agreement as defined in §217.2, a Board-regulated institution must:

(1) Conduct sufficient legal review to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that:

(i) The agreement meets the requirements of paragraph (2) of the definition of qualifying master netting agreement in §217.2; and

(ii) In the event of a legal challenge (including one resulting from default or from receivership, insolvency, liquidation, or similar proceeding) the relevant court and administrative authorities would find the agreement to be legal, valid, binding, and enforceable under the law of the relevant jurisdictions; and

(2) Establish and maintain written procedures to monitor possible changes in relevant law and to ensure that the agreement continues to satisfy the requirements of the definition of qualifying master netting agreement in §217.2.

(e) *Repo-style transaction.* In order to recognize an exposure as a repo-style transaction as defined in §217.2, a Board-regulated institution must conduct sufficient legal review to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that the agreement underlying the exposure:

(1) Meets the requirements of paragraph (3) of the definition of repo-style transaction in §217.2, and

(2) Is legal, valid, binding, and enforceable under applicable law in the relevant jurisdictions.

(f) *Failure of a QCCP to satisfy the rule's requirements.* If a Board-regulated institution determines that a CCP ceases to be a QCCP due to the failure of the CCP to satisfy one or more of the requirements set forth in paragraphs (2)(i) through (2)(iii) of the definition of a QCCP in §217.2, the Board-regulated institution may continue to treat the CCP as a QCCP for up to three months following the determination. If the CCP fails to remedy the relevant deficiency within three months after the initial determination, or the CCP fails to satisfy the requirements set forth in paragraphs (2)(i) through (2)(iii) of the definition of a QCCP continuously for a three-month period after remedying the relevant deficiency, a Board-regulated institution may not treat the CCP as a QCCP for the purposes of this part until after the Board-regulated institution has determined that the CCP has satisfied the requirements in paragraphs (2)(i) through (2)(iii) of the definition of a QCCP for three continuous months.

§§217.4–217.9 [Reserved]

Subpart B—Capital Ratio Requirements and Buffers

§217.10 Minimum capital requirements.

(a) *Minimum capital requirements.* (1) A Board-regulated institution must maintain the following minimum capital ratios:

(i) A common equity tier 1 capital ratio of 4.5 percent.

(ii) A tier 1 capital ratio of 6 percent.

(iii) A total capital ratio of 8 percent.

(iv) A leverage ratio of 4 percent.

(v) For advanced approaches Board-regulated institutions or, for Category IIIBoard-regulated institutions, a supplementary leverage ratio of 3 percent.

(2) A qualifying community banking organization (as defined in §217.12), that is subject to the community bank leverage ratio framework (as defined §217.12), is considered to have met the minimum capital requirements in this paragraph (a) of this section.

(b) *Standardized capital ratio calculations.* Other than as provided in paragraph (c) of this section:

(1) *Common equity tier 1 capital ratio.* A Board-regulated institution's common equity tier 1 capital ratio is the ratio of the Board-regulated institution's common equity tier 1 capital to standardized total risk-weighted assets;

(2) *Tier 1 capital ratio.* A Board-regulated institution's tier 1 capital ratio is the ratio of the Board-regulated institution's tier 1 capital to standardized total risk-weighted assets;

(3) *Total capital ratio.* A Board-regulated institution's total capital ratio is the ratio of the Board-regulated institution's total capital to standardized total risk-weighted assets; and

(4) *Leverage ratio.* A Board-regulated institution's leverage ratio is the ratio of the Board-regulated institution's

tier 1 capital to the Board-regulated institution's average total consolidated assets as reported on the Board-regulated institution's Call Report, for a state member bank, or the Consolidated Financial Statements for Bank Holding Companies (FR Y–9C), for a bank holding company or savings and loan holding company, as applicable minus amounts deducted from tier 1 capital under § 217.22(a), (c) and (d).

(c) *Advanced approaches and Category III capital ratio calculations*. An advanced approaches Board-regulated institution that has completed the parallel run process and received notification from the Board pursuant to § 217.121(d) must determine its regulatory capital ratios as described in paragraphs (c)(1) through (3) of this section. An advanced approaches Board-regulated institution must determine its supplementary leverage ratio in accordance with paragraph (c)(4) of this section, beginning with the calendar quarter immediately following the quarter in which the Board-regulated institution meets any of the criteria in § 217.100(b)(1). A Category III Board-regulated institution must determine its supplementary leverage ratio in accordance with paragraph (c)(4) of this section, beginning with the calendar quarter immediately following the quarter in which the Board-regulated institution is identified as a Category III Board-regulated institution.

(1) *Common equity tier 1 capital ratio*. The Board-regulated institution's common equity tier 1 capital ratio is the lower of:

(i) The ratio of the Board-regulated institution's common equity tier 1 capital to standardized total risk-weighted assets; and

(ii) The ratio of the Board-regulated institution's common equity tier 1 capital to advanced approaches total risk-weighted assets.

