DEPARTMENT OF THE TREASURY
Office of the Comptroller of the Currency
12 CFR Part 3
[Docket No. 03-21]
RIN 1557-AC76

FEDERAL RESERVE SYSTEM
12 CFR Parts 208 and 225
[Regulations H and Y; Docket No. R-1156]

FEDERAL DEPOSIT INSURANCE CORPORATION
12 CFR Part 325
RIN 3064-AC74

DEPARTMENT OF THE TREASURY
Office of Thrift Supervision
12 CFR Part 567
[No. 2003-48]
RIN 1550-AB79

Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Interim Capital Treatment of Consolidated Asset-Backed Commercial Paper Program Assets

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Interim final rule with a request for comments.

SUMMARY: The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), and Office of Thrift Supervision (OTS) (collectively, the agencies) are amending their risk-based capital standards by providing an interim capital treatment for assets in asset-backed commercial paper (ABCP) programs that are consolidated onto the balance sheets of sponsoring banks, bank holding companies, and thrifts (collectively, sponsoring banking organizations) as a result of a recently issued accounting interpretation, Financial Accounting Standards Board Interpretation No. 46, Consolidation of Variable Interest Entities (FIN 46). The interim capital treatment allows sponsoring banking organizations to remove the consolidated ABCP program assets from their risk-weighted asset bases for the purpose of calculating their risk-based capital ratios. Sponsoring banking organizations must continue to hold risk-based capital against all other risk exposures arising in connection with ABCP programs, including direct credit substitutes, recourse obligations, residual interests, long-term liquidity facilities, and loans, in accordance with each agency's existing risk-based capital standards. In addition, any minority interests in ABCP programs that are consolidated as a result of FIN 46 are to be excluded from sponsoring banking organizations' minority interest component of tier 1 capital and, hence, from total risk-based capital.

This interim capital treatment will be in effect only for the regulatory reporting periods ending September 30 and December 31, 2003, and March 31, 2004. In addition, this interim capital treatment does not alter the accounting rules for balance sheet consolidation nor does it affect the denominator of the tier 1 leverage capital ratio calculation, which continues to be based primarily on on-balance sheet assets as reported under generally accepted accounting principles (GAAP). Thus, as a result of FIN 46, banking organizations must include all assets of consolidated ABCP programs in on-balance sheet assets for purposes of calculating the tier 1 leverage capital ratio.

The agencies also have issued a related notice of proposed rulemaking published elsewhere in today's Federal Register, in which the agencies are soliciting comments on a permanent risk-based capital treatment for the risks arising from ABCP programs.

DATES: This interim final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments on the interim final rule must be received by [INSERT DATE 45 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments should be directed to:

OCC: You should send comments to the Public Information Room, Office of the Comptroller of the Currency, Mailstop 1-5, Attention: Docket No. 03-21, 250 E Street, SW, Washington, DC 20219. Due to delays in the delivery of paper mail in the Washington area and at the OCC, commenters are encouraged to submit comments by fax or e-mail. Comments may be sent by fax to (202) 874-4448, or by e-mail to regs.comments@occ.treas.gov. You can make an appointment to inspect and photocopy the comments by calling the Public Information Room at (202) 874-5043.

Board: Comments should refer to Docket No. R-1156 and may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW, Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to regs.comments@federalreserve.gov, or faxing them to the Office of the Secretary at 202/452-3819 or 202/452-3102. Members of the public may inspect comments in Room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429. Comments also may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW, Washington, DC, between 9:00 a.m. and 4:30 p.m. on business days.

OTS: Send comments to Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, Attention: No. 2003-48.
Delivery: Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street,

NW, from 9:00 a.m. to 4:00 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2003-48.
Facsimiles: Send facsimile transmissions to FAX Number (202) 906-6518, Attention: No. 2003-48.

E-Mail: Send e-mails to regs.comments@ots.treas.gov, Attention: No. 2003-48 and include your name and telephone number. Due to temporary disruptions in mail service in the Washington, DC area, commenters are encouraged to send comments by fax or e-mail, if possible.

Availability of comments: OTS will post comments and the related index on the OTS Internet Site at *www.ots.treas.gov*. In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW, by appointment. To make an appointment for access, call (202) 906-5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906-7755. (Please identify the materials you would like to inspect to assist us in serving you.) We schedule appointments on business days between 10:00 a.m. and 4:00 p.m. In most cases, appointments will be available the business day after the date we receive a request.

