guarantee to the QCCP on the performance of a client on a transaction between the client and a QCCP.

Collateral agreement means a legal contract that specifies the time when, and circumstances under which, a counterparty is required to pledge collateral to an FDIC-supervised institution for a single financial contract or for all financial contracts in a netting set and confers upon the FDIC-supervised institution a perfected, first-priority security interest (notwithstanding the prior security interest of

³For the standardized approach treatment of these exposures, see § 324.34(e) (OTC derivative contracts) or § 324.37(c) (repo-style transactions). For the advanced approaches treatment of these exposures, see § 324.132(c)(8) and (d) (OTC derivative contracts) or § 324.132(b) and 324.132(d) (repo-style transactions) and for calculation of the margin period of risk, see § 324.132(d)(5)(iii)(C) (OTC derivative contracts) and § 324.132(d)(5)(iii)(A) (repo-style transactions).

Federal Deposit Insurance Corporation

§ 324.2

any custodial agent), or the legal equivalent thereof, in the collateral posted by the counterparty under the agreement. This security interest must provide the FDIC-supervised institution with a right to close-out the financial positions and liquidate the collateral upon an event of default of, or failure to perform by, the counterparty under the collateral agreement. A contract would not satisfy this requirement if the FDIC-supervised institution's exercise of rights under the agreement may be stayed or avoided.

(1) Under applicable law in the relevant jurisdictions, other than:

(i) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar⁴ to the U.S. laws referenced in this paragraph (1)(i) in order to facilitate the orderly resolution of the defaulting counterparty;

(ii) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (1)(i) of this definition; or

(2) Other than to the extent necessary for the counterparty to comply with the requirements of part 382 of this title, subpart I of part 252 of this title or part 47 of this title, as applicable.

Commercial end-user means an entity that:

(1)(i) Is using derivative contracts to hedge or mitigate commercial risk; and

(ii)(A) Is not an entity described in section 2(h)(7)(C)(i)(I) through (VIII) of the Commodity Exchange Act (7 U.S.C. 2(h)(7)(C)(i)(I) through (VIII)); or

(B) Is not a "financial entity" for purposes of section 2(h)(7) of the Commodity Exchange Act (7 U.S.C. 2(h)) by virtue of section 2(h)(7)(C)(iii) of the Act (7 U.S.C. 2(h)(7)(C)(iii)); or

(2)(i) Is using derivative contracts to hedge or mitigate commercial risk; and

(ii) Is not an entity described in section 3C(g)(3)(A)(i) through (viii) of the Securities Exchange Act of 1934 (15

U.S.C. 78c-3(g)(3)(A)(i) through (viii)); or

(3) Qualifies for the exemption in section 2(h)(7)(A) of the Commodity Exchange Act (7 U.S.C. 2(h)(7)(A)) by virtue of section 2(h)(7)(D) of the Act (7 U.S.C. 2(h)(7)(D)); or

(4) Qualifies for an exemption in section 3C(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78c-3(g)(1)) by virtue of section 3C(g)(4) of the Act (15 U.S.C. 78c-3(g)(4)).

Commitment means any legally binding arrangement that obligates an FDIC-supervised institution to extend credit or to purchase assets.

Commodity derivative contract means a commodity-linked swap, purchased commodity-linked option, forward commodity-linked contract, or any other instrument linked to commodities that gives rise to similar counterparty credit risks.

Commodity Exchange Act means the Commodity Exchange Act of 1936 (7 U.S.C. 1 *et seq.*)

Common equity tier 1 capital is defined in § 324.20(b).

Common equity tier 1 minority interest means the common equity tier 1 capital of a depository institution or foreign bank that is:

(1) A consolidated subsidiary of an FDIC-supervised institution; and

(2) Not owned by the FDIC-supervised institution.

Company means a corporation, partnership, limited liability company, depository institution, business trust, special purpose entity, association, or similar organization.

Control. A person or company *controls* a company if it:

(1) Owns, controls, or holds with power to vote 25 percent or more of a class of voting securities of the company; or

(2) Consolidates the company for financial reporting purposes.

Core capital means Tier 1 capital, as defined in § 324.2 of subpart A of this part.

Corporate exposure means an exposure to a company that is not:

(1) An exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the International

⁴The FDIC expects to evaluate jointly with the Federal Reserve and the OCC whether foreign special resolution regimes meet the requirements of this paragraph.

Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, a multi-lateral development bank (MDB), a depository institution, a foreign bank, a credit union, or a public sector entity (PSE);

- (2) An exposure to a GSE;
- (3) A residential mortgage exposure;
- (4) A pre-sold construction loan;
- (5) A statutory multifamily mortgage;
- (6) A high volatility commercial real estate (HVCRE) exposure;
- (7) A cleared transaction;
- (8) A default fund contribution;
- (9) A securitization exposure;
- (10) An equity exposure;
- (11) An unsettled transaction;
- (12) A policy loan;
- (13) A separate account; or
- (14) A Paycheck Protection Program covered loan as defined in section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)).

Country risk classification (CRC) with respect to a sovereign, means the most recent consensus CRC published by the Organization for Economic Cooperation and Development (OECD) as of December 31st of the prior calendar year that provides a view of the likelihood that the sovereign will service its external debt.

Covered debt instrument means an unsecured debt instrument that is:

- (1) Issued by a global systemically important BHC, as defined in 12 CFR 217.2, and that is an eligible debt security, as defined in 12 CFR 252.61, or that is *pari passu* or subordinated to any eligible debt security issued by the global systemically important BHC; or
- (2) Issued by a Covered IHC, as defined in 12 CFR 252.161, and that is an eligible Covered IHC debt security, as defined in 12 CFR 252.161, or that is *pari passu* or subordinated to any eligible Covered IHC debt security issued by the Covered IHC; or
- (3) Issued by a global systemically important banking organization, as defined in 12 CFR 252.2 other than a global systemically important BHC, as defined in 12 CFR 217.2; or issued by a subsidiary of a global systemically important banking organization that is not a global systemically important BHC, other than a Covered IHC, as defined in 12 CFR 252.161; and where,

- (i) The instrument is eligible for use to comply with an applicable law or regulation requiring the issuance of a minimum amount of instruments to absorb losses or recapitalize the issuer or any of its subsidiaries in connection with a resolution, receivership, insolvency, or similar proceeding of the issuer or any of its subsidiaries; or

- (ii) The instrument is *pari passu* or subordinated to any instrument described in paragraph (3)(i) of this definition; for purposes of this paragraph (3)(ii) of this definition, if the issuer may be subject to a special resolution regime, in its jurisdiction of incorporation or organization, that addresses the failure or potential failure of a financial company and any instrument described in paragraph (3)(i) of this definition is eligible under that special resolution regime to be written down or converted into equity or any other capital instrument, then an instrument is *pari passu* or subordinated to any instrument described in paragraph (3)(i) of this definition if that instrument is eligible under that special resolution regime to be written down or converted into equity or any other capital instrument ahead of or proportionally with any instrument described in paragraph (3)(i) of this definition; and

- (4) Provided that, for purposes of this definition, *covered debt instrument* does not include a debt instrument that qualifies as tier 2 capital pursuant to 12 CFR 324.20(d) or that is otherwise treated as regulatory capital by the primary supervisor of the issuer.

Covered savings and loan holding company means a top-tier savings and loan holding company other than:

- (1) A top-tier savings and loan holding company that is:

- (i) A grandfathered unitary savings and loan holding company as defined in section 10(c)(9)(A) of HOLA; and

- (ii) As of June 30 of the previous calendar year, derived 50 percent or more of its total consolidated assets or 50 percent of its total revenues on an enterprise-wide basis (as calculated under GAAP) from activities that are not financial in nature under section 4(k) of the Bank Holding Company Act (12 U.S.C. 1842(k));

(2) A top-tier savings and loan holding company that is an insurance underwriting company; or

(3)(i) A top-tier savings and loan holding company that, as of June 30 of the previous calendar year, held 25 percent or more of its total consolidated assets in subsidiaries that are insurance underwriting companies (other than assets associated with insurance for credit risk); and

(ii) For purposes of paragraph 3(i) of this definition, the company must calculate its total consolidated assets in accordance with GAAP, or if the company does not calculate its total consolidated assets under GAAP for any regulatory purpose (including compliance with applicable securities laws), the company may estimate its total consolidated assets, subject to review and adjustment by the Federal Reserve.

Credit derivative means a financial contract executed under standard industry credit derivative documentation that allows one party (the protection purchaser) to transfer the credit risk of one or more exposures (reference exposure(s)) to another party (the protection provider) for a certain period of time.

