Authority: 12 U.S.C. 36, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1823(j), 1828(o), 1831o, 1831p–1, 3105, 3310, 3331–3351 and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1 and 78w; 31 U.S.C. 5318.

2. In Part 208, Appendix A, section III.B. is amended by adding a new paragraph 5. to read as follows:

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

* * * * * * III.* * * B.* * *

5. Small Business Loans and Leases on Personal Property Transferred with Recourse. a. Notwithstanding other provisions of this Appendix A, a qualifying bank that has transferred small business loans and leases on personal property with recourse need include in weighted-risk assets only the amount of retained recourse in lieu of the outstanding amount of the loans and leases transferred with recourse, provided two conditions are met. First, the transaction must be treated as a sale under GAAP and, second, the bank must establish a non-capital reserve sufficient to meet the bank's reasonably estimated liability under the recourse arrangement. Only loans and leases to businesses that meet the criteria for a small business concern established by the Small Business Administration under section 3(a) of the Small Business Act are eligible for this capital treatment.

b. For purposes of this Appendix A, qualifying banks are those that are well capitalized or, by order of the Board, adequately capitalized. The definitions of well capitalized and adequately capitalized are found in the Board's prompt corrective action regulation (12 CFR 208.30). For purposes of determining whether a bank is qualifying, its capital ratios must be calculated without regard to the capital treatment for transfers of small business obligations with recourse specified in section III.B.5.a. of this Appendix A. The total outstanding amount of recourse retained by qualifying banking organizations on transfers of small business obligations receiving the preferential capital treatment cannot exceed 15 percent of the institution's total risk-based capital. By order, the Board may approve a higher limit.

c. For purposes of determining whether a bank is adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized under prompt corrective action (12 CFR 208.30), the risk-based capital ratio of the bank shall be determined without regard to the capital treatment of transfers of small business obligations with recourse specified in section III.B.5.a. of this Appendix A.

3. In Part 208, Appendix B, section II is amended by revising paragraph c. and adding new paragraphs d., e., and f.

Appendix B to Part 208—Capital Adequacy Guidelines for State Member Banks: Tier 1 Leverage Measure

* * * * * * * II. * * *

c. Notwithstanding other provisions of this Appendix B, a qualifying bank that has transferred small business loans and leases on personal property with recourse may adjust its average total consolidated assets. for purposes of calculating its tier 1 leverage ratio, to include only the amount of retained recourse in lieu of the outstanding amount of the loans and leases transferred with recourse, provided two conditions are met. First, the fransaction must be treated as a sale under GAAP and, second, the bank must establish a non-capital reserve sufficient to meet the bank's reasonably estimated liability under the recourse arrangement. Only loans and leases to businesses that meet the criteria for a small business concern established by the Small Business Administration under section 3(a) of the Small Business Act are eligible for this capital treatment.

d. For purposes of this Appendix B. qualifying banks are those that are well capitalized or, by order of the Board, adequately capitalized. The definitions of well capitalized and adequately capitalized are found in the Board's prompt corrective action regulation (12 CFR 208.30). For purposes of determining whether a bank is qualifying, its capital ratios must be calculated without regard to the capital treatment for transfers of small business obligations with recourse specified in section II.c. of this Appendix B. The total outstanding amount of recourse retained by qualifying banks on transfers of small business obligations receiving the preferential capital treatment cannot exceed 15 percent of the institution's total risk-based capital. By order, the Board may approve a higher limit.

e. For purposes of determining whether a bank is adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized under prompt corrective action (12 CFR 208.30), the leverage capital ratio of the bank shall be determined without regard to the capital treatment of transfers of small business obligations with recourse specified in section II.c. of this Appendix B.

f. Whenever appropriate, including when a bank is undertaking expansion, seeking to engage in new activities, or otherwise facing unusual or abnormal risks, the Board will continue to consider the level of an individual bank's tangible tier 1 leverage ratio (after deducting all intangibles) in making an overall assessment of capital adequacy. This is consistent with the Federal Reserve's risk-based capital guidelines and long-standing Board policy and

practice with regard to leverage guidelines. Banks experiencing growth, whether internally or by acquisition, are expected to maintain strong capital positions substantially above minimum supervisory levels, without significant reliance on intangible assets.

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, 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. In part 225, Appendix A, section III.B. is amended by adding a new paragraph 5. to read as follows:

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

III. * * *

III. * * * B. * * *

5. Small Business Loans and Leases on Personal Property Transferred with Recourse. a. Notwithstanding other provisions of this Appendix A, a qualifying banking organization that has transferred small business loans and leases on personal property with recourse need include in weighted-risk assets only the amount of retained recourse in lieu of the outstanding amount of the loans and leases transferred with recourse, provided two conditions are met. First, the transaction must be treated as a sale under GAAP and, second, the banking organization must establish a non-capital reserve sufficient to meet the organization's reasonably estimated liability under the recourse arrangement. Only loans and leases to businesses that meet the criteria for a small business concern established by the Small Business Administration under section 3(a) of the Small Business Act are eligible for this capital treatment.

b. For purposes of this Appendix A, qualifying banking organizations are those that meet the criteria for well capitalized or, by order of the Board, adequately capitalized. The criteria for well capitalized and adequately capitalized are found in the Board's prompt corrective action regulation for state member banks (12 CFR 208.30). For purposes of determining whether an organization is qualifying, its capital ratios must be calculated without regard to the capital treatment for transfers of small business obligations with recourse specified in section III.B.5.a. of this Appendix A. The total outstanding amount of recourse retained by qualifying banking organizations on transfers of small business obligations receiving the preferential capital treatment cannot exceed 15 percent of the institution's total risk-based capital. By order, the Board may approve a higher limit.

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