bank with a company engaged in insurance activities, the bank should describe the type of insurance activity that the company is engaged in and has present plans to conduct. The bank must also list for each state the lines of business for which the company holds, or will hold, an insurance license, indicating the state where the company holds a resident license or charter, as applicable;

(3) Information demonstrating that the bank will comply with the investment limitations of paragraph (i) of this section; and

(4) Information demonstrating that the bank service company will perform only those services that each insured depository institution shareholder or member is authorized to perform under applicable Federal or State law and will perform such services only at locations in a State in which each such shareholder or member is authorized to perform such services unless performing services that are authorized by the Federal Reserve Board under the authority of 12 U.S.C. 1865(b).

(h) Examination and supervision. Each bank service company in which a national bank is the principal investor is subject to examination and supervision by the OCC in the same manner and to the same extent as that national bank. OCC authority under this paragraph is subject to the limitations and requirements of section 45 of the Federal Deposit Insurance Act (12 U.S.C. 1831v) and section 115 of the Gramm-Leach-Bliley Act (12 U.S.C. 1820a).

(i) Investment limitations. A bank may not invest more than ten percent of its capital and surplus in a bank service company. In addition, the bank’s total investments in all bank service companies may not exceed five percent of the bank’s total assets.

§ 5.36 Other equity investments.

(a) Authority. 12 U.S.C. 1 et seq., 24(Seventh), and 93a.

(b) Scope. National banks are permitted to make various types of equity investments pursuant to 12 U.S.C. 24(Seventh) and other statutes. These investments are in addition to those subject to §§5.34, 5.35, and 5.37. This section describes the procedure governing the filing of the application or notice that the OCC requires in connection with certain of these investments. Other permissible equity investments may be reviewed on a case-by-case basis by the OCC.

(c) Definitions. For purposes of this §5.36:

(1) Enterprise means any corporation, limited liability company, partnership, trust, or similar business entity.

(2) Well capitalized means the capital level described in 12 CFR 6.4(b)(1).

(3) Well managed has the meaning set forth in §5.34(d)(3).

(d) Procedure. (1) A national bank must provide the appropriate district office with written notice within ten days after making an equity investment in the following:

(i) An agricultural credit corporation;

(ii) A savings association eligible to be acquired under section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823); and

(iii) Any other equity investment that may be authorized by statute after February 12, 1990, if not covered by other applicable OCC regulation.

(2) The written notice required by paragraph (c)(1) of this section must include a description, and the amount, of the bank’s investment.

(3) The OCC reserves the right to require additional information as necessary.

(e) Non-controlling investments; notice procedure. Unless the procedures governing a national bank’s non-controlling investment are prescribed by OCC rules implementing a separate legal authorization of the investment and except as provided in paragraphs (f) and (g) of this section, a national bank may make a non-controlling investment, directly or through its operating subsidiary, in an enterprise that engages in the activities described in paragraph (e)(2) of this section by filing a written notice. The bank must file this written notice with the appropriate district office no later than 10 days after making the investment. The written notice must:

(1) Describe the structure of the investment and the activity or activities
conducted by the enterprise in which the bank is investing. To the extent
the notice relates to the initial affiliation of the bank with a company en-
gaged in insurance activities, the bank should describe the type of insurance
activity that the company is engaged in and has present plans to conduct.
The bank must also list for each state the lines of business for which the com-
pany holds, or will hold, an insurance license, indicating the state where the
company holds a resident license or charter, as applicable;
(2) State which paragraphs of
§5.34(e)(5)(v) describe the activity or activities, or state that, and describe
how, the activity is substantively the same as that contained in published OCC precedent approving a non-con-
trolling investment by a national bank or its operating subsidiary, state that
the activity will be conducted in ac-
cordance with the same terms and con-
ditions applicable to the activity cov-
ered by the precedent, and provide the
citation to the applicable precedent;
(3) Certify that the bank is well man-
aged and well capitalized at the time of
the investment;
(4) Describe how the bank has the
ability to prevent the enterprise from
engaging in activities that are not set
forth in §5.34(e)(5)(v) or not contained
in published OCC precedent approving a non-con-
trolling investment by a na-
tional bank or its operating subsidiary,
or how the bank otherwise has the abil-
ity to withdraw its investment;
(5) Describe how the investment is
convenient and useful to the bank in
carrying out its business and not a
mere passive investment unrelated to
the bank’s banking business;
(6) Certify that the bank’s loss expo-
sure is limited as a legal matter and
that the bank does not have unlimited
liability for the obligations of the en-
terprise; and
(7) Certify that the enterprise in
which the bank is investing agrees to
be subject to OCC supervision and ex-
amination, subject to the limitations and requirements of section 45 of the
Federal Deposit Insurance Act (12 U.S.C. 1831v) and section 115 of the