Credit-enhancing interest-only strip (CEIO) means an on-balance sheet asset that, in form or in substance:

(1) Represents a contractual right to receive some or all of the interest and no more than a minimal amount of principal due on the underlying exposures of a securitization; and

(2) Exposes the holder of the CEIO to credit risk directly or indirectly associated with the underlying exposures that exceeds a pro rata share of the holder's claim on the underlying exposures, whether through subordination provisions or other credit-enhancement techniques.

Credit-enhancing representations and warranties means representations and warranties that are made or assumed in connection with a transfer of underlying exposures (including loan servicing assets) and that obligate an FDIC-supervised institution to protect another party from losses arising from the credit risk of the underlying exposures. Credit-enhancing representations and warranties include provisions

to protect a party from losses resulting from the default or nonperformance of the counterparties of the underlying exposures or from an insufficiency in the value of the collateral backing the underlying exposures. Credit-enhancing representations and warranties do not include:

(1) Early default clauses and similar warranties that permit the return of, or premium refund clauses covering, 1–4 family residential first mortgage loans that qualify for a 50 percent risk weight for a period not to exceed 120 days from the date of transfer. These warranties may cover only those loans that were originated within 1 year of the date of transfer;

(2) Premium refund clauses that cover assets guaranteed, in whole or in part, by the U.S. Government, a U.S. Government agency or a GSE, provided the premium refund clauses are for a period not to exceed 120 days from the date of transfer; or

(3) Warranties that permit the return of underlying exposures in instances of misrepresentation, fraud, or incomplete documentation.

Credit risk mitigant means collateral, a credit derivative, or a guarantee.

Credit-risk-weighted assets means 1.06 multiplied by the sum of:

(1) Total wholesale and retail risk-weighted assets as calculated under § 324.131;

(2) Risk-weighted assets for securitization exposures as calculated under § 324.142; and

(3) Risk-weighted assets for equity exposures as calculated under § 324.151.

Credit union means an insured credit union as defined under the Federal Credit Union Act (12 U.S.C. 1751 *et seq.*).

Current Expected Credit Losses (CECL) means the current expected credit losses methodology under GAAP.

Current exposure means, with respect to a netting set, the larger of zero or the fair value of a transaction or portfolio of transactions within the netting set that would be lost upon default of the counterparty, assuming no recovery on the value of the transactions.

Current exposure methodology means the method of calculating the exposure amount for over-the-counter derivative contracts in § 324.34(b).

Custodian means a financial institution that has legal custody of collateral provided to a CCP.

Custody bank means an FDIC-supervised institution that is a subsidiary of a depository institution holding company that is a custodial banking organization under 12 CFR 217.2.

Default fund contribution means the funds contributed or commitments made by a clearing member to a CCP's mutualized loss sharing arrangement.

Depository institution means a depository institution as defined in section 3 of the Federal Deposit Insurance Act.

Depository institution holding company means a bank holding company or savings and loan holding company.

Derivative contract means a financial contract whose value is derived from the values of one or more underlying assets, reference rates, or indices of asset values or reference rates. Derivative contracts include interest rate derivative contracts, exchange rate derivative contracts, equity derivative contracts, commodity derivative contracts, credit derivative contracts, and any other instrument that poses similar counterparty credit risks. Derivative contracts also include unsettled securities, commodities, and foreign exchange transactions with a contractual settlement or delivery lag that is longer than the lesser of the market standard for the particular instrument or five business days.

Discretionary bonus payment means a payment made to an executive officer of an FDIC-supervised institution, where:

(1) The FDIC-supervised institution retains discretion as to whether to make, and the amount of, the payment until the payment is awarded to the executive officer;

(2) The amount paid is determined by the FDIC-supervised institution without prior promise to, or agreement with, the executive officer; and

(3) The executive officer has no contractual right, whether express or implied, to the bonus payment.

Distribution means:

(1) A reduction of tier 1 capital through the repurchase of a tier 1 capital instrument or by other means, except when an FDIC-supervised institution, within the same quarter when the

repurchase is announced, fully replaces a tier 1 capital instrument it has repurchased by issuing another capital instrument that meets the eligibility criteria for:

(i) A common equity tier 1 capital instrument if the instrument being repurchased was part of the FDIC-supervised institution's common equity tier 1 capital, or

(ii) A common equity tier 1 or additional tier 1 capital instrument if the instrument being repurchased was part of the FDIC-supervised institution's tier 1 capital;

(2) A reduction of tier 2 capital through the repurchase, or redemption prior to maturity, of a tier 2 capital instrument or by other means, except when an FDIC-supervised institution, within the same quarter when the repurchase or redemption is announced, fully replaces a tier 2 capital instrument it has repurchased by issuing another capital instrument that meets the eligibility criteria for a tier 1 or tier 2 capital instrument;

(3) A dividend declaration or payment on any tier 1 capital instrument;

(4) A dividend declaration or interest payment on any tier 2 capital instrument if the FDIC-supervised institution has full discretion to permanently or temporarily suspend such payments without triggering an event of default; or

(5) Any similar transaction that the FDIC determines to be in substance a distribution of capital.

Dodd-Frank Act means the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. 111-203, 124 Stat. 1376).

Early amortization provision means a provision in the documentation governing a securitization that, when triggered, causes investors in the securitization exposures to be repaid before the original stated maturity of the securitization exposures, unless the provision:

(1) Is triggered solely by events not directly related to the performance of the underlying exposures or the originating FDIC-supervised institution (such as material changes in tax laws or regulations); or

(2) Leaves investors fully exposed to future draws by borrowers on the underlying exposures even after the provision is triggered.

Effective notional amount means for an eligible guarantee or eligible credit derivative, the lesser of the contractual notional amount of the credit risk mitigant and the exposure amount (or EAD for purposes of subpart E of this part) of the hedged exposure, multiplied by the percentage coverage of the credit risk mitigant.

Eligible ABCP liquidity facility means a liquidity facility supporting ABCP, in form or in substance, that is subject to an asset quality test at the time of draw that precludes funding against assets that are 90 days or more past due or in default. Notwithstanding the preceding sentence, a liquidity facility is an eligible ABCP liquidity facility if the assets or exposures funded under the liquidity facility that do not meet the eligibility requirements are guaranteed by a sovereign that qualifies for a 20 percent risk weight or lower.

Eligible clean-up call means a clean-up call that:

(1) Is exercisable solely at the discretion of the originating FDIC-supervised institution or servicer;

(2) Is not structured to avoid allocating losses to securitization exposures held by investors or otherwise structured to provide credit enhancement to the securitization; and

(3)(i) For a traditional securitization, is only exercisable when 10 percent or less of the principal amount of the underlying exposures or securitization exposures (determined as of the inception of the securitization) is outstanding; or

(ii) For a synthetic securitization, is only exercisable when 10 percent or less of the principal amount of the reference portfolio of underlying exposures (determined as of the inception of the securitization) is outstanding.

Eligible credit derivative means a credit derivative in the form of a credit default swap, nth-to-default swap, total return swap, or any other form of credit derivative approved by the FDIC, provided that:

(1) The contract meets the requirements of an eligible guarantee and has been confirmed by the protection purchaser and the protection provider;

(2) Any assignment of the contract has been confirmed by all relevant parties;

(3) If the credit derivative is a credit default swap or nth-to-default swap, the contract includes the following credit events:

(i) Failure to pay any amount due under the terms of the reference exposure, subject to any applicable minimal payment threshold that is consistent with standard market practice and with a grace period that is closely in line with the grace period of the reference exposure; and

(ii) Receivership, insolvency, liquidation, conservatorship or inability of the reference exposure issuer to pay its debts, or its failure or admission in writing of its inability generally to pay its debts as they become due, and similar events;

(4) The terms and conditions dictating the manner in which the contract is to be settled are incorporated into the contract;

(5) If the contract allows for cash settlement, the contract incorporates a robust valuation process to estimate loss reliably and specifies a reasonable period for obtaining post-credit event valuations of the reference exposure;

(6) If the contract requires the protection purchaser to transfer an exposure to the protection provider at settlement, the terms of at least one of the exposures that is permitted to be transferred under the contract provide that any required consent to transfer may not be unreasonably withheld;

(7) If the credit derivative is a credit default swap or nth-to-default swap, the contract clearly identifies the parties responsible for determining whether a credit event has occurred, specifies that this determination is not the sole responsibility of the protection provider, and gives the protection purchaser the right to notify the protection provider of the occurrence of a credit event; and

(8) If the credit derivative is a total return swap and the FDIC-supervised institution records net payments received on the swap as net income, the FDIC-supervised institution records offsetting deterioration in the value of

§ 324.2

12 CFR Ch. III (1–1–23 Edition)

the hedged exposure (either through reductions in fair value or by an addition to reserves).

