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§ 5.1 Scope.

This part establishes rules, policies and procedures of the Office of the Comptroller of the Currency (OCC) for corporate activities and transactions involving national banks. It contains information on rules of general and specific applicability, where and how to file, and requirements and policies applicable to filings. This part also establishes the corporate filing procedures for Federal branches and agencies of foreign banks.

Subpart A—Rules of General Applicability

§ 5.2 Rules of general applicability.

(a) *General.* The rules in this subpart apply to all sections in this part unless otherwise stated.

(b) *Exceptions.* The OCC may adopt materially different procedures for a particular filing, or class of filings, in exceptional circumstances or for unusual transactions, after providing notice of the change to the applicant and to any other party that the OCC determines should receive notice.

(c) *Additional information.* The “Comptroller’s Licensing Manual” (Manual) provides additional guidance, including policies, procedures, and sample forms. The Manual is available on the OCC’s Internet Web page at <http://www.occ.treas.gov>. Printed copies are available for a fee from Publications, Communications Division, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219-0001.

(d) *Electronic filing.* The OCC may permit electronic filing for any class of filings. The Manual identifies filings that may be made electronically and describes the procedures that the OCC requires in those cases.

[61 FR 60363, Nov. 27, 1996, as amended at 68 FR 17892, Apr. 14, 2003]

§ 5.3 Definitions.

(a) *Applicant* means a person or entity that submits a notice or application to the OCC under this part.

(b) *Application* means a submission requesting OCC approval to engage in various corporate activities and transactions.

(c) *Appropriate district office* means:

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(1) The Licensing Department for all national bank subsidiaries of those holding companies assigned to the Washington, DC, licensing unit;

(2) The appropriate OCC district office for all national bank subsidiaries of certain holding companies assigned to a district office licensing unit;

(3) The OCC's district office where the national bank's supervisory office is located for all other banks; or

(4) The licensing unit in the Northeastern District Office for Federal branches and agencies of foreign banks.

(d) *Capital and surplus* means:

(1) A bank's Tier 1 and Tier 2 capital calculated under the OCC's risk-based capital standards set forth in appendix A to 12 CFR part 3 as reported in the bank's Consolidated Report of Condition and Income filed under 12 U.S.C. 161; plus

(2) The balance of a bank's allowance for loan and lease losses not included in the bank's Tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (d)(1) of this section, as reported in the bank's Consolidated Report of Condition and Income filed under 12 U.S.C. 161.

(e) *Central city* means the city or cities identified as central cities by the Director of the Office of Management and Budget.

(f) *Depository institution* means any bank or savings association.

(g) *Eligible bank* means a national bank that:

(1) Is well capitalized as defined in 12 CFR 6.4(b)(1);

(2) Has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (CAMELS);

(3) Has a Community Reinvestment Act (CRA), 12 U.S.C. 2901 *et seq.*, rating of "Outstanding" or "Satisfactory"; and

(4) Is not subject to a cease and desist order, consent order, formal written agreement, or Prompt Corrective Action directive (*see* 12 CFR part 6, subpart B) or, if subject to any such order, agreement, or directive, is informed in writing by the OCC that the bank may be treated as an "eligible bank" for purposes of this part.

(h) *Eligible depository institution* means a state bank or a Federal or state savings association that meets

the criteria for an "eligible bank" under § 5.3(g) and is FDIC-insured.

(i) *Filing* means an application or notice submitted to the OCC under this part.

(j) *Notice* means a submission notifying the OCC that a national bank intends to engage in or has commenced certain corporate activities or transactions.

(k) *Short-distance relocation* means moving the premises of a branch or main office within a:

(1) One thousand foot-radius of the site if the branch is located within a central city of an MSA;

(2) One-mile radius of the site if the branch is not located within a central city, but is located within an MSA; or

(3) Two-mile radius of the site if the branch is not located within an MSA.

[61 FR 60363, Nov. 27, 1996, as amended at 64 FR 60098, Nov. 4, 1999; 68 FR 70698, Dec. 19, 2003; 73 FR 22236, Apr. 24, 2008]

§ 5.4 Filing required.

(a) *Filing*. A depository institution shall file an application or notice with the OCC to engage in corporate activities and transactions as described in this part.

(b) *Availability of forms*. Individual sample forms and instructions for filings are available in the Manual and from each district office.

