

Department of the Treasury  
Office of Thrift Supervision

# RESCINDED

## Transmittal



October 28, 1997

Number: 183

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Some of the gains thrifts have made on certain equity securities that they hold but have not yet sold could be counted as capital under the attached proposed rule published jointly by the Office of Thrift Supervision (OTS), the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation and the Federal Reserve Board.

The proposed rule would permit up to 45 percent of unrealized gains on equity securities to be counted in supplementary (Tier 2) capital. Unrealized gains do not currently count as regulatory capital even though unrealized losses must be deducted from regulatory capital.

To be eligible for the proposed capital treatment, the equity securities must be reported as "available for sale." They must be valued in accordance with GAAP and have readily determinable fair values.

The proposed change would apply only to equity securities, not debt securities or other assets, which would continue to be treated under the present rules.

The joint notice of proposed rulemaking was published in the October 27, **1997**, edition of the *Federal Register*, Vol. 62, No. 207, pp. **55681-55686**. Written comments must be received on or before December 26, 1997, and should be addressed to: Manager, Dissemination Branch, Records Management and Information Policy Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552. Comments may be mailed or hand-delivered, faxed to 202/906-7755 or e-mailed to: [public.info@ots.treas.gov](mailto:public.info@ots.treas.gov). All commenters should include their name and telephone number.

For further information contact:

John F. Connolly                      202/906-6465  
Vern McKinley                         202/906-6241

A handwritten signature in black ink that reads "Nicolas P. Retsinas".

Nicolas P. Retsinas  
Director  
Office of Thrift Supervision

Attachment

Monday  
October 27, 1997

# Federal Register

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## Part III

### Department of the Treasury

Office of the Comptroller of the Currency  
12 CFR Part 3

### Federal Reserve System

12 CFR Parts 208 and 225

### Federal Deposit Insurance Corporation

12 CFR Part 325

### Department of the Treasury

Office of Thrift Supervision  
12 CFR Part 567

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**Risk Based Capital Standards: Unrealized Holding Gains on Certain Equity Securities; and Construction Loans on Presold Residential Properties, Junior Liens on 1- to 4-Family Residential Properties and Mutual Funds, and Leverage Capital Standards (Tier 1 Leverage Ratio); Proposed Rules**

**DEPARTMENT OF THE TREASURY****Office of the Comptroller of the Currency****12 CFR Part 3**

[Docket No. 97-1 8]

**RIN 1557-AB14****FEDERALRESERVESYSTEM****12 CFR Parts 208 and 225**

[Regulations H and Y; Docket No. R-0982]

**FEDERAL DEPOSIT INSURANCE CORPORATION****12 CFR Part 325****RIN 3064-AC1 1****DEPARTMENT OF THE TREASURY****Office of Thrift Supervision****12 CFR Part 567**

[Docket No. 97-109]

**RIN 1550-AB11****Risk-Based Capital Standards: Unrealized Holding Gains on Certain Equity Securities**

**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:** Joint notice of proposed rulemaking.

**SUMMARY:** The office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the Agencies) are proposing to amend their respective risk-based capital standards for banks, bank holding companies and thrifts (institutions) with regard to the treatment of unrealized holding gains on certain equity securities. These gains are reported as a component of equity capital under U.S. generally accepted accounting principles (GAAP), but currently are not included in regulatory capital under the Agencies' capital standards. The proposal, if adopted as a final rule, would establish uniform interagency rules permitting institutions to include in supplementary (Tier 2) capital up to 45 percent of unrealized gains on certain available-for-sale equity securities. The Agencies' proposal is consistent with the prudential standards of the Basle Accord.

**DATES:** Comments must be received on or before December 26, 1997.

**ADDRESSES:** Comments should be directed to:

**OCC:** Comments may be submitted to Docket No. 97-18, Communications Division, Third Floor, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C., 20219. Comments will be available for inspection and photocopying at that address. In addition, comments may be sent by facsimile transmission to FAX number (202) 874-5274, or by electronic mail to

**REGS.COMMENTS@OCC.TREAS.GOV.**

**Board:** Comments directed to the Board should refer to Docket No. R-0982 and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington D.C., 20551. Comments may also be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP-500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's Rules Regarding Availability of Information.