Eligible credit reserves means:

(1) For an FDIC-supervised institution that has not adopted CECL, all general allowances that have been established through a charge against earnings to cover estimated credit losses associated with on- or off-balance sheet wholesale and retail exposures, including the ALLL associated with such exposures, but excluding allocated transfer risk reserves established pursuant to 12 U.S.C. 3904 and other specific reserves created against recognized losses; and

(2) For an FDIC-supervised institution that has adopted CECL, all general allowances that have been established through a charge against earnings or retained earnings to cover expected credit losses associated with on- or off-balance sheet wholesale and retail exposures, including AACL associated with such exposures. Eligible credit reserves exclude allocated transfer risk reserves established pursuant to 12 U.S.C. 3904, allowances that reflect credit losses on purchased credit deteriorated assets and available-for-sale debt securities, and other specific reserves created against recognized losses.

Eligible guarantee means a guarantee that:

(1) Is written;

(2) Is either:

(i) Unconditional, or

(ii) A contingent obligation of the U.S. government or its agencies, the enforceability of which is dependent upon some affirmative action on the part of the beneficiary of the guarantee or a third party (for example, meeting servicing requirements);

(3) Covers all or a pro rata portion of all contractual payments of the obligated party on the reference exposure;

(4) Gives the beneficiary a direct claim against the protection provider;

(5) Is not unilaterally cancelable by the protection provider for reasons other than the breach of the contract by the beneficiary;

(6) Except for a guarantee by a sovereign, is legally enforceable against the protection provider in a jurisdiction where the protection provider has

sufficient assets against which a judgment may be attached and enforced;

(7) Requires the protection provider to make payment to the beneficiary on the occurrence of a default (as defined in the guarantee) of the obligated party on the reference exposure in a timely manner without the beneficiary first having to take legal actions to pursue the obligor for payment;

(8) Does not increase the beneficiary's cost of credit protection on the guarantee in response to deterioration in the credit quality of the reference exposure;

(9) Is not provided by an affiliate of the FDIC-supervised institution, unless the affiliate is an insured depository institution, foreign bank, securities broker or dealer, or insurance company that:

(i) Does not control the FDIC-supervised institution; and

(ii) Is subject to consolidated supervision and regulation comparable to that imposed on depository institutions, U.S. securities broker-dealers, or U.S. insurance companies (as the case may be); and

(10) For purposes of §§324.141 through 324.145 and subpart D of this part, is provided by an eligible guarantor.

Eligible guarantor means:

(1) A sovereign, the Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, a Federal Home Loan Bank, Federal Agricultural Mortgage Corporation (Farmer Mac), the European Stability Mechanism, the European Financial Stability Facility, a multilateral development bank (MDB), a depository institution, a bank holding company, a savings and loan holding company, a credit union, a foreign bank, or a qualifying central counterparty; or

(2) An entity (other than a special purpose entity):

(i) That at the time the guarantee is issued or anytime thereafter, has issued and outstanding an unsecured debt security without credit enhancement that is investment grade;

(ii) Whose creditworthiness is not positively correlated with the credit risk of the exposures for which it has provided guarantees; and

(iii) That is not an insurance company engaged predominately in the business of providing credit protection (such as a monoline bond insurer or reinsurer).

Eligible margin loan means:

(1) An extension of credit where:

(i) The extension of credit is collateralized exclusively by liquid and readily marketable debt or equity securities, or gold;

(ii) The collateral is marked to fair value daily, and the transaction is subject to daily margin maintenance requirements; and

(iii) The extension of credit is conducted under an agreement that provides the FDIC-supervised institution the right to accelerate and terminate the extension of credit and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, insolvency, liquidation, conservatorship, or similar proceeding, of the counterparty, provided that, in any such case,

(A) Any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than

(I) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs,⁵ or laws of foreign jurisdictions that are substantially similar⁶ to the U.S. laws referenced in this paragraph (1)(iii)(A)(I) in order to facilitate the orderly resolution of the defaulting counterparty; or

(2) Where the agreement is subject by its terms to, or incorporates, any of

⁵This requirement is met where all transactions under the agreement are (i) executed under U.S. law and (ii) constitute “securities contracts” under section 555 of the Bankruptcy Code (11 U.S.C. 555), qualified financial contracts under section 11(e)(8) of the Federal Deposit Insurance Act, or netting contracts between or among financial institutions under sections 401–407 of the Federal Deposit Insurance Corporation Improvement Act or the Federal Reserve Board’s Regulation EE (12 CFR part 231).

⁶The FDIC expects to evaluate jointly with the Federal Reserve and the OCC whether foreign special resolution regimes meet the requirements of this paragraph.

the laws referenced in paragraph (1)(iii)(A)(I) of this definition; and

(B) The agreement may limit the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty to the extent necessary for the counterparty to comply with the requirements of part 382 of this title, subpart I of part 252 of this title or part 47 of this title, as applicable.

(2) In order to recognize an exposure as an eligible margin loan for purposes of this subpart, an FDIC-supervised institution must comply with the requirements of § 324.3(b) with respect to that exposure.

Eligible servicer cash advance facility means a servicer cash advance facility in which:

(1) The servicer is entitled to full reimbursement of advances, except that a servicer may be obligated to make non-reimbursable advances for a particular underlying exposure if any such advance is contractually limited to an insignificant amount of the outstanding principal balance of that exposure;

(2) The servicer’s right to reimbursement is senior in right of payment to all other claims on the cash flows from the underlying exposures of the securitization; and

(3) The servicer has no legal obligation to, and does not make advances to the securitization if the servicer concludes the advances are unlikely to be repaid.

Employee stock ownership plan has the same meaning as in 29 CFR 2550.407d-6.

Equity derivative contract means an equity-linked swap, purchased equity-linked option, forward equity-linked contract, or any other instrument linked to equities that gives rise to similar counterparty credit risks.

Equity exposure means:

(1) A security or instrument (whether voting or non-voting) that represents a direct or an indirect ownership interest in, and is a residual claim on, the assets and income of a company, unless:

(i) The issuing company is consolidated with the FDIC-supervised institution under GAAP;

§ 324.2

12 CFR Ch. III (1–1–23 Edition)

(ii) The FDIC-supervised institution is required to deduct the ownership interest from tier 1 or tier 2 capital under this part;

(iii) The ownership interest incorporates a payment or other similar obligation on the part of the issuing company (such as an obligation to make periodic payments); or

(iv) The ownership interest is a securitization exposure;

(2) A security or instrument that is mandatorily convertible into a security or instrument described in paragraph (1) of this definition;

(3) An option or warrant that is exercisable for a security or instrument described in paragraph (1) of this definition; or

(4) Any other security or instrument (other than a securitization exposure) to the extent the return on the security or instrument is based on the performance of a security or instrument described in paragraph (1) of this definition.

ERISA means the Employee Retirement Income and Security Act of 1974 (29 U.S.C. 1001 *et seq.*).

Exchange rate derivative contract means a cross-currency interest rate swap, forward foreign-exchange contract, currency option purchased, or any other instrument linked to exchange rates that gives rise to similar counterparty credit risks.

Excluded covered debt instrument means an investment in a covered debt instrument held by an FDIC-supervised institution that is a subsidiary of a global systemically important BHC, as defined in 12 CFR 252.2, that:

(1) Is held in connection with market making-related activities permitted under 12 CFR 351.4, provided that a direct exposure or an indirect exposure to a covered debt instrument is held for 30 business days or less; and

(2) Has been designated as an excluded covered debt instrument by the FDIC-supervised institution that is a subsidiary of a global systemically important BHC, as defined in 12 CFR 252.2, pursuant to 12 CFR 324.22(c)(5)(iv)(A).

Executive officer means a person who holds the title or, without regard to title, salary, or compensation, performs the function of one or more of the following positions: president, chief

executive officer, executive chairman, chief operating officer, chief financial officer, chief investment officer, chief legal officer, chief lending officer, chief risk officer, or head of a major business line, and other staff that the board of directors of the FDIC-supervised institution deems to have equivalent responsibility.

Expected credit loss (ECL) means:

(1) For a wholesale exposure to a non-defaulted obligor or segment of non-defaulted retail exposures that is carried at fair value with gains and losses flowing through earnings or that is classified as held-for-sale and is carried at the lower of cost or fair value with losses flowing through earnings, zero.

(2) For all other wholesale exposures to non-defaulted obligors or segments of non-defaulted retail exposures, the product of the probability of default (PD) times the loss given default (LGD) times the exposure at default (EAD) for the exposure or segment.

(3) For a wholesale exposure to a defaulted obligor or segment of defaulted retail exposures, the FDIC-supervised institution's impairment estimate for allowance purposes for the exposure or segment.

(4) Total ECL is the sum of expected credit losses for all wholesale and retail exposures other than exposures for which the FDIC-supervised institution has applied the double default treatment in § 324.135.

