**§ 324.5 Issuance of directives.**

(a) *General.* A directive is a final order issued to an FDIC-supervised institution that fails to maintain capital at or above the minimum leverage capital requirement as set forth in §§ 324.4 and 324.10. A directive issued pursuant to this section, including a plan submitted under a directive, is enforceable in the same manner and to the same extent as a final cease-and-desist order issued under section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)).

(b) *Issuance of directives.* If an FDIC-supervised institution is operating with less than the minimum leverage capital requirement established by this regulation, the FDIC Board of Directors, or its designee(s), may issue and serve upon any FDIC-supervised institution a directive requiring the FDIC-supervised institution to restore its capital to the minimum leverage capital requirement within a specified time period. The directive may require the FDIC-supervised institution to submit to the appropriate FDIC regional director, or other specified official, for review and approval, a plan describing the means and timing by which the FDIC-supervised institution shall achieve the minimum leverage capital requirement. After the FDIC has approved the plan, the FDIC-supervised institution may be required under the terms of the directive to adhere to and monitor compliance with the plan. The directive may be issued during the course of an examination of the FDIC-supervised institution, or at any other time that the FDIC deems appropriate, if the FDIC-supervised institution is found to be operating with less than the minimum leverage capital requirement.

(c) *Notice and opportunity to respond to issuance of a directive.* (1) If the FDIC makes an initial determination that a directive should be issued to an FDIC-supervised institution pursuant to paragraph (b) of this section, the FDIC, through the appropriate designated official(s), shall serve written notification upon the FDIC-supervised institution of its intent to issue a directive. The notice shall include the current leverage capital ratio, the basis upon which said ratio was calculated, the proposed capital injection, the proposed date for achieving the minimum leverage capital requirement and any other relevant information concerning the decision to issue a directive. When deemed appropriate, specific requirements of a proposed plan for meeting the minimum leverage capital requirement may be included in the notice.

(2) Within 14 days of receipt of notification, the FDIC-supervised institution may file with the appropriate designated FDIC official(s) a written response, explaining why the directive should not be issued, seeking modification of its terms, or other appropriate relief. The FDIC-supervised institution's response shall include any information, mitigating circumstances, documentation, or other relevant evidence which supports its position, and may include a plan for attaining the minimum leverage capital requirement.

(3)(i) After considering the FDIC-supervised institution's response, the appropriate designated FDIC official(s) shall serve upon the FDIC-supervised institution a written determination addressing the FDIC-supervised institution's response and setting forth the FDIC's findings and conclusions in support of any decision to issue or not to issue a directive. The directive may be issued as originally proposed or in modified form. The directive may order the FDIC-supervised institution to:

(A) Achieve the minimum leverage capital requirement established by this regulation by a certain date;

(B) Submit for approval and adhere to a plan for achieving the minimum leverage capital requirement;

(C) Take other action as is necessary to achieve the minimum leverage capital requirement; or

(D) A combination of the above actions.

(ii) If a directive is to be issued, it may be served upon the FDIC-supervised institution along with the final determination.

(4) Any FDIC-supervised institution, upon a change in circumstances, may request the FDIC to reconsider the terms of a directive and may propose changes in the plan under which it is operating to meet the minimum leverage capital requirement. The directive

and plan continue in effect while such request is pending before the FDIC.

(5) All papers filed with the FDIC must be postmarked or received by the appropriate designated FDIC official(s) within the prescribed time limit for filing.

(6) Failure by the FDIC-supervised institution to file a written response to notification of intent to issue a directive within the specified time period shall constitute consent to the issuance of such directive.

(d) *Enforcement of a directive.* (1) Whenever an FDIC-supervised institution fails to follow the directive or to submit or adhere to its capital adequacy plan, the FDIC may seek enforcement of the directive in the appropriate United States district court, pursuant to 12 U.S.C. 3907(b)(2)(B)(ii), in the same manner and to the same extent as if the directive were a final cease-and-desist order. In addition to enforcement of the directive, the FDIC may seek assessment of civil money penalties for violation of the directive against any FDIC-supervised institution, any officer, director, employee, agent, or other person participating in the conduct of the affairs of the FDIC-supervised institution, pursuant to 12 U.S.C. 3909(d).

(2) The directive may be issued separately, in conjunction with, or in addition to, any other enforcement mechanisms available to the FDIC, including cease-and-desist orders, orders of correction, the approval or denial of applications, or any other actions authorized by law. In addition to addressing an FDIC-supervised institution's minimum leverage capital requirement, the capital directive may also address minimum risk-based capital requirements that are to be maintained and calculated in accordance with § 324.10, and, for state savings associations, the minimum tangible capital requirements set for in § 324.10.

**§§ 324.6–324.9 [Reserved]**

## Subpart B—Capital Ratio Requirements and Buffers

**§ 324.10 Minimum capital requirements.**

(a) *Minimum capital requirements.* (1) An FDIC-supervised institution must maintain the following minimum capital ratios:

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

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

(iii) A total capital ratio of 8 percent.

(iv) A leverage ratio of 4 percent.

(v) For advanced approaches FDIC-supervised institutions or for Category III FDIC-regulated institutions, a supplementary leverage ratio of 3 percent.

(vi) For state savings associations, a tangible capital ratio of 1.5 percent.

(2) A qualifying community banking organization (as defined in § 324.12), that is subject to the community bank leverage ratio framework (as defined in § 324.12), is considered to have met the minimum capital requirements in this paragraph (a).

(b) *Standardized capital ratio calculations.* Other than as provided in paragraph (c) of this section:

(1) *Common equity tier 1 capital ratio.* An FDIC-supervised institution's common equity tier 1 capital ratio is the ratio of the FDIC-supervised institution's common equity tier 1 capital to standardized total risk-weighted assets;

(2) *Tier 1 capital ratio.* An FDIC-supervised institution's tier 1 capital ratio is the ratio of the FDIC-supervised institution's tier 1 capital to standardized total risk-weighted assets;

(3) *Total capital ratio.* An FDIC-supervised institution's total capital ratio is the ratio of the FDIC-supervised institution's total capital to standardized total risk-weighted assets; and

(4) *Leverage ratio.* An FDIC-supervised institution's leverage ratio is the ratio of the FDIC-supervised institution's tier 1 capital to the FDIC-supervised institution's average total consolidated assets as reported on the FDIC-supervised institution's Call Report minus amounts deducted from tier 1 capital under § 324.22(a), (c), and (d).