**FDIC:** Send written comments to Robert E. Feldman, Executive Secretary, Attention: **Comments/OES**, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. (FAX number (202)898-3838; Internet address: [comments@fdic.gov](mailto:comments@fdic.gov)). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100.801 17th Street, N.W., Washington, D.C. 20429, between 9:00 a.m. and 4:30 p.m. on business days.

**OTS:** Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, Attention Docket No. 97-109. These submissions may be hand-delivered to 1700 G Street, N.W., from 9:00 a.m. to 5:00 p.m. on business days; they may be sent by facsimile transmission to FAX number (202) 906-7755, or they may be sent by e-mail:

[public.info@ots.treas.gov](mailto:public.info@ots.treas.gov). Those commenting by e-mail should include their name and telephone number. Comments will be available for

inspection at 1700 G Street, N.W., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT:

**OCC:** Roger Tufts, Senior Economic Advisor (202/874-5070), Tom Rollo, National Bank Examiner (202/874-5070), Capital Policy Division; or Ronald Shimabukuro, Senior Attorney (202/874-5090), Legislative and Regulatory Activities Division.

**Board:** Roger Cole, Associate Director (202/452-2618); Norah Barger, Assistant Director (202/452-2402); or Barbara Bouchard, Senior Supervisory Financial Analyst (202/452-3072), Division of Banking Supervision and Regulation. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Diane Jenkins (202/452-3544).

**FDIC:** For supervisory issues, Stephen G. Pfeifer, Examination Specialist, Accounting Section, Division of Supervision (202/898-8904); for legal issues, Jamey Basham, Counsel, Legal Division (202/898-7265).

**OTS:** John F. Connolly, Senior Program Manager for Capital Policy (202/906-6465); Michael D. Solomon, Senior Policy Advisor (202/906-5654), Supervision Policy; Karen Osterloh, Assistant Chief Counsel (202/906-6639), or Vem McKinley, Senior Attorney (202/906-6241), Regulations and Legislation Division, Office of the Chief Counsel.

**SUPPLEMENTARY INFORMATION:** The Agencies' risk-based capital standards implementing the International Convergence of Capital Measurement and Capital Standards (the Basle Accord)<sup>1</sup> include definitions for core (Tier 1) capital and supplementary (Tier 2) capital.<sup>2</sup> Under the Agencies' capital standards, Tier 1 capital generally includes common stockholders' equity, noncumulative perpetual preferred stock, and minority interests in the equity accounts of consolidated subsidiaries.<sup>3</sup> The common stockholders' equity component is defined to include common stock; related surplus; and retained earnings

<sup>1</sup> The Basle Accord is a risk-based framework developed by the Basle Committee on Banking Regulations and Supervisory practices and endorsed by the central bank governors of the Group of Ten (G-10) countries in July 1988. The Committee is comprised of the central banks and supervisory authorities from the G-10 countries (Belgium, Canada, France, Germany, Italy, Netherlands, Sweden, Switzerland, the United Kingdom, and the United States) and Luxembourg.

<sup>2</sup> Refer to each Agency's risk-based capital standards for more detailed descriptions of core and supplementary capital.

<sup>3</sup> Bank holding companies may also include in Tier 1 capital limited amounts of cumulative perpetual preferred stock.

(including capital reserves and adjustments for the cumulative effect of foreign currency translation): less net unrealized holding losses on available-for-sale equity securities with readily determinable fair values. Net unrealized holding gains on such equity securities and net unrealized holding gains and losses on available-for-sale debt securities are not included in the Agencies' regulatory capital definition of common stockholders' equity.<sup>4</sup>

Tier 2 capital includes, subject to certain limitations and conditions, the allowance for loan and lease losses; cumulative perpetual preferred stock and related surplus; and certain other maturing or redeemable capital instruments. The Basle Accord also permits in Tier 2 capital up to 45 percent of the gross (i.e., pm-tax) unrealized gains on equity securities. The 55 percent discount is applied to the unrealized gains to reflect potential volatility of this form of unrealized capital, as well as tax liability charges that would be incurred if the unrealized gain were realized or otherwise taxed currently. When the Agencies implemented the Basle Accord by issuing their respective risk-based capital standards in 1989, they decided not to include such unrealized gains in Tier 2 capital.