Exposure amount means:

(1) For the on-balance sheet component of an exposure (other than an available-for-sale or held-to-maturity security, if the FDIC-supervised institution has made an AOCI opt-out election (as defined in § 324.22(b)(2)); an OTC derivative contract; a repo-style transaction or an eligible margin loan for which the FDIC-supervised institution determines the exposure amount under § 324.37; a cleared transaction; a default fund contribution; or a securitization exposure), the FDIC-supervised institution's carrying value of the exposure.

(2) For a security (that is not a securitization exposure, an equity exposure, or preferred stock classified as an equity security under GAAP) classified as available-for-sale or held-to-maturity if the FDIC-supervised institution has made an AOCI opt-out election

Federal Deposit Insurance Corporation

§ 324.2

(as defined in § 324.22(b)(2)), the FDIC-supervised institution's carrying value (including net accrued but unpaid interest and fees) for the exposure less any net unrealized gains on the exposure and plus any net unrealized losses on the exposure.

(3) For available-for-sale preferred stock classified as an equity security under GAAP if the FDIC-supervised institution has made an AOCI opt-out election (as defined in § 324.22(b)(2)), the FDIC-supervised institution's carrying value of the exposure less any net unrealized gains on the exposure that are reflected in such carrying value but excluded from the FDIC-supervised institution's regulatory capital components.

(4) For the off-balance sheet component of an exposure (other than an OTC derivative contract; a repo-style transaction or an eligible margin loan for which the FDIC-supervised institution calculates the exposure amount under § 324.37; a cleared transaction; a default fund contribution; or a securitization exposure), the notional amount of the off-balance sheet component multiplied by the appropriate credit conversion factor (CCF) in § 324.33.

(5) For an exposure that is an OTC derivative contract, the exposure amount determined under § 324.34;

(6) For an exposure that is a cleared transaction, the exposure amount determined under § 324.35.

(7) For an exposure that is an eligible margin loan or repo-style transaction for which the FDIC-supervised institution calculates the exposure amount as provided in § 324.37, the exposure amount determined under § 324.37.

(8) For an exposure that is a securitization exposure, the exposure amount determined under § 324.42.

FDIC-supervised institution means any bank or state savings association.

Federal Deposit Insurance Act means the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*).

Federal Deposit Insurance Corporation Improvement Act means the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102-242, 105 Stat. 2236).

Federal Reserve means the Board of Governors of the Federal Reserve System.

Fiduciary or custodial and safekeeping account means, for purposes of § 324.10(c)(2)(x), an account administered by a custody bank for which the custody bank provides fiduciary or custodial and safekeeping services, as authorized by applicable Federal or state law.

Financial collateral means collateral:

(1) In the form of:

(i) Cash on deposit with the FDIC-supervised institution (including cash held for the FDIC-supervised institution by a third-party custodian or trustee);

(ii) Gold bullion;

(iii) Long-term debt securities that are not resecuritization exposures and that are investment grade;

(iv) Short-term debt instruments that are not resecuritization exposures and that are investment grade;

(v) Equity securities that are publicly traded;

(vi) Convertible bonds that are publicly traded; or

(vii) Money market fund shares and other mutual fund shares if a price for the shares is publicly quoted daily; and

(2) In which the FDIC-supervised institution has a perfected, first-priority security interest or, outside of the United States, the legal equivalent thereof (with the exception of cash on deposit; and notwithstanding the prior security interest of any custodial agent or any priority security interest granted to a CCP in connection with collateral posted to that CCP).

Financial institution means:

(1) A bank holding company; savings and loan holding company; nonbank financial institution supervised by the Federal Reserve under Title I of the Dodd-Frank Act; depository institution; foreign bank; credit union; industrial loan company; industrial bank; or other similar institution described in section 2 of the Bank Holding Company Act; national association, state member bank, or state non-member bank that is not a depository institution; insurance company; securities holding company as defined in section 618 of the Dodd-Frank Act; broker or dealer registered with the SEC under section 15 of the Securities Exchange Act; futures commission merchant as defined

§ 324.2

12 CFR Ch. III (1–1–23 Edition)

in section 1a of the Commodity Exchange Act; swap dealer as defined in section 1a of the Commodity Exchange Act; or security-based swap dealer as defined in section 3 of the Securities Exchange Act;

(2) Any designated financial market utility, as defined in section 803 of the Dodd-Frank Act;

(3) Any entity not domiciled in the United States (or a political subdivision thereof) that is supervised and regulated in a manner similar to entities described in paragraphs (1) or (2) of this definition; or

(4) Any other company:

(i) Of which the FDIC-supervised institution owns:

(A) An investment in GAAP equity instruments of the company with an adjusted carrying value or exposure amount equal to or greater than \$10 million; or

(B) More than 10 percent of the company's issued and outstanding common shares (or similar equity interest), and

(ii) Which is predominantly engaged in the following activities:

(A) Lending money, securities or other financial instruments, including servicing loans;

(B) Insuring, guaranteeing, indemnifying against loss, harm, damage, illness, disability, or death, or issuing annuities;

(C) Underwriting, dealing in, making a market in, or investing as principal in securities or other financial instruments; or

(D) Asset management activities (not including investment or financial advisory activities).

(5) For the purposes of this definition, a company is “predominantly engaged” in an activity or activities if:

(i) 85 percent or more of the total consolidated annual gross revenues (as determined in accordance with applicable accounting standards) of the company is either of the two most recent calendar years were derived, directly or indirectly, by the company on a consolidated basis from the activities; or

(ii) 85 percent or more of the company's consolidated total assets (as determined in accordance with applicable accounting standards) as of the end of either of the two most recent calendar years were related to the activities.

(6) Any other company that the FDIC may determine is a financial institution based on activities similar in scope, nature, or operation to those of the entities included in paragraphs (1) through (4) of this definition.

(7) For purposes of this part, “financial institution” does not include the following entities:

(i) GSEs;

(ii) Small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 661 *et seq.*);

(iii) Entities designated as Community Development Financial Institutions (CDFIs) under 12 U.S.C. 4701 *et seq.* and 12 CFR part 1805;

(iv) Entities registered with the SEC under the Investment Company Act or foreign equivalents thereof;

(v) Entities to the extent that the FDIC-supervised institution's investment in such entities would qualify as a community development investment under section 24 (Eleventh) of the National Bank Act; and

(vi) An employee benefit plan as defined in paragraphs (3) and (32) of section 3 of ERISA, a “governmental plan” (as defined in 29 U.S.C. 1002(32)) that complies with the tax deferral qualification requirements provided in the Internal Revenue Code, or any similar employee benefit plan established under the laws of a foreign jurisdiction.

First-lien residential mortgage exposure means a residential mortgage exposure secured by a first lien.

Foreign bank means a foreign bank as defined in §211.2 of the Federal Reserve's Regulation K (12 CFR 211.2) (other than a depository institution).

Forward agreement means a legally binding contractual obligation to purchase assets with certain drawdown at a specified future date, not including commitments to make residential mortgage loans or forward foreign exchange contracts.

FR Y-9LP means the Parent Company Only Financial Statements for Large Holding Companies.

FR Y-15 means the Systemic Risk Report.

GAAP means generally accepted accounting principles as used in the United States.

Federal Deposit Insurance Corporation

§ 324.2

Gain-on-sale means an increase in the equity capital of an FDIC-supervised institution (as reported on Schedule RC of the Call Report) resulting from a traditional securitization (other than an increase in equity capital resulting from the FDIC-supervised institution's receipt of cash in connection with the securitization or reporting of a mortgage servicing asset on Schedule RC of the Call Report).

General obligation means a bond or similar obligation that is backed by the full faith and credit of a public sector entity (PSE).

Government-sponsored enterprise (GSE) means an entity established or chartered by the U.S. government to serve public purposes specified by the U.S. Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the U.S. government.

Guarantee means a financial guarantee, letter of credit, insurance, or other similar financial instrument (other than a credit derivative) that allows one party (beneficiary) to transfer the credit risk of one or more specific exposures (reference exposure) to another party (protection provider).

High volatility commercial real estate (HVCRE) exposure means:

(1) A credit facility secured by land or improved real property that, prior to being reclassified by the FDIC-supervised institution as a non-HVCRE exposure pursuant to paragraph (6) of this definition—

(i) Primarily finances, has financed, or refinances the acquisition, development, or construction of real property;

(ii) Has the purpose of providing financing to acquire, develop, or improve such real property into income-producing real property; and

(iii) Is dependent upon future income or sales proceeds from, or refinancing of, such real property for the repayment of such credit facility.