(f) Non-controlling investment; application
procedure. Unless the procedures
governing a national bank’s non-con-
trolling investment are prescribed by
OCC rules implementing a separate
legal authorization of the investment,
a national bank must file an applica-
tion and obtain prior approval before
making or acquiring, either directly or
through an operating subsidiary, a
non-controlling investment in an en-
terprise if the non-controlling invest-
ment does not qualify for the notice
procedure set forth in paragraph (e) of
this section because the bank is unable
to make the representation required by
paragraph (e)(2) or the certification re-
quired by paragraph (e)(3) of this sec-
tion. The application must include the
information required in paragraphs
(e)(1) and (e)(4) through (e)(7) of this
section and (e)(2) or (e)(3), as appro-
priate. If the bank is unable to make
the representation set forth in para-
grah (e)(2) of this section, the bank’s
application must explain why the ac-
tivity in which the enterprise engages
is a permissible activity for a national
bank and why the applicant should be
permitted to hold a non-controlling in-
vestment in an enterprise engaged in
that activity. A bank may not make a
non-controlling investment if it is un-
able to make the representations and
certifications specified in paragraphs
(e)(1) and (e)(4) through (e)(7) of this
section.

(g) Non-controlling investments in enti-
ties holding assets in satisfaction of debts
previously contracted. Certain non-con-
trolling investments may be eligible
for expedited treatment where the
bank’s investment is in an entity hold-
ing assets in satisfaction of debts pre-
viously contracted or the bank ac-
quires shares of a company in satisfac-
tion of debts previously contracted.
(1) Notice required. A national bank
that is well capitalized and well man-
aged may acquire a non-controlling
investment, directly or through its oper-
ating subsidiary, in an enterprise that
engages in the activities of holding and
managing assets acquired by the par-
ent bank through foreclosure or other-
wise in good faith to compromise a
doubtful claim, or in the ordinary
course of collecting a debt previously
contracted, by filing a written notice.
§ 5.37 Investment in bank premises.

(a) Authority. 12 U.S.C. 29, 93a, and 371d.

(b) Scope. This section sets forth the procedures governing OCC review and approval of applications by national banks to invest in bank premises or in certain bank premises related investments, loans, or indebtedness, as described in paragraph (d)(1)(i) of this section.

(c) Definition—Bank premises for purposes of this section includes the following:

(1) Premises that are owned and occupied (or to be occupied, if under construction) by the bank, its branches, or its consolidated subsidiaries;

(2) Capitalized leases and leasehold improvements, vaults, and fixed machinery and equipment;

(3) Remodeling costs to existing premises;

(4) Real estate acquired and intended, in good faith, for use in future expansion; or

(5) Parking facilities that are used by customers or employees of the bank, its branches, and its consolidated subsidiaries.

(d) Procedure—(1) Application. (i) A national bank shall submit an application to the appropriate supervisory office to invest in bank premises, or in the stock, bonds, debentures, or other such obligations of any corporation holding the premises of the bank, or to make loans to or upon the security of the stock of such corporation, if the aggregate of all such investments and loans, together with the indebtedness incurred by any such corporation that is an affiliate of the bank, as defined in 12 U.S.C. 221a, will exceed the amount of the capital stock of the bank.

(ii) The application must include:

(A) A description of the bank’s present investment in bank premises;

(B) The investment in bank premises that the bank intends to make, and the business reason for making the investment; and

(C) The amount by which the bank’s aggregate investment will exceed the amount of the bank’s capital stock.