

## § 565.2

## 12 CFR Ch. V (1-1-05 Edition)

### § 565.2 Definitions.

For purposes of this part, except as modified in this section or unless the context otherwise requires, the terms used in this part have the same meanings as set forth in sections 38 and 3 of the FDI Act.

(a)(1) *Control* has the same meaning assigned to it in section 2 of the Bank Holding Company Act (12 U.S.C. 1841), and the term “controlled” shall be construed consistently with the term “control.”

(2) *Exclusion for fiduciary ownership.* No insured depository institution or company controls another insured depository institution or company by virtue of its ownership or control of shares in a fiduciary capacity. Shares shall not be deemed to have been acquired in a fiduciary capacity if the acquiring insured depository institution or company has sole discretionary authority to exercise voting rights with respect thereto.

(3) *Exclusion for debts previously contracted.* No insured depository institution or company controls another insured depository institution or company by virtue of its ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith, until two years after the date of acquisition. The two-year period may be extended at the discretion of the appropriate federal banking agency for up to three one-year periods.

(b) *Controlling person* means any person having control of an insured depository institution and any company controlled by that person.

(c) *Leverage ratio* means the ratio of Tier 1 capital to adjusted total assets, as calculated in accordance with part 567 of this chapter.

(d) *Management fee* means any payment of money or provision of any other thing of value to a company or individual for the provision of management services or advice to the savings association or related overhead expenses, including payments related to supervisory, executive, managerial or policymaking functions, other than compensation to an individual in the individual's capacity as an officer or employee of the savings association.

(e) *Risk-weighted assets* means total risk-weighted assets, as calculated in accordance with part 567 of this chapter.

(f) *Tangible equity* means the amount of a savings association's core capital as computed in part 567 of this chapter plus the amount of its outstanding cumulative perpetual preferred stock (including related surplus), minus intangible assets as defined in §567.1 of this chapter and nonmortgage servicing assets that have not been previously deducted in calculating core capital.

(g) *Tier 1 capital* means the amount of core capital as defined in part 567 of this chapter.

(h) *Tier 1 risk-based capital ratio* means the ratio of Tier 1 capital to risk-weighted assets, as calculated in accordance with part 567 of this chapter.

(i) *Total assets*, for purposes of §565.4(b)(5), means adjusted total assets as calculated in accordance with part 567 of this chapter, minus intangible assets as provided in the definition of tangible equity.

(j) *Total risk-based capital ratio* means the ratio of total capital to risk-weighted assets, as calculated in accordance with part 567 of this chapter.

[57 FR 44903, Sept. 29, 1992, as amended at 60 FR 39232, Aug. 1, 1995; 62 FR 66263, Dec. 18, 1997; 63 FR 42678, Aug. 10, 1998]

### § 565.3 Notice of capital category.

(a) *Effective date of determination of capital category.* A savings association shall be deemed to be within a given capital category for purposes of section 38 of the FDI Act and this part as of the date the savings association is notified of, or is deemed to have notice of, its capital category, pursuant to paragraph (b) of this section.

(b) *Notice of capital category.* A savings association shall be deemed to have been notified of its capital levels and its capital category as of the most recent date:

(1) A Thrift Financial Report (TFR) is required to be filed with the OTS;

(2) A final report of examination is delivered to the savings association; or

(3) Written notice is provided by the OTS to the savings association of its capital category for purposes of section 38 of the FDI Act and this part or that