(2) *Tier 1 capital ratio*. The Board-regulated institution's tier 1 capital ratio is the lower of:

(i) The ratio of the Board-regulated institution's tier 1 capital to standardized total risk-weighted assets; and

(ii) The ratio of the Board-regulated institution's tier 1 capital to advanced approaches total risk-weighted assets.

(3) *Total capital ratio*. The Board-regulated institution's total capital ratio is the lower of:

(i) The ratio of the Board-regulated institution's total capital to standardized total risk-weighted assets; and

(ii) The ratio of the Board-regulated institution's advanced-approaches-adjusted total capital to advanced approaches total risk-weighted assets. A Board-regulated institution's advanced-approaches-adjusted total capital is the Board-regulated institution's total capital after being adjusted as follows:

(A) An advanced approaches Board-regulated institution must deduct from its total capital any allowance for loan and lease losses or adjusted allowance for credit losses, as applicable, included in its tier 2 capital in accordance with § 217.20(d)(3); and

(B) An advanced approaches Board-regulated institution must add to its total capital any eligible credit reserves that exceed the Board-regulated institution's total expected credit losses to the extent that the excess reserve amount does not exceed 0.6 percent of the Board-regulated institution's credit risk-weighted assets.

(4) *Supplementary leverage ratio*. (i) An advanced approaches Board-regulated institution's or a Category III Board-regulated institution's supplementary leverage ratio is the ratio of its tier 1 capital to total leverage exposure, the latter which is calculated as the sum of:

(A) The mean of the on-balance sheet assets calculated as of each day of the reporting quarter; and

(B) The mean of the off-balance sheet exposures calculated as of the last day of each of the most recent three months, minus the applicable deductions under § 217.22(a), (c), and (d).

(ii) For purposes of this part, *total leverage exposure* means the sum of the items described in paragraphs (c)(4)(ii)(A) through (H) of this section, as adjusted pursuant to paragraph (c)(4)(ii)(I) for a clearing member Board-regulated institution:

(A) The balance sheet carrying value of all of the Board-regulated institution's on-balance sheet assets, *plus* the value of securities sold under a repurchase transaction or a securities lending transaction that qualifies for sales treatment under U.S. GAAP, *less* amounts deducted from tier 1 capital under § 217.22(a), (c), and (d), and *less* the value of securities received in security-for-security repo-style transactions, where the Board-regulated institution acts as a securities lender and includes the securities received in its on-balance sheet assets but has not sold or re-hypothecated the securities received;

(B) The PFE for each derivative contract or each single-product netting set of derivative contracts (including a cleared transaction except as provided in paragraph (c)(4)(ii)(I) of this section and, at the discretion of the Board-supervised institution, excluding a forward agreement treated as a derivative contract that is part of a repurchase or reverse repurchase or a securities borrowing or lending transaction that qualifies for sales treatment under U.S. GAAP), to which the Board-regulated institution is a counterparty as determined under § 217.34, but without regard to § 217.34(b), provided that:

(*1*) A Board-regulated institution may choose to exclude the PFE of all credit derivatives or other similar instruments through which it provides credit protection when calculating the PFE under § 217.34, but without regard to § 217.34(b), provided that it does not adjust the net-to-gross ratio (NGR); and

(*2*) A Board-regulated institution that chooses to exclude the PFE of credit derivatives or other similar instruments through which it provides credit protection pursuant to paragraph (c)(4)(ii)(B)(*1*) of this section must do so consistently over time for the calculation of the PFE for all such instruments;

(C) The amount of cash collateral that is received from a counterparty to a derivative contract and that has offset the mark-to-fair value of the derivative asset, or cash collateral that is posted to a counterparty to a derivative contract and that has reduced the Board-regulated institution's on-balance sheet assets, unless such cash collateral is all or part of variation margin that satisfies the following requirements:

(*1*) For derivative contracts that are not cleared through a QCCP, the cash collateral received by the recipient counterparty is not segregated (by law, regulation or an agreement with the counterparty);

(*2*) Variation margin is calculated and transferred on a daily basis based on the mark-to-fair value of the derivative contract;

(*3*) The variation margin transferred under the derivative contract or the governing rules for a cleared transaction is the full amount that is necessary to fully extinguish the net current credit exposure to the counterparty of the derivative contracts, subject to the threshold and minimum transfer amounts applicable to the counterparty under the terms of the derivative contract or the governing rules for a cleared transaction;

(*4*) The variation margin is in the form of cash in the same currency as the currency of settlement set forth in the derivative contract, provided that for the purposes of this paragraph, currency of settlement means any currency for settlement specified in the governing qualifying master netting agreement and the credit support annex to the qualifying master netting agreement, or in the governing rules for a cleared transaction;

(*5*) The derivative contract and the variation margin are governed by a qualifying master netting agreement between the legal entities that are the counterparties to the derivative contract or by the governing rules for a cleared transaction, and the qualifying master netting agreement or the governing rules for a cleared transaction must explicitly stipulate that the counterparties agree to settle any payment obligations on a net basis, taking into account any variation margin received or provided under the contract if a credit event involving either counterparty occurs;