The Agencies believe that it is appropriate to continue the existing regulatory capital treatment of unrealized gains and losses on available-for-sale debt securities and unrealized losses on available-for-sale equity securities. However, for institutions that have net unrealized holding gains on available-for-sale equity securities, the Agencies are considering whether it would be more reasonable, as well as more consistent with the Basle Accord, to include at least a portion of the unrealized gains on such securities in regulatory capital. Therefore, the Agencies have decided to issue, and request comment on, a proposed revision to the Agencies' rules.

Specifically, the Agencies are proposing to permit institutions that

<sup>4</sup>For regulatory capital purposes, institutions record net unrealized gains or losses on available-for-sale securities (debt and equity) in accordance with Statement of Financial-Accounting Standards No. 115, "Accounting for Certain Investments in Debt and Equity Securities" (SFAS 115). Available-for-sale securities are all debt securities not held for trading that an institution does not have the positive intent and ability to hold until maturity and equity securities with readily determinable fair values not held for trading. Available-for-sale securities must be reported at fair value with unrealized gains or losses (i.e., the amount by which fair value exceeds or falls below amortized cost) reported, net of tax, directly in a separate component of common stockholders' equity.

legally hold equity securities to include in Tier 2 capital up to 45 percent of the pretax net unrealized holding gains (that is, the excess amount, if any, of the fair value over historical cost as reported in the institution's most recent quarterly regulatory report)<sup>5</sup> on available-for-sale equity securities. The equity securities must be valued in accordance with GAAP and have readily determinable fair values<sup>6</sup> and institutions should be able to substantiate those values. In the event that an Agency determines that an institution's available-for-sale equity securities are not prudently valued, the institution may be precluded from including all or a portion of the eligible pretax net unrealized gains on those securities in Tier 2 capital. The proposed 55 percent discount is not required by GAAP, but is consistent with the Basle Accord.

The Agencies clarify that net unrealized gains (losses) on other types of assets, such as bank premises and available-for-sale debt securities, are not included in supplementary capital, but may be taken into account when assessing an institution's overall capital adequacy.

The Agencies request comment on all aspects of this proposal.

#### Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Agencies have determined that this proposed rule would not have a significant economic 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. The proposed rule would permit institutions to

<sup>5</sup>The Consolidated Report of Condition and Income for banks supervised by the OCC, the Board, or the FDIC; the Thrift Financial Report for thrift institutions supervised by the OTS; and the Y-9C Report for bank holding companies supervised by the Board.

<sup>6</sup>The Agencies intend to rely on the guidance set forth in SFAS 115 for purposes of determining whether equity securities have fair values that are "readily determinable." Under SFAS 115, the fair value of an equity security is readily determinable if sales prices or bid-and-ask quotations are currently available on a securities exchange registered with the Securities and Exchange Commission or in the over-the-counter market, provided that those prices or quotations for the over-the-counter market are publicly reported by the National Association of Securities Dealers Automated Quotations system or by the National Quotations Bureau. Restricted stock does not meet this definition. The fair value of an equity security traded only in a foreign market is readily determinable if that foreign market is of a breadth and scope comparable to one of the U.S. markets referred to above. The fair value of an investment in a mutual fund is readily determinable if the fair value per share (unit) is determined and published and is the basis for current transactions.

include up to 45 percent of the pretax net unrealized holding gains on available-for-sale equity securities in Tier 2 capital. The effect of the proposed rule would be to increase immediately the amount of Tier 2 capital held by institutions, including small institutions, in proportion to the amount of their qualifying pretax net unrealized holding gains on such securities. Thereafter, the amount of Tier 2 capital will increase or decrease as the value of the equity securities changes. The Agencies have concluded that this proposal will not have a significant impact on the amount of total capital held by institutions, regardless of size.

#### Paperwork Reduction Act

The Agencies have determined that the proposed 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.).

#### OCC and OTS Executive Order 12866 Determination

The OCC and the OTS have determined that the proposed rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

#### OCC and OTS Unfunded Mandates Reform Act of 1995 Determinations

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 1044 (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. As discussed in the preamble, this proposed rule would permit institutions to include up to 45 percent of holding gains on available-for-sale equity securities in Tier 2 capital under the Agencies' risk-based capital rules. The proposed rule would reduce regulatory burden by increasing the amount of supplementary capital held by certain institutions. The OCC and OTS have therefore determined that the effect of the proposed rule on the thrift and banking institutions as a whole will not result in expenditures by State, local, or tribal governments or by the private sector of \$100 million or more. Accordingly, the OCC and OTS have not

prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

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

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 requirements, Savings associations.