(2) An HVCRE exposure does not include a credit facility financing—

(i) The acquisition, development, or construction of properties that are—

(A) One- to four-family residential properties. Credit facilities that do not finance the construction of one- to four-family residential structures, but instead solely finance improvements

such as the laying of sewers, water pipes, and similar improvements to land, do not qualify for the one- to four-family residential properties exclusion;

(B) Real property that would qualify as an investment in community development; or

(C) Agricultural land;

(ii) The acquisition or refinance of existing income-producing real property secured by a mortgage on such property, if the cash flow being generated by the real property is sufficient to support the debt service and expenses of the real property, in accordance with the FDIC-supervised institution's applicable loan underwriting criteria for permanent financings;

(iii) Improvements to existing income-producing improved real property secured by a mortgage on such property, if the cash flow being generated by the real property is sufficient to support the debt service and expenses of the real property, in accordance with the FDIC-supervised institution's applicable loan underwriting criteria for permanent financings; or

(iv) Commercial real property projects in which—

(A) The loan-to-value ratio is less than or equal to the applicable maximum supervisory loan-to-value ratio as determined by the FDIC;

(B) The borrower has contributed capital of at least 15 percent of the real property's appraised, 'as completed' value to the project in the form of—

(1) Cash;

(2) Unencumbered readily marketable assets;

(3) Paid development expenses out-of-pocket; or

(4) Contributed real property or improvements; and

(C) The borrower contributed the minimum amount of capital described under paragraph (2)(iv)(B) of this definition before the FDIC-supervised institution advances funds (other than the advance of a nominal sum made in order to secure the FDIC-supervised institution's lien against the real property) under the credit facility, and such minimum amount of capital contributed by the borrower is contractually required to remain in the project until the HVCRE exposure has

been reclassified by the FDIC-supervised institution as a non-HVCRE exposure under paragraph (6) of this definition;

(3) An HVCRE exposure does not include any loan made prior to January 1, 2015;

(4) An HVCRE exposure does not include a credit facility reclassified as a non-HVCRE exposure under paragraph (6) of this definition.

(5) Value Of contributed real property: For the purposes of this HVCRE exposure definition, the value of any real property contributed by a borrower as a capital contribution is the appraised value of the property as determined under standards prescribed pursuant to section 1110 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3339), in connection with the extension of the credit facility or loan to such borrower.

(6) Reclassification as a non-HVCRE exposure: For purposes of this HVCRE exposure definition and with respect to a credit facility and an FDIC-supervised institution, an FDIC-supervised institution may reclassify an HVCRE exposure as a non-HVCRE exposure upon—

(i) The substantial completion of the development or construction of the real property being financed by the credit facility; and

(ii) Cash flow being generated by the real property being sufficient to support the debt service and expenses of the real property, in accordance with the FDIC-supervised institution's applicable loan underwriting criteria for permanent financings.

(7) For purposes of this definition, an FDIC-supervised institution is not required to reclassify a credit facility that was originated on or after January 1, 2015 and prior to April 1, 2020.

Home country means the country where an entity is incorporated, chartered, or similarly established.

Identified losses means:

(1) When measured as of the date of examination of an FDIC-supervised institution, those items that have been determined by an evaluation made by a state or Federal examiner as of that date to be chargeable against income, capital and/or general valuation allow-

ances such as the allowances for loan and lease losses (examples of identified losses would be assets classified loss, off-balance sheet items classified loss, any provision expenses that are necessary for the FDIC-supervised institution to record in order to replenish its general valuation allowances to an adequate level, liabilities not shown on the FDIC-supervised institution's books, estimated losses in contingent liabilities, and differences in accounts which represent shortages) or the adjusted allowances for credit losses; and

(2) When measured as of any other date, those items:

(i) That have been determined—

(A) By an evaluation made by a state or Federal examiner at the most recent examination of an FDIC-supervised institution to be chargeable against income, capital and/or general valuation allowances; or

(B) By evaluations made by the FDIC-supervised institution since its most recent examination to be chargeable against income, capital and/or general valuation allowances; and

(ii) For which the appropriate accounting entries to recognize the loss have not yet been made on the FDIC-supervised institution's books nor has the item been collected or otherwise settled.

Independent collateral means financial collateral, other than variation margin, that is subject to a collateral agreement, or in which a FDIC-supervised institution has a perfected, first-priority security interest or, outside of the United States, the legal equivalent thereof (with the exception of cash on deposit; notwithstanding the prior security interest of any custodial agent or any prior security interest granted to a CCP in connection with collateral posted to that CCP), and the amount of which does not change directly in response to the value of the derivative contract or contracts that the financial collateral secures.

Indirect exposure means an exposure that arises from the FDIC-supervised institution's investment in an investment fund which holds an investment in the FDIC-supervised institution's

own capital instrument or an investment in the capital of an unconsolidated financial institution. For an advanced approaches FDIC-supervised institution, indirect exposure also includes an investment in an investment fund that holds a covered debt instrument.

Insurance company means an insurance company as defined in section 201 of the Dodd-Frank Act (12 U.S.C. 5381).

Insurance underwriting company means an insurance company as defined in section 201 of the Dodd-Frank Act (12 U.S.C. 5381) that engages in insurance underwriting activities.

Insured depository institution means an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act.

Interest rate derivative contract means a single-currency interest rate swap, basis swap, forward rate agreement, purchased interest rate option, when-issued securities, or any other instrument linked to interest rates that gives rise to similar counterparty credit risks.

International Lending Supervision Act means the International Lending Supervision Act of 1983 (12 U.S.C. 3901 *et seq.*).

Investing bank means, with respect to a securitization, an FDIC-supervised institution that assumes the credit risk of a securitization exposure (other than an originating FDIC-supervised institution of the securitization). In the typical synthetic securitization, the investing FDIC-supervised institution sells credit protection on a pool of underlying exposures to the originating FDIC-supervised institution.

Investment Company Act means the Investment Company Act of 1940 (15 U.S.C. 80 a-1 *et seq.*)

Investment fund means a company:

- (1) Where all or substantially all of the assets of the company are financial assets; and
- (2) That has no material liabilities.

Investment grade means that the entity to which the FDIC-supervised institution is exposed through a loan or security, or the reference entity with respect to a credit derivative, has adequate capacity to meet financial commitments for the projected life of the asset or exposure. Such an entity or

reference entity has adequate capacity to meet financial commitments if the risk of its default is low and the full and timely repayment of principal and interest is expected.

Investment in a covered debt instrument means an FDIC-supervised institution's net long position calculated in accordance with §324.22(h) in a covered debt instrument, including direct, indirect, and synthetic exposures to the debt instrument, excluding any underwriting positions held by the FDIC-supervised institution for five or fewer business days.

Investment in the capital of an unconsolidated financial institution means a net long position calculated in accordance with §324.22(h) in an instrument that is recognized as capital for regulatory purposes by the primary supervisor of an unconsolidated regulated financial institution or is an instrument that is part of the GAAP equity of an unconsolidated unregulated financial institution, including direct, indirect, and synthetic exposures to capital instruments, excluding underwriting positions held by the FDIC-supervised institution for five or fewer business days.

Investment in the FDIC-supervised institution's own capital instrument means a net long position calculated in accordance with §324.22(h) in the FDIC-supervised institution's own common stock instrument, own additional tier 1 capital instrument or own tier 2 capital instrument, including direct, indirect, or synthetic exposures to such capital instruments. An investment in the FDIC-supervised institution's own capital instrument includes any contractual obligation to purchase such capital instrument.

Junior-lien residential mortgage exposure means a residential mortgage exposure that is not a first-lien residential mortgage exposure.

Main index means the Standard & Poor's 500 Index, the FTSE All-World Index, and any other index for which the FDIC-supervised institution can demonstrate to the satisfaction of the FDIC that the equities represented in the index have comparable liquidity, depth of market, and size of bid-ask spreads as equities in the Standard &

Poor's 500 Index and FTSE All-World Index.

Market risk FDIC-supervised institution means an FDIC-supervised institution that is described in § 324.201(b).

Minimum transfer amount means the smallest amount of variation margin that may be transferred between counterparties to a netting set pursuant to the variation margin agreement.

Money market fund means an investment fund that is subject to 17 CFR 270.2a-7 or any foreign equivalent thereof.

Mortgage servicing assets (MSAs) means the contractual rights owned by an FDIC-supervised institution to service for a fee mortgage loans that are owned by others.

Multilateral development bank (MDB) means the International Bank for Reconstruction and Development, the Multilateral Investment Guarantee Agency, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the European Investment Fund, the Nordic Investment Bank, the Caribbean Development Bank, the Islamic Development Bank, the Council of Europe Development Bank, and any other multilateral lending institution or regional development bank in which the U.S. government is a shareholder or contributing member or which the FDIC determines poses comparable credit risk.

