

New Capital Rules for US Banks

New Capital Rules

- Effective April 1, 2008
- 72 Fed. Reg. 69288 et seq. (12/7/07)
- Implement Basel II in the US

Basel I

- Defined Core (Tier I) and secondary (Tier II) capital
- Credit risk only
- Set minima—4% Tier I to RWA/8% total K to RWA
- Minimum K = Loan Amount x Risk Weight x 8%
- Derivatives get on balance sheet amount

Basel II

- Three pillars
- Risk mitigation techniques (e.g. netting, collateral, and guarantees) may be taken into account
- Credit separate from operational risk
- More risk buckets, driven by firm's internal ratings

Implementation in US

- Each country must take action to implement Basel II
- The April 1, 2008 rules are the result in the US
- Faithful to Basel II but there are differences (see commentary at the beginning of the rule)

Legal Analysis under the US Rules

- Netting—similar to Basel I, but not necessary to have a written opinion if there is another basis
- Collateral—need valid first priority security interest