Authority and Issuance

Office of the Comptroller of the Currency

12 CFR CHAPTER I

For the reasons set out in the joint preamble, appendix A to part 3 of chapter 1 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, 161.1618, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

2. In appendix A to part 3, section 2, is amended by adding a new paragraph (b)(5) including footnote 5 to read as follows:

Appendix A to Part 3—Risk-Based Capital Guidelines

Section 2. Components of Capital.

(b) \* \* \* (5) Up to 45 percent of the pretax net unrealized holding gains (the excess, if

any, of the fair value over historical cost) on available-for-sale equity securities with readily determinable fair values.5 Unrealized gains (losses) on other types of assets, such as bank premises or available-for-sale debt securities, are not included in supplementary capital, but the OCC may take these unrealized gains (losses) into account as additional factors when assessing overall capital adequacy.

Dated: October 6, 1997. Eugene A. Ludwig, Comptroller of the Currency.

Federal Reserve System

12 CFR CHAPTER II

For the reasons set forth in the joint preamble, parts 208 and 225 of chapter II of title 12 of the Code of Federal Regulations are proposed to be amended as follows:

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

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

Authority: 12 U.S.C. 24, 36, 92(a), 93(a), 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, 1835(a), 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 introductory paragraphs in section II.A.2. are revised and footnote 8 is removed and reserved to read as follows:

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

II. . . . A: . . .

2. Supplementary capital elements (Tier 2 capital). The Tier 2 component of a bank's qualifying total capital may consist of the following items that are defined as supplementary capital elements:

- (i) Allowance for loan and lease losses (subject to limitations discussed below).
(ii) Perpetual preferred stock and related surplus (subject to conditions discussed below).
(iii) Hybrid capital instruments (as defined below) and mandatory convertible debt securities.

5 The OCC reserves the authority to exclude all or a portion of unrealized gains from Tier 2 capital if the OCC determines that the equity securities are not prudently valued.

(iv) Term subordinated debt and intermediate-term preferred stock, including related surplus (subject to limitations discussed below).

(v) Unrealized gains on equity securities (subject to limitations discussed in paragraph II.B.2.e. of this section).

The maximum amount of Tier 2 capital that may be included in a bank's qualifying total capital is limited to 100 percent of Tier 1 capital (net of goodwill and other intangible assets required to be deducted in accordance with section II.B.1.b. of this appendix).

The elements of supplementary capital are discussed in greater detail below.

3. In appendix A to part 208, section II.A.2., paragraphs (d) and (e) are revised to read as follows:

II. \* \* \* A. \* \* \* 2. \* \* \* (d) Subordinated debt and intermediate term preferred stock. i. The aggregate amount of term subordinated debt (excluding mandatory convertible debt) and intermediate-term preferred stock that may be treated as supplementary capital is limited to 50 percent of Tier 1 capital (net of goodwill and other intangible assets required to be deducted in accordance with section II.B.1.b. of this appendix). Amounts in excess of these limits may be issued and, while not included in the ratio calculation, will be taken into account in the overall assessment of an organization's funding and financial condition.

ii. Subordinated debt and intermediate-term preferred stock must have an original weighted average maturity of at least five years to qualify as supplemental capital. (If the holder has the option to require the issuer to redeem, repay, or repurchase the instrument prior to the stated maturity, maturity would be defined, for risk-based capital purposes, as the earliest possible date on which the holder can put the instrument back to the issuing bank.) 12

iii. In the case of subordinated debt, the instrument must be unsecured and must clearly state on its face that it is not a deposit and is not insured by a Federal agency. To qualify as capital in banks, debt must be subordinated to general creditors and claims of depositors. Consistent with current regulatory requirements, if a state member bank wishes to redeem subordinated debt

12 As a limited-life capital instrument approaches maturity it begins to take on characteristics of a short-term obligation. For this reason, the outstanding amount of term subordinated debt and limited life preferred stock eligible for inclusion in Tier 2 is reduced, or discounted, as these instruments approach maturity: one-fifth of the original amount (less redemptions) is excluded each year during the instrument's last five years before maturity. When the remaining maturity is less than one year, the instrument is excluded from Tier 2 capital.

before the stated maturity, it must receive prior approval of the Federal Reserve.

