DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 5, 7, 8, 9, 10, 11, 12, 16, 18, 31, 150, 151, 155, 162, 163, 193, 194, 197

[Docket ID OCC–2016–0002]

RIN 1557–AD95F

Economic Growth and Regulatory Paperwork Reduction Act of 1996 Amendments

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: As part of its review under the Economic Growth and Regulatory Paperwork Reduction Act of 1996, the Office of the Comptroller of the Currency (OCC) is revising certain of its rules to remove outdated or otherwise unnecessary provisions. Specifically, the OCC is: revising certain licensing rules related to chartering applications, business combinations involving Federal mutual savings associations, and notices for changes in permanent capital; clarifying national bank director oath requirements; revising certain fiduciary activity requirements for national banks and Federal savings associations; removing certain financial disclosure regulations for national banks; removing certain unnecessary regulatory reporting, accounting, and management policy regulations for Federal savings associations; updating the electronic activities regulation for Federal savings associations; integrating and updating OCC regulations for national banks and Federal savings associations relating to municipal securities dealers, Securities Exchange Act disclosure rules, and securities offering disclosure rules; updating and revising recordkeeping and confirmation requirements for national banks' and Federal savings associations' securities transactions; integrating and updating regulations relating to insider and affiliate transactions; and making other technical and clarifying changes.

DATES: This final rule is effective on April 1, 2017.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Heidi Thomas, Special Counsel; or Rima Kundnani, Attorney, Legislative and Regulatory Activities Division, 202–649–5490, for persons who are deaf or hard of hearing, TTY, 202–649–5597, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background

Section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) [1] requires that, at least once every 10 years, the Federal Financial Institutions Examination Council (FFIEC) and each appropriate Federal banking agency (Agency or, collectively, Agencies) represented on the FFIEC (the OCC, Federal Deposit Insurance Corporation (FDIC), and the Board of Governors of the Federal Reserve System (Federal Reserve Board)) conduct a review of the regulations prescribed by the FFIEC or Agency. The purpose of this review is to identify outdated or otherwise unnecessary regulatory requirements imposed on insured depository institutions.

EGRPRA requires the Agencies to provide public notice and seek comment on one or more categories of regulations at regular intervals so that all Agency regulations are published for comment within a 10-year cycle. EGRPRA also directs the Agencies to categorize their regulations by type, publish the categories, and invite the public to identify areas of regulations that are ''outdated, unnecessary, or unduly burdensome.'' [2] Once the Agencies have published the categories of regulations for comment, EGRPRA requires the Agencies to publish a comment summary and discuss the significant issues raised by the commenters. The statute also directs the Agencies to ''eliminate unnecessary regulations to the extent that such action is appropriate.'' [3] Finally, EGRPRA requires the FFIEC to submit a report to Congress summarizing significant issues and their relative merits. The report also must analyze whether the Agencies can address these issues through regulatory change or whether legislative action is required.

The Agencies completed the first EGRPRA review in 2006. The Agencies expect to complete the current EGRPRA review process by the end of 2016.

As with the first EGRPRA review, the Agencies have elected to conduct this current review jointly. The Agencies have divided their regulations into 12 categories and published four **Federal Register** notices,[4] each requesting public comment on three of these categories. Additionally, the Agencies held a series of six outreach meetings to provide an opportunity for bankers, consumer and community groups, and other interested parties to present their views on the Agencies' regulations directly to Agency principals, senior Agency management, and Agency staff.[5]

The OCC believes it is unnecessary to wait until the end of the EGRPRA process before acting to reduce regulatory burden where possible.[6] To this end, the OCC published a Notice of Proposed Rulemaking (proposed rule or proposal) on March 14, 2016 [7] that included amendments in response to some of the comments the OCC received on its rules to date.[8] The proposed rule also included amendments to OCC rules derived from the OCC's most recent internal review of its rules to identify outdated or unnecessary provisions beyond those suggested by EGRPRA commenters. Furthermore, the proposed rule included amendments that would integrate a number of national bank and Federal savings association rules. These proposed amendments remove unnecessary or outdated provisions and streamline and simplify OCC rules, thereby reducing regulatory burden on

[1] Pub. L 104–208 (1996), codified at 12 U.S.C. 3311(b).

[2] *Id.* at 3311(a).

[3] *Id.* at 3311(d)(2).

[4] *See* 79 FR 32172 (June 4, 2014); 80 FR 7980 (Feb. 13, 2015); 80 FR 32046 (June 5, 2015), and 80 FR 79724 (Dec. 23, 2015). More information on the current EGRPRA process, including the **Federal Register** notices, outreach meetings, and public comments received, is available at *http://egrpra.ffiec.gov/index.html.*

[5] These public outreach meetings took place in Los Angeles, California on December 2, 2014; Dallas, Texas on February 4, 2015; Boston, Massachusetts on May 4, 2015; Kansas City, Missouri on August 4, 2015 (which focused on rural banking issues), Chicago, Illinois on October 19, 2015; and Washington, DC on December 2, 2015.

[6] We note that the OCC already has finalized or proposed a number of changes to our rules, in addition to this EGRPRA rulemaking. Last year, we incorporated a number of changes suggested by EGRPRA commenters into a final rule that integrates the OCC's national bank and Federal savings association licensing rules. (80 FR 28346 (May 18, 2015)). In addition, pursuant to the Fixing America's Surface Transportation (FAST) Act, the Agencies issued an interim final rule that provides for an 18-month examination cycle for qualifying 1- and 2-rated institutions with assets of between $500 million and $1 billion. This rule provides an 18-month examination cycle for 1-rated banks up to 1 billion in assets, and gives the Agencies the authority to provide an 18-month examination cycle for 2-rated banks with up to $1 billion in assets. (81 FR 10063 (Feb. 29, 2016)). Furthermore, the Agencies, acting through the FFIEC, have sought comment on proposals to eliminate or revise several items on the Consolidated Reports of Condition (Call Report). (*See* 80 FR 56539 (Sept. 18, 2015)). The Agencies also published a proposal for a streamlined call report for small institutions under $1 billion (*See* 81 FR 54190 (Aug. 15, 2016)). These Call Report initiatives are consistent with the feedback the OCC, FDIC, and Federal Reserve Board have received in this EGRPRA review.

[7] 81 FR 13607.

[8] The OCC is continuing to review EGRPRA comments on OCC rules to determine whether additional amendments are appropriate.

national banks and Federal savings associations.[9]

II. Summary of Public Comments

The OCC received four comment letters in response to this proposed rule. One trade association stated that it had no objection to the proposed rule.[10] A financial institution also stated that it had no objection to the various items in the proposal, but noted that the proposal does not reduce regulatory burden on the day-to-day servicing and offering of products to bank customers and consumers, noting as an example the paperwork burden associated with mortgage loans. It specifically requested that the OCC consider proposing additional reforms to simplify the process for consumers.

Another trade association, while noting that the proposed rule is an early effort by the OCC to remove regulatory burden through the EGRPRA review, applauded the OCC's effort through this rulemaking to remove certain outdated and otherwise unnecessarily burdensome provisions. This commenter also provided specific substantive comments on the proposed amendments relating to fiduciary activities (12 CFR parts 9 and 150), recordkeeping and confirmation requirements for securities transactions (12 CFR parts 12 and 151), and the sale of securities at a Federal savings association office (12 CFR 163.76). These comments are discussed in detail, below.[11]

As a general response to these commenters, the OCC notes that it will continue to review our rules under the EGRPRA process to determine whether further reductions in burden are warranted. We will propose additional amendments to our rules where appropriate.

II. Description of the Final Rule

The OCC is adopting the amendments as proposed with the removal of the technical amendments to 12 CFR part 4 and one clarifying change to 12 CFR 9.13 (custody of fiduciary assets). A section-by-section discussion of the proposed rule, the public comments received, and the resulting final rule are set forth below.

Organization and Functions, Availability and Release of Information (12 CFR Part 4)

Twelve CFR part 4 describes the organization and functions of the OCC and sets forth the standards, policies, and procedures that the OCC applies in administering the Freedom of Information Act (FOIA) and requests for non-public OCC information, among other things. The proposed rule included technical amendments to update and correct the OCC address in several sections and replace ''Licensing Department'' with ''Licensing Division'' and ''Disclosure Officer'' with ''Freedom of Information Act Officer.'' Additionally, the proposed rule would have updated the OCC's FOIA rules to remove references to the Office of Thrift Supervision (OTS) that are no longer necessary.

Since the publication of the proposed rule, Congress enacted the FOIA Improvement Act of 2016,[12] which makes a number of changes to FOIA that necessitate further amendments to the OCC's FOIA rules in 12 CFR part 4. To avoid confusion and to include all OCC FOIA rule changes in one rulemaking, we have removed the part 4 amendments in this EGRPRA final rule and will include them in a separate FOIA rulemaking.

Rules, Policies, and Procedures for Corporate Activities (12 CFR Part 5)

Twelve CFR part 5 sets forth the OCC's rules for corporate activities and filings. These rules were included in the first EGRPRA **Federal Register** request for comments and, as indicated above, the OCC's final rule integrating the OCC's national bank and Federal savings association licensing rules incorporated changes that reflect some of the comments received in response to that notice. As discussed below, the proposed rule included a number of additional amendments to part 5 that reflected further review of these licensing rules by the OCC since the adoption of this final rule.

