§ 3565.209 Loan amortization.

Each guaranteed loan shall be made for a period of not less than 25 nor greater than 40 years from the date the loan was made and may provide for amortization of the loan over a period of not to exceed 40 years with a final payment of the balance due at the end of the loan term.

§ 3565.214 [Removed and Reserved]

4. Section 3565.214 is removed and reserved.

Subpart I—Servicing Requirements

§ 3565.403 [Amended]

5. Section 3565.403(b)(2) is amended by removing the last sentence.

Subpart J—Assignment, Conveyance, and Claims

6. Section 3565.452 is revised to read as follows:

§ 3565.452 Decision to liquidate.

(a) A decision to liquidate shall be made when it is determined that the default cannot be cured through actions contained in § 3565.403 of subpart I or it has been determined that it is in the best interest of the Agency and the lender to liquidate.

(b) In the event of a default involving a loan to an Indian tribe or tribal corporation made under this section which is secured by an interest in land within such tribe's reservation (as determined by the Secretary of the Interior), including a community in Alaska incorporated by the Secretary of the Interior pursuant to the Indian Reorganization Act (25 U.S.C. 461 *et seq.*), the lender shall only pursue liquidation after offering to transfer the account to an eligible tribal member, the tribe, or the Indian housing authority serving the tribe. If the lender subsequently proceeds to liquidate the account, the lender shall not sell, transfer, or otherwise dispose of or alienate the property except to one of the entities described in the preceding sentence.

Dated: April 3, 2002.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 02–8528 Filed 4–8–02; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 02–04]

RIN 1557–AB14

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–1085]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AC17

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[No. 2002–5]

RIN 1550–AB11

Risk-Based Capital Standards: Claims on Securities Firms

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

ACTION: Final rule.

SUMMARY: The OCC, Board, FDIC, and OTS (collectively, the Agencies) are amending their respective risk-based capital standards for banks, bank holding companies, and savings associations (collectively, institutions or banking organizations) with regard to the risk weighting of claims on, and claims guaranteed by, qualifying securities firms. This rule reduces the risk weight applied to certain claims on, and claims guaranteed by, qualifying securities firms incorporated in the United States and in other countries that are members of the Organization for Economic Cooperation and Development (OECD) from 100 percent to 20 percent under the Agencies' risk-based capital rules. In addition, consistent with the existing rules of the FRB and the OCC, the FDIC and OTS are amending their risk-based capital standards to permit a zero percent risk weight for certain claims on qualifying securities firms that are collateralized by cash on deposit in the lending institution or by securities issued or guaranteed by the United States or other OECD central governments.

DATES: This final rule is effective on July 1, 2002. The Agencies will not object if an institution wishes to apply the provisions of this final rule beginning on the date it is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

OCC: Margot Schwadron, Risk Expert (202/874–5070), Capital Policy Division; or Ron Shimabukuro, Counsel (202/874–5090), Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Norah Barger, Deputy Associate Director (202/452–2402), Barbara Bouchard, Assistant Director (202–452–3072), or John F. Connolly, Supervisory Financial Analyst (202/452–3621), Division of Banking Supervision and Regulation; or Mark E. Van Der Weide, Counsel (202/452–2263), Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. For users of Telecommunications Device for the Deaf (''TDD'') only, contact 202/263–4869.

FDIC: For supervisory issues, Stephen G. Pfeifer, Examination Specialist (202/898–8904), Accounting Section, Division of Supervision; for legal issues, Leslie Sallberg, Counsel, (202/898–8876), Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: David W. Riley, Project Manager, (202/906–6669), Supervision Policy; Teresa A. Scott, Counsel, Banking and Finance (202/906–6478), Regulations and Legislation Division, Office of the Chief Counsel, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Agencies' risk-based capital standards are based upon principles contained in the July 1988 agreement entitled ''International Convergence of Capital Measurement and Capital Standards'' (Basel Accord or Accord). The Basel Accord was developed by the Basel Committee on Banking Supervision (Basel Committee) and endorsed by the central bank governors of the Group of Ten (G–10) countries.[1] The Basel Accord provides a framework for

[1] The G–10 countries are Belgium, Canada, France, Germany, Italy, Japan, Netherlands, Sweden, Switzerland, the United Kingdom, and the United States. The Basel Committee is comprised of representatives of the central banks and supervisory authorities from the G–10 countries, Luxembourg, and Spain.

assessing the capital adequacy of a bank by risk weighting its assets and off-balance-sheet exposures primarily based on credit risk.

The original Basel Accord imposed a 20 percent risk weight for claims on banks incorporated in the United States or other OECD countries [2] and a 100 percent risk weight for claims on securities firms and most other nonbanking firms. In April 1998, the Basel Committee amended the Basel Accord to lower the risk weight from 100 percent to 20 percent for claims on, and claims guaranteed by, securities firms incorporated in OECD countries if such firms are subject to supervisory and regulatory arrangements that are comparable to those imposed on OECD banks.[3] Such arrangements must include risk-based capital requirements that are comparable to those applied to banks under the Accord and its amendment to incorporate market risks. The term ''comparable'' is also intended to require that qualifying securities firms (but not necessarily their parent organizations) be subject to consolidated regulation and supervision with respect to their subsidiaries.

One of the primary reasons that the Basel Committee amended the Accord was to make it consistent with the European Union's (EU) Capital Adequacy Directive (CAD). A number of European countries have followed the CAD for some time. The CAD, which subjects EU banks and securities firms to the same capital requirements, applies a 20 percent risk weight to claims on both banks and securities firms.

Proposed Rule

The Agencies proposed to reduce from 100 percent to 20 percent the risk weight applied to certain claims on, and claims guaranteed by, qualifying securities firms under the Agencies' risk-based capital rules.[4] Under the proposal, as under the Basel Accord, qualifying securities firms must be incorporated in an OECD country and subject to supervisory and regulatory arrangements comparable to those imposed on OECD banks.

With respect to securities firms incorporated in the United States, the proposal would have required U.S. securities firms to be broker-dealers registered with the Securities and Exchange Commission (SEC) to be qualifying securities firms. Qualifying U.S. securities firms also had to be subject to and in compliance with the SEC's net capital rule, and margin and other regulatory requirements applicable to registered broker-dealers.

To be qualifying securities firms, the proposal would have required securities firms incorporated in any other OECD country to be subject to consolidated supervision and regulation (covering their subsidiaries, but not necessarily their parent organizations) comparable to that imposed on depository institutions in OECD countries. This includes risk-based capital requirements comparable to those applied to banks under the Accord [5] and banking organizations under the Agencies' capital rules.

