DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set out in the preamble, part 3 of chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

2. In section 1, paragraph (c) of appendix A:

A. Paragraphs (17) through (31) are redesignated as paragraph (20) through (34); paragraphs (12) through (16) are redesignated as paragraph (14) through (18); and paragraphs (1) through (11) are redesignated as paragraphs (2) through (12).

B. New paragraphs (1), (13) and (19) are added to read as follows:

APPENDIX A TO PART 3—RISK-BASED CAPITAL GUIDELINES

Section 1. Purpose, Applicability of Guidelines, and Definitions.

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(c) * * *

(1) *Adjusted carrying value* means, for purposes of section 2(c)(4) of this appendix A, the aggregate value that investments are carried on the balance sheet of the bank reduced by any unrealized gains on the investments that are reflected in such carrying value but excluded from the bank's Tier 1 capital. For example, for investments held as available-for-sale (AFS), the adjusted carrying value of the investments would be the aggregate carrying value of the investments (as reflected on the consolidated balance sheet of the bank) less any unrealized gains on those investments that are included in other comprehensive income and that are not reflected in Tier 1 capital, and less any associated deferred tax liabilities. Unrealized losses on AFS equity investments must be deducted from Tier 1 capital in accordance with section 1(c)(8) of this appendix A. The treatment of small business investment companies that are consolidated for accounting purposes is discussed in section 2(c)(4)(iv) of this appendix A. For investments in a nonfinancial company that is consolidated for accounting purposes, the bank's adjusted carrying value of the investment is determined under the equity method of accounting (net of any intangibles associated with the investment that are deducted from the bank's Tier

1 capital in accordance with section 2(c)(2) of this appendix A). Even though the assets of the nonfinancial company are consolidated for accounting purposes, these assets (as well as the credit equivalent amounts of the company's off-balance sheet items) are excluded from the bank's risk-weighted assets.

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(13) *Equity investment* means, for purposes of paragraph (c)(19) of this section and section 2(c)(4) of this appendix A, any equity instrument including warrants and call options that give the holder the right to purchase an equity instrument, any equity feature of a debt instrument (such as a warrant or call option), and any debt instrument that is convertible into equity. An investment in subordinated debt or other types of debt instruments may be treated as an equity investment if the OCC determines that the instrument is the functional equivalent of equity.

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(19) *Nonfinancial equity investment* means any equity investment in a nonfinancial company made by the bank through a small business investment company (SBIC) under section 302(b) of the Small Business Investment Act of 1958 or under the portfolio investment provisions of Regulation K (12 CFR 211.5(b)(1)(iii)). An equity investment in a SBIC made under section 302(b) of the Small Business Investment Act of 1958 that is not consolidated with the bank is treated as a nonfinancial equity investment. A nonfinancial company is an entity that engages in any activity that has not been determined to be permissible for the bank to conduct directly or to be financial in nature or incidental to financial activities under section 4(k) of the Bank Holding Company Act.

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3. In section 2 of appendix A:

A. Paragraph (a)(3) is amended;

B. New paragraph (c)(1)(iv) is added;

C. Paragraph (c)(4) is redesignated as paragraph (c)(5); and

D. New paragraph (c)(4) is added to read as follows:

APPENDIX A TO PART 3—RISK-BASED CAPITAL GUIDELINES

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Section 2. Components of Capital

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(a) * * *

(3) Minority interests in the equity accounts of consolidated subsidiaries, except that minority interests in a small business investment company or investment fund that holds nonfinancial equity investments and minority interests in a subsidiary that is engaged in nonfinancial activities and is held under one of the legal authorities listed in section 1(c)(19) of this appendix A are not included in Tier 1 capital or total capital.

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(c) * * *

(1) * * *

(iv) Nonfinancial equity investments as provided by section 2(c)(4) of this appendix A.

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(4) *Nonfinancial equity investments.* (i) *General.* A bank must deduct from its Tier 1 capital the appropriate percentage, as determined in accordance with Table 1, of the adjusted carrying value of all nonfinancial equity investments made by the bank or by its direct or indirect subsidiaries.

(ii) *Nonfinancial equity investments in the trading account.* Section 2(c)(4) of this appendix A does not apply to, and no deduction is required for, any nonfinancial equity investment that is held in the trading account in accordance with applicable accounting principles and as part of an underwriting, market making or dealing activity.