Change in charter purpose or type (12 CFR 5.20, 5.53). The OCC proposed to amend §§ 5.20 and 5.53 to clarify what type of application is to be used when an existing national bank or Federal savings association proposes to change the purpose and type of charter under which it operates. The OCC charters national banks and Federal savings associations that are authorized to conduct any activity permitted for a national bank or a Federal savings association, respectively (sometimes called ''full-service charters''). The OCC also charters national banks and Federal savings associations whose activities are limited to a special purpose. The most common types of special purpose institutions are (1) those whose operations are limited to those of a trust company and activities related thereto, and (2) those that conduct only a credit card business. Other special purpose charter types include: Bankers' banks, community development banks, and cash management banks.

When the OCC grants approval for a special purpose institution, the approval decision generally includes a condition requiring the institution to conduct only the limited activity. If the institution later desires to expand the scope of its business, it must seek OCC approval. A later expansion to include additional business warrants a new review to determine if the institution has the financial and managerial resources to conduct the expanded business. Similarly, when an institution that has a full-service charter later desires to limit itself to a special purpose and conduct only one business line, the OCC reviews the change to ascertain whether the institution could continue to operate safely and soundly after it narrows its focus and to evaluate the institution's proposed capital, staffing, business plan, and risk management systems.

Currently, filings to change the purpose of a charter have no established framework and the OCC addresses them on a case-by-case basis when an institution inquires. Recently revised § 5.53[13] now covers transactions that are similar to a change in purpose and type of charter (*i.e.,* transactions that involve substantial changes in an institution's assets, liabilities, or business lines). Because the changes to an institution's assets, liabilities, and business lines that would be involved in a change in the purpose of a charter would necessitate a filing under § 5.53, we proposed to clarify § 5.53 to expressly add change in charter type to the transactions that are covered by § 5.53. We also proposed additional provisions to § 5.20(l), where special purpose charters are discussed, that describe changes in charter purpose, set out the requirement for an application, and direct institutions to § 5.53 for the relevant application.

We received no specific comments on these proposed amendments to §§ 5.20 and 5.53 and adopt them as proposed.

[9] The amendments included in this rulemaking amend rules issued only by the OCC and do not reflect comments submitted on rules the OCC has issued jointly with other agencies. We will address any modifications to interagency rules through a separate interagency rulemaking.

[10] This commenter also addressed the Volcker rule, 12 CFR part 44, Bank Secrecy Act rules, 12 CFR part 21, and the appraisal rule, 12 CFR part 34, which are outside the scope of this rulemaking.

[11] The fourth comment letter, from an individual, addressed the Volcker rule and Community Reinvestment Act. These topics are outside the scope of this rulemaking.

[12] Public Law 114–185 (2016).

[13] The OCC amended § 5.53 in July 2015. *See* 80 FR 28346 (May 18, 2015).

Business combinations involving Federal mutual savings associations (12 CFR 5.33). Twelve CFR 5.33 sets forth the provisions governing business combinations involving depository institutions within the OCC's jurisdiction, including Federal mutual savings associations. Paragraph (n)(2)(iii) of this section currently provides that if any combining Federal savings association is a mutual savings association, the resulting institution must be a mutually held savings association, unless the transaction is approved under 12 CFR part 192, which governs mutual to stock conversions, or involves a mutual holding company reorganization under 12 U.S.C. 1467a(o).[14] Consequently, unless one of these two exceptions applies, the resulting institution may not be a mutually held state-chartered savings bank.[15]

However, the merger authority set forth in 12 CFR 5.33(n)(2)(iii) is narrower than the merger authority granted to all Federal savings associations under the Home Owners' Loan Act (HOLA). Specifically, section 10(s) of the HOLA [16] provides that ''[s]ubject to sections 5(d)(3) and 18(c) of the Federal Deposit Insurance Act (FDI Act) and all other applicable laws, any Federal savings association may acquire or be acquired by any insured depository institution.'' The statute, therefore, does not limit the resulting institution in such transactions to a savings association.[17]

Under § 5.33(n)(2)(iii), Federal mutual savings associations and mutual state-chartered savings banks that seek to combine must undertake a multi-step transaction. For example, a Federal mutual savings association generally may convert to a mutual state-chartered savings association or a mutual state-chartered savings bank pursuant to section 5(i)(3) of the HOLA, and thereafter combine with a mutual state-chartered savings bank. Such a process, while accomplishing the same purpose as a direct merger, is more expensive and time consuming than a direct merger and results in unnecessary regulatory burden for the institutions involved.

Accordingly, the OCC proposed to amend § 5.33(n)(2)(iii) to permit a mutual depository institution insured by the FDIC, *i.e.,* either a mutual savings association or a mutual savings bank, to be the resulting institution in a combination involving a Federal mutual savings association. This amendment would simplify combinations involving mutual savings banks, thereby reducing regulatory burden and costs associated with such transactions imposed under the current rule. We note that this amendment would continue to require the resulting institution to have a mutual charter so as not to implicate the mutual-to-stock conversion regulations, 12 CFR part 192.

The OCC also proposed to amend 12 CFR 5.33(n)(2)(iii)(B) to allow a mutual Federal savings association to merge into an FDIC-insured depository institution subsidiary of a state-chartered mutual holding company. Currently, under the exception, a mutual Federal savings association may merge into a subsidiary savings association of a section 10(o) mutual holding company, provided the depositors of the resulting association have membership rights in the mutual holding company.[18] The exception does not allow the merger of a mutual Federal savings association into a state savings bank subsidiary of a mutual holding company that is established under state law. As a result, in order for the mutual Federal savings association to merge into a state savings bank subsidiary of a mutual holding company organized under state law, it must first convert to a state-chartered savings association or state-chartered savings bank, and then combine with the state-chartered savings bank.

In addition, we proposed to amend § 5.33(n)(2)(iii)(B) so that mergers of mutual Federal savings associations into subsidiaries of section 10(o) and non-section 10(o) mutual holding companies are treated similarly. As with the amendment to § 5.33(n)(2)(iii) described above, this amendment would reduce regulatory burden and costs associated with such transactions imposed under the current rule.

We received no specific comments on these proposed amendments to § 5.33 and adopt them as proposed.

Changes in permanent capital (12 CFR 5.46). Under 12 CFR 5.46, a national bank must submit an application to the OCC and receive prior approval for certain increases or decreases to the bank's permanent capital accounts. In addition, a national bank must submit an after-the-fact notice of all increases or decreases to the bank's permanent capital accounts. Furthermore, pursuant to 12 U.S.C. 57, the OCC must certify all increases to a national bank's permanent capital accounts resulting from cash or other assets for the increase to be considered valid. The purpose of these requirements is to inform the OCC whenever the bank's board of directors decides to change the capital structure of the institution, including when accepting additional funds from a parent holding company, issuing new shares or stock, or redeeming an existing issue of preferred stock.

The OCC receives a number of applications and notices for changes to permanent capital that arise solely from applying U.S. generally accepted accounting principles (GAAP). For example, U.S. GAAP may allow a national bank to revalue certain balance sheet accounts, including permanent capital accounts, for a period after the conclusion of a merger or acquisition. As 12 U.S.C. 1831n generally requires all insured depository institutions, including national banks, to apply U.S. GAAP when preparing their financial statements, there is limited value in requiring licensing filings or certifications solely because the bank is complying with that statute by applying U.S. GAAP. These accounting adjustments often are not material and typically are reviewed by the bank's internal accounting staff and external auditors. In addition, many of the accounting adjustments relate back to transactions reviewed or approved by the OCC under other rules, such as mergers, acquisitions, or divestitures. Furthermore, these accounting adjustments do not result in increases from cash paid or other assets and therefore do not require certification by the OCC pursuant to 12 U.S.C. 57.

We proposed to amend § 5.46 to create an exemption for national banks from the prior approval, notification, and certification requirements for all changes to permanent capital that result solely from application of U.S. GAAP, and do not otherwise involve the receipt of cash or other assets. However, proposed § 5.46 would continue to require a notice for material accounting adjustments, which the amendment defines as an increase or decrease greater than 5 percent of the bank's total

[14] Section 10(o) of the HOLA.

[15] This paragraph is generally consistent with the rule as issued by the former OTS and originally republished by the OCC as 12 CFR 146.2(a)(4). The OCC moved this provision to § 5.33 in its licensing integration rule. *See* 80 FR 28346 (May 18, 2015).

[16] 12 U.S.C. 1467a(s).

[17] Section 5(i) of the HOLA (12 U.S.C. 1464(i)) provides that transactions involving the conversion of a Federal mutual savings association to a stock Federal savings association, and vice versa, must comply with OCC regulations. As indicated above, OCC regulations relating to mutual to stock conversions are set forth at 12 CFR part 192. By limiting the resulting institution to a mutual institution, both the current rule and the amendment ensure that combinations involving Federal mutual savings associations are consistent with the mutual to stock conversion regulations at 12 CFR part 192.

[18] The OCC deems this type of transaction to be one type of mutual holding company reorganization.

permanent capital prior to the adjustments in the most recent quarter, or if the national bank is subject to a letter, order, directive, written agreement, or otherwise that is related to changes in permanent capital. The national bank would be required to provide the notice within 30 days after the end of the quarter in which the material accounting adjustment occurred, and include the amount of the adjustment, a description, and a citation to the applicable U.S. GAAP provision.