(*6*) The variation margin is used to reduce the current credit exposure of the derivative contract, calculated as described in § 217.34(a), and not the PFE; and

(7) For the purpose of the calculation of the NGR described in

§ 217.34(a)(2)(ii)(B), variation margin described in paragraph (c)(4)(ii)(C)(6) of this section may not reduce the net current credit exposure or the gross current credit exposure;

(D) The effective notional principal amount (that is, the apparent or stated notional principal amount multiplied by any multiplier in the derivative contract) of a credit derivative, or other similar instrument, through which the Board-regulated institution provides credit protection, provided that:

(*1*) The Board-regulated institution may reduce the effective notional principal amount of the credit derivative by the amount of any reduction in the mark-to-fair value of the credit derivative if the reduction is recognized in common equity tier 1 capital;

(*2*) The Board-regulated institution may reduce the effective notional principal amount of the credit derivative by the effective notional principal amount of a purchased credit derivative or other similar instrument, provided that the remaining maturity of the purchased credit derivative is equal to or greater than the remaining maturity of the credit derivative through which the Board-regulated institution provides credit protection and that:

(*i*) With respect to a credit derivative that references a single exposure, the reference exposure of the purchased credit derivative is to the same legal entity and ranks *pari passu* with, or is junior to, the reference exposure of the credit derivative through which the Board-regulated institution provides credit protection; or

(*ii*) With respect to a credit derivative that references multiple exposures, the reference exposures of the purchased credit derivative are to the same legal entities and rank *pari passu* with the reference exposures of the credit derivative through which the Board-regulated institution provides credit protection, and the level of seniority of the purchased credit derivative ranks *pari passu* to the level of seniority of the credit derivative through which the Board-regulated institution provides credit protection;

(*iii*) Where a Board-regulated institution has reduced the effective notional amount of a credit derivative through which the Board-regulated institution provides credit protection in accordance with paragraph (c)(4)(ii)(D)(*1*) of this section, the Board-regulated institution must also reduce the effective notional principal amount of a purchased credit derivative used to offset the credit derivative through which the Board-regulated institution provides credit protection, by the amount of any increase in the mark-to-fair value of the purchased credit derivative that is recognized in common equity tier 1 capital; and

(*iv*) Where the Board-regulated institution purchases credit protection through a total return swap and records the net payments received on a credit derivative through which the Board-regulated institution provides credit protection in net income, but does not record offsetting deterioration in the mark-to-fair value of the credit derivative through which the Board-regulated institution provides credit protection in net income (either through reductions in fair value or by additions to reserves), the Board-regulated institution may not use the purchased credit protection to offset the effective notional principal amount of the related credit derivative through which the Board-regulated institution provides credit protection;

(E) Where a Board-regulated institution acting as a principal has more than one repo-style transaction with the same counterparty and has offset the gross value of receivables due from a counterparty under reverse repurchase transactions by the gross value of payables under repurchase transactions due to the same counterparty, the gross value of receivables associated with the repo-style transactions *less* any on-balance sheet receivables amount associated with these repo-style transactions included under paragraph (c)(4)(ii)(A) of this section, unless the following criteria are met:

(*1*) The offsetting transactions have the same explicit final settlement date under their governing agreements;

(*2*) The right to offset the amount owed to the counterparty with the amount owed by the counterparty is legally enforceable in the normal course of business and in the event of receivership, insolvency, liquidation, or similar proceeding; and

(*3*) Under the governing agreements, the counterparties intend to settle net, settle simultaneously, or settle according to a process that is the functional equivalent of net settlement, (that is, the cash flows of the transactions are equivalent, in effect, to a single net amount on the settlement date), where both transactions are settled through the same settlement system, the settlement arrangements are supported by cash or intraday credit facilities intended to ensure that settlement of both transactions will occur by the end of the business day, and the settlement of the underlying securities does not interfere with the net cash settlement;

(F) The counterparty credit risk of a repo-style transaction, including where the Board-regulated institution acts as an agent for a repo-style transaction and indemnifies the customer with respect to the performance of the customer's counterparty in an amount limited to the difference between the fair value of the security or cash its customer has lent and the fair value of the collateral the borrower has provided, calculated as follows:

(*1*) If the transaction is not subject to a qualifying master netting agreement, the counterparty credit risk (E*) for transactions with a counterparty must be calculated on a transaction by transaction basis, such that each transaction i is treated as its own netting set, in accordance with the following formula, where E_i is the fair value of the instruments, gold, or cash that the Board-regulated institution has lent, sold subject to repurchase, or provided as collateral to the counterparty, and C_i is the fair value of the instruments, gold, or cash that the Board-regulated institution has borrowed, purchased subject to resale, or received as collateral from the counterparty:

$E_i^* = \max\{0, [E_i — C_i]\}$; and

(*2*) If the transaction is subject to a qualifying master netting agreement, the counterparty credit risk (E*) must be calculated as the greater of zero and the total fair value of the instruments, gold, or cash that the Board-regulated institution has lent, sold subject to repurchase or provided as collateral to a counterparty for all transactions included in the qualifying master netting agreement (ΣE_i), *less* the total fair value of the instruments, gold, or cash that the Board-regulated institution borrowed, purchased subject to resale or received as collateral from the counterparty for those transactions (ΣC_i), in accordance with the following formula:

$E^* = \max\{0, [\Sigma E_i - \Sigma C_i]\}$

(G) If a Board-regulated institution acting as an agent for a repo-style transaction provides a guarantee to a customer of the security or cash its customer has lent or borrowed with respect to the performance of the customer's counterparty and the guarantee is not limited to the difference between the fair value of the security or cash its customer has lent and the fair value of the collateral the borrower has provided, the amount of the guarantee that is greater than the difference between the fair value of the security or cash its customer has lent and the value of the collateral the borrower has provided;

(H) The credit equivalent amount of all off-balance sheet exposures of the Board-regulated institution, excluding repo-style transactions, repurchase or reverse repurchase or securities borrowing or lending transactions that qualify for sales treatment under U.S. GAAP, and derivative transactions, determined using the applicable credit conversion factor under §217.33(b), provided, however, that the minimum credit conversion factor that may be assigned to an off-balance sheet exposure under this paragraph is 10 percent; and

(I) For a Board-regulated institution that is a clearing member:

(*1*) A clearing member Board-regulated institution that guarantees the performance of a clearing member client with respect to a cleared transaction must treat its exposure to the clearing member client as a derivative contract for purposes of determining its total leverage exposure;

(*2*) A clearing member Board-regulated institution that guarantees the performance of a CCP with respect to a transaction cleared on behalf of a clearing member client must treat its exposure to the CCP as a derivative contract for purposes of determining its total leverage exposure;

(*3*) A clearing member Board-regulated institution that does not guarantee the performance of a CCP with respect to a transaction cleared on behalf of a clearing member client may exclude its exposure to the CCP for purposes of determining its total leverage exposure;

(*4*) A Board-regulated institution that is a clearing member may exclude from its total leverage exposure the effective notional principal amount of credit protection sold through a credit derivative contract, or other similar instrument, that it clears on behalf of a clearing member client through a CCP as calculated in accordance with part (c)(4)(ii)(D); and

(*5*) Notwithstanding paragraphs (c)(4)(ii)(I)(*1*) through (*3*) of this section, a Board-regulated institution may exclude from its total leverage exposure a clearing member's exposure to a clearing member client for a derivative contract, if the clearing member client and the clearing member are affiliates and consolidated for financial reporting purposes on the Board-regulated institution's balance sheet.

(d) *Capital adequacy*. (1) Notwithstanding the minimum requirements in this part, a Board-regulated institution must maintain capital commensurate with the level and nature of all risks to which the Board-regulated institution is exposed. The supervisory evaluation of the Board-regulated institution's capital adequacy is based on an individual assessment of numerous factors, including the character and condition of the institution's assets and its existing and prospective liabilities and other corporate responsibilities.

(2) A Board-regulated institution must have a process for assessing its overall capital adequacy in relation to its risk profile and a comprehensive strategy for maintaining an appropriate level of capital.

[Reg. Q, 78 FR 62157, 62285, Oct. 11, 2013, as amended at 78 FR 62286, Oct. 11, 2013; 79 FR 57744, Sept. 26, 2014; 80 FR 41419, July 15, 2015; 84 FR 4242, Feb. 14, 2019; 84 FR 35259, July 22, 2019; 84 FR 59271, Nov. 1, 2019; 84 FR 61797, Nov. 13, 2019]

§ 217.11 Capital conservation buffer, countercyclical capital buffer amount, and GSIB surcharge.

(a) *Capital conservation buffer*. (1) *Composition of the capital conservation buffer*. The capital conservation buffer is composed solely of common equity tier 1 capital.

(2) *Definitions*. For purposes of this section, the following definitions apply:

(i) *Eligible retained income*. The eligible retained income of a Board-regulated institution is the Board-regulated institution's net income, calculated in accordance with the instructions to the Call Report or the FR Y–9C, as applicable, for the four calendar quarters preceding the current calendar quarter, net of any distributions and associated tax effects not already reflected in net income.

(ii) *Maximum payout ratio*. The maximum payout ratio is the percentage of eligible retained income that a Board-regulated institution can pay out in the form of distributions and discretionary bonus payments during the current calendar quarter. The maximum payout ratio is based on the Board-regulated institution's capital conservation buffer, calculated as of the last day of the previous calendar quarter, as set forth in Table 1 to § 217.11.

(iii) *Maximum payout amount*. A Board-regulated institution's maximum payout amount for the current calendar quarter is equal to the Board-regulated institution's eligible retained income, multiplied by the applicable maximum payout ratio, as set forth in Table 1 to § 217.11.

(iv) *Private sector credit exposure*. Private sector credit exposure means an exposure to a company or an individual that is not an exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the European Stability Mechanism, the European Financial Stability Facility, the International Monetary Fund, a MDB, a PSE, or a GSE.