(c) *Other applications accepted*. At the request of the applicant, the OCC may accept an application form or other filing submitted to another Federal agency that covers the proposed action or transaction and contains substantially the same information as required by the OCC. The OCC may also require the applicant to submit supplemental information.

(d) *Where to file*. An applicant should address a filing or other submission under this part to the attention of the Director for District Licensing at the appropriate district office. However, the OCC may advise an applicant through a pre-filing communication to send the filing or submission directly to the Licensing Department or elsewhere as otherwise directed by the OCC. Relevant addresses are listed in the Manual.

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(e) *Incorporation of other material.* An applicant may incorporate any material contained in any other application or filing filed with the OCC or other Federal agency by reference, provided that the material is attached to the application and is current and responsive to the information requested by the OCC. The filing must clearly indicate that the information is so incorporated and include a cross-reference to the information incorporated.

[61 FR 60363, Nov. 27, 1996, as amended at 73 FR 22236, Apr. 24, 2008]

§5.5 Fees.

An applicant shall submit the appropriate filing fee, if any, in connection with its filing. An applicant shall pay the fee by check payable to the Comptroller of the Currency or by other means acceptable to the OCC. The OCC publishes a fee schedule annually in the "Notice of Comptroller of the Currency fees," described in 12 CFR 8.8. The OCC generally does not refund the filing fees.

§5.6 [Reserved]

§5.7 Investigations.

(a) *Authority.* The OCC may examine or investigate and evaluate facts related to a filing to the extent necessary to reach an informed decision.

(b) *Fees.* The OCC may assess fees for investigations or examinations conducted under paragraph (a) of this section. The OCC publishes the rates, described in 12 CFR 8.6, annually in the "Notice of Comptroller of the Currency fees."

§5.8 Public notice.

(a) *General.* An applicant shall publish a public notice of its filing in a newspaper of general circulation in the community in which the applicant proposes to engage in business, on the date of filing, or as soon as practicable before or after the date of filing.

(b) *Contents of the public notice.* The public notice shall state that a filing is being made, the date of the filing, the name of the applicant, the subject matter of the filing, that the public may submit comments to the OCC, the address of the appropriate office(s) where comments should be sent, the closing

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date of the public comment period, and any other information that the OCC requires.

(c) *Confirmation of public notice.* The applicant shall mail or otherwise deliver a statement containing the date of publication, the name and address of the newspaper that published the public notice, a copy of the public notice, and any other information that the OCC requires, to the appropriate district office promptly following publication.

(d) *Multiple transactions.* The OCC may consider more than one transaction, or a series of transactions, to be a single filing for purposes of the publication requirements of this section. When filing a single public notice for multiple transactions, the applicant shall explain in the notice how the transactions are related.

(e) *Joint public notices accepted.* Upon the request of an applicant for a transaction subject to the OCC's public notice requirements and public notice required by another Federal agency, the OCC may accept publication of a single joint notice containing the information required by both the OCC and the other Federal agency, provided that the notice states that comments must be submitted to both the OCC and, if applicable, the other Federal agency.

(f) *Public notice by the OCC.* In addition to the foregoing, the OCC may require or give public notice and request comment on any filing and in any manner the OCC determines appropriate for the particular filing.

§5.9 Public availability.

(a) *General.* The OCC provides a copy of the public file to any person who requests it. A requestor should submit a request for the public file concerning a pending application to the appropriate district office. A requestor should submit a request for the public file concerning a decided or closed application to the Disclosure Officer, Communications Division, at the address listed in the Manual. Requests should be in writing. The OCC may impose a fee in accordance with 12 CFR 4.17 and with the rates the OCC publishes annually in the "Notice of Comptroller of the Currency Fees" described in 12 CFR 8.8.

(b) *Public file.* A public file consists of the portions of the filing, supporting data, supplementary information, and information submitted by interested persons, to the extent that those documents have not been afforded confidential treatment. Applicants and other interested persons may request that confidential treatment be afforded information submitted to the OCC pursuant to paragraph (c) of this section.