The OCC did not propose a similar change to § 5.45, Increases in permanent capital of a Federal stock savings association. Section 5.45 requires a Federal savings association to submit an application to the OCC and receive prior approval for increases to its permanent capital accounts under the same circumstances that national banks are required to submit an application under § 5.46(g)(1)(ii). However, unlike the national bank rule, § 5.45 requires an after-the-fact notice of the increase only if the savings association was required to obtain prior approval of the increase. In addition, there is no statutory requirement that the OCC certify the increase in capital. For these reasons, an amendment similar to the one adopted for § 5.46 is not needed for § 5.45.

The OCC, however, did propose a clarifying change to § 5.45(g)(4)(i). The current wording of that section is unclear to whether a Federal savings association that increases its permanent capital account must file a notice for all increases, rather than only in the circumstances in which the savings association is required to obtain prior approval. In adopting this provision, the OCC intended the notice to be filed only in cases in which prior approval was required. We proposed to amend § 5.45(g)(4)(i) to specifically provide that an after-the-fact notice is required only if the capital increase was subject to prior approval by the OCC.

We received no specific comments on the proposed amendments to §§ 5.46 and 5.45 and adopt them as proposed.

Additional technical changes to 12 CFR part 5. The proposed rule also included additional technical changes to 12 CFR part 5. First, we proposed to amend § 5.8, Public notice, to provide that the public notice of a licensing-related filing must include the closing date of the 30-day public comment period only if this information is available at the time of publication. We proposed this change because the OCC treats the comment period differently in business combinations than in other transactions. For other transactions, the comment period starts when the public notice is published. For business combinations, the comment period starts on the latest of the publication date, the date when the OCC makes the application available in the OCC's FOIA Reading Room, or the date when the OCC publishes the application in the OCC Weekly Bulletin. When the national bank or Federal savings association files the application with the OCC and publishes the notice, it typically would not know when the other two events will occur, and so would not know the comment period closing-date for these transactions at the time the public notice is published. However, in order to assist the public in determining this date, the proposed rule required that the notice include a statement indicating that information about the transaction, including the comment period closing-date, may be found in the OCC's Weekly Bulletin.

Second, for a similar reason, we proposed a technical correction to paragraph (i) of 12 CFR 5.33, Business combinations involving a national bank or Federal savings association. In general, paragraph (i) provides that a business reorganization filing or a filing that qualifies for a streamlined application is deemed approved by the OCC on the latter of the 45th day after the OCC receives the application or the 15th day after the close of the public comment period. However, because the 30-day public comment period for business combinations starts on the later of the date that the filing is published in the OCC Weekly Bulletin or the date it is available in the OCC's FOIA Reading Room, and because this date will always be after the OCC receives the application, 15 days after the close of the public comment period always will be later than the 45th day after the OCC receives the application. Therefore, the reference to the 45-day period in § 5.33(i) is unnecessary and confusing, and we proposed to remove it.

Third, we proposed to correct inaccurate cross-references in paragraphs (j)(3) and (4) of § 5.21, Federal mutual savings association charter and bylaws. Specifically, the references to paragraphs (j)(2) would be changed to paragraph (j)(3).

Fourth, we proposed to correct an inaccurate cross-reference in § 5.33(o)(3)(i) by replacing the reference to paragraph (n)(3) with paragraph (o)(3).

Fifth, we proposed to correct an inaccurate cross-reference to the definition of the term ''tax-qualified employee stock benefit plan'' in § 5.50(f)(2)(ii)(E) by replacing ''§ 192.2(a)(39)'' with ''§ 192.25.''

Lastly, we proposed to amend § 5.66, Dividends payable in property other than cash, to provide that a national bank must submit a request for prior approval of a non-cash dividend to the appropriate OCC licensing office. Currently, this section provides that the OCC must approve a non-cash dividend but does not indicate where a bank must submit the request for approval. The only direction provided in OCC dividend rules as to where a dividend application should be filed is contained in § 5.64(c)(3), which provides that a national bank must submit its request for prior approval for cash dividends to the appropriate OCC supervisory office. Because the OCC reviews non-cash dividends in the appropriate licensing office, and not the appropriate supervisory office, the amendment to § 5.66 would remove any confusion as to where a bank must submit non-cash dividend applications.

We received no specific comments on these proposed technical amendments and adopt them as proposed.

The OCC also is adopting additional technical and procedural amendments not included in the proposed rule. First, we are replacing the term ''main office'' with ''home office'' both in paragraph (j)(3)(iii) of § 5.21, Federal mutual savings association charter and bylaws, and in paragraph (j)(2)(iii) of § 5.22, Federal stock savings association charter and bylaws. ''Main office'' is the appropriate term for national banks, while ''home office'' is the appropriate term for Federal savings associations. Second, we are making a change in OCC procedure in paragraph (e)(2)(ii) of § 5.48, Voluntary liquidation of a national bank or Federal savings association. Currently, this provision requires a bank or savings association to receive the OCC's supervisory non-objection to a liquidation plan before beginning the liquidation. We are amending this provision to allow a non-supervisory office of the OCC, such as the OCC Licensing Division, to provide this non-objection.

National Bank Director Oaths (12 CFR 7.2008).

Twelve U.S.C. 73 sets forth the requirements for national bank director oaths. Specifically, this statute requires that, when appointed or elected, each national bank director must take an oath that he or she (1) will diligently and honestly administer the affairs of the bank, (2) not knowingly violate or willingly permit to be violated any applicable laws, and (3) is the owner in good faith of the requisite shares of stock and that the stock is not pledged as security for any loan or debt. The statute requires the oath to be notarized and immediately transmitted to the

Comptroller and filed in the Comptroller's office for 10 years.

Twelve CFR 7.2008 implements this statutory requirement. Specifically, § 7.2008 provides that: (1) A notary public, including one who is a director but not an officer of the national bank, may administer the oath of directors; (2) each director attending the organization meeting must execute either a joint or individual oath, and a director not attending the organization meeting (the first meeting after the election of the directors) must execute the individual oath; (3) a director must take another oath upon re-election, notwithstanding uninterrupted service; and (4) the national bank must file the original executed oaths of directors with the OCC and retain a copy in the bank's records in accordance with the Comptroller's Corporate Manual filing and recordkeeping instructions for executed oaths of directors. This provision also notes that appropriate sample oaths are located in the Comptroller's Corporate Manual.

Twelve CFR 7.2008 was included in the third **Federal Register** EGRPRA notice and the OCC did not receive any comments on this provision in response to this request for comment. However, after conducting its own internal review, the OCC proposed to amend § 7.2008 to clarify when the director oath must be taken. As proposed, § 7.2008 would follow the statute more closely by requiring a director to execute either a joint or individual oath at the first meeting of the board of directors that the director attends after the director is appointed or elected. This proposed amendment also would remove the reference to ''organizational meeting,'' which we believe does not adequately convey when a director must execute the oath in all cases, including when a director is appointed.

The OCC also proposed to replace obsolete references to the Comptroller's Corporate Manual with references to *www.occ.gov* [19] and to correct a spelling error in § 7.2008.

We received no specific comments on these proposed amendments to § 7.2008 and adopt them as proposed.

Fidelity Bonds (12 CFR part 7, §§ 163.180, 163.190, and 163.191).

Twelve CFR 7.2013 requires all national bank officers and employees to have adequate fidelity bond coverage. It also states that the bank's directors may be liable for losses incurred in the absence of such bonds and that directors should not serve as bond sureties. Furthermore, the rule provides that the bank's directors should determine the appropriate amount of bond coverage, premised on consideration of the bank's internal auditing safeguards, number of employees, deposit liabilities, and amount of cash and securities normally held by the bank.

Twelve CFR 163.180(c), 163.190, and 163.191 contain the fidelity bond rules applicable to Federal savings associations. While §§ 163.190 and 7.2013 are similar, the Federal savings association rules are more prescriptive and apply not only to officers and employees, but also to directors and agents. In addition, under § 163.190(b), the Federal savings association's management must determine the amount of coverage, based on the potential risk exposure. Section 163.190(c) also directs the Federal savings association to provide supplemental coverage beyond that provided by the insurance underwriter industry's standard forms if the board determines that additional coverage is warranted. Furthermore, § 163.190(d) requires the Federal savings association's board of directors to approve the association's bond coverage, with this approval documented in the board's minutes, and to review annually the adequacy of coverage. Section 163.191 provides an alternative means of calculating the bond coverage that is appropriate for a Federal savings association agent, in lieu of the calculation provided in § 163.190. Finally, § 163.180(c) states that a Federal savings association maintaining a bond required by § 163.190 must promptly notify the bond company and file proof of loss for any covered loss that is greater than twice the bond's deductible amount.

Twelve CFR 163.180(c), 163.190, and 163.191 were included in the fourth **Federal Register** EGRPRA notice, and the OCC did not receive any comments on these rules in response to this request for comment. However, after conducting its own internal review, the OCC finds that some of the requirements are unnecessary or overly detailed, and more appropriately addressed in guidance or left to the institution's judgment, as is currently the case for national banks. The OCC also finds that other provisions in the savings association rules should be continued and applied, as modified, to national banks. Therefore, the OCC proposed to remove §§ 163.180(c), 163.190 and 163.191 and apply § 7.2013, as amended and as described below, to Federal savings associations.