Finally, for claims on a qualifying securities firm to be accorded a 20 percent risk weight, the proposal would have required the firm to satisfy a rating standard. As proposed, a qualifying securities firm, or its parent consolidated group, would have been required to have a long-term issuer credit rating,[6] or a rating on at least one issue of long-term (i.e., one year or longer) unsecured debt, from a nationally recognized statistical rating organization (rating agency) that is in one of the three highest investment grade rating categories [7] used by the rating agency.[8]

Comment Analysis

The Agencies received five comments. Four were from banking organizations, while one was from a securities industry trade association.

The five commenters supported the proposal to apply a 20 percent risk weight to claims on, or guaranteed by, qualifying securities firms. Two commenters indicated that the rule change would appropriately recognize the relatively low credit risk of claims on qualifying securities firms in OECD countries that are subject to supervision and regulation, including a risk-based capital requirement, comparable to supervision and regulation of banks in those countries. Two commenters stated that adopting the rule change would create a greater degree of equality

[2] The OECD is an international organization of countries that are committed to market-oriented economic policies, including the promotion of private enterprise and free market prices, liberal trade policies, and the absence of exchange controls. For purposes of the Basel Accord, OECD countries are those countries that are full members of the OECD or that have concluded special lending arrangements associated with the International Monetary Fund's General Arrangements to Borrow. A listing of OECD member countries is available at *www.oecdwash.org*. Any OECD country that has rescheduled its external sovereign debt, however, may not receive the preferential capital treatment generally granted to OECD countries under the Accord for five years after such rescheduling.

[3] Prior to this 1998 amendment, the Basel Accord generally permitted claims on securities firms to receive a preferential risk weight only if the claims were covered by a qualifying guarantee or secured by qualifying collateral. In general, under the Agencies' risk-based capital standards, qualifying guarantees are limited to guarantees by central governments (including U.S. government agencies), U.S. government-sponsored agencies, state and local governments of the OECD-based group of countries, multilateral lending institutions, regional development banks, U.S. depository institutions, and certain foreign banks. Qualifying collateral is generally limited to cash on deposit in the lending bank, securities issued or guaranteed by the U.S. or other OECD central governments (including U.S. government agencies), and securities issued or guaranteed by U.S. government-sponsored agencies, multilateral lending institutions, or regional development banks. Claims covered by a qualifying guarantee or secured by qualifying collateral generally are accorded a risk weight of either zero percent or 20 percent.

[4] 65 FR 76180 (Dec. 6, 2000).

[5] This standard generally would include firms engaged in securities activities in the EU that are subject to the CAD. Securities firms in other OECD countries would need to demonstrate to institutions and the Agencies that their supervision and regulation qualify as comparable under this rule and the Accord.

[6] A long-term issuer credit rating is one that assesses a firm's overall capacity and willingness to pay on a timely basis its unsecured financial obligations. Under the proposed rule, issuer credit ratings that are assigned to a non-broker-dealer subsidiary or affiliate of the securities firm (other than the parent consolidated group), or debt ratings on long-term unsecured debt issues of such a subsidiary or affiliate of the securities firm, would not satisfy the rating criterion.

[7] The Agencies recognize that recent international consultative papers and a rule issued by the banking agencies used the two highest investment grade rating categories to identify assets that would qualify for a 20 percent risk weight. Both the Basel Committee's June 1999 consultative paper entitled ''A New Capital Adequacy Framework'', and the Committee's January 2001 second consultative paper entitled ''The New Basel Capital Accord'', proposed that a bank, commercial firm, or securitization position rated in one of the two highest investment grade rating categories would qualify for a 20 percent risk weight. In addition, the Agencies' November 2001 final rule on recourse and direct credit substitutes provides that a securitization position rated in one of the two highest investment grade rating categories may qualify for a 20 percent risk weight. 66 FR 59614 (November 29, 2001) (Recourse Rule).

The Agencies considered a rating requirement for securities firms consistent with these other proposals, but decided it would be appropriate to propose requiring qualifying securities firms to be rated in one of the top three rating categories of a rating agency. In addition to meeting the rating standard, qualifying securities firms would be subject to supervision and regulation comparable to depository institutions in OECD countries. This supervision distinguishes qualifying securities firms from other types of entities, such as commercial firms. Further, under the current Basel Accord, claims on OECD banks and securities firms receive a 20 percent risk weight without satisfying a similar credit rating requirement. Thus, while the Agencies considered both a higher rating requirement, on the one hand, and no rating requirement, on the other, the Agencies concluded the proposed rating requirement struck an appropriate balance.

[8] The Recourse Rule defined ''nationally recognized statistical rating organization'' as an entity recognized by the Division of Market Regulation of the SEC as a nationally recognized statistical rating organization for various purposes, including the Commission's uniform net capital requirements for brokers and dealers.

between U.S. institutions and non-U.S. institutions that already apply the 1998 Basel revision for claims on securities firms.

One of the commenters did not object to the Agencies' adoption of a rating criterion for qualifying securities firms even though it is more conservative than the Basel provision. Three commenters, however, opposed the adoption of a rating standard. First, these commenters believed that the qualifying criteria requiring adequate supervision, regulation, and capital are sufficient indicators of creditworthiness without a rating requirement. Specifically, SEC supervision of broker-dealers, including its net capital rule, provides a rigorous supervisory framework not warranting the additional rating requirement. Second, two commenters stated that elimination of the rating standard from the proposed U.S. rule would make it consistent with the Basel provision and would eliminate the competitive disparity with foreign banks applying the Basel provision. Two commenters also indicated that imposing a rating requirement on securities firms is inconsistent with the provision of the Agencies' current capital rule granting a 20 percent risk weight to claims on OECD banks without a rating requirement. Two commenters noted that many high quality securities firms in the United States do not issue debt in the public debt markets and therefore do not have a credit rating from a rating agency. They contended that the Agencies should not put such firms into the position of either obtaining ratings without a business need or being disadvantaged (i.e., paying higher rates) when they borrow from banking organizations. Another commenter argued that the Agencies should not vest government authority in, and increase institutions' reliance on, a small group of private rating agencies.

Upon further consideration, the Agencies have decided that market practices for certain types of transactions and banking organizations' credit risk exposure from such transactions do not necessitate compliance with a rating standard for certain types of collateralized transactions. Accordingly, the Agencies are differentiating the treatment of uncollateralized transactions and certain types of collateralized transactions satisfying designated prudential criteria.

Accordingly, with regard to claims on qualifying securities firms that do not meet such prudential collateralization criteria (or that are not otherwise covered by a qualifying guarantee or secured by qualifying collateral), the Agencies are retaining the proposed rating standard as a uniform way of assessing the credit risk of securities firms in the United States and in other OECD countries. The use of such credit ratings represents a market-based approach for credit assessment because investors and market participants rely on such ratings in making investment and business decisions. The Agencies recognize the value of the supervisory and regulatory oversight of securities firms in the United States and other OECD countries. However, the Agencies believe that applying a rating standard as a uniform credit standard for securities firms both domestically and internationally is a sound prudential supplement to ensure that only claims on, or guaranteed by, high quality securities firms are accorded a 20 percent risk weight. Because a ratings-based approach increases the risk sensitivity of the risk-based capital framework, the Agencies also adopted such an approach in the recently issued Recourse Rule.[9] In addition, the use of external ratings is under consideration by the Basel Committee as part of the revisions to the Accord.