(e) Unrealized gains on equity securities and unrealized gains (losses) on other assets. i. Up to 45 percent of pretax net unrealized holding gains (that is, the excess, if any, of the fair value over amortized cost) on available-for-sale equity securities with readily determinable fair values may be included in supplementary capital. However, the Federal Reserve may exclude all or a portion of these unrealized gains from Tier 2 capital if the Federal Reserve determines that the equity securities are not prudently valued. Unrealized gains (losses) on other types of assets, such as bank premises and available-for-sale debt securities, are not included in supplementary capital, but the Federal Reserve may take these unrealized gains (losses) into account as additional factors when assessing a bank's overall capital adequacy.

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

1. The authority citation for part 225 is revised 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.

2. In appendix A to part 225, the introductory paragraphs of section II.A.2. are revised and footnote 8 is removed and reserved to read as follows:

#### Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

II. . . .  
A. . . .

2. *Supplementary capital elements (Tier 2 capital)*. The Tier 2 component of an institution's qualifying total capital may consist of the following items that are defined as supplementary capital elements:

- (i) Allowance for loan and lease losses (subject to limitations discussed below).
- (ii) Perpetual preferred stock and related surplus (subject to conditions discussed below).
- (iii) Hybrid capital instruments (as defined below), perpetual debt and mandatory convertible debt securities.
- (iv) Term subordinated debt and intermediate-term preferred stock, including related surplus (subject to limitations discussed below).

(v) Unrealized gains on equity securities (subject to limitations discussed in paragraph II.B.2.(e) of this section).

The maximum amount of Tier 2 capital that may be included in an organization's qualifying total capital is limited to 100 percent of Tier 1 capital (net of goodwill and other intangible assets required to be deducted in accordance with section II.B.1.b. of this appendix).

The elements of supplementary capital are discussed in greater detail below.

3. In appendix A to part 225, section II.A.2., paragraphs (d) and (e) are revised to read as follows:

II. . . .  
A. . . .  
2: . . .  
(d) *Subordinated debt and intermediate term preferred stock*. i. The aggregate amount of term subordinated debt (excluding mandatory convertible stock) and intermediate-term preferred stock that may be treated as supplementary capital is limited to 50 percent of Tier 1 capital (net of goodwill and other intangible assets required to be deducted in accordance with section II.B.1.b. of this appendix). Amounts in excess of these limits may be issued and, while not included in the ratio calculation, will be taken into account in the overall assessment of an organization's funding and financial condition.

ii. Subordinated debt and intermediate-term preferred stock must have an original weighted average maturity of at least five years to qualify as supplementary capital.<sup>12</sup> (If the holder has the option to require the issuer to redeem, repay, or repurchase the instrument prior to the stated maturity, maturity would be defined, for risk-based capital purposes, as the earliest possible date on which the holder can put the instrument back to the issuing banking organization.)<sup>13</sup> iii. In the case of subordinated debt, the instrument must be unsecured and must clearly state on its face that it is not a deposit and is not insured by a Federal agency. Bank holding company debt must be subordinated in the right of payment to all senior indebtedness of the company.

(e) *Unrealized gains on equity securities and unrealized gains (losses) on other assets*. i. Up to 45 percent of net unrealized holding gains (that is, the excess, if any, of the fair value over amortized cost) on available-for-sale equity securities with readily determinable fair values may be

<sup>12</sup> Unsecured term-debt issued by bank holding companies prior to March 12, 1988, and qualifying as secondary capital at the time of issuance continues to qualify as an element of supplementary capital under the risk-based framework, subject to the 50 percent of Tier 1 capital limitation. Bank holding company term debt issued on or after March 12, 1988, must be subordinated in order to qualify as capital.