As a result of removing § 163.190, Federal savings associations would no longer be required to maintain fidelity bonds for directors who do not also serve as officers or employees. We proposed to remove this requirement because fidelity bond coverage generally is not available for directors unless they also are acting as officers or employees. In addition, the activities in which outside directors engage generally do not expose financial institutions to the types of losses covered by fidelity bonds. Furthermore, as a result of this proposed amendment, the board of directors of a Federal savings association no longer would be required to assess annually the adequacy of bond coverage for the association officers and employees.

We also proposed to remove the requirement in § 163.180(c) because we find that a regulatory requirement that a Federal savings association notify its bond insurance company and file proof of loss for certain claims is unnecessary. The terms of a fidelity bond contract itself require such notification, and it is a prudent business practice for a financial institution. Furthermore, the Corporate and Risk Governance booklet of the *Comptroller's Handbook* states that ''[a]ll fidelity bonds require that a loss be reported to the bonding company within a specified time after a reportable item comes to the attention of management. Management should diligently report all potential claims . . . because failure to file a timely report may jeopardize coverage for that loss.'' [20]

In addition, we proposed to modify the treatment of fidelity bond coverage for certain agents of Federal savings associations. Currently, § 163.191 requires fidelity bond coverage for any agent who has control over or access to cash, securities, or other property of a Federal savings association. There is no comparable requirement for agents of national banks. Instead of a mandatory requirement for agent bonding, we proposed to amend § 7.2013 to provide that the boards of directors of both banks and savings associations should consider whether agents who have access to assets of a bank or savings association also should have fidelity bond coverage. The OCC recognizes that agents providing financial services, such as cash handling or payment processing, to a financial institution potentially expose that institution to significant risks. The OCC believes that these risks and associated risk mitigation strategies, including the scope and size of fidelity

[19] The OCC's Web site contains general instructions for filing the oath of directors and a sample individual oath and joint oath at *http://www.occ.gov/publications/publications-by-type/licensing-manuals/index-licensing-manuals.html.*

[20] Corporate and Risk Governance booklet of the *Comptroller's Handbook,* p. 63 (July 2016).

bond coverage for agents, are best addressed by the board of directors.

Finally, § 7.2013(b) currently provides that a national bank's board of directors should determine the appropriate amount of fidelity bond coverage. This language is in contrast to that in § 163.190, which makes clear that this determination is mandatory. For safety and soundness reasons, the OCC believes that both national bank and Federal savings association boards of directors should be required to determine the appropriate bond coverage and proposed to amend § 7.2013(b) to make clear that this determination is a mandatory requirement. We also proposed to amend this section to allow a board committee, as an alternative to the entire board, to assess fidelity bond coverage.

We did not received any specific comments on these proposed amendments to part 7 and §§ 163.180, 163.190, and 163.191 and adopt them as proposed.

Assessments (12 CFR Part 8)

The OCC collects semiannual assessments from national banks, Federal savings associations, Federal branches, and Federal agencies in accordance with 12 CFR part 8. The OCC is adopting a technical amendment to the definition of ''[f]ull-service trust Federal savings association'' in 12 CFR 8.6(c)(iv) not included in the proposed rule. The amendment removes the extraneous word ''trust'' from the title, which corrects a drafting error from an earlier rulemaking in which the OCC combined certain rules of the OCC and the former OTS.[21] This amendment will not affect the method for collecting assessments or the amount of assessments collected by the OCC.

Fiduciary Activities (12 CFR Parts 9 and 150)

Twelve CFR parts 9 and 150 set forth the standards that apply to the fiduciary activities of national banks and Federal savings associations, respectively. Parts 9 and 150 were included in the first EGRPRA **Federal Register** notice, and the OCC proposed revisions to these rules to reflect some of the public comments received in response to this notice. One commenter to the proposed rule provided a number of comments on these revisions. These comments and the revisions as adopted in this final rule are discussed below.

Custody of fiduciary assets. Sections 9.13 and 150.230 require a national bank or Federal savings association, respectively, to place all fiduciary account assets in the joint custody or control of no fewer than two of the fiduciary officers or employees designated by the bank's or savings association's board of directors or to maintain fiduciary investments off premises, if consistent with applicable law and if the bank maintains adequate safeguards and controls. The OCC proposed to amend § 9.13 to add a new § 150.245 to provide relief for arrangements under which a national bank or Federal savings association is deemed a fiduciary solely because it provides investment advice for a fee. If, under such an arrangement the bank or savings association is a fiduciary merely because it provides such advice and does not have investment discretion, the OCC does not believe that it should be required to have custody of the fiduciary assets. Specifically, the OCC proposed to amend § 9.13(a) to provide that a national bank that is deemed a fiduciary based solely on its provision of investment advice for a fee, as that capacity is defined in 12 CFR 9.101(a), is not required to serve as custodian when offering those fiduciary services. Similarly, proposed § 150.245 provides that a Federal savings association that is deemed a fiduciary based solely on its provision of investment advice for a fee, as that capacity is defined in 12 CFR 9.101(a), would not be required to maintain custody or control of fiduciary assets as set forth in § 150.220 or 150.240.

We received one comment on this proposed change, which suggested that the proposal does not go far enough in that it leaves many other arrangements unaddressed and may raise uncertainty about common scenarios that arise even in traditional fiduciary relationships, such as when a client does not wish to grant the bank custody of fiduciary assets. It suggested that the final rule also provide that a national bank that has not been granted custody of fiduciary assets may still act as a fiduciary with respect to those assets, if consistent with applicable law.

The OCC does not agree with the comment. Such arrangements may pose additional risks to account beneficiaries as well as additional liabilities to bank fiduciaries. The proposed amendment was deliberately and narrowly focused on situations where a bank or Federal savings association is deemed a fiduciary based solely on the provision of investment advice for a fee, as that capacity is defined in § 9.101(a). Banks that act in any other fiduciary capacity, such as directed trustees or banks that have sole or shared investment discretion, still are required to maintain custody of fiduciary assets in accordance with § 9.13(a).

However, to avoid any confusion about the intent of the amendment the final rule specifically cross-references the definition of ''investment advisor'' instead of referencing the provision of investment advice for a fee and states that, in order not to be required to serve as custodian, the bank may not have any other specified fiduciary capacity. Specifically, as adopted in the final rule, this amendment now provides that a bank that is deemed a fiduciary based solely on its capacity as investment advisor, as that capacity is defined in § 9.101(a), and has no other fiduciary capacity as enumerated in § 9.2(e) is not required to serve as custodian when offering those fiduciary services. This language is substantively identical to the language in proposed § 9.13 but provides banks with more clarity regarding their obligations. We have made corresponding changes to § 150.245.

Deposits of securities with state authorities. Pursuant to 12 U.S.C. 92a(f), § 9.14(a) provides that if a state requires corporations acting in a fiduciary capacity to deposit securities with state authorities for the protection of private or court trusts, a national bank must make a similar deposit with state authorities before acting as a private or court-appointed trustee in that state. If the state authorities refuse to accept the deposit, the bank must instead deposit the securities with the Federal Reserve Bank of the district in which the national bank is located. Section 150.490 contains a nearly identical requirement for Federal savings associations, except that savings associations must deposit the securities with state authorities or the applicable Federal Home Loan Bank. The OCC proposed to amend § 9.14(a) to permit national banks to deposit these securities either with the Federal Home Loan Bank of which the bank is a member or with the appropriate Federal Reserve Bank. Because Federal savings associations may not be members of a Federal Reserve Bank, the OCC cannot make a reciprocal amendment to § 150.490.

One commenter requested that the OCC amend § 9.14 further to provide that if a bank makes a best effort to comply with this provision but is unable to meet the deposit requirement because of a state's refusal or inaction, the bank will be deemed to have complied. The OCC does not agree with this suggested change. Twelve U.S.C. 92a(f) specifically requires national banks to make these deposits. Thus, amending 12 CFR 9.14 to deem a bank

[21] 76 FR 43566 (July 21, 2011).

to have complied when it has not actually made the deposit would be inconsistent with the plain language of the statute. Furthermore, the OCC believes that the option of depositing such funds with either a Federal Reserve Bank or a Federal Home Loan Bank, in the case of national banks, or with a Federal Home Loan Bank, in the case of Federal savings associations, provides these entities with a feasible method of complying with the regulation and statute when a state refuses to accept the deposit. The OCC therefore adopts the amendment as proposed.

Collective investment funds. Section 9.18 permits a national bank, where consistent with applicable law, to invest assets that it holds as fiduciary in specified collective investment funds. Section 150.260 permits Federal savings associations also to invest funds in a fiduciary account in collective investment funds, and provides that in establishing and administering such funds, Federal savings associations must comply with the requirements of § 9.18. Therefore, the amendments to § 9.18 made by this rulemaking also apply to Federal savings associations.

Section 9.18(b)(1) requires a national bank to establish and maintain each collective investment fund in accordance with a written plan approved by a resolution of the bank's board of directors or by a committee authorized by the board. This provision also requires the bank to make a copy of the plan available for public inspection at its main office during all banking hours and to provide a copy of the plan to any person who requests it.