National Bank Act means the National Bank Act (12 U.S.C. 1 *et seq.*).

Net independent collateral amount means the fair value amount of the independent collateral, as adjusted by the standard supervisory haircuts under § 324.132(b)(2)(ii), as applicable, that a counterparty to a netting set has posted to a FDIC-supervised institution less the fair value amount of the independent collateral, as adjusted by the standard supervisory haircuts under § 324.132(b)(2)(ii), as applicable, posted by the FDIC-supervised institution to the counterparty, excluding such amounts held in a bankruptcy remote manner or posted to a QCCP and held in conformance with the operational requirements in § 324.3.

Netting set means a group of transactions with a single counterparty that are subject to a qualifying master netting agreement. For derivative contracts, netting set also includes a single derivative contract between a FDIC-supervised institution and a single counterparty. For purposes of the internal model methodology under § 324.132(d), netting set also includes a group of transactions with a single counterparty that are subject to a qualifying cross-product master netting agreement and does not include a transaction:

(1) That is not subject to such a master netting agreement; or

(2) Where the FDIC-supervised institution has identified specific wrong-way risk.

Non-significant investment in the capital of an unconsolidated financial institution means an investment by an advanced approaches FDIC-supervised institution in the capital of an unconsolidated financial institution where the advanced approaches FDIC-supervised institution owns 10 percent or less of the issued and outstanding common stock of the unconsolidated financial institution.

Nth-to-default credit derivative means a credit derivative that provides credit protection only for the *n*th-defaulting reference exposure in a group of reference exposures.

OCC means the Office of the Comptroller of the Currency, U.S. Treasury.

Operating entity means a company established to conduct business with clients with the intention of earning a profit in its own right.

Original maturity with respect to an off-balance sheet commitment means the length of time between the date a commitment is issued and:

(1) For a commitment that is not subject to extension or renewal, the stated expiration date of the commitment; or

(2) For a commitment that is subject to extension or renewal, the earliest date on which the FDIC-supervised institution can, at its option, unconditionally cancel the commitment.

Originating FDIC-supervised institution, with respect to a securitization, means an FDIC-supervised institution that:

Federal Deposit Insurance Corporation

§ 324.2

(1) Directly or indirectly originated or securitized the underlying exposures included in the securitization; or

(2) Serves as an ABCP program sponsor to the securitization.

Over-the-counter (OTC) derivative contract means a derivative contract that is not a cleared transaction. An OTC derivative includes a transaction:

(1) Between an FDIC-supervised institution that is a clearing member and a counterparty where the FDIC-supervised institution is acting as a financial intermediary and enters into a cleared transaction with a CCP that offsets the transaction with the counterparty; or

(2) In which an FDIC-supervised institution that is a clearing member provides a CCP a guarantee on the performance of the counterparty to the transaction.

Performance standby letter of credit (or performance bond) means an irrevocable obligation of an FDIC-supervised institution to pay a third-party beneficiary when a customer (account party) fails to perform on any contractual non-financial or commercial obligation. To the extent permitted by law or regulation, performance standby letters of credit include arrangements backing, among other things, subcontractors' and suppliers' performance, labor and materials contracts, and construction bids.

Pre-sold construction loan means any one-to-four family residential construction loan to a builder that meets the requirements of section 618(a)(1) or (2) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (Pub. L. 102-233, 105 Stat. 1761) and the following criteria:

(1) The loan is made in accordance with prudent underwriting standards, meaning that the FDIC-supervised institution has obtained sufficient documentation that the buyer of the home has a legally binding written sales contract and has a firm written commitment for permanent financing of the home upon completion;

(2) The purchaser is an individual(s) that intends to occupy the residence and is not a partnership, joint venture, trust, corporation, or any other entity (including an entity acting as a sole

proprietorship) that is purchasing one or more of the residences for speculative purposes;

(3) The purchaser has entered into a legally binding written sales contract for the residence;

(4) The purchaser has not terminated the contract;

(5) The purchaser has made a substantial earnest money deposit of no less than 3 percent of the sales price, which is subject to forfeiture if the purchaser terminates the sales contract; provided that, the earnest money deposit shall not be subject to forfeiture by reason of breach or termination of the sales contract on the part of the builder;

(6) The earnest money deposit must be held in escrow by the FDIC-supervised institution or an independent party in a fiduciary capacity, and the escrow agreement must provide that in an event of default arising from the cancellation of the sales contract by the purchaser of the residence, the escrow funds shall be used to defray any cost incurred by the FDIC-supervised institution;

(7) The builder must incur at least the first 10 percent of the direct costs of construction of the residence (that is, actual costs of the land, labor, and material) before any drawdown is made under the loan;

(8) The loan may not exceed 80 percent of the sales price of the presold residence; and

(9) The loan is not more than 90 days past due, or on nonaccrual.

Protection amount (P) means, with respect to an exposure hedged by an eligible guarantee or eligible credit derivative, the effective notional amount of the guarantee or credit derivative, reduced to reflect any currency mismatch, maturity mismatch, or lack of restructuring coverage (as provided in § 324.36 or § 324.134, as appropriate).

Publicly-traded means traded on:

(1) Any exchange registered with the SEC as a national securities exchange under section 6 of the Securities Exchange Act; or

(2) Any non-U.S.-based securities exchange that:

(i) Is registered with, or approved by, a national securities regulatory authority; and

(ii) Provides a liquid, two-way market for the instrument in question.

Public sector entity (PSE) means a state, local authority, or other governmental subdivision below the sovereign level.

Qualifying central bank means:

(1) A Federal Reserve Bank;
 (2) The European Central Bank; and
 (3) The central bank of any member country of the Organisation for Economic Co-operation and Development, if:

(i) Sovereign exposures to the member country would receive a zero percent risk-weight under § 324.32; and

(ii) The sovereign debt of the member country is not in default or has not been in default during the previous 5 years.

Qualifying central counterparty (QCCP) means a central counterparty that:

(1)(i) Is a designated financial market utility (FMU) under Title VIII of the Dodd-Frank Act;

(ii) If not located in the United States, is regulated and supervised in a manner equivalent to a designated FMU; or

(iii) Meets the following standards:

(A) The central counterparty requires all parties to contracts cleared by the counterparty to be fully collateralized on a daily basis;

(B) The FDIC-supervised institution demonstrates to the satisfaction of the FDIC that the central counterparty:

(1) Is in sound financial condition;

(2) Is subject to supervision by the Federal Reserve, the CFTC, or the Securities Exchange Commission (SEC), or, if the central counterparty is not located in the United States, is subject to effective oversight by a national supervisory authority in its home country; and

(3) Meets or exceeds the risk-management standards for central counterparties set forth in regulations established by the Federal Reserve, the CFTC, or the SEC under Title VII or Title VIII of the Dodd-Frank Act; or if the central counterparty is not located in the United States, meets or exceeds similar risk-management standards established under the law of its home country that are consistent with international standards for central

counterparty risk management as established by the relevant standard setting body of the Bank of International Settlements; and

(2)(i) Provides the FDIC-supervised institution with the central counterparty's hypothetical capital requirement or the information necessary to calculate such hypothetical capital requirement, and other information the FDIC-supervised institution is required to obtain under §§ 324.35(d)(3) and 324.133(d)(3);

(ii) Makes available to the FDIC and the CCP's regulator the information described in paragraph (2)(i) of this definition; and

(iii) Has not otherwise been determined by the FDIC to not be a QCCP due to its financial condition, risk profile, failure to meet supervisory risk management standards, or other weaknesses or supervisory concerns that are inconsistent with the risk weight assigned to qualifying central counterparties under §§ 324.35 and 324.133.

(3) *Exception.* A QCCP that fails to meet the requirements of a QCCP in the future may still be treated as a QCCP under the conditions specified in § 324.3(f).

Qualifying master netting agreement means a written, legally enforceable agreement provided that:

(1) The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default following any stay permitted by paragraph (2) of this definition, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty;

(2) The agreement provides the FDIC-supervised institution the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case,

(i) Any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

Federal Deposit Insurance Corporation

§ 324.2

(A) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar⁷ to the U.S. laws referenced in this paragraph (2)(i)(A) in order to facilitate the orderly resolution of the defaulting counterparty; or

(B) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i)(A) of this definition; and

(ii) The agreement may limit the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty to the extent necessary for the counterparty to comply with the requirements of part 382 of this title, subpart I of part 252 of this title or part 47 of this title, as applicable;

(3) The agreement does not contain a walkaway clause (that is, a provision that permits a non-defaulting counterparty to make a lower payment than it otherwise would make under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the agreement); and

(4) In order to recognize an agreement as a qualifying master netting agreement for purposes of this subpart, an FDIC-supervised institution must comply with the requirements of § 324.3(d) with respect to that agreement.