(v) *Maximum leverage payout ratio*. The maximum leverage payout ratio is the percentage of eligible retained income that a global systemically important BHC can pay out in the form of distributions and discretionary bonus payments during the current calendar quarter. The maximum leverage payout ratio is based on the global systemically important BHC's leverage buffer, calculated as of the last day of the previous calendar quarter, as set forth in Table 2 of this section.

(vi) *Maximum leverage payout amount.* A global systemically important BHC's maximum leverage payout amount for the current calendar quarter is equal to the global systemically important BHC's eligible retained income, multiplied by the applicable maximum leverage payout ratio, as set forth in Table 2 of this section.

(3) *Calculation of capital conservation buffer.* (i) A Board-regulated institution's capital conservation buffer is equal to the lowest of the following ratios, calculated as of the last day of the previous calendar quarter:

(A) The Board-regulated institution's common equity tier 1 capital ratio minus the Board-regulated institution's minimum common equity tier 1 capital ratio requirement under § 217.10;

(B) The Board-regulated institution's tier 1 capital ratio minus the Board-regulated institution's minimum tier 1 capital ratio requirement under § 217.10; and

(C) The Board-regulated institution's total capital ratio minus the Board-regulated institution's minimum total capital ratio requirement under § 217.10; or

(ii) Notwithstanding paragraphs (a)(3)(i)(A)–(C) of this section, if the Board-regulated institution's common equity tier 1, tier 1 or total capital ratio is less than or equal to the Board-regulated institution's minimum common equity tier 1, tier 1 or total capital ratio requirement under § 217.10, respectively, the Board-regulated institution's capital conservation buffer is zero.

(4) *Limits on distributions and discretionary bonus payments.* (i) A Board-regulated institution shall not make distributions or discretionary bonus payments or create an obligation to make such distributions or payments during the current calendar quarter that, in the aggregate, exceed the maximum payout amount or, as applicable, the maximum leverage payout amount.

(ii) A Board-regulated institution with a capital conservation buffer that is greater than 2.5 percent plus 100 percent of its applicable countercyclical capital buffer in accordance with paragraph (b) of this section, and 100 percent of its applicable GSIB surcharge, in accordance with paragraph (c) of this section, and, if applicable, that has a leverage buffer that is greater than 2.0 percent, in accordance with paragraph (d) of this section, is not subject to a maximum payout amount under this section.

(iii) *Negative eligible retained income.* Except as provided in paragraph (a)(4)(iv) of this section, a Board-regulated institution may not make distributions or discretionary bonus payments during the current calendar quarter if the Board-regulated institution's:

(A) Eligible retained income is negative; and

(B) Capital conservation buffer was less than 2.5 percent, or, if applicable, leverage buffer was less than 2.0 percent, as of the end of the previous calendar quarter.

(iv) *Prior approval.* Notwithstanding the limitations in paragraphs (a)(4)(i) through (iii) of this section, the Board may permit a Board-regulated institution to make a distribution or discretionary bonus payment upon a request of the Board-regulated institution, if the Board determines that the distribution or discretionary bonus payment would not be contrary to the purposes of this section, or to the safety and soundness of the Board-regulated institution. In making such a determination, the Board will consider the nature and extent of the request and the particular circumstances giving rise to the request.

TABLE 1 TO § 217.11—CALCULATION OF MAXIMUM PAYOUT AMOUNT

Capital conservation buffer	Maximum payout ratio
Greater than 2.5 percent plus 100 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and 100 percent of the Board-regulated institution's applicable GSIB surcharge.	No payout ratio limitation applies.

TABLE 1 TO §217.11—CALCULATION OF MAXIMUM PAYOUT AMOUNT—Continued

Capital conservation buffer	Maximum payout ratio
Less than or equal to 2.5 percent plus 100 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and 100 percent of the Board-regulated institution's applicable GSIB surcharge, *and* greater than 1.875 percent plus 75 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and 75 percent of the Board-regulated institution's applicable GSIB surcharge.	60 percent.
Less than or equal to 1.875 percent plus 75 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and 75 percent of the Board-regulated institution's applicable GSIB surcharge, *and* greater than 1.25 percent plus 50 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and 50 percent of the Board-regulated institution's applicable GSIB surcharge.	40 percent.
Less than or equal to 1.25 percent plus 50 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and 50 percent of the Board-regulated institution's applicable GSIB surcharge, *and* greater than 0.625 percent plus 25 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and 25 percent of the Board-regulated institution's applicable GSIB surcharge.	20 percent.
Less than or equal to 0.625 percent plus 25 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and 25 percent of the Board-regulated institution's applicable GSIB surcharge.	0 percent.

(v) *Other limitations on distributions.* Additional limitations on distributions may apply to a Board-regulated institution under 12 CFR 225.4, 12 CFR 225.8, and 12 CFR 263.202.

(b) *Countercyclical capital buffer amount.* (1) *General.* An advanced approaches Board-regulated institution or a Category III Board-regulated institution must calculate a countercyclical capital buffer amount in accordance with this paragraph (b) for purposes of determining its maximum payout ratio under Table 1 to this section.