In response to a comment letter received as part of the EGRPRA review process, the OCC proposed to amend § 9.18(b)(1) to require instead that the bank make a copy of the investment fund plan available to the public either at its main office or on its Web site. Although it is appropriate to provide the public access to this plan, we agree that requiring a bank to make the plan available for public inspection at its main office is unnecessarily burdensome and is not the most efficient method for public inspection in today's electronic environment. The proposal maintained the option for access to the plan at a main office for those small banks that may not have a Web site, and also clarified that a bank may satisfy the requirement to provide a copy of the plan to any person who requests it by providing it in either written or electronic form.

The one commenter that discussed this amendment supported it, noting that it would allow banks to lower distribution costs, while satisfying participants' requests for the information through electronic mail or an internet Web site. The OCC adopts this amendment as proposed.

Section 9.18(c)(2) provides that a national bank may collectively invest assets that it holds as fiduciary in a mini-fund. A mini-fund is a fund that a bank maintains for the collective investment of cash balances received or held by the bank in its capacity as trustee, executor, administrator, guardian, or custodian under the Uniform Gifts to Minors Act that the bank considers too small to be invested separately in an economically efficient manner. This section further provides that the total assets in a mini-fund must not exceed $1,000,000 and the number of participating accounts must not exceed 100.

A comment on this rule received as part of the EGRPRA review process requested that the OCC periodically adjust the asset limit for mini-funds in § 9.18(c)(2) to account for inflation and economic growth. This commenter also noted that the current limit of $1 million was last updated in 1996 [22] and suggested that the OCC raise the threshold to at least $1.5 million, which is the inflation-adjusted value of $1 million in 1996. The OCC agreed with this commenter and proposed to amend § 9.18(c)(2) to increase the threshold to $1,500,000, with an annual adjustment for inflation. The OCC believes this change will continue to make mini-funds a feasible investment option for national banks.

The same commenter supported the increased threshold in the proposed rule. However, this commenter also noted that this proposed threshold may be too low to provide a feasible investment option for many banks and asked that the OCC consider adjustments as needed. The OCC does not believe that a threshold higher than the one proposed is necessary at this time, as it reflects the inflation adjusted value of the original threshold. Furthermore, this amendment provides that the OCC will adjust this amount to reflect inflation on a yearly basis.

This commenter also recommended a number of additional amendments to § 9.18. Section 9.18(b)(5)(iii) provides that a bank managing certain collective investment funds invested primarily in real estate or other assets that are not readily marketable may require a prior notice period not to exceed one year for withdrawals. The commenter requested that the OCC amend this provision to replace references to ''real estate'' with references to ''assets that are illiquid or otherwise not readily marketable'' so that other illiquid assets such as guaranteed investment contracts, synthetic investment contracts, or separate account contracts with limits on transferability, may be recognized. The commenter also requested that the OCC amend the rule to permit national banks to require advance withdrawal notices longer than one year so that banks would not need to request such an extension from the OCC on a case-by-case basis. The OCC does not agree with either of these suggestions. The introduction of the term ''assets that are illiquid'' could be interpreted too broadly and, for example, could result in national banks denying participants access to funds when a collective investment fund holds assets that become illiquid due to adverse market conditions. The OCC also believes that banks should continue to be required to support, on a case-by-case basis, any request to extend the advance notice requirement.

Lastly, this commenter requested that the OCC allow flexibility in the timing of a final audit required by 12 CFR 9.18(b)(6), which requires a national bank administering a collective investment fund to prepare a financial audit of the fund once every 12 months. The commenter specifically recommended allowing a bank that is terminating a fund within 15 months after the last audit to wait until the fund has terminated to complete the final audit. The OCC does not agree with this recommendation. In many cases, banks should be able to plan fund terminations at or just prior to the end of a plan year. To the extent that circumstances beyond their control prevent the fund from closing as planned, those same circumstances may delay the closing beyond 15 months, delaying the audit without reducing expenses.

For the reasons stated above, the OCC adopts the proposed amendments to § 9.18 as proposed.

Additional suggested amendments. This commenter provided other suggested amendments to the OCC's fiduciary rules, most of which the commenter previously included in its response to the first **Federal Register** EGRPRA notice. The OCC did not include these amendments in the proposed rule, and has not included them in the final rule, for the reasons discussed below.

First, the commenter requested that we amend § 9.8(a), which requires national banks to maintain fiduciary account records for a period of three years from the later of the termination

[22] *See* 61 FR 68554 (Dec. 30, 1996).

of the account or the termination of any litigation relating to an account, to provide instead that these account records be retained for a ''necessary period'' or to refer to applicable law on the retention of documents. The term ''necessary period'' is too vague and the OCC declined to propose this change.

Second, this commenter also requested that the OCC amend 12 CFR 9.10(b)(1), which imposes requirements and restrictions on national banks that hold fiduciary funds that are awaiting investment or distribution by the bank. Section 9.10(b) specifically requires a bank to collateralize funds held in a fiduciary account if the funds are not insured by the FDIC. The commenter recommended that the OCC not require a bank to collateralize funds if the funds are directed by a third party or in the governing instrument. The commenter noted that in these situations, a third party and not the bank decides how to hold the funds at the bank, thus eliminating conflict of interest or self-dealing on the part of the bank. However, national banks are required to collateralize deposits by statute regardless of whether the bank has discretion to deposit fiduciary funds at the bank.[23] This collateralization is for protection of the trust funds. Customers providing direction to a bank to self-deposit may not fully understand the protection that they would forego by doing so. Also, in many cases, the party that could direct a bank to self-deposit may not be the party protected by the pledge. The directing party may benefit from foregoing the pledge, but not share in the risk. For these reasons, the OCC declined to include this amendment in the proposed rule.

Third, 12 CFR 9.10(b)(2) stipulates the types of collateral with which a bank may satisfy the requirements of 12 CFR 9.10(b)(1). This commenter requested that the OCC expand the list of acceptable collateral listed in § 9.10(b)(2) to include other instruments that provide protection from loss similar to that provided by surety bonds, and the commenter proposed language that would allow a bank to determine whether a collateral instrument provides such ''similar protection.'' The OCC finds that this proposed change is overly broad and subject to misinterpretation, and, therefore, did not include it in the proposed rule.

Lastly, this commenter urged the OCC to address electronic recordkeeping for fiduciary accounts in 12 CFR 9.8, noting that such guidance would provide clarity when state law is silent as to the medium of recordkeeping. The commenter noted that many bank fiduciaries are confused as to which fiduciary documents are covered by the Electronic Signatures in Global and National Commerce Act (E-Sign Act).[24] The commenter requested that the OCC expressly permit the electronic retention of documents to satisfy regulatory requirements.

The OCC notes that section 101 of the E-Sign Act provides that certain records may not be invalidated merely by virtue of being in an electronic format. However, section 103 of the E-Sign Act exempts from section 101 contracts or other records to the extent that they are governed by statutes, regulations, or other rules of law governing the creation and execution of wills, codicils, or testamentary trusts.[25] Generally, wills, codicils, and testamentary trusts are governed by state law. Section 9.8 does not prohibit the electronic recordkeeping of fiduciary documents. However, in light of the provisions in the E-Sign Act, the authority to declare that fiduciary records may be kept electronically if such records are subject to state law is unclear. Therefore, electronic recordkeeping is permissible for purposes of part 9 if such recordkeeping is permitted by state law, and we decline to amend our rule specifically to permit electronic retention of such fiduciary documents.

Municipal Securities Dealers (12 CFR Part 10)

Part 10 requires that a national bank (or a separately identifiable department or division of a national bank) that acts as a municipal securities dealer, and an associated person that acts as a municipal securities principal or representative, file certain forms with the OCC. Specifically, § 10.2 requires national banks to submit to the OCC Form MSD–4 (Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer) before associating with a municipal securities principal or municipal securities representative. Within 30 days of terminating such person's association with the bank, the bank must file with the OCC Form MSD–5 (Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer). Although there is no equivalent regulation applicable to Federal savings associations, these institutions and associated persons currently file these same forms with the OCC pursuant to Municipal Securities Rulemaking Board (MSRB) rules, as incorporated in an OTS Chief Counsel Opinion.[26]

Part 10 was included in the fourth **Federal Register** EGRPRA notice and the OCC did not receive any comments on this rule in response to this request for comment. However, in order to coordinate and harmonize the requirements applicable to these practices, the OCC proposed to codify this OTS opinion in OCC regulations by amending part 10 to include Federal savings associations. In addition, the OCC proposed minor technical changes to update part 10. First, we proposed to update the citation to MSRB Rule G–7(b) in § 10.2(a) to reflect MSRB revisions to this rule. Second, we proposed to amend § 10.2(c) to allow national banks to obtain Forms MSD–4 and MSD–5 [27] on *http://www.banknet.gov/* instead of by contacting the OCC in writing.[28] Third, we proposed to replace the street address of the MSRB, provided to assist institutions in obtaining MSRB rules, with the MSRB's internet address.

We did not receive any specific comments on the proposed codification and technical amendments and adopt them as proposed. This codification will not change the requirements applicable to Federal savings associations. Furthermore, by codifying this filing in OCC rules instead of referring to it in an opinion letter, this change will identify more clearly this requirement for Federal savings associations.

