

RESCINDED

Department of the Treasury
Office of Thrift Supervision

Transmittal



March 26, 1993

Number: 82

This rescission does not change the applicability of the conveyed document. To determine the applicability of the conveyed document, refer to the original issuer of the document.

Attached is a final rule that amends OTS' capital regulation so that savings associations will no longer be required to deduct certain equity investments from capital and from total assets when computing their risk-based capital.

Instead, such equity investments, defined as those that are permissible for both savings associations and national banks, are now placed in the 100 percent risk weight category.

Three types of equity investments most affected by the change are: Fannie Mae stock, Freddie Mac stock, and certain loans with equity participations that give lending institutions a stake in the profits of a property or project.

The rule is published in the *Federal Register*, Vol. 58, No. 52, pp. 15085-15086.

Acting Director
Office of Thrift Supervision

Attachment

Deborah Dakin, Assistant Chief Counsel, (202) 906-6445, Regulations and Legislation Division, Chief Counsel's Office; Office of Thrift Supervision, 1700 G St., NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The OTS is today revising its risk-based capital regulation to modify its treatment of certain equity investments and to clarify the treatment of certain other equity investments. Equity investments that are permissible for both savings associations and national banks will no longer be deducted from savings associations' calculations of total capital over a five-year transition period. Instead, they will be placed in the 100 percent risk-weight category, mirroring the treatment prescribed for those investments when made by national banks under the regulations of the Office of the Comptroller of the Currency (OCC). Equity investments held by savings associations that are not permissible for national banks must still be deducted from assets and total capital. This final regulation also clarifies the risk-based capital treatment of equity investments that represent interests in pools of assets, such as mutual funds. These amendments are adopted without change from the proposed regulation published at 57 FR 40147 (September 2, 1992).

The OTS received four comments on the proposed regulation: One from a savings association; two from trade associations; and one from a government-sponsored enterprise. All of the commenters supported the proposal. Two commenters sought greater specificity in the regulatory text about the types of investments covered by the proposal. As discussed below, the OTS believes that any benefits that could result from adopting these suggestions are outweighed by the disadvantages of such additional detail.

Today's revisions to the risk-based capital treatment of equity investments do not affect a savings association's underlying authority to make such investments. Some equity investments permissible for national banks are not permissible for savings associations. Nothing in this rule would permit savings associations to make investments that they are not otherwise authorized to make.

Today's change will cover all equity investments that are permissible for both savings associations and national banks. The three equity investments most commonly held by thrifts and thus most affected by this change are loans with equity participations that are considered equity investments under Generally Accepted Accounting

Principles, Federal National Mortgage Association (Fannie Mae) stock, and Federal Home Loan Mortgage Corporation (Freddie Mac) stock. One commenter suggested that the regulation explicitly list all Fannie Mae and Freddie Mac stock as excluded from the definition of equity investments rather than referring generically to equity investments permissible for national banks, a category that covers the stock of both entities. The OTS is not adopting this suggested change. Whether an equity investment is authorized for a national bank, as that authority may be amended from time to time, determines whether it will be placed in the 100% risk-weight category under the regulation. Listing particular investments may give rise to confusion about the status of investments not specifically listed and would result in the need for the regulation to be amended more frequently.

One commenter suggested that OTS explicitly incorporate in this regulation the OCC's body of regulations and interpretations addressing loans with equity participations. The OTS plans to look to such OCC documents for guidance in determining whether a particular loan would be permissible for a national bank and expects that thrifts will do the same. The OTS does not believe, however, that such an explicit addition to the regulation is appropriate or that it would provide savings associations with any clearer guidance in determining which loans are covered.

The OTS will continue to supervise the lending practices of savings associations and will closely scrutinize any loans with equity characteristics to ensure compliance with safe and sound lending practices. The OTS also has additional capital safeguards against excessively high ratio land and non-residential construction loans, which may have equity participation features. The capital rule treats the portion of high ratio land loans and non-residential construction loans above 80% of the value of the underlying property as subject to deduction from assets and capital when computing an institution's risk-based capital requirements. Today's amendment does not change this treatment.

Additionally, OTS reserves the right under 12 CFR 567.11 to determine that either a particular loan structure or group of loans should be treated in the same manner as an equity investment for purposes of the capital regulation if it finds such loan structures or groups of loans are more consistent with the characteristics of equity investments or were structured for the purpose of evading the equity investment rule.

12 CFR Part 567

(No. 92-526)

RIN 1550-AA55

Capital Treatment of Equity Investments

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is changing its risk-based capital treatment of certain equity investments to parallel the capital treatment of those investments under the rules applicable to national banks. Savings associations will be required to place these investments in the 100% risk-weight category.

EFFECTIVE DATE: April 19, 1993.

FOR FURTHER INFORMATION CONTACT: John Connolly, Program Manager for Capital Policy, (202) 906-6485, Policy;

Today's final rule also clarifies that investments in securities evidencing ownership interests in pools of assets, which are risk-weighted under 12 CFR 567.6(a)(vi) depending on the assets held in the portfolios, are not considered equity investments as defined in 12 CFR 567.1(i).

Executive Order 12291

The Director of the OTS has determined that this final rule does not constitute a "major rule" and, therefore, a final regulatory impact analysis is not required.

Regulatory Flexibility Act

Pursuant to section 805(b) of the Regulatory Flexibility Act, the OTS certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Accordingly, the Office of Thrift Supervision hereby amends part 567, chapter V, title 12, Code of Federal Regulations as set forth below:

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

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.

2. Section 567.1 is amended by revising the concluding text of paragraph (i)(2) to read as follows:

§ 567.1 Definitions.

- (i) *Equity investments.* * * *
- (2) * * *

It does not include investments in subsidiaries as defined in paragraph (dd) of this section, equity investments that are permissible for national banks, ownership interests in pools of assets that are risk-weighted in accordance with § 567.6(a)(vi) of this part, or the stock of Federal Home Loan Banks or Federal Reserve Banks.

3. Section 567.6 is amended by removing the period at the end of paragraph (a)(1)(iv)(S) and adding in its place a semicolon and by adding a new paragraph (a)(1)(iv)(T) to read as follows:

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

- (a) *Risk-weighted Assets.* * * *
- (1) *On-balance Sheet Assets.* * * *
- (iv) *100 percent Risk Weight (Category 4).* * * *

(T) Equity investments permissible for a national bank.

* * * * *

Dated: December 21, 1992.

By the Office of Thrift Supervision.

Jonathan L. Flechter.

Acting Director.

[FR Doc. 93-6360 Filed 3-16-93; 8:45 am]

BILLING CODE 6720-01-M