Regulated financial institution means a financial institution subject to consolidated supervision and regulation comparable to that imposed on the following U.S. financial institutions: Depository institutions, depository institution holding companies, nonbank financial companies supervised by the Federal Reserve, designated financial market utilities, securities broker-dealers, credit unions, or insurance companies.

Repo-style transaction means a repurchase or reverse repurchase transaction, or a securities borrowing or securities lending transaction, including a transaction in which the FDIC-supervised institution acts as agent for a customer and indemnifies the customer against loss, provided that:

(1) The transaction is based solely on liquid and readily marketable securities, cash, or gold;

(2) The transaction is marked-to-fair value daily and subject to daily margin maintenance requirements;

(3)(i) The transaction is a “securities contract” or “repurchase agreement” under section 555 or 559, respectively, of the Bankruptcy Code (11 U.S.C. 555 or 559), a qualified financial contract under section 11(e)(8) of the Federal Deposit Insurance Act, or a netting contract between or among financial institutions under sections 401–407 of the Federal Deposit Insurance Corporation Improvement Act or the Federal Reserve’s Regulation EE (12 CFR part 231); or

(ii) If the transaction does not meet the criteria set forth in paragraph (3)(i) of this definition, then either:

(A) The transaction is executed under an agreement that provides the FDIC-supervised institution the right to accelerate, terminate, and close-out the transaction on a net basis and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case,

(1) Any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than

(i) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar⁸ to the U.S. laws referenced in this paragraph (3)(ii)(A)(1)(i)

⁷The FDIC expects to evaluate jointly with the Federal Reserve and the OCC whether foreign special resolution regimes meet the requirements of this paragraph.

⁸The FDIC expects to evaluate jointly with the Federal Reserve and the OCC whether foreign special resolution regimes meet the requirements of this paragraph.

§ 324.2

12 CFR Ch. III (1–1–23 Edition)

in order to facilitate the orderly resolution of the defaulting counterparty;

(ii) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (3)(i)(A)(1)(i) of this definition; and

(2) The agreement may limit the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty to the extent necessary for the counterparty to comply with the requirements of part 382 of this title, subpart I of part 252 of this title or part 47 of this title, as applicable; or

(B) The transaction is:

(1) Either overnight or unconditionally cancelable at any time by the FDIC-supervised institution; and

(2) Executed under an agreement that provides the FDIC-supervised institution the right to accelerate, terminate, and close-out the transaction on a net basis and to liquidate or set off collateral promptly upon an event of counterparty default; and

(4) In order to recognize an exposure as a repo-style transaction for purposes of this subpart, an FDIC-supervised institution must comply with the requirements of § 324.3(e) of this part with respect to that exposure.

Resecuritization means a securitization which has more than one underlying exposure and in which one or more of the underlying exposures is a securitization exposure.

Resecuritization exposure means:

(1) An on- or off-balance sheet exposure to a res securitization;

(2) An exposure that directly or indirectly references a res securitization exposure.

(3) An exposure to an asset-backed commercial paper program is not a res securitization exposure if either:

(i) The program-wide credit enhancement does not meet the definition of a res securitization exposure; or

(ii) The entity sponsoring the program fully supports the commercial paper through the provision of liquidity so that the commercial paper holders effectively are exposed to the default risk of the sponsor instead of the underlying exposures.

Residential mortgage exposure means an exposure (other than a securitization exposure, equity exposure, statutory multifamily mortgage, or presold construction loan):

(1)(i) That is primarily secured by a first or subsequent lien on one-to-four family residential property; or

(ii) With an original and outstanding amount of \$1 million or less that is primarily secured by a first or subsequent lien on residential property that is not one-to-four family; and

(2) For purposes of calculating capital requirements under subpart E of this part, managed as part of a segment of exposures with homogeneous risk characteristics and not on an individual-exposure basis.

Revenue obligation means a bond or similar obligation that is an obligation of a PSE, but which the PSE is committed to repay with revenues from the specific project financed rather than general tax funds.

Savings and loan holding company means a savings and loan holding company as defined in section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a).

Securities and Exchange Commission (SEC) means the U.S. Securities and Exchange Commission.

Securities Exchange Act means the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

Securitization exposure means:

(1) An on-balance sheet or off-balance sheet credit exposure (including credit-enhancing representations and warranties) that arises from a traditional securitization or synthetic securitization (including a res securitization), or

(2) An exposure that directly or indirectly references a securitization exposure described in paragraph (1) of this definition.

Securitization special purpose entity (securitization SPE) means a corporation, trust, or other entity organized for the specific purpose of holding underlying exposures of a securitization, the activities of which are limited to those appropriate to accomplish this purpose, and the structure of which is intended to isolate the underlying exposures held by the entity from the

Federal Deposit Insurance Corporation

§ 324.2

credit risk of the seller of the underlying exposures to the entity.

Separate account means a legally segregated pool of assets owned and held by an insurance company and maintained separately from the insurance company's general account assets for the benefit of an individual contract holder. To be a separate account:

(1) The account must be legally recognized as a separate account under applicable law;

(2) The assets in the account must be insulated from general liabilities of the insurance company under applicable law in the event of the insurance company's insolvency;

(3) The insurance company must invest the funds within the account as directed by the contract holder in designated investment alternatives or in accordance with specific investment objectives or policies; and

(4) All investment gains and losses, net of contract fees and assessments, must be passed through to the contract holder, provided that the contract may specify conditions under which there may be a minimum guarantee but must not include contract terms that limit the maximum investment return available to the policyholder.

Servicer cash advance facility means a facility under which the servicer of the underlying exposures of a securitization may advance cash to ensure an uninterrupted flow of payments to investors in the securitization, including advances made to cover foreclosure costs or other expenses to facilitate the timely collection of the underlying exposures.

Significant investment in the capital of an unconsolidated financial institution means an investment by an advanced approaches FDIC-supervised institution in the capital of an unconsolidated financial institution where the advanced approaches FDIC-supervised institution owns more than 10 percent of the issued and outstanding common stock of the unconsolidated financial institution.

Small Business Act means the Small Business Act (15 U.S.C. 631 *et seq.*).

Small Business Investment Act means the Small Business Investment Act of 1958 (15 U.S.C. 681 *et seq.*).

Sovereign means a central government (including the U.S. government) or an agency, department, ministry, or central bank of a central government.

Sovereign default means noncompliance by a sovereign with its external debt service obligations or the inability or unwillingness of a sovereign government to service an existing loan according to its original terms, as evidenced by failure to pay principal and interest timely and fully, arrearages, or restructuring.

Sovereign exposure means:

(1) A direct exposure to a sovereign; or

(2) An exposure directly and unconditionally backed by the full faith and credit of a sovereign.

Specific wrong-way risk means wrong-way risk that arises when either:

(1) The counterparty and issuer of the collateral supporting the transaction; or

(2) The counterparty and the reference asset of the transaction, are affiliates or are the same entity.

Speculative grade means the reference entity has adequate capacity to meet financial commitments in the near term, but is vulnerable to adverse economic conditions, such that should economic conditions deteriorate, the reference entity would present an elevated default risk.

Standardized market risk-weighted assets means the standardized measure for market risk calculated under § 324.204 multiplied by 12.5.

Standardized total risk-weighted assets means:

(1) The sum of:

(i) Total risk-weighted assets for general credit risk as calculated under § 324.31;

(ii) Total risk-weighted assets for cleared transactions and default fund contributions as calculated under § 324.35;

(iii) Total risk-weighted assets for unsettled transactions as calculated under § 324.38;

(iv) Total risk-weighted assets for securitization exposures as calculated under § 324.42;

(v) Total risk-weighted assets for equity exposures as calculated under §§ 324.52 and 324.53; and

(vi) For a market risk FDIC-supervised institution only, standardized market risk-weighted assets; minus

(2) Any amount of the FDIC-supervised institution's allowance for loan and lease losses or adjusted allowance for credit losses, as applicable, that is not included in tier 2 capital and any amount of "allocated transfer risk reserves."

State savings association means a State savings association as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3)), the deposits of which are insured by the Corporation. It includes a building and loan, savings and loan, or homestead association, or a cooperative bank (other than a cooperative bank which is a state bank as defined in section 3(a)(2) of the Federal Deposit Insurance Act) organized and operating according to the laws of the State in which it is chartered or organized, or a corporation (other than a bank as defined in section 3(a)(1) of the Federal Deposit Insurance Act) that the Board of Directors of the Federal Deposit Insurance Corporation determine to be operating substantially in the same manner as a state savings association.