FOR FURTHER INFORMATION CONTACT:

OCC: Amrit Sekhon, Risk Expert, Capital Policy Division, (202) 874-5211; Mauricio Claver-Carone, Attorney, or Ron Shimabukuro, Special Counsel, Legislative and Regulatory Activities Division, (202) 874-5090, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Board: Thomas R. Boemio, Senior Supervisory Financial Analyst, (202) 452-2982, David Kerns, Supervisory Financial Analyst, (202) 452-2428, Barbara Bouchard, Assistant Director, (202) 452-3072, Division of Banking Supervision and Regulation; or Mark E. Van Der Weide, Counsel, (202) 452-2263, Legal Division. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263-4869.

FDIC: Jason C. Cave, Chief, Policy Section, Capital Markets Branch, (202) 898-3548, Robert F. Storch, Chief Accountant, Division of Supervision and Consumer Protection, (202) 898-8906; Michael B. Phillips, Counsel, Supervision and Legislation Branch, Legal Division, (202) 898-3581, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

OTS: Michael D. Solomon, Senior Program Manager for Capital Policy, (202) 906-5654, David W. Riley, Project Manager, Supervision Policy, (202) 906-6669; or Teresa A. Scott, Counsel (Banking and Finance), (202) 906-6478, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

An asset-backed commercial paper (ABCP) program typically is a program through which a banking organization provides funding to its corporate customers by sponsoring and administering a bankruptcy-remote special purpose entity that purchases asset pools from, or extends loans to, those customers. The asset pools in an ABCP program may include, for example, trade receivables, consumer loans, or asset-backed securities. The ABCP program raises cash to provide funding to the banking organization's customers through the issuance of commercial paper into the market. Typically, the sponsoring banking organization provides liquidity and credit enhancements to the ABCP program, which aids the program in obtaining high quality credit ratings that facilitate the issuance of the commercial paper.[1]

In January 2003, the Financial Accounting Standards Board (FASB) issued interpretation No. 46, "Consolidation of Variable Interest Entities" (FIN 46), requiring the consolidation of variable interest entities (VIEs) onto the balance sheets of companies deemed to be the primary beneficiaries of those entities.[2] FIN 46 may result in the consolidation of many ABCP programs onto the balance sheets of banking organizations beginning in the third quarter of 2003. In contrast, under pre-FIN 46 accounting standards, banking organizations normally have not been required to consolidate the assets of these programs. Banking organizations that are required to consolidate ABCP program assets will have to include all of these program assets (mostly receivables and securities) and liabilities (mainly commercial paper) on their September 30, 2003 balance sheets for purposes of the bank Reports of Condition and Income (Call Report), the Thrift Financial Report (TFR), and the bank holding company financial statements (FR Y-9C Report). If no changes were made to regulatory capital standards, the resulting increase in the asset base would lower both the tier 1 leverage and risk-based capital ratios of banking organizations that must consolidate the assets held in ABCP programs.

The agencies believe that the consolidation of ABCP program assets onto the balance sheets of sponsoring banking organizations could result in risk-based capital requirements that do not appropriately reflect the risks faced by banking organizations that sponsor these programs. The agencies believe that sponsoring banking organizations generally face limited risk exposure to ABCP programs, which generally is confined to the credit enhancements and liquidity facility arrangements that they provide to these programs. In addition, operational controls and structural provisions, along with overcollateralization or other credit enhancements provided by the companies that sell assets into ABCP programs can further mitigate the risk to which sponsoring banking organizations are exposed. Because of the limited risks, the agencies believe that it is appropriate to provide an interim risk-based capital treatment that permits sponsoring banking organizations to exclude from risk-weighted assets, on a temporary basis, assets held by ABCP programs that must be consolidated onto the balance sheets of sponsoring

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1 For the purposes of this rulemaking, a banking organization is considered the sponsor of an ABCP program if it establishes the program; approves the sellers permitted to participate in the program; approves the asset pools to be purchased by the program; or administers the ABCP program by monitoring the assets, arranging for debt placement, compiling monthly reports, or ensuring compliance with the program documents and with the program's credit and investment policy.

2 Under FIN 46, the FASB broadened the criteria for determining when one entity is deemed to have a controlling financial interest in another entity and, therefore, when an entity must consolidate another entity in its financial statements. An entity generally does not need to be analyzed under FIN 46 if it is designed to have "adequate capital" as described in FIN 46 and its shareholders control the entity with their share votes and are allocated its profits and losses. If the entity fails these criteria, it typically is deemed a VIE and each stakeholder in the entity (a group that can include, but is not limited to, legal-form equity holders, creditors, sponsors, guarantors, and servicers) must assess whether it is the entity's "primary beneficiary" using the FIN 46 criteria. This analysis considers whether effective control exists by evaluating the entity's risks and rewards. The stakeholder who holds the majority of the entity's risks or rewards is the primary beneficiary and must consolidate the VIE.

banking organizations as a result of FIN 46.