One commenter believed that claims on a qualifying securities firm that is unrated should be given a 20 percent risk weight only if the claims are guaranteed by the securities firm's parent company and the parent company is rated in one of the top three investment grade rating categories. The parent company need not be a qualifying securities firm. Such a guarantee legally ensures that a parent company with a high credit rating will support claims on its qualifying securities firm subsidiary. Accordingly, the final rule allows 20 percent risk weighting on a claim on an unrated qualifying securities firm if the parent company guarantees the claim and satisfies the rating standard.

One commenter believed that the Agencies should allow banking organizations to rely on ratings generated by their internal ratings systems and analytical models. These systems and models cover a wide range of securities firms and are relied upon by banking organizations for the allocation of economic capital and for other purposes. This commenter argued that reliance on such systems is consistent with the internal-ratings-based approach that is a major focus of the potential revisions to the Basel Accord set forth in the Basel Committee's January 2000 consultative paper. However, it is premature to adopt such an option in this rulemaking. The broader Basel consultative process is addressing outstanding issues related to the adoption of such an internal ratings approach, and the Agencies may reconsider this position once the Basel process is concluded.

In response to commenters who argued that the rule could force some securities firms to obtain unneeded ratings to avoid higher borrowing costs, the Agencies have decided to accord a 20 percent risk weight to certain collateralized claims on qualifying securities firms, without regard to the rating standard, provided the claims satisfy certain specified criteria. The Agencies have determined that the requirements imposed by the market on certain collateralized transactions, particularly reverse repurchase/repurchase agreements and securities lending/borrowing transactions, ensure that such claims on qualifying securities firms pose very low credit risk to banking organizations. These market practices are incorporated in the prudential requirements imposed by the final rule.

Under the final rule, the collateralized portion of a claim on a qualifying securities firm is eligible for a 20 percent risk weight provided that the claim arises under a contract that: (1) Is a reverse repurchase/repurchase agreement or securities lending/borrowing transaction executed using standard industry documentation; (2) is collateralized by liquid and readily marketable debt or equity securities; (3) is marked to market daily; (4) is subject to a daily margin maintenance requirement under the standard industry documentation [10]; and (5) can be liquidated, terminated, or accelerated immediately in bankruptcy or similar proceeding, and the security or collateral agreement will not be stayed or avoided, under applicable law of the relevant jurisdiction.[11] The

[9] Furthermore, consistent with the Recourse Rule, if ratings are available from more than one rating agency, the lowest rating will be used to determine whether the rating standard has been met.

[10] The collateralized portion of the claim is the portion covered by the market value of the collateral. Remargining of collateral should be executed on a daily basis, taking into account any change in a banking organization's exposure to the counterparty under the claim in relation to the market value of the collateral held in support of the claim.

[11] For example, a claim is exempt from the automatic stay in bankruptcy in the United States if it arises under a securities contract or a repurchase agreement subject to section 555 or 559 of the Bankruptcy Code, respectively (11 U.S.C. 555 or 559), a qualified financial contract under section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)), or a netting contract between financial institutions under sections 401–407 of the Federal Deposit Insurance Corporation

Continued

collateralization of such a claim should be consistent with sound industry practice for the type of transaction, such as a securities borrowing transaction. The final rule accords such collateralized claims on qualifying securities firms a 20 percent risk weight (if the claims are not otherwise eligible for a zero percent risk weight) without the need for the qualifying securities firm or its parent company to comply with the rating standard of the final rule. If the claim were off balance sheet, the claim would continue to be converted to an on-balance sheet credit equivalent amount according to each Agency's risk-based capital rules and then risk weighted.

One commenter contended that the rule should accord a 20 percent risk weight to claims on, or guaranteed by, a subsidiary of a qualifying securities firm if the subsidiary is subject to the same supervision and regulation as its parent qualifying securities firm. However, the Agencies believe that this approach would require extensive qualitative assessment of the regulation of subsidiaries of qualifying securities firms both domestically and internationally and, thus, is of little practical use in setting the risk weight for claims. Consequently, the Agencies have not made this suggested revision to the proposal.

One commenter urged the Agencies to eliminate the reference to ''other regulatory requirements'' in the criteria for qualifying U.S. securities firms. This commenter stated that the term includes regulatory requirements unrelated to securities firms' financial condition and would impose a substantial compliance burden on lending institutions. The commenter believed that a banking organization should be able to rely on representations of a broker-dealer that it meets the relevant regulatory requirements. The Agencies have decided to revise the language of the rule to require qualified U.S. securities firms to be broker-dealers registered with the SEC and comply with the SEC's net capital rule, 17 CFR 240.15c3–1. Thus, the only requirement that banking organizations must track is whether a securities firm is in compliance with its net capital requirement. This requirement should not be burdensome to monitor because securities firms not in compliance with the net capital rule must immediately cease conducting business as broker-dealers, which would usually be well known in the financial sector. Absent information to the contrary, however, the Agencies would allow banking organizations to rely on annual reports or other confirmations of compliance provided by securities firms.

Two commenters urged the Agencies to extend the 20 percent risk weight to over-the-counter (OTC) derivatives dealers registered with the SEC. They noted that such firms are subject to substantial regulation, supervision, and capital requirements. These include limits on the scope of their activities, specified internal risk management controls, recordkeeping and reporting obligations, and a net capital rule. Although these commenters recognized that the oversight of OTC derivatives dealers is less rigorous than for standard broker-dealers, they contended that the level of oversight is sufficient to support a 20 percent risk weight for claims on such firms. One commenter also believed that a risk weight less than 100 percent should be applied to entities subject to regulatory reporting as Material Associated Persons (MAPs) under the SEC's risk assessment rules. This commenter also believed that, if a MAP voluntarily reports information under the guidelines of the Derivatives Policy Group, the risk weight applicable to claims on the MAP should be reduced further.

The Agencies have retained their proposed requirement that U.S. firms must be fully regulated registered broker-dealers as a prerequisite to being qualifying securities firms. The Agencies continue to believe that only claims on those firms that are subject to the SEC's full oversight and net capital requirements should qualify for a capital charge that is only 20 percent of the requirement applied to a broad array of claims on other supervised financial firms, including bank holding companies. The Agencies believe that such oversight and supervision is needed to be consistent with the terms of the revised provision of the Basel Accord giving a 20 percent risk weight to claims on securities firms subject to such supervision and oversight. Accordingly, the final rule only reduces the risk weight of U.S. securities firms that are fully regulated, registered broker-dealers satisfying their net capital requirements. Furthermore, the Agencies are cognizant that claims on OTC derivatives dealers, MAPs, and other companies, with high quality ratings, may qualify for reduced risk weightings under the standardized ratings-based approach currently being considered as part of the revisions to the Basel Accord. The Agencies may reconsider this issue when the Basel Accord is amended.

