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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

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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 national bank other than for capital stock;

(iii) The amount transferred from undivided profits; and

(iv) The amount transferred from undivided profits reflecting stock dividends.

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

(f) *Policy.* In determining whether to approve a proposed change to a national bank'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 bank's capital plan.

(g) *Increases in permanent capital—(1) Approval—(i) Prior approval not required.* If a national bank is not required to file an application and obtain prior approval under paragraph (g)(1)(ii) of this section, the bank need not submit an application. It must submit the notice of capital increase under paragraph (i)(3) of this section. The increase in capital is deemed approved by the OCC as of the date the increase was made, once the bank has filed the notice of capital increase and the OCC certifies the increase, as provided in paragraph (i)(3).

(ii) *Prior approval required.* In addition to a notice of capital increase under paragraph (i)(3) of this section, a national bank must submit an application under paragraph (i)(1) or (i)(2) of this section and obtain prior OCC approval to increase its permanent capital if the bank is:

(A) Required to receive OCC approval pursuant to letter, order, directive, written agreement, or otherwise;

(B) Selling common or preferred stock for consideration other than cash; or

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(C) Receiving a material noncash contribution to capital surplus.

(2) *Preferred stock.* Notwithstanding paragraph (g)(1)(i) of this section, in the case of a sale of preferred stock, the national bank must also submit provisions in the articles of association concerning preferred stock dividends, voting and conversion rights, retirement of the stock, and rights to exercise control over management to the appropriate OCC licensing office prior to the sale of the preferred stock. The provisions will be deemed approved by the OCC within 15 days of its receipt, unless the OCC notifies the filer otherwise, including a statement of the reason for the delay.

(h) *Decreases in permanent capital.* A national bank must submit an application and obtain prior approval under paragraph (i)(1) or (i)(2) of this section for any reduction of its permanent capital. A national bank may request approval for a reduction in capital for multiple quarters. The request need only specify a total dollar amount for the requested period and need not specify amounts for each quarter.

(i) *Procedures—(1) Prior approval.* A national bank proposing to make a change in its permanent capital that requires prior OCC approval under paragraphs (g) or (h) of this section must submit an application to the appropriate OCC licensing office. 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 reduction in capital, provide a schedule detailing the present and proposed capital structure;

(iii) In the case of a material noncash contribution to capital, provide a description of the method of valuing the contribution; and

(iv) State if the bank 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.

(2) *Expedited review.* An eligible bank's application is deemed approved by the OCC 15 days after the date the OCC receives the application described

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in paragraph (i)(1) of this section, unless the OCC notifies the bank prior to that date that the application has been removed from expedited review, or the expedited review process is extended, under §5.13(a)(2). An eligible bank seeking to decrease its capital may request OCC approval for up to four consecutive quarters. The request need only specify a total dollar amount for the four-quarter period and need not specify amounts for each quarter. An eligible bank may decrease its capital pursuant to such a plan only if the bank maintains its eligible bank status before and after each decrease in its capital.

(3) *Notice of increase.* (i) After a bank completes an increase in capital it must submit a notice to the appropriate OCC licensing office. The notice must be acknowledged before a notary public by the bank's president, vice president, or cashier and contain:

(A) A description of the transaction, unless already provided pursuant to paragraph (i)(1) of this section;

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

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

(D) A certified copy of the amendment to the articles of association, if required; and

(E) A statement that the bank has complied with all laws, regulations and conditions imposed by the OCC.

(ii) After it receives the notice of capital increase, the OCC issues a certification specifying the amount of the increase and the effective date (*i.e.*, the date on which the increase occurred). In the case of a capital increase for which prior approval was not required pursuant to paragraph (g)(1)(i), the increase is deemed certified by the OCC seven days after receipt of the notice if the OCC has not issued a certification prior to that date.

(4) *Notice of decrease.* A national bank that decreases its capital in accordance with paragraphs (i)(1) or (i)(2) of this section must notify the appropriate OCC licensing office following the completion of the transaction.

(5) *Expiration of approval.* Approval expires if a national bank has not completed its change in permanent capital

within one year of the date of approval, unless the OCC specifies a longer period.

(6) *Exception for accounting adjustments.* (i) Changes to the permanent capital accounts that result solely from application of GAAP are not subject to the prior approval or notice requirements in paragraph (i)(1), (3), or (4) of this section, as applicable.

(ii) Within 30 days after the end of the quarter in which the adjustment occurred, a bank must notify the OCC if the accounting adjustment resulted in an increase or decrease to permanent capital in an amount greater than 5% of the bank's total permanent capital prior to the adjustments; or, if the bank is subject to a letter, order, directive, written agreement, or otherwise related to changes in permanent capital. The notification must include the amount and description of the adjustment, including the applicable provision of GAAP.

(j) *Offers and sales of stock.* A national bank must comply with the Securities Offering Disclosure Rules in 12 CFR part 16 for offers and sales of common and preferred stock.

(k) *Shareholder approval.* A national bank must obtain the necessary shareholder approval required by statute for any change in its permanent capital.

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§5.47 Subordinated debt issued by a national bank.

(a) *Authority.* 12 U.S.C. 93a, 1831o, and 3907.

(b) *Scope.* This section sets forth the requirements applicable to all subordinated debt issued by national banks and the procedures for OCC review and approval of a national bank's application to issue or prepay subordinated debt and a notice to include subordinated debt in tier 2 capital.

(c) *Definitions.* The following definitions apply to this section:

Capital plan means a plan describing the means and schedule by which a national bank will attain specified capital levels or ratios, including a capital restoration plan filed with the OCC under 12 U.S.C. 1831o and 12 CFR 6.5.