The period during which the interim rule is in effect will provide the agencies with additional time to develop the appropriate risk-based capital requirements for banking organizations' sponsorship and other involvement with ABCP programs and to receive comments from the industry on a related proposal also published in today's Federal Register.

II. Interim Risk-Based Capital and Regulatory Reporting Treatment

The agencies are amending their risk-based capital standards to permit sponsoring banking organizations to exclude the assets of ABCP programs that must be consolidated under FIN 46 from risk-weighted assets when they calculate their tier 1 and total risk-based capital ratios for the quarters ending September 30, 2003, December 31, 2003, and March 31, 2004. Sponsoring banking organizations must continue to assess risk-based capital against any credit enhancements or long-term liquidity facilities that they provide to such ABCP programs. For example, banking organizations that sponsor ABCP programs generally assign any investment-grade equivalent credit enhancements that they provide to these programs to the 100 percent risk weight category.[3] Most liquidity facilities currently provided to ABCP programs are structured with a maturity of less than one year and, under the agencies' current risk-based capital rules, do not incur a capital charge.

Under this interim rule, for the third and fourth quarters of 2003, as well as for the first quarter of 2004, when reporting items 34 through 43 on Schedule RC-R (Regulatory Capital) of the Call Report and Schedule HC-R (Regulatory Capital) of the FR Y-9C, any consolidated ABCP program assets resulting from application of FIN 46 are to be reported in column A, "Totals (from Schedule RC)," as well as in column B, "Items not Subject to Risk-Weighting." With respect to the TFR, thrifts should not include the subject program assets in any of the lines for assets to risk weight on Schedule CCR that comprise the subtotal on line CCR64.

Reporting in this manner will exclude the ABCP program assets from incorporation into the calculation of the risk-based capital ratios. Banking organizations should continue to report the notional amounts of any credit enhancements and liquidity facilities provided to ABCP programs in the risk-based capital schedule line items in which these exposures would be properly reported as of the June 30, 2003 reporting date. In addition, credit enhancements and liquidity facilities that sponsoring banking organizations provide to their ABCP programs are to be reported in Memorandum items 3.a.(1) and 3.b.(1) of Schedule RC-S (Servicing, Securitization, and Asset Sale Activities) of the Call Report and Schedule HC-S (Servicing, Securitization, and Asset Sale Activities) of the FR Y-9C consolidated reports, respectively. Thrifts should include any related credit enhancements on Schedule CC, lines CC455, CC465, or CC468, as appropriate.

In addition, any minority interests in ABCP programs that are consolidated as a result of FIN 46 are to be excluded from sponsoring banking organizations' minority interest component

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3 Under the agencies' risk-based capital standards, banking organizations may, subject to supervisory approval, use their internal risk ratings system to assess the credit quality of non-rated direct credit substitutes provided to ABCP programs in order to determine the appropriate risk-based capital charge. Direct credit substitutes provided to ABCP programs that are the equivalent of non-investment grade are assigned to either the 200 percent risk weight category or effectively deducted from risk-based capital.

of tier 1 capital and, hence, also from total risk-based capital. Exclusion from capital of any minority interests associated with consolidated ABCP programs is required when the programs' assets are not included in an organization's risk-weighted asset base and, thus, are not assessed a risk-based capital charge. When sponsoring banking organizations report item 6, "Qualifying minority interest in consolidated subsidiaries," of Schedule RC-R of the Call Report and Schedule HC-R of the FR Y-9C, they should exclude the amount of minority interest associated with such consolidated ABCP programs. With respect to the TFR, when sponsoring savings associations report on line CCR125, "Minority Interest in Includable Consolidated Subsidiaries," of Schedule CCR, they should exclude the amount of minority interest associated with such consolidated ABCP programs.

This interim risk-based capital (and the associated regulatory capital reporting) treatment will expire on April 1, 2004. If the agencies have not implemented an alternative risk-based capital approach for banking organizations that sponsor ABCP programs prior to the expiration of the interim treatment, then sponsoring banking organizations will be required to subject ABCP program assets that are consolidated under FIN 46 to the applicable risk-based capital treatment for on-balance sheet assets. The agencies reserve the authority to require sponsoring banking organizations to hold an alternative amount of risk-based capital against ABCP program assets at any time during the period this interim treatment is in effect in the event that an agency determines that the application of these risk-based capital requirements does not adequately address the risks present in a sponsoring banking organization's involvement with an ABCP program.