Finally, one commenter stated that the Agencies should conduct a comprehensive review of all of their regulations to eliminate regulations that are unnecessary or outmoded, thereby hindering the flexibility needed by banking organizations as they adapt to the changing financial services industry. The Agencies note that the Basel risk-based capital framework is undergoing an overall review and revision to make it more risk-focused and flexible for banking organizations. Furthermore, the Agencies currently conduct comprehensive scheduled reviews of their regulations, including their capital guidelines.

In addition to the modifications discussed previously, the final rule states expressly that a claim (including a subordinated claim) on a qualifying securities firm that is an instrument used by the firm to satisfy its applicable capital requirement will be ineligible for the 20 percent risk weight. The Agencies have decided to impose this restriction because banks make subordinated loans to, and purchase subordinated debt of, securities firms that are included in the securities firms' capital under the SEC's net capital rule. As subordinated debt, the credit risk of these loans is higher than on the securities firms' senior debt and general unsecured obligations.

The collateralization provision of the final rule, in general, provides a 20 percent risk weight to claims on, or guaranteed by, qualifying securities firms that are collateralized by debt and equity securities, including corporate debt and equity securities. The Agencies note that the current rules of the OCC and the Board give a zero percent risk weight to certain claims that are collateralized by cash on deposit in the banking organization or by securities issued or guaranteed by the U.S. government or its agencies or other OECD central governments. [12] These current rules of the OCC and the Board require a positive margin of collateral to be maintained on such a claim on a daily basis, taking into account any change in a banking organization's exposure to the obligor or counterparty under the claim in relation to the market value of the collateral held in support of the claim. Claims qualifying for a zero percent risk weight under the current rules of the OCC and the Board are unaffected by this final rule giving a 20

Improvement Act of 1991 (12 U.S.C. 4401–4407), or the Board's Regulation EE (12 CFR part 231).

[12] 12 CFR part 3, appendix A, 3(a)(1)(viii); 12 CFR part 208, appendix A, III.C (1); and 12 CFR part 225, appendix A, III. (C)(1).

percent risk weight to certain claims on qualifying securities firms.[13]

By contrast, OTS and FDIC rules apply a 20 percent risk weight to claims that are collateralized by cash on deposit in depository institutions or by securities issued or guaranteed by OECD governments.[14] To ensure uniform treatment of claims on qualifying securities firms under the final rule, the FDIC and OTS are amending their rules to provide a zero percent risk weight to these claims.[15] The FDIC and OTS are reviewing whether to make further rule changes to apply this risk weight to claims on other entities that are collateralized in this manner, *e.g.,* claims on borrowers that are secured by certificates of deposit.

Final Rule

After careful consideration of the comments received and for the reasons discussed, the Agencies have decided to adopt a final rule according a 20 percent risk weight to certain claims on, or guaranteed by, certain qualifying OECD securities firms. Qualifying U.S. securities firms are broker-dealers that are registered with the Securities and Exchange Commission and satisfy their net capital requirements. Qualifying securities firms incorporated in other OECD countries are those firms that are subject to consolidated supervision and regulation comparable to that applied to banks in such countries. Such regulation must include risk-based capital requirements comparable to those applied to banks under the Basel Accord. With respect to OECD countries that are members of the European Union, compliance with the CAD generally satisfies this requirement.

The final rule applies a 20 percent risk weight to a claim on, or guaranteed by, a qualifying securities firm that has a long-term issuer credit rating or a rating on at least one issue of long-term unsecured debt in one of the three highest investment-grade-rating categories from a rating agency. However, if ratings are available from more than one rating agency, the lowest rating will be used to determine whether the rating standard has been met. The final rule also gives a 20 percent risk weight to a claim on a qualifying securities firm not satisfying the rating criterion if the firm's parent company satisfies the rating criterion and guarantees the claim. In addition, the final rule accords a 20 percent risk weight to a collateralized claim on, or guaranteed by, a qualifying securities firm if the claim arises under a contract that: (1) Is a reverse repurchase/repurchase agreement or securities lending/borrowing transaction executed under standard industry documentation; (2) is collateralized by liquid and readily marketable debt or equity securities; (3) is marked to market daily; (4) is subject to a daily margin maintenance requirement under the standard industry documentation; and (5) can be liquidated, terminated, or accelerated immediately in bankruptcy or similar proceeding, and the security or collateral agreement will not be stayed or avoided, under applicable law of the relevant jurisdiction.

The Agencies are adopting this rule giving a 20 percent risk weight to certain claims on certain qualifying securities firms for several reasons. First, claims on qualifying securities firms satisfying the criteria of the final rule generally pose relatively low credit risk to banking organizations. Second, the 100 percent risk weight applied to claims on securities firms under the Agencies' current capital rules is more stringent than the 20 percent risk weight permitted for claims on qualifying securities firms under the Basel Accord and the CAD. This results in a competitive inequity for U.S. depository institutions, which would be reduced by this final rule.

The Agencies note that this rule will address collateralized transactions conducted with qualifying securities firms where the collateral is a marketable security other than an U.S. or other OECD government security. As noted previously, the OCC and the Board will permit transactions that are collateralized by cash or an U.S. or other OECD government security to be risk weighted according to each Agency's existing risk-based capital rules for collateralized transactions. Furthermore, consistent with the current rules of the OCC and the Board, the FDIC and the OTS are modifying their risk-based capital standards to permit a zero percent risk weight to be assigned to certain claims on qualifying securities firms collateralized by cash on deposit in a bank or securities issued or guaranteed by the central governments of OECD countries (e.g., securities of the U.S. Government and its agencies), as discussed previously. Finally, if the banking organization is subject to the market risk rules of the OCC, Board, or FDIC, and the transaction is a securities borrowing transaction, the risk-based capital for the transaction should be determined according to the Interim Rule on Securities Borrowing Transactions.[16]

Regulatory Flexibility Act

Under section 605(b) of the Regulatory Flexibility Act, the Agencies certify that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it will not have a significant impact on the amount of capital required to be held by small institutions. The rule: (1) Only covers a narrow category of assets, (2) decreases the amount of capital that an institution must hold for those assets, (3) does not significantly change the amount of total capital an institution must hold, and (4) will have a positive impact on an affected institution's capital compliance. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The Agencies have determined that this final 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.*).

Use of "Plain Language"

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the use of "plain language" in all proposed and final rules published after January 1, 2001. The Agencies invited comments on whether the proposed rule was written in "plain language" and how to make the proposed rule easier to understand. No commenter indicated that the proposed rule needs to be revised to make it easier to understand. The final rule is substantially similar to the proposed rule and the Agencies believe the final rule is written plainly and clearly.