<sup>13</sup> As a limited-life capital instrument approaches maturity it begins to take on characteristics of a short-term obligation. For this reason, the outstanding amount of term subordinated debt and limited life preferred stock eligible for inclusion in Tier 2 is reduced, or discounted, as these instruments approach maturity: one-fifth of the original amount (less redemptions) is excluded each year during the instrument's last five years before maturity. When the remaining maturity is less than one year, the instrument is excluded from Tier 2 capital.

included in supplementary capital. However, the Federal Reserve may exclude all or a portion of these unrealized gains from Tier 2 capital if the Federal Reserve determines that the equity securities are not prudently valued. Unrealized gains (losses) on other types of assets, such as bank premises and available-for-sale debt securities, are not included in supplementary capital, but the Federal Reserve may take these unrealized gains (losses) into account as additional factors when assessing an institution's capital adequacy.

By order of the Board of Governors of the Federal Reserve System, October 21, 1997.

William W. Wiles,  
Secretary of the Board.

#### Federal Deposit Insurance Corporation 12 CFR CHAPTER III

For the reasons set forth in the joint preamble, part 325 of chapter III of title 12 of the Code of Federal Regulations is proposed to be amended 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, 2386 (12 U.S.C. 1828 note).

2. In appendix A to part 325, the introductory paragraphs of section I.A.2. are revised to read as follows:

#### Appendix A to Part 325—Statement of Policy on Risk-Based Capital

I. . . .  
A. . . .

2. *Supplementary capital elements (Tier 2)* consist of:

- Allowance for loan and lease losses, up to a maximum of 1.25 percent of risk-weighted assets;
- Cumulative perpetual preferred stock, long-term preferred stock (original maturity of at least 20 years) and any related surplus;
- Perpetual preferred stock (and any related surplus) where the dividend is reset periodically based, in whole or part, on the bank's current credit standing, regardless of whether the dividends are cumulative or noncumulative;
- Hybrid capital instruments, including mandatory convertible debt securities;
- Term subordinated debt and intermediate-term preferred stock (original average maturity of five years or more) and any related surplus; and

-Net unrealized gains on equity securities (subject to limitations discussed in paragraph I.A.2.(f) of this section).

The maximum amount of Tier 2 capital that may be recognized for risk-based capital purposes is limited to 100 percent of Tier 1 capital (after any deductions for disallowed intangibles). In addition, the combined amount of term subordinated debt and intermediate-term preferred stock that may be treated as part of Tier 2 capital for risk-based capital purposes is limited to 50 percent of Tier 1 capital. Amounts in excess of these limits may be issued but are not included in the calculation of the risk-based capital ratio.

3. In appendix A to part 325, the last undesignated paragraph of section I.A.2., entitled "Discount of limited-life supplementary capital instruments" is designated as paragraph (e).

4. In appendix A to part 325, a new paragraph (f) is added to section I.A.2. to read as follows:

II. \* \* \*
A: \* \* \*
2. \* \* \*

(f) Unrealized gains on equity securities and unrealized gains (losses) on other assets. Up to 45 percent of pretax net unrealized gains (that is, the excess, if any, of the fair value over amortized cost) on available-for-sale equity securities with readily determinable fair values may be included in supplementary capital. However, the FDIC may, on a case-by-case basis, exercise its discretion to exclude all or a portion of these unrealized gains from Tier 2 capital if the FDIC determines that the equity securities are not prudently valued. Unrealized gains (losses) on other types of assets, such as bank premises and available-for-sale debt securities, are not included in supplementary capital, but the FDIC may take these unrealized gains (losses) into account as additional factors when assessing a bank's overall capital adequacy.

By order of the Board of Directors.
Dated at Washington, DC, this 16th day of September 1997.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Executive Secretary.

Office of Thrift Supervision

12 CFR CHAPTER V

For the reasons set forth in the joint preamble, part 567 of chapter V of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

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 567.5 is amended by adding a new paragraph (b)(5) to read as follows:

§ 567.5 Components of capital.

\* . . . \*

(b) . . . \*

(5) Unrealized gains on equity securities. Up to 45 percent of net, unrealized gains before income taxes, calculated as the amount, if any, by which fair value exceeds amortized cost on available-for-sale equity securities with readily determinable fair values, may be included in supplementary capital. The OTS may disallow such inclusion in the calculation of supplementary capital if the Office determines that the equity securities are not prudently valued.

\* . . . \*

Dated: September 30, 1997.
By the Office of Thrift Supervision.

Nicolas P. Retsinas,

Director.

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