

Handbook: Thrift Activities
Subject: Capital Adequacy

Section: 320
TB 38-3

April 12, 1990

Minimum Standards for Voluntary Unassisted Transactions

RESCINDED

Summary: This Bulletin sets forth the policies of the Office of Thrift Supervision (OTS) regarding the minimum capital standards that will be applied to significant voluntary unassisted transactions for Federally-insured savings associations, including acquisitions of control, mergers, mutual-to-stock conversions and branch purchases (collectively referred to as "significant transactions"). Unassisted transactions are those that do not require government financial assistance. This Bulletin does not apply to simple holding company reorganizations, where an association establishes its own holding company and there is no material change in the association or its stock ownership.

For Further Information Contact: Your District Office or Supervision, OTS, Washington, D.C.

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Background:

The Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) amended the Home Owners' Loan Act by adding Section 5(t), requiring the OTS to adopt minimum capital standards for savings associations. On November 6, 1989, OTS promulgated a new capital regulation for savings associations. This regulation became effective December 7, 1989.

The new capital regulation requires savings associations to satisfy three separate minimum requirements: a risk-based, a leverage ratio (core capital), and a tangible capital standard. The capital regulation also requires a mandatory "phase-in" of higher capital standards such that the 100 percent risk-based capital standard will be effective on December 31, 1992. FIRREA imposes several statutory requirements that are phased-in by January 1, 1995.

General Policy:

Proposals and applications to consummate a significant transaction must adequately demonstrate that the acquired or resulting association will meet its *fully phased-in capital*

requirement upon consummation of the transaction. The fully phased-in capital requirement is the savings association's minimum capital requirement based on its current portfolio under the statutory and regulatory standards that will be applicable on January 1, 1995.

Applications to consummate significant transactions that do not demonstrate to the satisfaction of the District Director that the resulting savings association will meet the fully phased-in capital requirement upon consummation are generally unacceptable unless all of the following criteria are met:

- (1) The acquired or resulting association will meet or exceed its *currently applicable* tangible, core, and risk-based capital requirements, upon consummation of the transaction;
- (2) In cases where the transaction involves an acquisition of control (including an acquisition pursuant to a merger), the control party(ies) of the acquired or resulting association executes a *limited capital maintenance agreement* in accordance with OTS policy set forth in Thrift Bulletin 5a ("Capital Maintenance Agreements"). The acquirer(s) must have the resources and ability to meet the obligations under such agreement or the agreement must be guaranteed by a party acceptable to the Director of OTS, or his designee; and,

- (3) The applicant submits a *capital plan* for the resulting savings association that is acceptable to the District Director and demonstrates that the resulting savings association will comply with the fully phased-in capital requirement within a reasonable period of time, not to extend beyond December 31, 1994.

Standard and Simple Holding Company Conversions:

When the net proceeds generated in connection with a standard conversion (or a simple holding company conversion) from the mutual to the stock form of ownership are not sufficient to bring the savings association into capital compliance with its fully phased-in or current minimum capital requirements upon consummation of the conversion, the transaction may be permitted provided that the applicant demonstrates in a capital plan, acceptable to the District Director, that the resulting savings association will meet or exceed the applicable minimum capital requirements no later than *December 31, 1992* and the fully phased-in capital requirement within a reasonable period of time, not to extend beyond December 31, 1994.

The capital plan must be submitted in accordance with the requirements of TB 36a ("Guidelines for FIRREA Capital Plans, Exemptions and Exceptions") and successor Bulletins.

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As long as the resulting association falls below its current minimum capital requirement, the capital plan should not contemplate that the resulting savings association will increase assets in a manner that is inconsistent with the limitations set forth in FIRREA and Regulation Bulletin 3a-1 ("Policy Statement on Growth for Savings Associations") and successor bulletins, or pay capital distributions or engage in activities or investments that are generally prohibited for capital-deficient associations as set forth in OTS rules, regulations, policy statements and existing supervisory or enforcement documents.

Cash-out Mergers:

Transactions that involve a cash-out merger where the resulting savings

association would not meet its fully phased-in capital requirements will generally be disapproved, except where the transactions involve capital distributions permissible under OTS regulations and guidelines on capital distributions.

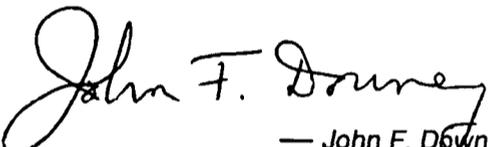
Capital Adequacy:

This policy statement does not preclude the Office from requiring the resulting acquired savings association to maintain capital at a level above the minimum capital requirements to ensure that the savings association operates in a safe and sound manner. OTS will notify the acquirer(s) or owner(s) in writing, during the application process, if capital must be maintained at a higher level and will require that the business and capital plans be revised accordingly.

Delegation:

An application subject to this Bulletin may be decided by the District Director unless the application raises a significant issue of policy or law. Applications that fail to comply with the policies set forth in this Bulletin are deemed to present such issues. OTS Washington staff will consult with the Director before rendering a decision on an application, or sending the application to the Director for a decision, where the application presents a significant issue of law or policy.

In general, non-standard conditions should not be imposed. The District Director must receive the concurrence of the Washington staff or the Director before imposing an agreement that contains non-standard conditions.


— John F. Downey
Acting Senior Deputy Director for Supervision