

appendix A of this part) to asset-backed commercial paper programs (as defined in section III.B.6. of appendix A of this part). Such excluded positions are subject to the risk-based capital requirements set forth in appendix A of this part.

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

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

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

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

- a. Section II.A.1.c. is revised.
- b. In section III.B.3—
 - i. Paragraph a., *Definitions*, is revised.
 - ii. Paragraph g., *Limitations on risk-based capital requirements*, is redesignated as paragraph h.
 - iii. A new paragraph g., *Early amortization triggers*, is added.
 - iv. A new paragraph iv., is added to the redesignated paragraph h.
- c. Section III.B.6. is revised.
- d. In section III.D—
 - i. The last sentence of the introductory paragraph is removed.
 - ii. In paragraph 2., *Items with a 50 percent conversion factor*, the third undesignated paragraph is revised, the fourth undesignated paragraph is removed, and the five remaining undesignated paragraphs are designated as 2.a. through 2.e.
 - iii. In paragraph 3, *Items with a 20 percent conversion factor*, the first undesignated paragraph is designated as 3.a. and a new paragraph 3.b. is added.
 - iv. The first sentence in the paragraph 4., *Items with a zero percent conversion factor*, is revised.
 - d. Attachments IV, V, and VI are removed.

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

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II. * * *

A. * * *

1. * * *

c. *Minority interest in equity accounts of consolidated subsidiaries.* This element is included in Tier 1 because, as a general rule, it represents equity that is freely available to absorb losses in operating subsidiaries whose assets are included in a bank organization's risk-weighted asset base. While not subject to an explicit sublimit within Tier 1, banking organizations are expected to avoid using minority interest in the equity accounts of consolidated subsidiaries as an avenue for introducing into their capital structures elements that might not otherwise qualify as

Tier 1 capital or that would, in effect, result in an excessive reliance on preferred stock within Tier 1. Minority interests in small business investment companies, investment funds that hold nonfinancial equity investments (as defined in section II.B.5.b. of this appendix A), and subsidiaries engaged in nonfinancial activities are not included in the banking organization's Tier 1 or total capital base if the organization's interest in the company or fund is held under one of the legal authorities listed in section II.B.5.b. In addition, minority interests in consolidated asset-backed commercial paper programs (as defined in section III.B.6. of this appendix) that are sponsored by a banking organization are not to be included in the organization's Tier 1 or total capital base if the bank holding company excludes the consolidated assets of such programs from risk-weighted assets pursuant to section III.B.6. of this appendix.

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III. * * *

B. * * *

a. *Definitions*—i. *Credit derivative* means a contract that allows one party (the "protection purchaser") to transfer the credit risk of an asset or off-balance sheet credit exposure to another party (the "protection provider"). The value of a credit derivative is dependent, at least in part, on the credit performance of the "reference asset."

ii. *Credit-enhancing representations and warranties* means representations and warranties that are made or assumed in connection with a transfer of assets (including loan servicing assets) and that obligate the bank holding company to protect investors from losses arising from credit risk in the assets transferred or the loans serviced. Credit-enhancing representations and warranties include promises to protect a party from losses resulting from the default or nonperformance of another party or from an insufficiency in the value of the collateral. Credit-enhancing representations and warranties do not include:

1. Early default clauses and similar warranties that permit the return of, or premium refund clauses covering, 1–4 family residential first mortgage loans that qualify for a 50 percent risk weight for a period not to exceed 120 days from the date of transfer. These warranties may cover only those loans that were originated within 1 year of the date of transfer;

2. Premium refund clauses that cover assets guaranteed, in whole or in part, by the U.S. Government, a U.S. Government agency or a government-sponsored enterprise, provided the premium refund clauses are for a period not to exceed 120 days from the date of transfer; or

3. Warranties that permit the return of assets in instances of misrepresentation, fraud or incomplete documentation.

iii. *Direct credit substitute* means an arrangement in which a bank holding company assumes, in form or in substance, credit risk associated with an on- or off-balance sheet credit exposure that was not previously owned by the bank holding company (third-party asset) and the risk assumed by the bank holding company exceeds the pro rata share of the bank holding company's interest in the third-party

asset. If the bank holding company has no claim on the third-party asset, then the bank holding company's assumption of any credit risk with respect to the third party asset is a direct credit substitute. Direct credit substitutes include, but are not limited to:

1. Financial standby letters of credit that support financial claims on a third party that exceed a bank holding company's pro rata share of losses in the financial claim;

2. Guarantees, surety arrangements, credit derivatives, and similar instruments backing financial claims that exceed a bank holding company's pro rata share in the financial claim;

3. Purchased subordinated interests or securities that absorb more than their pro rata share of losses from the underlying assets;

4. Credit derivative contracts under which the bank holding company assumes more than its pro rata share of credit risk on a third party exposure;

5. Loans or lines of credit that provide credit enhancement for the financial obligations of an account party;

6. Purchased loan servicing assets if the servicer is responsible for credit losses or if the servicer makes or assumes credit-enhancing representations and warranties with respect to the loans serviced. Mortgage servicer cash advances that meet the conditions of section III.B.3.a.viii. of this appendix are not direct credit substitutes; and

7. Clean-up calls on third party assets. Clean-up calls that are 10 percent or less of the original pool balance that are exercisable at the option of the bank holding company are not direct credit substitutes.

8. Liquidity facilities extended to ABCP programs that are not eligible liquidity facilities (as defined in section III.B.3.a. of this appendix).

iv. *Early Amortization Triggers* mean contractual requirements that, if triggered, would cause a securitization to begin repaying investors prior to the originally scheduled payment dates.

v. *Eligible liquidity facility* means a facility subject to a reasonable asset quality test at the time of draw that precludes funding against assets that are 60 days or more past due or in default. In addition, if the assets that an eligible liquidity facility is required to fund against are externally rated exposures at the inception of the facility, the facility can be used to fund only those exposures that are externally rated investment grade at the time of funding. Furthermore, an eligible liquidity facility must contain provisions that, prior to any draws, reduces the bank holding company's funding obligation to cover only those assets that would meet the funding criteria under the facility's asset quality tests.

vi. *Excess Spread* means gross finance charge collections and other income received by the trust or special purpose entity (SPE) minus certificate interest, servicing fees, charge-offs, and other trust or SPE expenses.

vii. *Externally rated* means that an instrument or obligation has received a credit rating from a nationally-recognized statistical rating organization.

viii. *Face amount* means the notional principal, or face value, amount of an off-balance sheet item; the amortized cost of an