(c) *Confidential treatment.* The applicant or an interested person submitting information may request that specific information be treated as confidential under the Freedom of Information Act, 5 U.S.C. 552 (see 12 CFR 4.12(b)). A submitter should draft its request for confidential treatment narrowly to extend only to those portions of a document it considers to be confidential. If a submitter requests confidential treatment for information that the OCC does not consider to be confidential, the OCC may include that information in the public file after providing notice to the submitter. Moreover, at its own initiative, the OCC may determine that certain information should be treated as confidential and withhold that information from the public file. A person requesting information withheld from the public file should submit the request to the Disclosure Officer, Communications Division, under the procedures described in 12 CFR part 4, subpart B. That request may be subject to the predisclosure notice procedures of 12 CFR 4.16.

§ 5.10 Comments.

(a) *Submission of comments.* During the comment period, any person may submit written comments on a filing to the appropriate district office.

(b) *Comment period—(1) General.* Unless otherwise stated, the comment period is 30 days after publication of the public notice required by § 5.8(a).

(2) *Extension.* The OCC may extend the comment period if:

(i) The applicant fails to file all required publicly available information on a timely basis to permit review by interested persons or makes a request for confidential treatment not granted by the OCC that delays the public availability of that information;

(ii) Any person requesting an extension of time satisfactorily demonstrates to the OCC that additional time is necessary to develop factual information that the OCC determines is necessary to consider the application; or

(iii) The OCC determines that other extenuating circumstances exist.

(3) *Applicant response.* The OCC may give the applicant an opportunity to respond to comments received.

§ 5.11 Hearings and other meetings.

(a) *Hearing requests.* Prior to the end of the comment period, any person may submit to the appropriate district office a written request for a hearing on a filing. The request must describe the nature of the issues or facts to be presented and the reasons why written submissions would be insufficient to make an adequate presentation of those issues or facts to the OCC. A person requesting a hearing shall simultaneously submit a copy of the request to the applicant.

(b) *Action on a hearing request.* The OCC may grant or deny a request for a hearing and may limit the issues to those it deems relevant or material. The OCC generally grants a hearing request only if the OCC determines that written submissions would be insufficient or that a hearing would otherwise benefit the decisionmaking process. The OCC also may order a hearing if it concludes that a hearing would be in the public interest.

(c) *Denial of a hearing request.* If the OCC denies a hearing request, it shall notify the person requesting the hearing of the reason for the denial.

(d) *OCC procedures prior to the hearing—(1) Notice of Hearing.* The OCC issues a Notice of Hearing if it grants a request for a hearing or orders a hearing because it is in the public interest. The OCC sends a copy of the Notice of Hearing to the applicant, to the person requesting the hearing, and anyone else requesting a copy. The Notice of Hearing states the subject and date of the filing, the time and place of the hearing, and the issues to be addressed.

(2) *Presiding officer.* The OCC appoints a presiding officer to conduct the hearing. The presiding officer is responsible

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for all procedural questions not governed by this section.

(e) *Participation in the hearing.* Any person who wishes to appear (participant) shall notify the appropriate district office of his or her intent to participate in the hearing within ten days from the date the OCC issues the Notice of Hearing. At least five days before the hearing, each participant shall submit to the appropriate district office, the applicant, and any other person the OCC requires, the names of witnesses, and one copy of each exhibit the participant intends to present.

(f) *Transcripts.* The OCC arranges for a hearing transcript. The person requesting the hearing generally bears the cost of one copy of the transcript for his or her use.

(g) *Conduct of the hearing—(1) Presentations.* Subject to the rulings of the presiding officer, the applicant and participants may make opening statements and present witnesses, material, and data.

(2) *Information submitted.* A person presenting documentary material shall furnish one copy to the OCC, and one copy to the applicant and each participant.

(3) *Laws not applicable to hearings.* The Administrative Procedure Act (5 U.S.C. 551 *et seq.*), the Federal Rules of Evidence (28 U.S.C. appendix), the Federal Rules of Civil Procedure (28 U.S.C. Rule 1 *et seq.*), and the OCC's Rules of Practice and Procedure (12 CFR part 19) do not apply to hearings under this section.

(h) *Closing the hearing record.* At the applicant's or participant's request, the OCC may keep the hearing record open for up to 14 days following the OCC's receipt of the transcript. The OCC resumes processing the filing after the record closes.

(i) *Other meetings—(1) Public meetings.* The OCC may arrange for a public meeting in connection with an application, either upon receipt of a written request for such a meeting which is made during the comment period, or upon the OCC's own initiative. Public meetings will be arranged and presided over by a presiding officer.