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[13] Also, this final rule is in addition to, and does not modify, the current rules of the Agencies that already permit a 20 percent risk weight to be assigned to certain claims that are collateralized by securities issued or guaranteed by U.S. government-sponsored agencies, multilateral lending institutions, or regional development banks.

[14] 12 CFR part 325, Appendix A, II.C and 12 CFR 567.6(a)(ii)(B) and (N).

[15] The Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4803(a)) requires the Agencies to work jointly to make uniform their regulations and guidelines implementing common statutory or supervisory policies. Although the current risk-based capital rules of the OCC and the Board with regard to collateralized claims that qualify for the zero percent risk weighting are not affected by this final rule, the FDIC and OTS are amending their risk-based capital standards to ensure that the Agencies have consistency of application in how claims on qualifying securities firms are risk-weighted when the claims are collateralized by cash on deposit in the lending depository institution or by securities issued or guaranteed by the U.S. or other OECD central governments (including U.S. government agencies).

[16] 12 CFR part 3, appendix B, 3(a)(1)(ii) (OCC); 12 CFR part 208, appendix E, 3(a)(1)(Board); 12 CFR part 225, appendix E, 3(a)(1)(Board); and 12 CFR part 325, appendix C, 3(a)(1)(FDIC).

Executive Order 12866

The Comptroller of the Currency and the Director of the OTS have determined that this final rule is not a ''significant regulatory action'' for purposes of Executive Order 12866. This rule reduces the current risk weighting applied to claims on qualifying securities firms and will not impose additional cost or burden on institutions.

OCC and OTS—Unfunded Mandates Reform Act of 1995

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 the 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 final rule reduces the current risk-based capital charge for claims on, and claims guaranteed by, qualifying securities firms. Accordingly, the OCC and OTS have determined that this rule will not result in the expenditure by state, local, and tribal governments, or by the private sector, of $100 million or more in any one year. In fact, this rule will not impose any new cost or burden on state, local, or tribal governments, or the private sector. Therefore, the OCC and OTS have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

FDIC Assessment of Impact of Federal Regulation On Families

The FDIC has determined that this final rule will not affect family well being within the meaning of section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L.105–277).

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, 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.

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set out in the joint preamble, the Office of the Comptroller of the Currency amends part 3 of chapter I of title 12 of the Code of Federal Regulations 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)(19) through (c)(34) are redesignated as (c)(20) through (c)(35);

B. In section 1, new paragraph (c)(19) is added;

C. In section 3, footnotes 11a and 11b are redesignated as 11b and 11c;

D. In section 3, new paragraphs (a)(2)(xiii) and (a)(4)(x) are added; and

E. In section 3, new footnote 11a is added.

The additions read as follows:

Appendix A to Part 3—Risk-Based Capital Guidelines

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

* * * * *

(c) * * *

(19) *Nationally recognized statistical rating organization (NRSRO)* means an entity recognized by the Division of Market Regulation of the Securities and Exchange Commission (or any successor Division) (Commission or SEC) as a nationally recognized statistical rating organization for various purposes, including the Commission's uniform net capital requirements for brokers and dealers.

* * * * *

Section 3. Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items.

* * * * *

(a) * * *

(2) * * *

(xiii) Claims on, or guaranteed by, a securities firm incorporated in an OECD country, that satisfies the following conditions:

(A) If the securities firm is incorporated in the United States, then the firm must be a broker-dealer that is registered with the SEC and must be in compliance with the SEC's net capital regulation (17 CFR 240.15c3(1)).

(B) If the securities firm is incorporated in any other OECD country, then the bank must be able to demonstrate that the firm is subject to consolidated supervision and regulation, including its subsidiaries, comparable to that imposed on depository institutions in OECD countries; such regulation must include risk-based capital standards comparable to those applied to depository institutions under the Basel Capital Accord.[11a]

(C) The securities firm, whether incorporated in the United States or another OECD country, must also have a long-term credit rating in accordance with section 3(a)(2)(xiii)(C)(*1*) of this appendix A; a parent company guarantee in accordance with section 3(a)(2)(xiii)(C)(*2*) of this appendix A; or a collateralized claim in accordance with section 3(a)(2)(xiii)(C)(*3*) of this appendix A. Claims representing capital of a securities firm must be risk weighted at 100 percent in accordance with section 3(a)(4) of this Appendix A.

(*1*) *Credit rating*. The securities firm must have either a long-term issuer credit rating or a credit rating on at least one issue of long-term unsecured debt, from a NRSRO that is in one of the three highest investment-grade categories used by the NRSRO. If the securities firm has a credit rating from more than one NRSRO, the lowest credit rating must be used to determine the credit rating under this paragraph.

(*2*) *Parent company guarantee.* The claim on, or guaranteed by, the securities firm must be guaranteed by the firm's parent company, and the parent company must have either a long-term issuer credit rating or a credit rating on at least one issue of long-term unsecured debt, from a NRSRO that is in one of the three highest investment-grade categories used by the NRSRO.

(*3*) *Collateralized claim.* The claim on the securities firm must be collateralized subject to all of the following requirements:

(*i*) The claim must arise from a reverse repurchase/repurchase agreement or securities lending/borrowing contract executed using standard industry documentation.

[11a] *See* Accord on International Convergence of Capital Measurement and Capital Standards as adopted by the Basle Committee on Banking Regulations and Supervisory Practices (renamed as the Basel Committee on Banking Supervision), dated July 1988 (amended 1998).

(*ii*) The collateral must consist of debt or equity securities that are liquid and readily marketable.

(*iii*) The claim and collateral must be marked-to-market daily.

(*iv*) The claim must be subject to daily margin maintenance requirements under standard industry documentation.

(*v*) The contract from which the claim arises can be liquidated, terminated, or accelerated immediately in bankruptcy or similar proceedings, and the security or collateral agreement will not be stayed or avoided under the applicable law of the relevant jurisdiction. To be exempt from the automatic stay in bankruptcy in the United States, the claim must arise from a securities contract or a repurchase agreement under section 555 or 559, respectively, of the Bankruptcy Code (11 U.S.C. 555 or 559), a qualified financial contract under section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)), or a netting contract between or among financial institutions under sections 401–407 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (912 U.S.C. 4407), or the Regulation EE (12 CFR part 231).

* * * * *

(4) * * *

(x) Claims representing capital of a securities firm notwithstanding section 3(a)(2)(xiii) of this appendix A.

* * * * *

Dated: March 25, 2002.