This interim risk-based capital treatment has no bearing on the accounting requirements as established by GAAP or the manner in which banking organizations report consolidated on-balance sheet assets. In addition, the interim capital treatment does not affect the denominator of the tier 1 leverage capital ratio calculation, which will continue to be based primarily on on-balance sheet assets as reported under GAAP. Thus, in accordance with FIN 46, banking organizations must include all assets of consolidated ABCP programs in on-balance sheet assets for purposes of calculating the tier 1 leverage capital ratio. In addition, in contrast to many other cases where minority interest in consolidated subsidiaries may be included as a component of tier 1 capital and, hence, incorporated into the tier 1 leverage capital ratio calculation, minority interest related to sponsoring banking organizations' ABCP program assets consolidated as a result of FIN 46 are <u>not</u> included in tier 1 capital. Thus, the reported tier 1 leverage capital ratio for a sponsoring banking organization will be lower than if only its ABCP program assets were consolidated. However, the agencies anticipate that the exclusion of minority interests related to consolidated ABCP program assets will not significantly affect the tier 1 leverage capital ratio of sponsoring banking organizations because the equity in ABCP programs generally is small relative to the capital levels of sponsoring banking organizations.

The agencies seek comment on all aspects of the interim rule. In a related notice of proposed rulemaking published elsewhere in today's <u>Federal Register</u>, the agencies are soliciting comments on the removal of the April 1, 2004 sunset provision contained in this interim final rule so that assets of ABCP programs consolidated under FIN 46 and any associated minority interest would continue to be excluded from risk-weighted assets and tier 1 capital, respectively, of sponsoring banking organizations for purposes of calculating the risk-based capital ratios. The proposed elimination of the sunset provision is conditional upon the agencies implementing appropriate risk-based capital requirements for all risk exposures arising from ABCP programs.

Thus, the agencies also have proposed that liquidity facilities with an original maturity of one year or less that banking organizations provide to ABCP programs be converted to on-balance sheet credit equivalent amounts using the 20 percent credit conversion factor (as opposed to the existing zero percent credit conversion factor) and assigned to the appropriate risk weight category according to the underlying assets or obligor, after consideration of any guarantees or collateral, or external credit ratings if the risk exposure is an asset- or mortgage-backed security. In general, this capital requirement on short-term liquidity facilities would be in addition to existing risk-based capital requirements for credit enhancements provided to ABCP programs.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the agencies have determined that this interim rule would not have a significant impact on a substantial number of small entities in accordance with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Accordingly, a regulatory flexibility analysis is not required. In addition, the interim rule would reduce regulatory burden with respect to the agencies' risk-based capital standards.

Administrative Procedure Act

Pursuant to section 553 of the Administrative Procedure Act, 5 U.S.C. 553, the agencies find good cause for issuing this interim rule in advance of the receipt of comments from interested parties. The agencies believe that it is important to make this interim final rule effective before banking organizations must calculate their regulatory risk-based capital ratios at the end of the third quarter 2003. If ABCP program assets are consolidated under FIN 46, then the resulting capital requirement might not be commensurate with the risk inherent in sponsoring banking organizations' involvement with such programs. The agencies are seeking public comment on the interim final rule and, in a related notice of proposed rulemaking, are seeking comment on an alternative risk-based capital treatment for the risk exposures arising from this activity.

In addition, under section 553(d)(3) of the Administrative Procedure Act, an agency may issue an interim rule or a final rule without delaying its effective date for 30 days from the date of publication if the agency finds good cause and publishes its finding with the rule. The agencies have determined that the issuance of this interim rule without delaying its effective date for 30 days from the date of publication will provide certainty for banking organizations in calculating their regulatory capital ratios for the third quarter 2003.

Paperwork Reduction Act

The agencies have determined that this interim rule does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Unfunded Mandates Reform Act of 1995

OCC: Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. This interim rule is designed to temporarily offset the effect on risk-based capital ratios of FIN 46 with respect to ABCP programs. The OCC has determined that this interim rule will not result in expenditures by state, local, or tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, Section 202 of the Unfunded Mandates Act does not require the OCC to prepare a budgetary impact statement for this rule.

OTS: Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS has determined that this interim rule will not result in expenditures by state, local, or tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, section 202 of the Unfunded Mandates Act does not require the OTS to prepare a budgetary impact statement for this rule.