Securities Exchange Act Rules (12 CFR Parts 11 and 194)

Twelve CFR parts 11 and 194 set forth the periodic reporting requirements for

[23] 12 U.S.C. 92a(d).

[24] 15 U.S.C. 7001 *et seq.*

[25] 15 U.S.C. 7003.

[26] OTS Chief Counsel Opinion (OTS Op. Oct. 29, 2001) (noting that a Federal savings association engaged in municipal securities underwriting and dealing must comply with applicable laws and regulations, financial reporting requirements, and Municipal Securities Rulemaking Board (MSRB) rules). MSRB rules include requirements to file forms with the ''appropriate regulatory agency.'' *See, e.g.,* MSRB Rule G–7. The Exchange Act provides that the OCC is the appropriate regulatory agency with respect to a municipal securities dealer that is a Federal savings association. 15 U.S.C. 78c(a)(34)(A)(i).

[27] We note that Forms MSD–4 and MSD–5 are uniform forms developed by the Federal Reserve Board, FDIC and OCC and that these forms expressly state that they be *mailed* to the appropriate regulatory agency. Therefore, the OCC cannot amend part 10 to provide for the electronic filing of these forms until the Federal Reserve Board, FDIC, and OCC jointly decide to permit electronic filing.

[28] BankNet is the OCC's secure Web site for communicating with and receiving information from national banks and Federal savings associations. BankNet is only available to OCC-regulated institutions and is not available to the public.

national banks and Federal savings associations, respectively, with securities registered under the Securities Exchange Act of 1934 (Exchange Act). These rules were included in the fourth **Federal Register** EGRPRA notice, and the OCC did not receive any specific comments on these rules in response to this request for comment, although we previously had received more general comments requesting that the OCC permit electronic filings. In light of the similar statutory provisions that apply to national banks and Federal savings associations as implemented by these parts, the OCC proposed to remove part 194 and amend part 11 to include Federal savings associations. In addition, we proposed to amend § 11.2 pursuant to the Jumpstart Our Business Startups Act (JOBS Act),[29] to permit the electronic filing of periodic reporting requirements, and to make technical, non-substantive edits and clarifications to part 11. These changes would reduce duplication and create efficiencies by establishing a single set of rules for all entities supervised by the OCC with respect to the Exchange Act disclosure rules, while not changing the requirements applicable to national banks or Federal savings associations. These specific amendments are discussed below.

Authority and OMB control number (§ 11.1). Section 11.1 sets forth the OCC's authority to issue rules for national banks with respect to the Exchange Act as well as the Office of Management and Budget (OMB) control number assigned to part 11 for purposes of the Paperwork Reduction Act (PRA). The OCC proposed to amend this section to include its authority with respect to Federal savings associations. We also proposed to remove the reference to the OMB control number, as it is not required to be included in regulatory text and the OCC has generally not included such numbers in recently published regulations.

We did not receive any specific comments on these proposed amendments to § 11.1 and adopt them as proposed. This removal is technical and will not affect the OCC's responsibilities under the PRA.

Reporting requirements for registered national banks (§ 11.2). The OCC proposed to add a new paragraph (c) to § 11.2 to state explicitly that references to registration requirements under the Securities Act of 1933 (Securities Act) pertain to the registration requirements under 12 CFR part 16. We did not receive any specific comments on this proposed amendment and therefore adopt it as proposed. This change will clarify the applicable requirements for national banks and Federal savings associations.

Emerging growth company eligibility (§ 11.2). The JOBS Act amended the Exchange Act to create a new class of issuer known as an emerging growth company.[30] An emerging growth company is defined generally as an issuer that had total annual gross revenues of less than $1 billion during its most recently completed fiscal year.[31] The JOBS Act provides scaled disclosure provisions for emerging growth companies, including, among other things: (1) An exemption from proxy statement requirements concerning shareholder approval of executive compensation under section 14A of the Exchange Act;[32] (2) an exemption from proxy statement requirements concerning disclosure of executive compensation versus performance under section 14(i) of the Exchange Act;[33] (3) a limitation of applicable time periods for disclosures required under Regulation S–K[34] for selected financial data;[35] (4) treatment as a smaller reporting company for purposes of executive compensation disclosures required under Regulation S–K, Item 402;[36] and (5) an exemption from auditor attestation provisions concerning internal financial reporting controls required by the Sarbanes-Oxley Act of 2002.[37]

The JOBS Act and the Exchange Act contain exclusions from emerging growth company eligibility that are based on public offerings that an issuer makes under the Securities Act. First, the JOBS Act provides that an issuer is not eligible for emerging growth company status if it engaged in a public securities offering pursuant to an effective Securities Act registration statement on or before December 8, 2011.[38] Second, the Exchange Act, as amended by the JOBS Act, provides that an issuer may not remain an emerging growth company beyond the close of the fiscal year following the fifth anniversary of the issuer's first securities offering under a Securities Act registration statement.[39] Because national banks and Federal savings associations file registration statements under OCC regulations rather than the Securities Act, these exclusions do not technically apply to banks and savings associations.

Section 12(i) of the Exchange Act requires the OCC to issue substantially similar regulations as the Securities and Exchange Commission (SEC) for those provisions of the Exchange Act for which it is vested authority with respect to banks and savings associations.[40] Parts 11 and 194 generally require national banks and Federal savings associations, respectively, with securities registered under sections 12(b) or 12(g) of the Exchange Act[41] to comply with certain Exchange Act rules. Therefore, pursuant to the JOBS Act, the OCC proposed to add a new paragraph (d) to § 11.2 to clarify national bank and Federal savings association eligibility for emerging growth company treatment for those provisions of the Exchange Act that the OCC administers. The intent of this amendment is to ensure equivalent treatment of banks and savings associations with non-bank issuers. This amendment also would provide that a bank or savings association eligible for emerging growth company status may choose to forgo such exemption and instead comply with the requirements that apply to a bank or savings association that is not an emerging growth company. Furthermore, the amendment would provide that: (1) A bank or savings association is not an emerging growth company if it sold common equity securities on or before December 8, 2011, pursuant to a registration statement or offering circular filed under 12 CFR part 16 or 197, or under the former OTS rule at 12 CFR 563g; and (2) emerging growth company status for banks and savings associations terminates no later than the end of the fiscal year following the fifth anniversary of the first sale of its common equity securities pursuant to a registration statement or offering circular under 12 CFR parts 16, 197 or 563g.[42]

We did not receive any specific comments on this proposed amendment to § 11.2 and adopt it as proposed.

Filing requirements and inspection of documents (§ 11.3). Several comments

[29] Public Law 112–106, 126 Stat. 306 (2012).

[30] JOBS Act, section 101(b), amending section 3(a) of the Exchange Act (15 U.S.C. 78c(a)).

[31] Exchange Act, section 3(a)(80) (15 U.S.C. 78c(a)(80)).

[32] Exchange Act, section 14A(e) (15 U.S.C. 78n–1(e)).

[33] Exchange Act, section 14(i) (15 U.S.C. 78n(i)).

[34] 17 CFR 210.1–01 *et seq.*

[35] Exchange Act, section 13(a) (15 U.S.C. 78m(a)).

[36] 12 CFR 229.402.

[37] Public Law 107–204, section 404, 116 Stat. 789 (2002) (15 U.S.C. 7262(b)).

[38] JOBS Act, section 101(d) (15 U.S.C. 77b(note)).

[39] Exchange Act, section 3(a)(80) (15 U.S.C. 78c(a)(80)).

[40] 15 U.S.C. 78l(i).

[41] 15 U.S.C. 78l(b), (g).

[42] The JOBS Act and the Exchange Act, as amended by the JOBS Act, contain equivalent restrictions for non-banks. However, these restrictions are based on when an issuer files a registration statement under the Securities Act.

received during the EGRPRA review process requested that the OCC permit national banks and Federal savings associations to submit forms and reports to the OCC electronically. The OCC agrees that electronic filings are more efficient and less costly for national banks and Federal savings associations, are more efficient for the OCC to review, and provide a quicker response time for banks and savings associations. Therefore, we proposed to amend part 11 to provide for the electronic submission of required filings.[43]

Section 11.3(a) currently requires national banks to submit by mail, fax, or otherwise four copies of all papers required to be filed with the OCC (pursuant to the Exchange Act or regulations thereunder) to the Securities and Corporate Practices (SCP) Division of the OCC. Through incorporation of SEC Rule 12b–11,[44] part 194 requires Federal savings associations to file three copies of Exchange Act filings with the SCP Division. We proposed to amend § 11.3(a)(1) to require instead that national banks and Federal savings associations submit one copy of their filings through electronic mail to the OCC at *http://www.banknet.gov/*.[45]

The proposed rule also included an amendment to § 11.3 to provide that documents may be signed electronically using the signature provision in SEC Rule 12b–11. SEC Rule 12b–11 provides that required signatures for Exchange Act filings may be signed using typed signatures or duplicated or facsimile versions of manual signatures. Where typed, duplicated, or facsimile signatures are used, each signatory to the filing is required to ''manually sign a signature page or other document authenticating, acknowledging, or otherwise adopting his or her signature that appears in the filing.''[46] As provided by Rule 12b–11, the national bank or Federal savings association must retain this document for five years and, upon request, provide a copy to the OCC.