(i) *Extension of capital conservation buffer.* The countercyclical capital buffer amount is an extension of the capital conservation buffer as described in paragraph (a) of this section.

(ii) *Amount.* An advanced approaches Board-regulated institution or a Category III Board-regulated institution has a countercyclical capital buffer amount determined by calculating the weighted average of the countercyclical capital buffer amounts established for the national jurisdictions where the Board-regulated institution's private sector credit exposures are located, as specified in paragraphs (b)(2) and (3) of this section.

(iii) *Weighting.* The weight assigned to a jurisdiction's countercyclical capital buffer amount is calculated by dividing the total risk-weighted assets for the Board-regulated institution's private sector credit exposures located in the jurisdiction by the total risk-weighted assets for all of the Board-regulated institution's private sector credit exposures. The methodology a Board-regulated institution uses for determining risk-weighted assets for purposes of this paragraph (b) must be the methodology that determines its risk-based capital ratios under §217.10. Notwithstanding the previous sentence, the risk-weighted asset amount for a private sector credit exposure that is a covered position under subpart F of this part is its specific risk add-on as determined under §217.210 multiplied by 12.5.

(iv) *Location.* (A) Except as provided in paragraphs (b)(1)(iv)(B) and (b)(1)(iv)(C) of this section, the location of a private sector credit exposure is the national jurisdiction where the borrower is located (that is, where it is incorporated, chartered, or similarly established or, if the borrower is an individual, where the borrower resides).

(B) If, in accordance with subparts D or E of this part, the Board-regulated institution has assigned to a private sector credit exposure a risk weight associated with a protection provider on a guarantee or credit derivative, the location of the exposure is the national jurisdiction where the protection provider is located.

(C) The location of a securitization exposure is the location of the underlying exposures, or, if the underlying exposures are located in more than one national jurisdiction, the national jurisdiction where the underlying exposures with the largest aggregate unpaid principal balance are located. For purposes of this paragraph (b), the location of an underlying exposure shall be the location of the borrower, determined consistent with paragraph (b)(1)(iv)(A) of this section.

(2) *Countercyclical capital buffer amount for credit exposures in the United States*—(i) *Initial countercyclical capital buffer amount with respect to credit exposures in the United States.* The initial countercyclical capital buffer amount in the United States is zero.

(ii) *Adjustment of the countercyclical capital buffer amount.* The Board will adjust the countercyclical capital buffer amount for credit exposures in the United States in accordance with applicable law.[10]

(iii) *Range of countercyclical capital buffer amount.* The Board will adjust the countercyclical capital buffer amount for credit exposures in the United States between zero percent and 2.5 percent of risk-weighted assets.

(iv) *Adjustment determination.* The Board will base its decision to adjust the countercyclical capital buffer amount under this section on a range of macroeconomic, financial, and supervisory information indicating an increase in systemic risk including, but not limited to, the ratio of credit to gross domestic product, a variety of asset prices, other factors indicative of relative credit and liquidity expansion or contraction, funding spreads, credit condition surveys, indices based on credit default swap spreads, options implied volatility, and measures of systemic risk.

(v) *Effective date of adjusted countercyclical capital buffer amount.* (A) *Increase adjustment.* A determination by the Board under paragraph (b)(2)(ii) of this section to increase the countercyclical capital buffer amount will be effective 12 months from the date of announcement, unless the Board establishes an earlier effective date and includes a statement articulating the reasons for the earlier effective date.

(B) *Decrease adjustment.* A determination by the Board to decrease the established countercyclical capital buffer amount under paragraph (b)(2)(ii) of this section will be effective on the day following announcement of the final determination or the earliest date permissible under applicable law or regulation, whichever is later.

(vi) *Twelve month sunset.* The countercyclical capital buffer amount will return to zero percent 12 months after the effective date that the adjusted countercyclical capital buffer amount is announced, unless the Board announces a decision to maintain the adjusted countercyclical capital buffer amount or adjust it again before the expiration of the 12-month period.

(3) *Countercyclical capital buffer amount for foreign jurisdictions.* The Board will adjust the countercyclical capital buffer amount for private sector credit exposures to reflect decisions made by foreign jurisdictions consistent with due process requirements described in paragraph (b)(2) of this section.

(c) *GSIB surcharge.* A global systemically important BHC must use its GSIB surcharge calculated in accordance with subpart H of this part for purposes of determining its maximum payout ratio under Table 1 to §217.11.

(d) *Leverage buffer*—(1) *General.* A global systemically important BHC is subject to the lower of the maximum payout amount as determined under paragraph (a)(2)(iii) of this section and the maximum leverage payout amount as determined under paragraph (a)(2)(vi) of this section.

(2) *Composition of the leverage buffer.* The leverage buffer is composed solely of tier 1 capital.

(3) *Calculation of the leverage buffer.* (i) A global systemically important BHC's leverage buffer is equal to the global systemically important BHC's supplementary leverage ratio minus 3 percent, calculated as of the last day of the previous calendar quarter based on the global systemically important

[10] The Board expects that any adjustment will be based on a determination made jointly by the Board, OCC, and FDIC.