Plain Language

Section 722 of the GLB Act requires the Federal banking agencies to use "plain language" in all proposed and final rules published after January 1, 2000. In light of this requirement, the agencies have sought to present the interim final rule in a simple and straightforward manner. The agencies invite comments on whether there are additional steps the agencies could take to make the rule easier to understand.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System,

Holding companies, Reporting and recordkeeping requirements, Securities.
12 CFR Part 325

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

12 CFR Part 567

Capital, Reporting and recordkeeping, Savings associations.

Department of Treasury
Office of the Comptroller of the Currency
12 CFR Chapter 1

Authority and Issuance

For the reasons set out in the joint preamble, part 3 of chapter I of title 12 of the Code of Federal Regulations is 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 Appendix A to part 3:

a. In section 1, paragraphs (c)(3) through (c)(35) are redesignated as paragraphs (c)(4) through (c)(36); newly redesignated paragraphs (c)(30) through (c)(36) are redesignated (c)(31) through (c)(37); and two new paragraphs (c)(3) and (c)(30) are added;

b. In section 2, paragraph (a)(3) is revised; and

c. In section 4, two new paragraphs (j) and (k) are added.

Appendix A to Part 3—Risk-Based Capital Guidelines

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

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(c) ***

(3) Asset-backed commercial paper program means a program that issues commercial paper backed by assets or other exposures held in a bankruptcy-remote special purpose entity.

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(30) Sponsor means a bank that:

(i) Establishes an asset-backed commercial paper program;

(ii) Approves the sellers permitted to participate in the asset-backed commercial paper program;

(iii) Approves the asset pools to be purchased by the asset-backed commercial paper program; or

(iv) Administers the asset-backed commercial paper program by monitoring the assets, arranging for debt placement, compiling monthly reports, or ensuring compliance with the program documents and with the program's credit and investment policy.

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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 the following are not included in Tier 1 capital or total capital:

(i) 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 a nonfinancial activities and is held under one of the legal authorities listed in section 1(c)(21) of this appendix A.

(ii) Minority interests in consolidated asset-backed commercial paper programs sponsored by a bank if the consolidated assets are excluded from risk-weighted assets pursuant to section 4(j)(1) of this appendix A. This paragraph (a)(3)(B) of this section is effective from July 1, 2003 to April 1, 2004.

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Section 4. Recourse, Direct Credit Substitutes and Positions in Securitizations

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(j) Asset-backed commercial paper programs subject to consolidation. (1) A bank that qualifies as a primary beneficiary and must consolidate an asset-backed commercial paper program as a variable interest entity under generally accepted accounting principles may exclude the consolidated asset-backed commercial paper program assets from risk-weighted assets if the bank is the sponsor of the consolidated asset-backed commercial paper program.

(2) If a bank excludes such consolidated asset-backed commercial paper program assets from risk-weighted assets, the bank must assess the appropriate risk-based capital charge against any risk exposures of the bank arising in connection with such asset-backed commercial paper programs, including direct credit substitutes, recourse obligations, residual interests, liquidity facilities, and loans, in accordance with sections 3 and 4(b) of this appendix A.

(3) If a bank either elects not to exclude such consolidated asset-backed commercial paper program assets from its risk-weighted assets in accordance with section 4(j)(1) of this appendix A, or is not permitted to exclude consolidated asset-backed commercial paper program assets, the bank must assess risk-based capital charge based on the appropriate risk weight of the consolidated asset-backed commercial paper program assets in accordance with section 3(a) of this appendix A. In such case, direct credit substitutes and recourse obligations (including residual interests), and loans that sponsoring banks provide to such asset-backed commercial paper programs are not subject to any capital charge under section 4 of this appendix A.

(4) This paragraph (j) is effective from July 1, 2003 until April 1, 2004.

(k) <u>Other variable interest entities subject to consolidation</u>. (1) If a bank that is required to consolidated the assets of a variable interest entity under generally accepted accounting principles, the bank must assess risk-based capital charge based on the appropriate risk weight of the consolidated assets in accordance with section 3(a) of this appendix A. In such case, direct credit substitutes and recourse obligations (including residual interests), and loans that sponsoring banks provide to such asset-backed commercial paper programs are not subject to any capital charge under section 4 of this appendix A.

(2) This paragraph (k) is effective from July 1, 2003 until April 1, 2004.