(2) *Private meetings.* The OCC may arrange a meeting with an applicant or other interested parties to an applica-

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tion, or with an applicant and other interested parties to an application, to clarify and narrow the issues and to facilitate the resolution of the issues.

[61 FR 60363, Nov. 27, 1996, as amended at 64 FR 60098, Nov. 4, 1999]

§ 5.12 Computation of time.

In computing the period of days, the OCC includes the day of the act (*e.g.*, the date an application is received by the OCC) from which the period begins to run and the last day of the period, regardless of whether it is a Saturday, Sunday, or legal holiday.

§ 5.13 Decisions.

(a) *General.* The OCC may approve, conditionally approve, or deny a filing after appropriate review and consideration of the record. In deciding an application under this part, the OCC may consider the activities, resources, or condition of an affiliate of the applicant that may reasonably reflect on or affect the applicant.

(1) *Conditional approval.* The OCC may impose conditions on any approval, including to address a significant supervisory, CRA (if applicable), or compliance concern, if the OCC determines that the conditions are necessary or appropriate to ensure that approval is consistent with relevant statutory and regulatory standards and OCC policies thereunder and safe and sound banking practices.

(2) *Expedited review.* The OCC grants eligible banks expedited review within a specified time after filing or commencement of the public comment period, including any extension of the comment period granted pursuant to § 5.10, as described in applicable sections of this part.

(i) The OCC may extend the expedited review process for a filing subject to the CRA up to an additional 10 days if a comment contains specific assertions concerning a bank's CRA performance that, if true, would indicate a reasonable possibility that:

(A) A bank's CRA rating would be less than satisfactory, institution-wide, or, where applicable, in a state or multistate MSA; or

(B) A bank's CRA performance would be less than satisfactory in an MSA, or in the non-MSA portion of a state, in

which it seeks to expand through approval of an application for a deposit facility as defined in 12 U.S.C. 2902(3).

(ii) The OCC will remove a filing from expedited review procedures, if the OCC concludes that the filing, or an adverse comment regarding the filing, presents a significant supervisory, CRA (if applicable), or compliance concern, or raises a significant legal or policy issue, requiring additional OCC review. The OCC will provide the applicant with a written explanation if it decides not to process an application from an eligible bank under expedited review pursuant to this paragraph (a)(2)(ii). For purposes of this section, a significant CRA concern exists if the OCC concludes that:

(A) A bank's CRA rating is less than satisfactory, institution-wide, or, where applicable, in a state or multistate MSA; or

(B) A bank's CRA performance is less than satisfactory in an MSA, or in the non-MSA portion of a state, in which it seeks to expand through approval of an application for a deposit facility as defined in 12 U.S.C. 2902(3).

(iii) Adverse comments that the OCC determines do not raise a significant supervisory, CRA (if applicable), or compliance concern, or a significant legal or policy issue, or are frivolous, filed primarily as a means of delaying action on the filing, or that raise a CRA concern that the OCC determines has been satisfactorily resolved, do not affect the OCC's decision under paragraphs (a)(2)(i) or (a)(2)(ii) of this section. The OCC considers a CRA concern to have been satisfactorily resolved if the OCC previously reviewed (*e.g.*, in an examination or an application) a concern presenting substantially the same issue in substantially the same assessment area during substantially the same time, and the OCC determines that the concern would not warrant denial or imposition of a condition on approval of the application.

(iv) If a bank files an application for any activity or transaction that is dependent upon the approval of another application under this part, or if requests for approval for more than one activity or transaction are combined in a single application under applicable sections of this part, none of the sub-

ject applications may be deemed approved upon expiration of the applicable time periods, unless all of the applications are subject to expedited review procedures and the longest of the time periods expires without the OCC issuing a decision or notifying the bank that the filings are not eligible for expedited review under the standards in paragraph (a)(2)(ii) of this section.

(b) *Denial.* The OCC may deny a filing if:

(1) A significant supervisory, CRA (if applicable), or compliance concern exists with respect to the applicant;

(2) Approval of the filing is inconsistent with applicable law, regulation, or OCC policy thereunder; or

(3) The applicant fails to provide information requested by the OCC that is necessary for the OCC to make an informed decision.