John D. Hawke, Jr.,

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 amended 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, 1835(a), 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 781(g), 781(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 sections III. and IV., footnotes 38 through 54 are redesignated as footnotes 41 through 57;

b. In section III.C.2. under the title *Category 2: 20* percent, the three existing paragraphs are designated as 2.a. through 2.c., and a new paragraph 2.d. is added with new footnotes 38, 39, and 40;

c. In section III.C.4.b., a new sentence is added at the end of the paragraph; and

d. In Attachment III, under Category 2, new paragraphs 12 and 13 are added. The revision and additions read as follows:

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

* * * * *

III. * * *

C. * * *

2. * * *

d. This category also includes claims[38] on, or guaranteed by, a qualifying securities firm incorporated in the United States or other member of the OECD-based group of countries[39] provided that: The qualifying securities firm has a long-term issuer credit rating, or a rating on at least one issue of long-term debt, in one of the three highest investment grade rating categories from a nationally recognized statistical rating organization; or the claim is guaranteed by the firm's parent company and the parent company has such a rating. If ratings are available from more than one rating agency, the lowest rating will be used to determine whether the rating requirement has been met. This category also includes a collateralized claim on a qualifying securities firm in such a country, without regard to satisfaction of the rating standard, provided that the claim arises under a contract that:

(1) Is a reverse repurchase/repurchase agreement or securities lending/borrowing transaction executed using standard industry documentation;

(2) Is collateralized by debt or equity securities that are liquid and readily marketable;

(3) Is marked-to-market daily;

(4) Is subject to a daily margin maintenance requirement under the standard industry documentation; and

(5) Can be liquidated, terminated, or accelerated immediately in bankruptcy or similar proceeding, and the security or collateral agreement will not be stayed or avoided, under applicable law of the relevant jurisdiction.[40]

* * * * *

4. * * *

b. * * * This category also includes claims representing capital of a qualifying securities firm.

* * * * *

Attachment III—Summary of Risk Weights and Risk Categories for State Member Banks

* * * * *

Category 2: 20 Percent * * *

12. Claims on, and claims guaranteed by, qualifying securities firms incorporated in the United States or other member of the OECD-based group of countries provided that:

a. The qualifying securities firm has a rating in one of the top three investment grade rating categories from a nationally recognized statistical rating organization; or

b. The claim is guaranteed by a qualifying securities firm's parent company with such a rating.

13. Certain collateralized claims on qualifying securities firms in the United States or other member of the OECD-based group of countries, without regard to satisfaction of the rating standard, provided that the claim arises under a contract that:

a. Is a reverse repurchase/repurchase agreement or securities lending/borrowing transaction executed using standard industry documentation;

b. Is collateralized by liquid and readily marketable debt or equity securities;

c. Is marked to market daily;

d. Is subject to a daily margin maintenance requirement under the standard industry documentation; and

e. Can be liquidated, terminated, or accelerated immediately in bankruptcy or similar proceeding, and the security or collateral agreement will not be stayed or avoided, under applicable law of the relevant jurisdiction.

* * * * *

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.

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

---

[38] Claims on a qualifying securities firm that are instruments the firm, or its parent company, uses to satisfy its applicable capital requirements are not eligible for this risk weight.

[39] With regard to securities firms incorporated in the United States, qualifying securities firms are those securities firms that are broker-dealers registered with the Securities and Exchange Commission (SEC) and are in compliance with the SEC's net capital rule, 17 CFR 240.15c3–1. With regard to securities firms incorporated in any other country in the OECD-based group of countries, qualifying securities firms are those securities firms that a bank is able to demonstrate are subject to consolidated supervision and regulation (covering their direct and indirect subsidiaries, but not necessarily their parent organizations) comparable to that imposed on banks in OECD countries. Such regulation must include risk-based capital requirements comparable to those applied to banks under the Accord on International Convergence of Capital Measurement and Capital Standards (1988, as amended in 1998) (Basel Accord).

[40] For example, a claim is exempt from the automatic stay in bankruptcy in the United States if it arises under a securities contract or a repurchase agreement subject to section 555 or 559 of the Bankruptcy Code, respectively (11 U.S.C. 555 or 559), a qualified financial contract under section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)), or a netting contract between financial institutions under sections 401–407 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401–4407), or the Board's Regulation EE (12 CFR Part 231).

a. In sections III. and IV., footnotes 42 through 58 are redesignated as footnotes 45 through 61;

b. In section III.C.2. under the title Category 2: 20 percent, the three existing paragraphs are designated as 2.a. through 2.c., and a new paragraph 2.d. is added with new footnotes 42, 43, and 44;

c. In section III.C.4.b., a new sentence is added at the end of the paragraph; and

d. In Attachment III, under Category 2, new paragraphs 12 and 13 are added.

The revision and additions read as follows:

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

* * * * *

III. * * *

C. * * *

2. * * *

d. This category also includes claims [42] on, or guaranteed by, a qualifying securities firm [43] incorporated in the United States or other member of the OECD-based group of countries provided that: the qualifying securities firm has a long-term issuer credit rating, or a rating on at least one issue of long-term debt, in one of the three highest investment grade rating categories from a nationally recognized statistical rating organization; or the claim is guaranteed by the firm's parent company and the parent company has such a rating. If ratings are available from more than one rating agency, the lowest rating will be used to determine whether the rating requirement has been met. This category also includes collateralized claims on, or guaranteed by, a qualifying securities firm in such a country, without regard to satisfaction of the rating standard, provided the claim arises under a contract that:

(1) Is a reverse repurchase/repurchase agreement or securities lending/borrowing transaction executed under standard industry documentation;

(2) Is collateralized by debt or equity securities that are liquid and readily marketable;

(3) Is marked-to-market daily;

(4) Is subject to a daily margin maintenance requirement under the standard industry documentation; and

(5) Can be liquidated, terminated, or accelerated immediately in bankruptcy or similar proceeding, and the security or collateral agreement will not be stayed or avoided, under applicable law of the relevant jurisdiction. [44]

* * * * *

4. * * *

b.* * * This category also includes claims representing capital of a qualifying securities firm.

* * * * *

Attachment III—Summary of Risk Weights and Risk Categories for Bank Holding Companies

* * * * *

Category 2: 20 Percent * * *

12. Claims on, and claims guaranteed by, qualifying securities firms incorporated in the United States or other member of the OECD-based group of countries provided that:

a. The qualifying securities firm has a rating in one of the top three investment grade rating categories from a nationally recognized statistical rating organization; or

b. The claim is guaranteed by a qualifying securities firm's parent company with such a rating.

13. Certain collateralized claims on qualifying securities firms in the United States or other member of the OECD-based group of countries, without regard to satisfaction of the rating standard, provided that the claim arises under a contract that:

a. Is a reverse repurchase/ repurchase agreement or securities lending/borrowing transaction executed under standard industry documentation;

b. Is collateralized by liquid and readily marketable debt or equity securities;

c. Is marked to market daily;

d. Is subject to a daily margin maintenance requirement under the standard industry documentation; and

e. Can be liquidated, terminated, or accelerated immediately in bankruptcy or similar proceeding, and the security or collateral agreement will not be stayed or avoided, under applicable law of the relevant jurisdiction.

