Columbia banks and state banks that are members of the Federal Reserve System.[3] This section further clarifies that foreign branches of national banks may be authorized to conduct additional international activities pursuant to 12 CFR part 211.

Definitions (section 1.2)

The proposal substantially revises the definitions section to add several definitions, updates others, and brings the definitions that currently appear in various places in the regulation into a single section. The following definitions have been added: ''investment company,'' ''Type IV security,'' and ''Type V security.'' The definitions of Type I, II, and III securities also have been substantially revised so that these types of securities are defined by their characteristics, not by the statutory limitations on the extent to which national banks may deal in, underwrite, purchase, or sell them. No substantive change in the authority of a national bank results from these revisions. In addition, as indicated with various individual definitions below, many definitions are revised to clarify their meaning and to incorporate the results of statutory changes, judicial decisions, and established OCC interpretations. Of particular note are the following proposed revisions:

Capital and surplus (section 1.2(a))

The proposal defines ''capital and surplus'' as Tier 1 and Tier 2 capital includable in risk-based capital under the Minimum Capital Ratios in 12 CFR part 3, plus the balance of a bank's allowance for loan and lease losses that is not included in Tier 2 capital. This is the same standard used in the OCC's recent revisions to its lending limit regulation. See 60 FR 8526 (February 15, 1995). As stated in the Preamble to the new lending limit rule, 60 FR 8528, the OCC's reasons for revising the definition of ''capital and surplus'' are to reduce the different definitions of capital currently used for various regulatory purposes and to use a well-recognized standard that banks are already required to calculate.

Investment grade (section 1.2(d))

''Investment grade'' means that a security is rated in one of the top four rating categories by each nationally recognized statistical rating organization that has rated the security. For example, if two nationally recognized statistical rating organizations rate the security in one of their top four categories, the security would qualify as ''investment grade'' even if other nationally recognized statistical rating organizations had not rated the security. However, if one of the two organizations rating the security did not rate the security in one of the top four categories, the security would not qualify as ''investment grade.'' Thus, when a security is given different ratings by different nationally recognized rating organizations, the lowest rating governs for purposes of this definition.

Investment security (section 1.2(e))

To be an ''investment security'' under the proposed definition, a security must be an investment grade marketable debt obligation or, if the security is not rated, it must be the credit equivalent of an investment grade marketable debt obligation. These standards reflect current OCC guidance and practice.

The OCC requests comments on whether the regulation should describe more specifically the characteristics of securities that are the ''credit equivalent of investment grade'' securities, and, if so, what description would be appropriate.

Commenters also are requested to address whether other securities with characteristics functionally equivalent to a debt obligation might be classified as an ''investment security.''

Marketable (section 1.2(f))

This proposed definition attempts to rely on more objective standards than the current definition of ''marketable.'' Currently, a marketable security is defined in § 1.5(a) as one that ''may be sold with reasonable promptness at a price which corresponds reasonably to its fair value.'' The proposed definition places more emphasis on indicators of a ready market for a security rather than a prediction of whether the security can be sold quickly at a particular price. As proposed, marketable securities include: (1) Securities registered under the Securities Act of 1933 (the Securities Act), 15 U.S.C. 77a *et seq.*; (2) certain government securities and municipal revenue bonds not required to be registered under the Securities Act; and (3) investment grade securities sold pursuant to SEC Rule 144A, 17 CFR 230.144A.

SEC Rule 144A provides a ''safe harbor'' exemption from the registration requirements of the Securities Act for resales of privately offered or ''restricted'' securities to qualified institutional buyers. The rationale for treating securities that qualify under SEC Rule 144A as readily marketable is that they may be sold without the need to prepare and receive SEC clearance of a registration statement used in connection with the sale. There may be a situation, however, based upon the particular security, when the security is not necessarily immediately sellable.

The OCC requests comments regarding whether this definition of ''marketable'' is sufficiently inclusive, particularly regarding other exemptions under the Securities Act, such as the statutory nonpublic offering exemption, that enable a seller to sell a security promptly at market or fair value, and whether the definition is appropriately inclusive of foreign sovereign debt.

The OCC also welcomes comments regarding alternative definitions of ''marketable'' that would address the OCC's concerns about liquidity. Commenters may suggest adopting a more general standard, or retaining the current standard whereby a security sold with reasonable promptness for a price that reasonably corresponds to its fair value is marketable. Commenters are asked to address how the OCC might objectively measure such a standard.

Type I security (section 1.2(h))

As in the current rule, the proposal defines a ''Type I'' security to mean specified government securities. The proposal also incorporates into the definition the key elements of the interpretation now found in § 1.110 regarding securities backed by the full faith and credit of the U.S. Government. The proposed definition is consistent with 12 U.S.C. 24 (Seventh), which does not require that government securities be ''marketable'' or otherwise qualify as ''investment securities.''

Type II security (section 1.2(i))

The proposal redefines a ''Type II'' security to mean an investment security that is issued by certain state, international or multilateral organizations, or that is otherwise listed or described in the statute. The definition differs from the current rule, which describes a Type II security both by the investment limits that apply to it, and by examples of qualifying types of issuers. The proposed definition also includes the statutory requirement that this type of security must qualify as an ''investment security,'' in addition to being issued by a qualifying type of issuer.

Type III security (section 1.2(j))

Part 1 currently defines a ''Type III'' security to mean a security that ''a bank may purchase and sell for its own

[3] State banks that are members of the Federal Reserve System are subject to the same limitations and conditions with respect to the purchasing, selling, underwriting and holding of investment securities and stock applicable to national banks under 12 U.S.C. 24 (Seventh). 12 U.S.C. 335.