(iii) *Amount of deduction from Tier 1 capital.* (A) The bank must deduct from its Tier 1 capital the appropriate percentage, as determined in accordance with Table 1, of the adjusted carrying value of all nonfinancial equity investments held by the bank and its subsidiaries.

Table 1—Deduction for Nonfinancial Equity Investments

Aggregate adjusted carrying value of all nonfinancial equity investments held directly or indirectly by the bank (As a percentage of the Tier 1 capital of the bank)[1]	Deduction from Tier 1 Capital (As a percentage of the adjusted carrying value of the investment)
Less than 15 percent	8.0 Percent
15 percent but less than 25 percent	12.0 percent
25 percent or greater	25.0 percent

[1] For purposes of calculating the adjusted carrying value of nonfinancial equity investments as a percentage of Tier 1 capital, Tier 1 capital is defined as the sum of the Tier 1 capital elements net of goodwill and net of all identifiable intangible assets other than mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships, but prior to the deduction for deferred tax assets and nonfinancial equity investments.

(B) Deductions for nonfinancial equity investments must be applied on a marginal basis to the portions of the adjusted carrying value of nonfinancial equity investments that fall within the specified ranges of the bank's Tier 1 capital. For example, if the adjusted carrying value of all nonfinancial equity investments held by a bank equals 20 percent of the Tier 1 capital of the bank, then the amount of the deduction would be 8 percent of the adjusted carrying value of all investments up to 15 percent of the bank's Tier 1 capital, and 12 percent of the adjusted carrying value of all investments in excess of 15 percent of the bank's Tier 1 capital.

(C) The total adjusted carrying value of any nonfinancial equity investment that is subject to deduction under section 2(c)(4) of this appendix A is excluded from the bank's weighted risk assets for purposes of computing the denominator of the bank's risk-based capital ratio. For example, if 8 percent of the adjusted carrying value of a nonfinancial equity investment is deducted from Tier 1 capital, the entire adjusted carrying value of the investment will be excluded from risk-weighted assets in calculating the denominator of the risk-based capital ratio.

(D) Banks engaged in equity investment activities, including those banks with a high concentration in nonfinancial equity investments (*e.g.*, in excess of 50 percent of Tier 1 capital) will be monitored and may be subject to heightened supervision, as appropriate, by the OCC to ensure that such banks maintain capital levels that are appropriate in light of their equity investment activities, and the OCC may impose a higher capital charge in any case where the circumstances, such as the level of risk of the particular investment or portfolio of investments, the risk management systems of the bank, or other information, indicate that a higher minimum capital requirement is appropriate.

(iv) *Small business investment company investments.* (A) Notwithstanding section 2(c)(4)(iii) of this appendix A, no deduction is required for nonfinancial equity investments that are made by a bank or its subsidiary through a SBIC that is consolidated with the bank, or in a SBIC that is not consolidated with the bank, to the extent that such investments, in the aggregate, do not exceed 15 percent of the Tier 1 capital of the bank. Except as provided in paragraph (c)(4)(iv)(B) of this section, any nonfinancial equity investment that is held through or in a SBIC and not deducted from Tier 1 capital will be assigned to the 100 percent risk-weight category and included in the bank's consolidated risk-weighted assets.

(B) If a bank has an investment in a SBIC that is consolidated for accounting purposes but the SBIC is not wholly owned by the bank, the adjusted carrying value of the bank's nonfinancial equity investments held through the SBIC is equal to the bank's proportionate share of the SBIC's adjusted carrying value of its nonfinancial equity investments. The remainder of the SBIC's adjusted carrying value (i.e., the minority interest holders' proportionate share) is excluded from the risk-weighted assets of the bank.

(C) To the extent the adjusted carrying value of all nonfinancial equity investments that the bank holds through a consolidated SBIC or in a nonconsolidated SBIC exceeds, in the aggregate, 15 percent of the Tier 1 capital of the bank, the appropriate percentage of such amounts, as set forth in Table 1, must be deducted from the bank's Tier 1 capital. In addition, the aggregate adjusted carrying value of all nonfinancial equity investments held through a consolidated SBIC and in a nonconsolidated SBIC (including any investments for which no deduction is required) must be included in determining for purposes of Table 1 the total amount of nonfinancial equity investments held by the bank in relation to its Tier 1 capital.

(v) *Transition period.* [Comment requested].