* * * * *

4. * * * This category also includes claims representing capital of a qualifying securities firm.

* * * * *

By order of the Board of Governors of the Federal Reserve System, March 27, 2002.

Jennifer J. Johnson,

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 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, 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:

a. In section II.B.3., the phrase "U.S. depository institutions and foreign banks" is removed and the phrase "U.S. depository institutions, foreign banks, and qualifying OECD-based securities firms" is added in its place;

b. Redesignate footnotes 27 through 47 as footnotes 30 through 50;

c. Add new footnotes 27 through 29;

d. In section II.C., under *Category 1—Zero Percent Risk Weight*, add a new paragraph to follow the existing two paragraphs, and redesignate these three paragraphs as paragraphs a. through c.

e. In section II.C., under *Category 2—20 Percent Risk Weight,* amend paragraph a. by adding three new sentences and paragraphs (1) through (5);

f. In section II.C., under *Category 4—100 Percent Risk Weight,* add a new paragraph (b)(12);

g. In Table II, add a new paragraph (7) under *Category 1—Zero Percent Risk Weight,* and

h. In Table II, add new paragraphs (13) and (14) under *Category 2—20 Percent Risk Weight.*

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

* * * * *

II. * * *

C. * * *

Category 1—Zero Percent Risk Weight

c. This category also includes claims on, and claims guaranteed by, qualifying

[42] Claims on a qualifying securities firm that are instruments the firm, or its parent company, uses to satisfy its applicable capital requirement are not eligible for this risk weight.

[43] With regard to securities firms incorporated in the United States, qualifying securities firms are those securities firms that are broker-dealers registered with the Securities and Exchange Commission and are in compliance with the SEC's net capital rule, 17 CFR 240.15c3–1. With regard to securities firms incorporated in other countries in the OECD-based group of countries, qualifying securities firms are those securities firms that a banking organization is able to demonstrate are subject to consolidated supervision and regulation (covering their direct and indirect subsidiaries, but not necessarily their parent organizations) comparable to that imposed on banks in OECD countries. Such regulation must include risk-based capital requirements comparable to those applied to banks under the Accord on International Convergence of Capital Measurement and Capital Standards (1988, as amended in 1998) (Basel Accord).

[44] For example, a claim is exempt from the automatic stay in bankruptcy in the United States if it arises under a securities contract or repurchase agreement subject to section 555 or 559 of the Bankruptcy Code, respectively (11 U.S.C. 555 or 559), a qualified financial contract under section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)), or a netting contract between financial institutions under sections 401–407 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401–4407), or the Board's Regulation EE (12 CFR Part 231).

securities firms incorporated in the United States or other members of the OECD-based group of countries that are collateralized by cash on deposit in the lending bank or by securities issued or guaranteed by the United States or OECD central governments (including U.S. government agencies), provided that a positive margin of collateral is required to be maintained on such a claim on a daily basis, taking into account any change in a bank's exposure to the obligor or counterparty under the claim in relation to the market value of the collateral held in support of the claim.

Category 2—20 Percent Risk Weight

a. * * * This category also includes a claim[27] on, or guaranteed by, qualifying securities firms incorporated in the United States or other member of the OECD-based group of countries[28] provided that: the qualifying securities firm has a long-term issuer credit rating, or a rating on at least one issue of long-term debt, in one of the three highest investment grade rating categories from a nationally recognized statistical rating organization; or the claim is guaranteed by the firm's parent company and the parent company has such a rating. If ratings are available from more than one rating agency, the lowest rating will be used to determine whether the rating requirement has been met. This category also includes a collateralized claim on a qualifying securities firm in such a country, without regard to satisfaction of the rating standard, provided that the claim arises under a contract that:

(1) Is a reverse repurchase/repurchase agreement or securities lending/borrowing transaction executed using standard industry documentation;

(2) Is collateralized by debt or equity securities that are liquid and readily marketable;

(3) Is marked-to-market daily;

(4) Is subject to a daily margin maintenance requirement under the standardized documentation; and

(5) Can be liquidated, terminated, or accelerated immediately in bankruptcy or similar proceeding, and the security or collateral agreement will not be stayed or avoided, under applicable law of the relevant jurisdiction.[29]

* * * * *

Category 4—100 Percent Risk Weight

(b) * * *

(12) Claims representing capital of a qualifying securities firm.

* * * * *

Table II—Summary of Risk Weights and Risk Categories

* * * * *

Category 1—Zero Percent Risk Weight

* * * * *

(7) Claims on, or guaranteed by, qualifying securities firms incorporated in the United States or other members of the OECD-based group of countries that are collateralized by cash on deposit in the lending bank or by securities issued or guaranteed by the United States or OECD central governments (including U.S. government agencies), provided that a positive margin of collateral is required to be maintained on such a claim on a daily basis, taking into account any change in a bank's exposure to the obligor or counterparty under the claim in relation to the market value of the collateral held in support of the claim.

* * * * *

Category 2—20 Percent Risk Weight

* * * * *

(13) Claims on, and claims guaranteed by, qualifying securities firms incorporated in the United States or other member of the OECD-based group of countries provided that:

a. The qualifying securities firm has a rating in one of the top three investment grade rating categories from a nationally recognized statistical rating organization; or

b. The claim is guaranteed by a qualifying securities firm's parent company with such a rating.

(14) Certain collateralized claims on qualifying securities firms in the United States or other member of the OECD-based group of countries, without regard to satisfaction of the rating standard, provided that the claim arises under a contract that:

a. Is a reverse repurchase/repurchase agreement or securities lending/borrowing transaction executed under standard industry documentation;

b. Is collateralized by liquid and readily marketable debt or equity securities;

c. Is marked to market daily;

d. Is subject to a daily margin maintenance requirement under the standard documentation; and

e. Can be liquidated, terminated, or accelerated immediately in bankruptcy or similar proceeding, and the security or collateral agreement will not be stayed or avoided, under applicable law of the relevant country.

* * * * *

By order of the Board of Directors.

Dated at Washington, DC, this 29th day of January, 2002.

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, the Office of Thrift Supervision amends part 567 of chapter V of title 12 of the Code of Federal Regulations 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 the definition of qualified securities firm to read as follows:

§ 567.1 Definitions.

* * * * *

Qualifying securities firm. The term *qualifying securities firm* means: (1) A securities firm incorporated in the United States that is a broker-dealer that is registered with the Securities and Exchange Commission (SEC) and that complies with the SEC's net capital regulations (17 CFR 240.15c3(1)); and

(2) A securities firm incorporated in any other OECD-based country, if the savings association is able to demonstrate that the securities firm is subject to consolidated supervision and regulation (covering its subsidiaries, but not necessarily its parent organizations) comparable to that imposed on depository institutions in OECD countries. Such regulation must include risk-based capital requirements comparable to those imposed on depository institutions under the Accord on International Convergence of Capital Measurement and Capital Standards (1988, as amended in 1998).

