

§ 3.10

other legal authority to continue to maintain those higher ratios.

[55 FR 38800, Sept. 21, 1990]

§ 3.10 Applicability.

The OCC may require higher minimum capital ratios for an individual bank in view of its circumstances. For example, higher capital ratios may be appropriate for:

- (a) A newly chartered bank;
- (b) A bank receiving special supervisory attention;
- (c) A bank that has, or is expected to have, losses resulting in capital inadequacy;
- (d) A bank with significant exposure due to the risks from concentrations of credit, certain risks arising from non-traditional activities, or management's overall inability to monitor and control financial and operating risks presented by concentrations of credit and nontraditional activities;
- (e) A bank with significant exposure to declines in the economic value of its capital due to changes in interest rates;
- (f) A bank with significant exposure due to fiduciary or operational risk;
- (g) A bank exposed to a high degree of asset depreciation, or a low level of liquid assets in relation to short term liabilities;
- (h) A bank exposed to a high volume or, or particularly severe, problem loans;
- (i) A bank that is growing rapidly, either internally or through acquisitions; or
- (j) A bank that may be adversely affected by the activities or condition of its holding company, affiliate(s), or other persons or institutions including chain banking organizations, with which it has significant business relationships.

[60 FR 39493, Aug. 2, 1995]

§ 3.11 Standards for determination of appropriate individual minimum capital ratios.

The appropriate minimum capital ratios for an individual bank cannot be determined solely through the application of a rigid mathematical formula or wholly objective criteria. The decision is necessarily based in part on sub-

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jective judgment grounded in agency expertise. The factors to be considered in the determination will vary in each case and may include, for example:

- (a) The conditions or circumstances leading to the Office's determination that higher minimum capital ratios are appropriate or necessary for the bank;
- (b) The exigency of those circumstances or potential problems;
- (c) The overall condition, management strength, and future prospects of the bank and, if applicable, its holding company and/or affiliate(s);
- (d) The bank's liquidity, capital, risk asset and other ratios compared to the ratios of its peer group; and
- (e) The views of the bank's directors and senior management.

§ 3.12 Procedures.

(a) *Notice.* When the OCC determines that minimum capital ratios above those set forth in § 3.6 or other legal authority are necessary or appropriate for a particular bank, the OCC will notify the bank in writing of the proposed minimum capital ratios and the date by which they should be reached (if applicable) and will provide an explanation of why the ratios proposed are considered necessary or appropriate for the bank.

(b) *Response.* (1) The bank may respond to any or all of the items in the notice. The response should include any matters which the bank would have the Office consider in deciding whether individual minimum capital ratios should be established for the bank, what those capital ratios should be, and, if applicable, when they should be achieved. The response must be in writing and delivered to the designated OCC official within 30 days after the date on which the bank received the notice. The Office may shorten the time period when, in the opinion of the Office, the condition of the bank so requires, provided that the bank is informed promptly of the new time period, or with the consent of the bank. In its discretion, the Office may extend the time period for good cause.

(2) Failure to respond within 30 days or such other time period as may be specified by the Office shall constitute

a waiver of any objections to the proposed minimum capital ratios or the deadline for their achievement.

(c) *Decision.* After the close of the bank's response period, the Office will decide, based on a review of the bank's response and other information concerning the bank, whether individual minimum capital ratios should be established for the bank and, if so, the ratios and the date the requirements will become effective. The bank will be notified of the decision in writing. The notice will include an explanation of the decision, except for a decision not to establish individual minimum capital requirements for the bank.

(d) *Submission of plan.* The decision may require the bank to develop and submit to the Office, within a time period specified, an acceptable plan to reach the minimum capital ratios established for the bank by the date required.

(e) *Change in circumstances.* If, after the Office's decision in paragraph (c) of this section, there is a change in the circumstances affecting the bank's capital adequacy or its ability to reach the required minimum capital ratios by the specified date, either the bank or the Office may propose to the other a change in the minimum capital ratios for the bank, the date when the minimums must be achieved, or the bank's plan (if applicable). The Office may decline to consider proposals that are not based on a significant change in circumstances or are repetitive or frivolous. Pending a decision on reconsideration, the Office's original decision and any plan required under that decision shall continue in full force and effect.

[50 FR 10216, Mar. 14, 1985, as amended at 55 FR 38800, Sept. 21, 1990]

§ 3.13 Relation to other actions.

In lieu of, or in addition to, the procedures in this subpart, the required minimum capital ratios for a bank may be established or revised through a written agreement or cease and desist proceedings under 12 U.S.C. 1818 (b) or (c) (12 CFR 19.0 through 19.21), or as a condition for approval of an application.

Subpart D—Enforcement

§ 3.14 Remedies.

A bank that does not have or maintain the minimum capital ratios applicable to it, whether required in subpart B of this part, in a decision pursuant to subpart C of this part, in a written agreement or temporary or final order under 12 U.S.C. 1818 (b) or (c), or in a condition for approval of an application, or a bank that has failed to submit or comply with an acceptable plan to attain those ratios, will be subject to such administrative action or sanctions as the OCC considers appropriate. These sanctions may include the issuance of a Directive pursuant to subpart E of this part or other enforcement action, assessment of civil money penalties, and/or the denial, conditioning, or revocation of applications. A national bank's failure to achieve or maintain minimum capital ratios in § 3.6 (a) or (b) may also be the basis for an action by the Federal Deposit Insurance Corporation to terminate federal deposit insurance. See 12 CFR 325.4.

[55 FR 38801, Sept. 21, 1990]

Subpart E—Issuance of a Directive

§ 3.15 Purpose and scope.

This subpart is applicable to proceedings by the Office to issue a directive under 12 U.S.C. 3907(b)(2). A directive is an order issued to a bank that does not have or maintain capital at or above the minimum ratios set forth in § 3.6, or established for the bank under subpart C, by a written agreement under 12 U.S.C. 1818(b), or as a condition for approval of an application. A directive may order the bank to:

(a) Achieve the minimum capital ratios applicable to it by a specified date;

(b) Adhere to a previously submitted plan to achieve the applicable capital ratios;

(c) Submit and adhere to a plan acceptable to the Office describing the means and time schedule by which the bank shall achieve the applicable capital ratios;

(d) Take other action, such as reduction of assets or the rate of growth of assets, or restrictions on the payment