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[THIS SIGNATURE PAGE RELATES TO THE JOINT INTERIM RULE ON "RISK-BASED CAPITAL GUIDELINES; INTERIM CAPITAL TREATMENT OF CONSOLIDATED ASSET-BACKED COMMERCIAL PAPER PROGRAM ASSETS"]

September 4, 2003	John D. Hawke, Jr. (signed)
Date	**John D. Hawke, Jr.**
	Comptroller of the Currency

Federal Reserve System
12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Governors of the Federal Reserve System amends parts 208 and 225 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 208 -- MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321-338a, 371d, 461, 481-486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p-1, 1831r-1, 1831w, 1831x, 1835a, 1882, 2901-2907, 3105, 3310, 3331-3351, and 3906-3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o-4(c)(5), 78q, 78q-1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In Appendix A to part 208, the following amendments are made:

a. In section II.A.1.c., Minority interest in equity accounts of consolidated subsidiaries, a new sentence is added at the end of the paragraph.

b. In section III.B--

i. In paragraph 3.a., paragraphs xiv. and xv. are redesignated xv. and xvi.;

ii. In paragraph 3.a., a new paragraph xiv., Sponsor, is added; and

iii. A new paragraph 6 is added at the end of the section.

APPENDIX A TO PART 208—CAPITAL ADEQUACY GUIDELINES FOR STATE MEMBER BANKS: RISK-BASED MEASURE

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II. ***

A. ***

1. ***

c. *** In addition, minority interests in consolidated asset-backed commercial paper programs (as defined in section III.B.6. of this appendix) that are sponsored by a bank are not to be included in the bank's Tier 1 or total capital base if the bank excludes the consolidated assets of such programs from risk-weighted assets pursuant to section III.B.6. of this appendix. This capital treatment for minority interests in consolidated asset-backed commercial paper programs will be effective from July 1, 2003 and will expire on April 1, 2004.

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III. ***

B. ***

3. ***

a. ***

xiv. Sponsor means a bank that establishes an asset-backed commercial paper program; approves the sellers permitted to participate in the program; approves the asset pools to be purchased by the program; or administers the asset-backed commercial paper program by monitoring the assets, arranging for debt placement, compiling monthly reports, or ensuring compliance with the program documents and with the program's credit and investment policy.

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6. Asset-backed commercial paper programs. a. An asset-backed commercial paper (ABCP) program typically is a program through which a bank provides funding to its corporate customers by sponsoring and administering a bankruptcy-remote special purpose entity that purchases asset pools from, or extends loans to, the bank's customers. The ABCP program raises the cash to provide the funding through the issuance of commercial paper in the market.

b. A bank that qualifies as a primary beneficiary and must consolidate an ABCP program that is defined as a variable interest entity under GAAP may exclude the consolidated ABCP program assets from its risk-weighted assets provided that the bank is the sponsor of the consolidated ABCP program. If a bank excludes such consolidated ABCP program assets, the bank must apply the appropriate risk-based capital charge against any risk exposures of the bank arising in connection with such ABCP programs, including direct credit substitutes, recourse obligations, residual interests, liquidity facilities, and loans, in accordance with sections III.B.3., III.C. and III.D. of this appendix.

c. This capital treatment for consolidated assets of certain ABCP programs will be effective from July 1, 2003 and will expire on April 1, 2004.

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PART 225 – BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p-1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331-3351, 3907, and 3909; 15 U.S.C. 6801 and 6805.

2. In Appendix A to part 225, the following amendments are made:

a. In section II.A.1.c., Minority interest in equity accounts of consolidated subsidiaries, a new sentence is added at the end of the paragraph.

b. In section III.B.--

i. In paragraph 3.a., paragraphs xiv. and xv. are redesignated xv. and xvi.;

ii. In paragraph 3.a., a new paragraph xiv., Sponsor, is added; and

iii. A new paragraph 6 is added at the end of the section.

APPENDIX A TO PART 225—CAPITAL ADEQUACY GUIDELINES FOR BANK HOLDING COMPANIES: RISK-BASED MEASURE

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II. ***

A. ***

c. *** In addition, minority interests in consolidated asset-backed commercial paper programs (as defined in section III.B.6. of this appendix) that are sponsored by a banking organization are not to be included in the organization's Tier 1 or total capital base if the organization excludes the consolidated assets of such programs from risk-weighted assets pursuant to section III.B.6. of this appendix. This capital treatment for minority interests in consolidated asset-backed commercial paper programs will be effective from July 1, 2003 and will expire on April 1, 2004.

*****

III. ***

B. ***

3. ***

a. ***

xiv. Sponsor means a bank holding company that establishes an asset-backed commercial paper program; approves the sellers permitted to participate in the program; approves the asset pools to be purchased by the program; or administers the asset-backed commercial paper program by monitoring the assets, arranging for debt placement, compiling monthly reports, or ensuring compliance with the program documents and with the program's credit and investment policy.