(c) *Required information and abandonment of filing.* A filing must contain information required by the applicable section set forth in this part. To the extent necessary to evaluate an application, the OCC may require an applicant to provide additional information. The OCC may deem a filing abandoned if information required or requested by the OCC in connection with the filing is not furnished within the time period specified by the OCC. The OCC may return an application without a decision if it finds the filing to be materially deficient. A filing is materially deficient if it lacks sufficient information for the OCC to make a determination under the applicable statutory or regulatory criteria.

(d) *Notification of final disposition.* The OCC notifies the applicant, and any person who makes a written request, of the final disposition of a filing, including confirmation of an expedited review under this part. If the OCC denies a filing, the OCC notifies the applicant in writing of the reasons for the denial.

(e) *Publication of decision.* The OCC will issue a public decision when a decision represents a new or changed policy or presents issues of general interest to the public or the banking industry. In rendering its decisions, the OCC may elect not to disclose information that the OCC deems to be private or confidential.

(f) *Appeal.* An applicant may file an appeal of an OCC decision with the Deputy Comptroller for Licensing or with the Ombudsman. Relevant addresses and telephone numbers are located in the Manual. In the event the Deputy Comptroller for Licensing was the deciding official of the matter appealed, or was involved personally and substantially in the matter, the appeal may be referred instead to the Chief Counsel.

(g) *Extension of time.* When the OCC approves or conditionally approves a filing, the OCC generally gives the applicant a specified period of time to commence that new or expanded activity. The OCC does not generally grant an extension of the time specified to commence a new or expanded corporate activity approved under this part, unless the OCC determines that the delay is beyond the applicant's control.

(h) *Nullifying a decision*—(1) *Material misrepresentation or omission.* An applicant shall certify that any filing or supporting material submitted to the OCC contains no material misrepresentations or omissions. The OCC may review and verify any information filed in connection with a notice or an application. If the OCC discovers a material misrepresentation or omission after the OCC has rendered a decision on the filing, the OCC may nullify its decision. Any person responsible for any material misrepresentation or omission in a filing or supporting materials may be subject to enforcement action and other penalties, including criminal penalties provided in 18 U.S.C. 1001.

(2) *Other nullifications.* The OCC may nullify any decision on a filing that is:

- (i) Contrary to law, regulation, or OCC policy thereunder; or
- (ii) Granted due to clerical or administrative error, or a material mistake of law or fact.

[61 FR 60363, Nov. 27, 1996, as amended at 73 FR 22236, Apr. 24, 2008]

Subpart B—Initial Activities

§ 5.20 Organizing a bank.

(a) *Authority.* 12 U.S.C. 21, 22, 24(Seventh), 26, 27, 92a, 93a, 1814(b), 1816, and 2903.

(b) *Licensing requirements.* Any person desiring to establish a national bank

shall submit an application and obtain prior OCC approval.

(c) *Scope.* This section describes the procedures and requirements governing OCC review and approval of an application to establish a national bank, including a national bank with a special purpose. Information regarding an application to establish an interim national bank solely to facilitate a business combination is set forth in §5.33.

(d) *Definitions.* For purposes of this section:

(1) *Bankers' bank* means a bank owned exclusively (except to the extent directors' qualifying shares are required by law) by other depository institutions or depository institution holding companies (as that term is defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813), the activities of which are limited by its articles of association exclusively to providing services to or for other depository institutions, their holding companies, and the officers, directors, and employees of such institutions and companies, and to providing correspondent banking services at the request of other depository institutions or their holding companies.

(2) *Control* means control as used in section 2 of the Bank Holding Company Act, 12 U.S.C. 1841(a)(2).

(3) *Final approval* means the OCC action issuing a charter certificate and authorizing a national bank to open for business.

(4) *Holding company* means any company that controls or proposes to control a national bank whether or not the company is a bank holding company under section 2 of the Bank Holding Company Act, 12 U.S.C. 1841(a)(1).

(5) *Lead depository institution* means the largest depository institution controlled by a bank holding company based on a comparison of the average total assets controlled by each depository institution as reported in its Consolidated Report of Condition and Income required to be filed for the immediately preceding four calendar quarters.

(6) *Organizing group* means five or more persons acting on their own behalf, or serving as representatives of a sponsoring holding company, who