

§ 5.45

(ii) If neither the director nor national bank appeals pursuant to paragraph (e) of this section, upon the expiration of the period to appeal.

(e) *Appeal.* (1) A director or national bank, or both, may seek review by appealing the OCC's decision to revoke a residency or citizenship waiver to the Comptroller, or an authorized delegate, within 15 days of the receipt of the OCC's written decision to revoke. The director or national bank, or both, may appeal on the grounds that the reasons for revocation are contrary to fact or arbitrary and capricious. The appellant must submit all documents and written arguments that the appellant wishes to be considered in support of the appeal.

(2) The Comptroller, or an authorized delegate, may designate an appellate official who was not previously involved in the decision leading to the appeal at issue. The Comptroller, an authorized delegate, or the appellate official considers all information submitted with the original application for the residency or citizenship waiver, the material before the OCC official who made the initial decision, and any information submitted by the appellant at the time of appeal.

(3) The Comptroller, an authorized delegate, or the appellate official will independently determine whether the reasons given for the initial decision to revoke are contrary to fact or arbitrary and capricious. If they determine either to be the case, the Comptroller, an authorized delegate, or the appellate official may reverse the initial decision to revoke the waiver.

(4) Upon completion of the review, the Comptroller, an authorized delegate, or the appellate official will notify the appellant in writing of the decision. If the initial decision is upheld, the decision to revoke the waiver is effective pursuant to paragraph (d)(2)(i) of this section.

(f) *Prior waivers.* Any waiver granted by the OCC before January 11, 2021 remains in effect unless revoked pursuant to paragraph (d) of this section or, for a waiver granted to an individual, until the individual no longer serves on the board.

[85 FR 80462, Dec. 11, 2020]

12 CFR Ch. I (1-1-23 Edition)

§ 5.45 Increases in permanent capital of a Federal stock savings association.

(a) *Authority.* 12 U.S.C. 1462a, 1463, 1464, 1467a, 1831o and 5412(b)(2)(B).

(b) *Licensing requirements.* Generally a Federal stock savings association is not required to apply for an increase in capital unless the method of increase itself requires a filing (such as issuance of a new class of stock). However, in certain circumstances, a Federal stock savings association is required to submit an application and obtain OCC approval.

(c) *Scope.* This section describes procedures and standards relating to a transaction resulting in an increase in a Federal stock savings association's permanent capital.

(d) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to increases in a Federal stock savings association's permanent capital.

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

(1) *Capital plan* means a plan describing the manner and schedule by which a Federal stock savings association will attain specified capital levels or ratios and a capital restoration plan filed with the OCC under 12 U.S.C. 1831o and 12 CFR 6.5.

(2) *Capital stock* means the total amount of common stock and preferred stock.

(3) *Capital surplus* means the total of:

(i) The amount paid in on capital stock in excess of the par or stated value;

(ii) Direct capital contributions representing the amounts paid in to the Federal stock savings association other than for capital stock;

(iii) The amount transferred from retained net income; and

(iv) The amount transferred from retained net income reflecting stock dividends.

(4) *Permanent capital* means the sum of capital stock and capital surplus.

(5) *Retained net income* means the net income of a specified period less the amount of all dividends and other capital distributions declared in that period.

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(f) *Policy.* In determining whether to approve a proposed increase in a Federal stock savings association's permanent capital, the OCC considers whether the change is:

- (1) Consistent with law, regulation, and OCC policy thereunder;
- (2) Provides an adequate capital structure; and
- (3) If appropriate, complies with the Federal stock savings association's capital plan.

(g) *Procedures*—(1) *When prior approval is required.* A Federal stock savings association must submit an application to the appropriate OCC licensing office and obtain prior OCC approval to increase its permanent capital if the Federal stock savings association is:

- (i) Required to receive OCC approval pursuant to letter, order, directive, written agreement or otherwise;
- (ii) Selling common or preferred stock for consideration other than cash; or
- (iii) Receiving a material noncash contribution to capital surplus.

(2) *Content of application.* The application must:

- (i) Describe the type and amount of the proposed change in permanent capital and explain the reason for the change;
- (ii) In the case of a material noncash contribution to capital, provide a description of the method of valuing the contribution; and
- (iii) State if the Federal stock savings association is subject to a capital plan with the OCC and how the proposed change would conform to a capital plan or if a capital plan is otherwise required in connection with the proposed change in permanent capital.

(3) *Expedited review.* An eligible savings association's application is deemed approved by the OCC 15 days after the date the OCC receives the application, unless the OCC notifies the savings association prior to that date that the application is not eligible for expedited review, or the expedited review process is extended, under §5.13(a)(2).

(4) *Notice of increase.* (i) If prior approval is required pursuant to this paragraph (g), after a Federal stock savings association completes an increase in capital it must submit a no-

tice to the appropriate OCC licensing office. The notice must contain:

(A) The amount, including the par value of the stock, and effective date of the increase;

(B) A certification that the funds have been paid in, if applicable; and

(C) A statement that the Federal stock savings association has complied with all laws, regulations and conditions imposed by the OCC.

(5) *Expiration of approval.* Approval expires if a Federal stock savings association has not completed its change in permanent capital within one year of the date of approval.

(h) *Offers and sales of stock.* A Federal stock savings association must comply with the Securities Offering Disclosure Rules in 12 CFR part 16 for offers and sales of common and preferred stock.

(i) *Shareholder approval.* A Federal stock savings association must obtain the necessary shareholder approval required by statute for any change in its permanent capital.

[80 FR 28453, May 18, 2015, as amended at 82 FR 8104, Jan. 23, 2017; 85 FR 80463, Dec. 11, 2020]

§5.46 Changes in permanent capital of a national bank.

(a) *Authority.* 12 U.S.C. 21a, 51a, 51b, 51b-1, 52, 56, 57, 59, 60, and 93a.

(b) *Licensing requirements.* A national bank must submit an application and obtain OCC approval to decrease its permanent capital. Generally, a national bank need only submit a notice to increase its permanent capital, although, in certain circumstances, a national bank may be required to submit an application and obtain OCC approval.

(c) *Scope.* This section describes procedures and standards relating to a transaction resulting in a change in a national bank's permanent capital.

(d) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to changes in a national bank's permanent capital.

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

(1) *Capital plan* means a plan describing the manner and schedule by which a national bank will attain specified capital levels or ratios and a capital