BHC's most recent Consolidated Financial Statement for Bank Holding Companies (FR Y–9C).

(ii) Notwithstanding paragraph (c)(3)(i) of this section, if the global systemically important BHC's supplementary leverage ratio is less than or equal to 3 percent, the global systemically important BHC's leverage buffer is zero.

TABLE 2 TO § 217.11—CALCULATION OF MAXIMUM LEVERAGE PAYOUT AMOUNT

Leverage buffer	Maximum leverage payout ratio (as a percentage of eligible retained income)
Greater than 2.0 percent	No payout ratio limitation applies.
Less than or equal to 2.0 percent, and greater than 1.5 percent	60 percent.
Less than or equal to 1.5 percent, and greater than 1.0 percent	40 percent.
Less than or equal to 1.0 percent, and greater than 0.5 percent	20 percent.
Less than or equal to 0.5 percent	0 percent.

[Reg. Q, 78 FR 62157, 62285, Oct. 11, 2013, as amended at 78 FR 62286, Oct. 11, 2013; 79 FR 24540, May 1, 2014; 79 FR 78295, Dec. 30, 2014; 80 FR 49103, Aug. 14, 2015; 83 FR 705, Jan. 8, 2018; 83 FR 17477, Apr. 20, 2018; 84 FR 35259, July 22, 2019; 84 FR 59271, Nov. 1, 2019]

§ 217.12 Community bank leverage ratio framework.

(a) *Community bank leverage ratio framework.* (1) Notwithstanding any other provision in this part, a qualifying community banking organization that has made an election to use the community bank leverage ratio framework under paragraph (a)(3) of this section shall be considered to have met the minimum capital requirements under § 217.10, the capital ratio requirements for the well capitalized capital category under § 208.43(b)(1) of this chapter, and any other capital or leverage requirements to which the qualifying community banking organization is subject, if it has a leverage ratio greater than 9 percent.

(2) For purposes of this section, a qualifying community banking organization means a Board-regulated institution that is not an advanced approaches Board-regulated institution and that satisfies all of the following criteria:

(i) Has a leverage ratio of greater than 9 percent;

(ii) Has total consolidated assets of less than $10 billion, calculated in accordance with the reporting instructions to the Call Report or to Form FR Y–9C, as applicable, as of the end of the most recent calendar quarter;

(iii) Has off-balance sheet exposures of 25 percent or less of its total consolidated assets as of the end of the most recent calendar quarter, calculated as the sum of the notional amounts of the exposures listed in paragraphs (a)(2)(iii)(A) through (I) of this section, divided by total consolidated assets, each as of the end of the most recent calendar quarter:

(A) The unused portion of commitments (except for unconditionally cancellable commitments);

(B) Self-liquidating, trade-related contingent items that arise from the movement of goods;

(C) Transaction-related contingent items, including performance bonds, bid bonds, warranties, and performance standby letters of credit;

(D) Sold credit protection through guarantees and credit derivatives;

(E) Credit-enhancing representations and warranties;

(F) Securities lent and borrowed, calculated in accordance with the reporting instructions to the Call Report or to Form FR Y–9C, as applicable;

(G) Financial standby letters of credit;

(H) Forward agreements that are not derivative contracts; and

(I) Off-balance sheet securitization exposures; and

(iv) Has total trading assets and trading liabilities, calculated in accordance with the reporting instructions to the Call Report or to Form FR Y–9C, as applicable, of 5 percent or less of the Board-regulated institution's total consolidated assets, each as of the end of the most recent calendar quarter.

(3)(i) A qualifying community banking organization may elect to use the community bank leverage ratio framework if it makes an opt-in election under this paragraph (a)(3).

(ii) For purposes of this paragraph (a)(3), a qualifying community banking organization makes an election to use the community bank leverage ratio framework by completing the applicable reporting requirements of its Call Report or of its Form FR Y–9C, as applicable.

(iii)(A) A qualifying community banking organization that has elected to use the community bank leverage ratio framework may opt out of the community bank leverage ratio framework by completing the applicable risk-based and leverage ratio reporting requirements necessary to demonstrate compliance with § 217.10(a)(1) in its Call Report or its Form FR Y–9C, as applicable, or by otherwise providing the information to the Board.

(B) A qualifying community banking organization that opts out of the community bank leverage ratio framework pursuant to paragraph (a)(3)(iii)(A) of this section must comply with § 217.10(a)(1) immediately.

(b) *Calculation of the leverage ratio*. A qualifying community banking organization's leverage ratio is calculated in accordance with § 217.10(b)(4), except that a qualifying community banking organization is not required to:

(1) Make adjustments and deductions from tier 2 capital for purposes of § 217.22(c); or

(2) Calculate and deduct from tier 1 capital an amount resulting from insufficient tier 2 capital under § 217.22(f).