* * * * *

[27] Claims on a qualifying securities firm that are instruments the firm, or its parent company, uses to satisfy its applicable capital requirements are not eligible for this risk weight.

[28] With regard to securities firms incorporated in the United States, qualifying securities firms are those securities firms that are broker-dealers registered with the Securities and Exchange Commission (SEC) and are in compliance with the SEC's net capital rule, 17 CFR 240.15c3–1. With regard to securities firms incorporated in any other country in the OECD-based group of countries, qualifying securities firms are those securities firms that a bank is able to demonstrate are subject to consolidated supervision and regulation (covering their direct and indirect subsidiaries, but not necessarily their parent organizations) comparable to that imposed on banks in OECD countries. Such regulation must include risk-based capital requirements comparable to those applied to banks under the Accord on International Convergence of Capital Measurement and Capital Standards (1988, as amended in 1998) (Basel Accord). Claims on a qualifying securities firm that are instruments the firm, or its parent company, uses to satisfy its applicable capital requirements are not eligible for this risk weight and are generally assigned to at least a 100 percent risk weight. In addition, certain claims on qualifying securities firms are eligible for a zero percent risk weight if the claims are collateralized by cash on deposit in the lending bank or by securities issued or guaranteed by the United States or OECD central governments (including U.S. government agencies), provided that a positive margin of collateral is required to be maintained on such a claim on a daily basis, taking into account any change in a bank's exposure to the obligor or counterparty under the claim in relation to the market value of the collateral held in support of the claim.

[29] For example, a claim is exempt from the automatic stay in bankruptcy in the United States if it arises under a securities contract or a repurchase agreement subject to section 555 or 559 of the Bankruptcy Code, respectively (11 U.S.C. 555 or 559), a qualified financial contract under section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)), or a netting contract between financial institutions under sections 401–407 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401–4407), or the Board's Regulation EE (12 CFR part 231).

3. Section 567.6 is amended by adding paragraphs (a)(1)(i)(H) and (a)(1)(ii)(H) to read as follows:

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

(a) * * *

(1) * * *

(i) * * *

(H) Claims on, and claims guaranteed by, a qualifying securities firm that are collateralized by cash on deposit in the savings association or by securities issued or guaranteed by the United States Government or its agencies, or the central government of an OECD country. To be eligible for this risk weight, the savings association must maintain a positive margin of collateral on the claim on a daily basis, taking into account any change in a savings association's exposure to the obligor or counterparty under the claim in relation to the market value of the collateral held in support of the claim.

(ii) * * *

(H) Claims on, and claims guaranteed by, a qualifying securities firm, subject to the following conditions:

(*1*) A qualifying securities firm must have a long-term issuer credit rating, or a rating on at least one issue of long-term unsecured debt, from a NRSRO. The rating must be in one of the three highest investment grade categories used by the NRSRO. If two or more NRSROs assign ratings to the qualifying securities firm, the savings association must use the lowest rating to determine whether the rating requirement of this paragraph is met. A qualifying securities firm may rely on the rating of its parent consolidated company, if the parent consolidated company guarantees the claim.

(*2*) A collateralized claim on a qualifying securities firm does not have to comply with the rating requirements under paragraph (a)(1)(ii)(H)(*1*) of this section if the claim arises under a contract that:

(*i*) Is a reverse repurchase/repurchase agreement or securities lending/borrowing transaction executed using standard industry documentation;

(*ii*) Is collateralized by debt or equity securities that are liquid and readily marketable;

(*iii*) Is marked-to-market daily;

(*iv*) Is subject to a daily margin maintenance requirement under the standard industry documentation; and

(*v*) Can be liquidated, terminated or accelerated immediately in bankruptcy or similar proceeding, and the security or collateral agreement will not be stayed or avoided under applicable law of the relevant jurisdiction. For example, a claim is exempt from the automatic stay in bankruptcy in the United States if it arises under a securities contract or a repurchase agreement subject to section 555 or 559 of the Bankruptcy Code (11 U.S.C. 555 or 559), a qualified financial contract under section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)), or a netting contract between or among financial institutions under sections 401–407 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401–4407), or Regulation EE (12 CFR part 231).

(*3*) If the securities firm uses the claim to satisfy its applicable capital requirements, the claim is not eligible for a risk weight under this paragraph (a)(1)(ii)(H);

* * * * *

Dated: February 1, 2002.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 02–8142 Filed 4–8–02; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1118]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; official staff interpretation.

SUMMARY: The Board is publishing revisions to the official staff commentary to Regulation Z, which implements the Truth in Lending Act. The commentary applies and interprets the requirements of Regulation Z. The revisions clarify how creditors that place Truth in Lending Act disclosures on the same document with the credit contract may satisfy the requirement for providing the disclosures, in a form the consumer may keep, before consummation. In addition, the revisions provide guidance on disclosing costs for certain credit insurance policies and on the definition of ''business day'' for purposes of the right to rescind certain home-secured loans. The Board is also publishing technical corrections to the commentary and regulation.

DATES: The rule is effective April 9, 2002.

FOR FURTHER INFORMATION CONTACT: David A. Stein, Senior Attorney, or Dan S. Sokolov, Attorney; Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (''TDD'') only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.*, is to promote the informed use of consumer credit by providing for disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate. Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping for credit. TILA requires additional disclosures for loans secured by consumers' homes and permits consumers to rescind certain transactions that involve their principal dwelling. In addition, the act regulates certain practices of creditors.

TILA is implemented by the Board's Regulation Z (12 CFR part 226). The Board's official staff commentary (12 CFR part 226 (Supp. I)) interprets the regulation, and provides guidance to creditors in applying the regulation to specific transactions. Good faith compliance with the commentary affords protection from liability under section 130(f) of TILA (15 U.S.C. 1640(f)). The commentary is a substitute for individual staff interpretations; it is updated periodically to address significant questions that arise.

In December 2001, the Board published for comment proposed changes to the commentary (66 FR 64381, December 13, 2001). The Board received approximately 50 comment letters. About half of the comments were from financial institutions, other creditors, and their representatives. Most of the remaining comment letters were from consumer advocates. The comment letters focused mainly on the proposed comment concerning disclosures placed on the same document with the credit contract. Although commenters generally supported the proposal, most requested additional clarifications. Commenters also supported the proposed clarification concerning disclosure of insurance premiums, but were divided on the proposed comment concerning the definition of ''business day.''

As discussed below, the commentary is being adopted substantially as proposed. In response to commenters' suggestions, some revisions have been made for clarity. In addition, several technical corrections are being made to the commentary and regulation. The