The OCC also proposed an exception to the general electronic filing requirement to permit the use of paper filings where unanticipated technical difficulties prevent the use of electronic filings. This exception is modeled on the SEC's General Rules and Regulations for Electronic Filings, Regulation S–T, Rule 201,[47] which provides a temporary hardship exemption to the SEC's Electronic Data Gathering, Analysis, and Retrieval system (EDGAR) filing requirements in cases of unanticipated technical difficulties. Similar to Rule 201, the OCC notes that use of this exception should be extremely limited and should be relied upon only when unusual and unexpected circumstances create technical impediments to the use of electronic filings. However, this exception would not be available for statements of beneficial ownership that must be made through the *FDICconnect* platform, which requires electronic filings.[48]

Current § 11.3(a)(3)(i) provides that the date on which papers are actually received by the OCC shall be the date of filing, if the person or bank filing the papers has complied with all applicable requirements. The OCC proposed to update this provision to conform to the electronic filing requirement. Specifically, an electronic filing whose submission is commenced on a nonholiday weekday on or before 5:30 p.m. Eastern Standard or Daylight Savings Time, whichever is currently in effect, would be deemed received by the OCC on the same business day. An electronic filing whose submission is commenced after 5:30 p.m. Eastern Standard or Daylight Savings Time, whichever is currently in effect, or on a Saturday, Sunday, or Federal holiday would be deemed received by the OCC on the next business day. The proposal also included a new paragraph (a)(3)(iii) to § 11.3 to provide that if an electronic filer in good faith attempts to file a document pursuant to this part in a timely manner but the filing is delayed due to technical difficulties beyond the electronic filer's control, the electronic filer may request that the OCC adjust the filing date. The OCC may grant the request if it appears that such adjustment is appropriate and consistent with the public interest and the protection of investors. These rules for dating an electronic filing, and for providing a waiver for technical difficulties with the filing, also are derived from SEC Regulation S–T.[49]

Finally, the OCC proposed the following technical amendments to part 11. First, the OCC proposed to rename the paragraph heading of § 11.3(a)(3)(ii), which establishes filing dates for statements of beneficial ownership that must be made through the *FDICconnect* platform,[50] from *Electronic filings* to *Beneficial ownership filings*. This new heading would more accurately reflect the final rule's application of electronic filing requirements to all part 11 filings, not just those made under § 11.3(a)(3)(ii).

Second, the OCC proposed to delete paragraph (a)(4) of § 11.3. This paragraph provides a mandatory compliance date of January 1, 2004 for 12 CFR part 11. However, as this date has now passed, this mandatory compliance date no longer is needed in the rule text.

Third, the OCC proposed to amend § 11.4(b), which currently provides that filing fees must be paid by check, to reflect the electronic filing of documents and the additional payment options now available. Specifically, the amendment would permit filing fees to be paid by means acceptable to the OCC, in addition to by check. We note that the OCC currently is not imposing any filing fees for part 11 filings and is not adopting any fees as part of this rulemaking.

As a consequence of proposing to amend part 11 to include Federal savings associations, the OCC proposed to remove part 194 in its entirety. The OCC notes that removing § 194.3, which addresses liability for certain forward-looking statements made by Federal savings associations, would not change the applicability of the requirements of this section for Federal savings associations. Specifically, the text of § 194.3 is substantially similar to the SEC Rule 3b–6,[51] which currently applies to national banks by reference in § 11.2. Therefore, because part 11 (and its cross-reference to the SEC Rule 3b-6) would apply to Federal savings associations, the requirements imposed by current § 194.3 would continue to apply to Federal savings associations.

Furthermore, we note that the removal of §§ 194.801 and 194.802, Interpretations for Federal savings associations filing statements pursuant to the Exchange Act, is not intended to be a substantive change in how these filings are conducted. The interpretations included in these sections are now widely accepted and no longer need to be included in a rule. Therefore, the removal of these sections would not change how Federal savings associations prepare their reports.

The OCC did not receive any specific comments on the proposed amendments to § 11.3 and the removal of part 194

[43] The OCC currently permits the electronic submission of a number of other filings, for example, Call Reports, and public welfare investment notifications and proposals.

[44] 17 CFR 240.12b–11.

[45] As described elsewhere in this final rule, the OCC also is amending part 16, Securities offering disclosure rules, to provide for electronic submissions.

[46] *Id.*

[47] 17 CFR 232.201.

[48] *See* 70 FR 46403 (Aug. 10, 2005). FDICconnect is the secure internet channel for FDIC-insured institutions to conduct business and exchange information with the FDIC.

[49] 17 CFR part 232.

[50] *See* 70 FR 46403 (Aug. 10, 2005).

[51] 17 CFR 240.3b–6.

and adopts the amendments and removal as proposed.

Recordkeeping and Confirmation Requirements for Securities Transactions (12 CFR Parts 12 and 151)

Twelve CFR parts 12 and 151 establish recordkeeping and confirmation requirements for national banks and Federal savings associations, respectively, that engage in securities transactions for their customers. These rules were included in the fourth **Federal Register** EGRPRA notice and the OCC did not receive any comments on them in response to this request for comment. However, based on our internal review of these rules, the OCC proposed a number of amendments to both parts 12 and 151. We received one comment on these amendments, with respect to 12 CFR 12.102, National bank use of electronic communications as customer notifications, as discussed below.

Definitions. The OCC proposed to revise the definition of ''municipal security'' at §§ 12.2(i)(3) and 151.40 to remove an outdated citation to the Internal Revenue Code. We are adopting this change as proposed.

Recordkeeping. Section 12.3 and subpart A of part 151 establish recordkeeping requirements for securities transactions conducted by national banks and Federal savings associations, respectively. Section 151.60(b) prescribes more detailed procedures for record maintenance and storage for Federal savings associations than prescribed for national banks in § 12.3(b). Specifically, § 12.3(b) provides that the required records must clearly and accurately reflect the information required and provide an adequate basis for the audit of the information, and that record maintenance may include the use of automated or electronic records provided the records are easily retrievable, readily available for inspection, and capable of being reproduced in a hard copy. In addition to what is required for national banks, § 151.60(b) imposes requirements related to indexing, paper storage, electronic storage, and the provision of records to examiners. The OCC proposed to remove § 151.60(b) and revise § 151.60(a) to include the less detailed maintenance and storage procedures found in the national bank rule. The OCC believes that this approach would provide a Federal savings association with more flexibility in making internal business decisions about record storage and maintenance.

Current § 151.60(c), redesignated in the proposed rule as § 151.60(b), provides that a Federal savings association may use a third-party service provider to provide record storage or maintenance. The current national bank rule does not include a similar third-party provision. The OCC proposed to amend § 12.3 to clarify that a national bank may use a third-party service provider for record storage and maintenance provided that the bank maintains effective oversight to ensure that the records are easily retrievable, are readily available for inspection, can be reproduced in a hard copy, and follow applicable OCC guidance.[52]

The OCC did not receive any specific comments on these proposed amendments to §§ 12.3 and 151.60 and adopts them as proposed.

Content and time of notification. Sections 12.4 and 151.70, respectively, require national banks and Federal savings associations that effect securities transactions for their customers to provide notifications of the transactions. Under the current rule, a national bank or Federal savings association may choose among several types of notification. Pursuant to §§ 12.4(a) and 151.90, a national bank or Federal savings association, respectively, may provide the customer a written notice that includes the information set forth in those sections. Sections 12.5 and 151.100 permit a national bank or Federal savings association, respectively, to fulfill the notification requirement through alternative means that vary by the type of account. For transactions that use a registered broker-dealer, § 151.80(a) allows the Federal savings association to satisfy the requirement of § 151.70 by having the registered broker-dealer send the confirmation statement directly to the customer or by having the Federal savings association send a copy of the broker-dealer's confirmation to the customer. If the broker-dealer has the necessary account level information to send the confirmation directly to the customer, the Federal savings association need not send out an additional written notification of the transaction. In contrast, under § 12.4(b), a national bank may send a copy of the broker-dealer's confirmation but is not expressly permitted to satisfy the requirement by having the broker-dealer send the confirmation directly to the customer.

The OCC believes that most national banks and Federal savings associations, particularly community institutions, effect securities transactions for customers through registered broker-dealers. To avoid duplicative reporting to customers and to reduce burden on institutions, the OCC proposed to amend § 12.4(b) to follow the approach of § 151.80. With this amendment, both national banks and Federal savings associations could direct a broker-dealer to mail confirmations to customers without requiring that a duplicate be sent by the bank or savings association, thereby reducing regulatory burden for national banks. This approach also would reduce confusion that may result when a customer receives duplicate confirmations for the same transaction from two different parties.

In addition, the OCC proposed to amend § 151.80 to reduce regulatory burden on Federal savings associations. Currently, § 151.80(b) requires a Federal savings association that receives or will receive remuneration from any source, including the customer, in connection with the transaction to provide the customer a statement of the source and amount of the remuneration in addition to the registered broker-dealer confirmation. The OCC proposed to amend this provision to provide that, when such remuneration is determined by a written agreement between the Federal savings association and the customer, the savings association does not need to provide this remuneration statement for each securities transaction. This change is consistent with § 12.4(b), which does not require a national bank to provide a statement of the source and amount of remuneration in these circumstances.

The OCC did not receive any specific comments on these proposed amendments to §§ 12.4 and 151.70 and adopts them as proposed.

