

## § 1777.12

CFR part 1780 commencing an action to order the Enterprise to cease and desist conduct, conditions, or violations specified in the notice to show cause;

(ii) A temporary order to the Enterprise under section 1372 of the 1992 Act (12 U.S.C. 4632) and the procedures in 12 CFR part 1780 to cease and desist from, and take affirmative actions to prevent or remedy harm from, conduct, conditions, or violations specified in the notice to show cause;

(iii) A notice of charges under section 1376 of the 1992 Act (12 U.S.C. 4636) and the procedures in 12 CFR part 1780 commencing imposition of a civil money penalty against the Enterprise; or

(iv) A notice of discretionary reclassification of the Enterprise's capital classification under section 1364(b) of the 1992 Act (12 U.S.C. 4614(b)) and subpart B of this part.

(2) *Review; further action.* Based on the Enterprise's response to the notice to show cause and consideration of other relevant factors, OFHEO shall promptly determine whether to commence the actions described in the notice, and whether additional supervisory response under this section is warranted.

### § 1777.12 Other supervisory action.

Notwithstanding the pendency or completion of one or more supervisory responses described in §1777.11, OFHEO may at any time undertake additional supervisory steps and actions in the form of any informal or formal supervisory tool available to OFHEO under the 1992 Act, including, but not limited to, issuing guidance or directives under section 1313 (12 U.S.C. 4513), requiring reports under section 1314 (12 U.S.C. 4514), conducting other examinations under section 1317 (12 U.S.C. 4517), issuing discretionary reclassification under section 1364 (12 U.S.C. 4614), initiating discretionary action under section 1366(b) (12 U.S.C. 4616(b)), appointing a conservator under section 1369(a) (12 U.S.C. 4619(a)), or initiating administrative enforcement action under sections 1371, 1372, and 1376 (12 U.S.C. 4631, 4632 and 4636). In addition, OFHEO may take any such steps or actions with respect to an Enterprise that fails to make a submission or comply with a directive as required by §1777.11, or to

## 12 CFR Ch. XVII (1–1–06 Edition)

address an Enterprise's failure to implement an appropriate action in response to a supervisory letter or under an action plan under §1777.11.

### Subpart B—Capital Classifications and Orders Under Section 1366 of the 1992 Act

#### § 1777.20 Capital classifications.

(a) *Capital classifications after the effective date of section 1365 of the 1992 Act.* The capital classification of an Enterprise for purposes of subpart B of this part is as follows:

(1) *Adequately capitalized.* Except as otherwise provided under paragraph (a)(5) of this section, an Enterprise will be classified as adequately capitalized if the Enterprise:

(i) As of the date specified in the notice of proposed capital classification, holds total capital equaling or exceeding the risk-based capital level; and

(ii) As of the date specified in the notice of proposed capital classification, holds core capital equaling or exceeding the minimum capital level.

(2) *Undercapitalized.* Except as otherwise provided under paragraph (a)(5) of this section or §1777.23(c) or §1777.23(h), an Enterprise will be classified as undercapitalized if the Enterprise:

(i) As of the date specified in the notice of proposed capital classification, holds total capital less than the risk-based capital level; and

(ii) As of the date specified in the notice of proposed capital classification, holds core capital equaling or exceeding the minimum capital level.

(3) *Significantly undercapitalized.* Except as otherwise provided under paragraph (a)(5) of this section or §1777.23(c) or §1777.23(h), an Enterprise will be classified as significantly undercapitalized if the Enterprise:

(i) As of the date specified in the notice of proposed capital classification, holds core capital less than the minimum capital level; and

(ii) As of the date specified in the notice of proposed capital classification, holds core capital equaling or exceeding the critical capital level.

(4) *Critically undercapitalized.* An Enterprise will be classified as critically undercapitalized if, as of the date specified in the notice of proposed capital