(c) *Treatment when ceasing to meet the qualifying community banking organization requirements*. (1) Except as provided in paragraphs (c)(5) and (6) of this section, if an Board-regulated institution ceases to meet the definition of a qualifying community banking organization, the Board-regulated institution has two reporting periods under its Call Report or Form FR Y–9C, as applicable (grace period) either to satisfy the requirements to be a qualifying community banking organization or to comply with § 217.10(a)(1) and report the required capital measures under § 217.10(a)(1) on its Call Report or its Form FR Y–9C, as applicable.

(2) The grace period begins as of the end of the calendar quarter in which the Board-regulated institution ceases to satisfy the criteria to be a qualifying community banking organization provided in paragraph (a)(2) of this section. The grace period ends on the last day of the second consecutive calendar quarter following the beginning of the grace period.

(3) During the grace period, the Board-regulated institution continues to be treated as a qualifying community banking organization for the purpose of this part and must continue calculating and reporting its leverage ratio under this section unless the Board-regulated institution has opted out of using the community bank leverage ratio framework under paragraph (a)(3) of this section.

(4) During the grace period, the qualifying community banking organization continues to be considered to have met the minimum capital requirements under § 217.10(a)(1), the capital ratio requirements for the well capitalized capital category under § 208.43(b)(1)(i)(A) through (D) of this chapter, and any other capital or leverage requirements to which the qualifying community banking organization is subject, and must continue calculating and reporting its leverage ratio under this section.

(5) Notwithstanding paragraphs (c)(1) through (4) of this section, a Board-regulated institution that no longer meets the definition of a qualifying community banking organization as a result of a merger or acquisition has no grace period and immediately ceases to be a qualifying community banking organization. Such a Board-regulated institution must comply with the minimum capital requirements under § 217.10(a)(1) and must report the required capital measures under § 217.10(a)(1) for the quarter in which it ceases to be a qualifying community banking organization.

(6) Notwithstanding paragraphs (c)(1) through (4) of this section, a Board-regulated institution that has a leverage ratio of 8 percent or less does not have a grace period and must comply with

the minimum capital requirements under § 217.10(a)(1) and must report the required capital measures under § 217.10(a)(1) for the quarter in which it reports a leverage ratio of 8 percent or less.

[Reg. Q, 84 FR 61797, Nov. 13, 2019]

§§ 217.13–217.19 [Reserved]

Subpart C—Definition of Capital

§ 217.20 Capital components and eligibility criteria for regulatory capital instruments.

(a) *Regulatory capital components.* A Board-regulated institution's regulatory capital components are:

(1) Common equity tier 1 capital;

(2) Additional tier 1 capital; and

(3) Tier 2 capital.

(b) *Common equity tier 1 capital.* Common equity tier 1 capital is the sum of the common equity tier 1 capital elements in this paragraph (b), minus regulatory adjustments and deductions in § 217.22. The common equity tier 1 capital elements are:

(1) Any common stock instruments (plus any related surplus) issued by the Board-regulated institution, net of treasury stock, and any capital instruments issued by mutual banking organizations, that meet all the following criteria:

(i) The instrument is paid-in, issued directly by the Board-regulated institution, and represents the most subordinated claim in a receivership, insolvency, liquidation, or similar proceeding of the Board-regulated institution;

(ii) The holder of the instrument is entitled to a claim on the residual assets of the Board-regulated institution that is proportional with the holder's share of the Board-regulated institution's issued capital after all senior claims have been satisfied in a receivership, insolvency, liquidation, or similar proceeding;

(iii) The instrument has no maturity date, can only be redeemed via discretionary repurchases with the prior approval of the Board to the extent otherwise required by law or regulation, and does not contain any term or feature that creates an incentive to redeem;

(iv) The Board-regulated institution did not create at issuance of the instrument through any action or communication an expectation that it will buy back, cancel, or redeem the instrument, and the instrument does not include any term or feature that might give rise to such an expectation;

(v) Any cash dividend payments on the instrument are paid out of the Board-regulated institution's net income, retained earnings, or surplus related to common stock, and are not subject to a limit imposed by the contractual terms governing the instrument. State member banks are subject to other legal restrictions on reductions in capital resulting from cash dividends, including out of the capital surplus account, under 12 U.S.C. 324 and 12 CFR 208.5.

(vi) The Board-regulated institution has full discretion at all times to refrain from paying any dividends and making any other distributions on the instrument without triggering an event of default, a requirement to make a payment-in-kind, or an imposition of any other restrictions on the Board-regulated institution;

(vii) Dividend payments and any other distributions on the instrument may be paid only after all legal and contractual obligations of the Board-regulated institution have been satisfied, including payments due on more senior claims;

(viii) The holders of the instrument bear losses as they occur equally, proportionately, and simultaneously with the holders of all other common stock instruments before any losses are borne by holders of claims on the Board-regulated institution with greater priority in a receivership, insolvency, liquidation, or similar proceeding;

(ix) The paid-in amount is classified as equity under GAAP;

(x) The Board-regulated institution, or an entity that the Board-regulated institution controls, did not purchase or directly or indirectly fund the purchase of the instrument;

(xi) The instrument is not secured, not covered by a guarantee of the