*****

6. Asset-backed commercial paper programs. a. An asset-backed commercial paper (ABCP) program typically is a program through which a banking organization provides funding to its corporate customers by sponsoring and administering a bankruptcy-remote special purpose entity that purchases asset pools from, or extends loans to, the organization's customers. The ABCP program raises the cash to provide the funding through the issuance of commercial paper in the market.

b. A banking organization that qualifies as a primary beneficiary and must consolidate an ABCP program that is defined as a variable interest entity under GAAP may exclude the consolidated ABCP program assets from its risk-weighted assets provided that the bank holding company is the sponsor of the consolidated ABCP program. If a banking organization excludes such ABCP program assets, the banking organization must apply the appropriate risk-based capital charge against any risk exposures of the organization arising in connection with such ABCP programs, including direct credit substitutes, recourse obligations, residual interests, liquidity facilities, and loans, in accordance with sections III.B.3., III.C. and III.D. of this appendix.

c. This capital treatment for consolidated assets of certain ABCP programs will be effective from July 1, 2003 and will expire on April 1, 2004.

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[THIS SIGNATURE PAGE RELATES TO THE JOINT INTERIM RULE ON "RISK-BASED CAPITAL GUIDELINES; INTERIM CAPITAL TREATMENT OF CONSOLIDATED ASSET-BACKED COMMERCIAL PAPER PROGRAM ASSETS"]

By order of the Board of Governors of the Federal Reserve System, September 12, 2003.

Jennifer J. Johnson (signed)
Jennifer J. Johnson
Secretary of the Board

Federal Deposit Insurance Corporation
12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Directors of the Federal Deposit Insurance Corporation amends part 325 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 325 – CAPITAL MAINTENANCE

1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102-233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102-242, 105 Stat. 2236, 2355, as amended by Pub. L. 103-325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102-242, 105 Stat. 2236, 2386, as amended by Pub. L. 102-550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note).

2. In Appendix A to part 325, the following amendments are made:

a. In section I.A.1.iii, the four undesignated paragraphs are designated (a), (b), (c), and (d), and a new paragraph (e) is added to that section.

b. In section II.B--

i. In paragraph 5.a., paragraphs (15) and (16) are redesignated (16) and (17);

ii. In paragraph 5.a., a new paragraph (15), Sponsor, is added; and

iii. A new paragraph 6 is added at the end of the section.

APPENDIX A TO PART 325 —STATEMENT OF POLICY ON RISK-BASED CAPITAL

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I. ***

A. ***

1. ***

(e) Minority interests in consolidated asset-backed commercial paper programs (as defined in section II.B.6. of this appendix) that are sponsored by a bank are not to be included in the bank's tier 1 or total capital base if the bank excludes the consolidated assets of such programs from risk-weighted assets pursuant to section II.B.6. of this appendix. This capital treatment for minority interests in consolidated asset-backed commercial paper programs will be effective from July 1, 2003 and will expire on April 1, 2004.

*****

II. ***

B. ***

5. ***

a. ***

(15) Sponsor means a bank that establishes an asset-backed commercial paper program; approves the sellers permitted to participate in the program; approves the asset pools to be purchased by the program; or administers the asset-backed commercial paper program by monitoring the assets, arranging for debt placement, compiling monthly reports, or ensuring compliance with the program documents and with the program's credit and investment policy.

*****

6. Asset-backed commercial paper programs. a. An asset-backed commercial paper (ABCP) program typically is a program through which a bank provides funding to its corporate customers by sponsoring and administering a bankruptcy-remote special purpose entity that purchases asset pools from, or extends loans to, the bank's customers. The ABCP program raises the cash to provide the funding through the issuance of commercial paper in the market.

b. A bank that qualifies as a primary beneficiary and must consolidate an ABCP program that is defined as a variable interest entity under generally accepted accounting principles may exclude the consolidated ABCP program assets from risk-weighted assets provided that the bank is the sponsor of the consolidated ABCP program. If a bank excludes such consolidated ABCP program assets, the bank must assess the appropriate risk-based capital charge against any risk exposures of the bank arising in connection with such ABCP programs, including direct credit substitutes, recourse obligations, residual interests, liquidity facilities, and loans, in accordance with sections II.B.5., II.C., and II.D. of this appendix.

c. This capital treatment for consolidated assets of certain ABCP programs will be effective from July 1, 2003 and will expire on April 1, 2004.