Statutory multifamily mortgage means a loan secured by a multifamily residential property that meets the requirements under section 618(b)(1) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991, and that meets the following criteria:⁹

(1) The loan is made in accordance with prudent underwriting standards;

(2) The principal amount of the loan at origination does not exceed 80 percent of the value of the property (or 75 percent of the value of the property if the loan is based on an interest rate that changes over the term of the loan) where the value of the property is the lower of the acquisition cost of the property or the appraised (or, if appropriate, evaluated) value of the property;

(3) All principal and interest payments on the loan must have been

made on a timely basis in accordance with the terms of the loan for at least one year prior to applying a 50 percent risk weight to the loan, or in the case where an existing owner is refinancing a loan on the property, all principal and interest payments on the loan being refinanced must have been made on a timely basis in accordance with the terms of the loan for at least one year prior to applying a 50 percent risk weight to the loan;

(4) Amortization of principal and interest on the loan must occur over a period of not more than 30 years and the minimum original maturity for repayment of principal must not be less than 7 years;

(5) Annual net operating income (before making any payment on the loan) generated by the property securing the loan during its most recent fiscal year must not be less than 120 percent of the loan's current annual debt service (or 115 percent of current annual debt service if the loan is based on an interest rate that changes over the term of the loan) or, in the case of a cooperative or other not-for-profit housing project, the property must generate sufficient cash flow to provide comparable protection to the FDIC-supervised institution; and

(6) The loan is not more than 90 days past due, or on nonaccrual.

Sub-speculative grade means the reference entity depends on favorable economic conditions to meet its financial commitments, such that should such economic conditions deteriorate the reference entity likely would default on its financial commitments.

Subsidiary means, with respect to a company, a company controlled by that company.

Synthetic exposure means an exposure whose value is linked to the value of an investment in the FDIC-supervised institution's own capital instrument or to the value of an investment in the capital of an unconsolidated financial institution. For an advanced approaches FDIC-supervised institution, synthetic exposure includes an exposure whose value is linked to the value of an investment in a covered debt instrument.

Synthetic securitization means a transaction in which:

⁹The types of loans that qualify as loans secured by multifamily residential properties are listed in the instructions for preparation of the Call Report.

(1) All or a portion of the credit risk of one or more underlying exposures is retained or transferred to one or more third parties through the use of one or more credit derivatives or guarantees (other than a guarantee that transfers only the credit risk of an individual retail exposure);

(2) The credit risk associated with the underlying exposures has been separated into at least two tranches reflecting different levels of seniority;

(3) Performance of the securitization exposures depends upon the performance of the underlying exposures; and

(4) All or substantially all of the underlying exposures are financial exposures (such as loans, commitments, credit derivatives, guarantees, receivables, asset-backed securities, mortgage-backed securities, other debt securities, or equity securities).

Tangible capital means the amount of core capital (Tier 1 capital), as defined in accordance with § 324.2, plus the amount of outstanding perpetual preferred stock (including related surplus) not included in Tier 1 capital.

Tangible equity means the amount of Tier 1 capital, as calculated in accordance with § 324.2, plus the amount of outstanding perpetual preferred stock (including related surplus) not included in Tier 1 capital.

Tier 1 capital means the sum of common equity tier 1 capital and additional tier 1 capital.

Tier 1 minority interest means the tier 1 capital of a consolidated subsidiary of an FDIC-supervised institution that is not owned by the FDIC-supervised institution.

Tier 2 capital is defined in § 324.20(d).

Total capital means the sum of tier 1 capital and tier 2 capital.

Total capital minority interest means the total capital of a consolidated subsidiary of an FDIC-supervised institution that is not owned by the FDIC-supervised institution.

Total leverage exposure is defined in § 324.10(c)(2).

Traditional securitization means a transaction in which:

(1) All or a portion of the credit risk of one or more underlying exposures is transferred to one or more third parties other than through the use of credit derivatives or guarantees;

(2) The credit risk associated with the underlying exposures has been separated into at least two tranches reflecting different levels of seniority;

(3) Performance of the securitization exposures depends upon the performance of the underlying exposures;

(4) All or substantially all of the underlying exposures are financial exposures (such as loans, commitments, credit derivatives, guarantees, receivables, asset-backed securities, mortgage-backed securities, other debt securities, or equity securities);

(5) The underlying exposures are not owned by an operating company;

(6) The underlying exposures are not owned by a small business investment company defined in section 302 of the Small Business Investment Act;

(7) The underlying exposures are not owned by a firm an investment in which qualifies as a community development investment under section 24 (Eleventh) of the National Bank Act;

(8) The FDIC may determine that a transaction in which the underlying exposures are owned by an investment firm that exercises substantially unfettered control over the size and composition of its assets, liabilities, and off-balance sheet exposures is not a traditional securitization based on the transaction's leverage, risk profile, or economic substance;

(9) The FDIC may deem a transaction that meets the definition of a traditional securitization, notwithstanding paragraph (5), (6), or (7) of this definition, to be a traditional securitization based on the transaction's leverage, risk profile, or economic substance; and

(10) The transaction is not:

(i) An investment fund;

(ii) A collective investment fund (as defined in 12 CFR 344.3 (state non-member bank), and 12 CFR 390.203 (state savings association);

(iii) An employee benefit plan (as defined in paragraphs (3) and (32) of section 3 of ERISA), a "governmental plan" (as defined in 29 U.S.C. 1002(32)) that complies with the tax deferral qualification requirements provided in the Internal Revenue Code, or any similar employee benefit plan established under the laws of a foreign jurisdiction;

§ 324.3

12 CFR Ch. III (1–1–23 Edition)

(iv) A synthetic exposure to the capital of a financial institution to the extent deducted from capital under § 324.22; or

(v) Registered with the SEC under the Investment Company Act or foreign equivalents thereof.

Tranche means all securitization exposures associated with a securitization that have the same seniority level.

Two-way market means a market where there are independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined within one day and settled at that price within a relatively short time frame conforming to trade custom.

Unconditionally cancelable means with respect to a commitment, that an FDIC-supervised institution may, at any time, with or without cause, refuse to extend credit under the commitment (to the extent permitted under applicable law).

Underlying exposures means one or more exposures that have been securitized in a securitization transaction.

Unregulated financial institution means, for purposes of § 324.131, a financial institution that is not a regulated financial institution, including any financial institution that would meet the definition of “financial institution” under this section but for the ownership interest thresholds set forth in paragraph (4)(i) of that definition.

U.S. Government agency means an instrumentality of the U.S. Government whose obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the U.S. Government.

Value-at-Risk (VaR) means the estimate of the maximum amount that the value of one or more exposures could decline due to market price or rate movements during a fixed holding period within a stated confidence interval.

Variation margin means financial collateral that is subject to a collateral agreement provided by one party to its counterparty to meet the performance

of the first party’s obligations under one or more transactions between the parties as a result of a change in value of such obligations since the last time such financial collateral was provided.

Variation margin agreement means an agreement to collect or post variation margin.

Variation margin amount means the fair value amount of the variation margin, as adjusted by the standard supervisory haircuts under § 324.132(b)(2)(ii), as applicable, that a counterparty to a netting set has posted to a FDIC-supervised institution less the fair value amount of the variation margin, as adjusted by the standard supervisory haircuts under § 324.132(b)(2)(ii), as applicable, posted by the FDIC-supervised institution to the counterparty.

Variation margin threshold means the amount of credit exposure of a FDIC-supervised institution to its counterparty that, if exceeded, would require the counterparty to post variation margin to the FDIC-supervised institution pursuant to the variation margin agreement.

Volatility derivative contract means a derivative contract in which the payoff of the derivative contract explicitly depends on a measure of the volatility of an underlying risk factor to the derivative contract.

Wrong-way risk means the risk that arises when an exposure to a particular counterparty is positively correlated with the probability of default of such counterparty itself.

[78 FR 55471, Sept. 10, 2013, as amended at 79 FR 20758, Apr. 14, 2014; 79 FR 44124, July 30, 2014; 79 FR 57748, Sept. 26, 2014; 80 FR 41422, July 15, 2015; 81 FR 71354, Oct. 17, 2016; 82 FR 50260, Oct. 30, 2017; 84 FR 4246, Feb. 14, 2019; 84 FR 35270, July 22, 2019; 84 FR 59277, Nov. 1, 2019; 84 FR 68033, Dec. 13, 2019; 85 FR 4429, Jan. 24, 2020; 85 FR 4578, Jan. 27, 2020; 85 FR 20393, Apr. 13, 2020; 86 FR 739, Jan. 6, 2021]

§ 324.3 Operational requirements for counterparty credit risk.

For purposes of calculating risk-weighted assets under subparts D and E of this part:

(a) *Cleared transaction*. In order to recognize certain exposures as cleared transactions pursuant to paragraphs (1)(ii), (iii), or (iv) of the definition of