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[THIS SIGNATURE PAGE RELATES TO THE JOINT INTERIM RULE ON "RISK-BASED CAPITAL GUIDELINES; CAPTIAL ADEQUACY GUIDELINES; CAPITAL MAINTENACE: INTERIM CAPITAL TREATMENT OF CONSOLIDATED ASSET-BACKED COMMERCIAL PAPER PROGRAM ASSETS"]

By order of the Board of Directors.
Dated at Washington, DC, this 5th day of September, 2003.
Federal Deposit Insurance Corporation.

Robert E. Feldman,
Robert E. Feldman (signed)
(SEAL)

DEPARTMENT OF THE TREASURY
Office of Thrift Supervision
12 CFR Chapter V

Authority and Issuance

For the reasons set out in the preamble, part 567 of the chapter V of title 12 of the Code of Federal Regulations is amended as follows:

PART 567 – CAPITAL

1. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

2. Section 567.1 is amended by adding definitions of asset backed commercial paper program and sponsor of an asset backed commercial paper program.

§ 567.1 Definitions

*****

Asset backed commercial paper program. The term asset backed commercial paper program (ABCP) means a program that issues commercial paper backed assets or exposures held in a bankruptcy-remote special purpose entity. The term sponsor of an ABCP means a savings association that either:

(1) Establishes an ABCP program;

(2) Approves the sellers permitted to participate in the program;

(3) Approves the asset pools to be purchased by the program; or

(4) Administers the ABCP by monitoring the assets, arranging for debt placement, compiling monthly reports, or ensuring compliance with the program documents and with the program's credit and investment policy.

*****

3. Section 567.5 is amended by revising paragraph (a)(1)(iii) to read as follows:

§ **567.5 Components of capital**

(a) * * *

(1) * * *

(iii) Minority interests in the equity accounts of subsidiaries that are fully consolidated. However, minority interests in consolidated ABCP programs sponsored by a savings association are excluded from the association's core capital or total capital base if the consolidated assets are excluded from risk-weighted assets pursuant to § 567.6 (a)(3). This capital treatment for minority interests in consolidated ABCP programs will be effective from July 1, 2003 to April 1, 2004.

*****

4. Amend §567.6 by adding new paragraphs (a)(3) and (4) to read as follows:

§ **567.6 Risk-based capital credit risk-weight categories.**

(a) ***

(3) Asset-backed commercial paper programs. (i) A savings association that qualifies as a primary beneficiary and must consolidate an ABCP program that is defined as a variable interest entity under generally accepted accounting principles may exclude the consolidated ABCP program assets from risk-weighted assets, provided that the savings association is the sponsor of the ABCP.

(ii) If a savings association excludes such consolidated ABCP program assets from risk-weighted assets, the savings association must assess the appropriate risk-based capital requirement against any risk exposures of the institution arising in connection with such ABCP programs, including direct credit substitutes, recourse obligations, residual interests, liquidity facilities, and loans, in accordance with paragraphs (a)(1) and (2) and (b) of this section.

(iii) If a savings association either elects not to exclude consolidated ABCP program assets from its risk-weighted assets in accordance with paragraph (a)(3)(i) of this section, or otherwise is not permitted to exclude consolidated ABCP program assets, the savings association must assess a risk-based capital charge based on the appropriate risk weight of the consolidated ABCP program assets in accordance with paragraph (a)(1) of this section. Direct credit substitutes and recourse obligations (including residual interests), and loans that sponsoring savings associations provide to ABCP programs are not subject to any capital charge under paragraphs (a)(2) and (b) of this section.

(iv) This capital treatment for consolidated assets of certain ABCP programs will be effective from July 1, 2003 to April 1, 2004.

(4) Other variable interest entities subject to consolidation. (i) A savings association that is required to consolidate the assets of a variable interest entity under generally accepted accounting principles must assess a risk-based capital charge based on the appropriate risk weight of the consolidated assets in accordance with paragraph (a)(1) of this section. Direct credit substitutes and recourse obligations (including residual interests), and loans that sponsoring savings associations provide to ABCP programs are not subject to any capital charge under paragraphs (a)(2) and (b) of this section.

(ii) This capital treatment for other variable interest entities subject to consolidation will be effective from July 1, 2003 to April 1, 2004.

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[THIS SIGNATURE PAGE RELATES TO THE JOINT INTERIM RULE ON "RISK-BASED CAPITAL GUIDELINES; INTERIM CAPITAL TREATMENT OF CONSOLIDATED ASSET-BACKED COMMERCIAL PAPER CONDUIT ASSETS"]

Dated: September 9, 2003

By the Office of Thrift Supervision

James E. Gilleran (signed)
James E. Gilleran
Director