National bank disclosure of remuneration for mutual fund transactions. The OCC proposed to remove the interpretation in § 12.101, national bank disclosure of remuneration for mutual fund transactions. The OCC does not intend to change any existing practices with this amendment. Instead, the OCC believes that this issue is obsolete because of recent SEC actions.[53] The OCC did not receive any specific comments on this proposed removal and adopts it as proposed.

National bank use of electronic communications as customer notifications. Section 12.102 allows national banks, in appropriate situations, to comply with the written customer notification requirements in

[52] *See* OCC Bulletin 2013–29, Third-Party Relationships: Risk Management Guidance (Oct. 30, 2013).

[53] For example, the SEC now requires all mutual funds to disclose their fee structures in registration statements. *http://www.sec.gov/about/forms/formn-1a.pdf.*

§§ 12.4 and 12.5 by using electronic communications or, if a customer has a facsimile machine, through facsimile transmission. To satisfy the notification delivery requirement by other electronic communication, the parties must agree to use electronic instead of hard-copy notifications, the parties must have the ability to print or download the electronic notification, the recipient must be able to affirm or reject trades through electronic notification, the system cannot automatically delete the electronic notification, and both parties must have the capacity to receive electronic messages. Federal savings associations are subject to a similar provision at § 151.110. The OCC finds that the use of electronic communications has become widespread and is provided for in state and Federal law, such as the E-Sign Act, which allows for electronic communications with customers. Therefore, §§ 12.102 and 151.110 are outdated and duplicative of existing law, and we proposed to remove them.

We received one comment on this proposed amendment, which was critical of removing this guidance for banks on the use of electronic communications. However, the OCC continues to believe that these provisions are outdated and not necessary in the current electronic environment. We therefore adopt the amendment as proposed.

Securities Offering Disclosures (12 CFR Parts 16 and 197)

Twelve CFR parts 16 and 197 set forth securities offering disclosure rules for national banks and Federal savings associations, respectively. These rules are based on the Securities Act [54] and certain Securities Act rules, to the extent appropriate for banks.[55] These rules were included in the fourth **Federal Register** EGRPRA notice, and the OCC did not receive any specific comments in response to this request for comment, although, as indicated above, we previously had received comments requesting that the OCC permit electronic filings.

In light of the similar provisions that apply to national banks and Federal savings associations, the OCC proposed to amend part 16 to include Federal savings associations and to remove part 197. In addition, the OCC proposed to incorporate some provisions of part 197 into part 16, to provide for the electronic submission of filings required under part 16, and to update the part 16 filing fees provision. The OCC also proposed technical changes throughout part 16 to update citations to SEC rules and to replace all references to ''Commission'' with ''SEC.'' The OCC believes that these amendments would reduce duplication and create efficiencies by establishing a single set of rules for all entities supervised by the OCC with respect to securities offerings. In addition, integrating savings associations into part 16 would clarify disclosure requirements for these institutions and provide them with additional exemptions, as described below. Furthermore, providing for the electronic submission of securities filings would reduce burden for both national banks and Federal savings associations.

These specific amendments are discussed below.

The JOBS Act, addressed above in the discussion of part 11, amended the Securities Act and directed the SEC both to amend existing Securities Act rules and to write new rules to implement certain JOBS Act provisions. Generally, the JOBS Act seeks to ease securities offering disclosure requirements and periodic reporting obligations for certain issuers, including emerging growth companies.[56] It also creates new Securities Act private placement exemptions for crowdfunding [57] and small company capital formation.[58] In addition, the JOBS Act includes provisions that reduce restrictions on certain research and communications concerning emerging growth company securities offerings.[59] The OCC generally intends for part 16 to remain consistent with the Securities Act, including those provisions amended under the JOBS Act, and SEC rules. Part 16 incorporates through cross-references various SEC rules that the JOBS Act directs the SEC to amend. Therefore, amendments to these SEC rules are incorporated into part 16 by virtue of these cross-references.[60]

Registration statement: form and content. The OCC proposed to replace the offering circular currently required under § 197.2 and the corresponding form and content requirements of § 197.7 with a registration statement and prospectus required by §§ 16.3 and 16.15 for national banks. We received no comments on this proposed change and adopt it as proposed. Requiring the use of the same form by both national banks and Federal savings associations will provide a consistent set of disclosure standards and format for investors. The OCC believes that this change will not impose any undue regulatory burden on Federal savings associations because these forms provide similar information to potential investors.

Communications not deemed an offer. Both §§ 16.4 and 197.2(b) provide that certain communications by national banks or Federal savings associations about their securities are not deemed to be offers. However, § 16.4 more closely follows SEC regulations by additionally exempting summary prospectuses covered by SEC Rule 431,[61] notices of certain proposed unregistered offerings covered by SEC Rule 135c,[62] publications or distributions of research reports by brokers or dealers covered by SEC Rules 138 and 139,[63] and certain communications made after providing a prospectus. Amending part 16 to include Federal savings associations would afford them the additional communication exemptions under the

[54] National bank and Federal savings association securities are generally exempt from the Securities Act. Securities Act, sections 3(a)(2) and (5) (15 U.S.C. 77c(a)(2) and (5)).

[55] 59 FR 54789 (Nov. 2, 1994) (''[Part 16] generally requires national bank securities offering documents to conform to the form for registration that the bank would use if it had to register the securities under the Securities Act. Accordingly, the final rule cross-references a number of provisions of the Securities Act and a number of SEC rules.'')

[56] As indicated in the discussion of part 11, above, an emerging growth company is a new category of issuer created under the JOBS Act. Generally, an emerging growth company is an issuer that had total annual gross revenues of less than $1 billion during its most recently completed fiscal year. Securities Act section 2(a)(19) (15 U.S.C. 77b(a)(19)). An emerging growth company is eligible to rely on certain scaled disclosure requirements for registration statements filed under the Securities Act. For example, an emerging growth company need not present more than two years of audited financial statements in a registration statement for an initial public offering. Securities Act section 7(a) (15 U.S.C. 77g(a)). *C.f.* SEC Regulation S–X, Rule 3–02 (17 CFR 210.3–02) (requiring three years of audited financial statements). We note that under 12 CFR 16.15(e), the OCC does not generally require audited financial statements in securities offering documents for national banks in organization. An emerging growth company also is eligible for scaled disclosure requirements in the context of Exchange Act periodic reporting. A detailed discussion of this relief is set forth above in the discussion of part 11.

[57] Securities Act, section 4(a)(6) (15 U.S.C. 77d(a)(6)) (crowdfunding creates a registration exemption for offerings of up to $1 million, provided that individual investments do not exceed certain thresholds and the issuer satisfies other conditions in the JOBS Act).

[58] Securities Act, section 3(b) (15 U.S.C. 77c(b)) (directing the SEC to create a registration exemption for securities offerings of up to $50 million).

[59] Securities Act, sections 2(a)(3) and 5(d) (15 U.S.C. 77b(a)(3) and 77e(d)).

[60] The SEC has adopted amendments to Regulation A under the Securities Act to implement section 401 of the JOBS Act. 80 FR 21806 (Apr. 20, 2015). The SEC also has adopted amendments to Rule 506 of Regulation D and Rule 144A under the Securities Act to implement section 201(a) of the JOBS Act. 78 FR 44771 (July 24, 2013).

[61] 17 CFR 230.431.

[62] 17 CFR 230.135c.

[63] 17 CFR 230.138 and 230.139.

SEC rules currently available to national banks. The OCC received no comments on this change and adopts it as proposed.

Exemptions. Section 16.5 provides exemptions to the general registration requirements for national bank securities under § 16.3. These exemptions significantly overlap with the § 197.3 exemptions to the registration requirements for Federal savings associations. However, § 16.5 applies SEC Rules 152 [64] (private placement exemption), 152a [65] (exemption for sales of certain fractional interests) to transactions exempt under section 4 of the Securities Act [66]), and 236 [67] (offerings to shareholders in connection with a stock dividend, stock split, conversion, or merger) while § 197.3(b) does not. By amending § 16.5 to include Federal savings associations, the additional exemptions provided by these two SEC rules would apply to transactions by Federal savings associations.

Section 16.5(f) specifically exempts transactions that satisfy the requirements of SEC Rule 701 [68] regarding offers and sales of securities pursuant to certain compensatory benefit plans and contracts relating to compensation. Section 197.3 does not cross-reference SEC Rule 701 but rather provides in § 197.3(g) a narrower exemption for sales only to officers, directors, or employees through an employee benefit plan or a dividend or interest reinvestment plan that has been approved by shareholders. In particular, § 197.3(g) does not exempt sales made through compensatory benefit plans for consultants, advisors, and family members, as does SEC Rule 701.

By amending § 16.5 to include Federal savings associations, the exemption available for savings associations would be expanded to cover all such sales exempted by SEC Rule 701. Although the OCC did not propose to incorporate the § 197.3(g) requirement regarding shareholder approval of compensation plans, Federal savings associations still must follow all applicable corporate governance requirements under their charter provisions. Additionally, national banks and Federal savings associations that are subject to the Federal proxy rules must comply with SEC rules issued under Exchange Act Section 14A [69] concerning shareholder approval of executive compensation and golden parachute payments.

The OCC notes that under paragraph (e) of § 197.3 certain collateralized securities issued by Federal savings associations currently are exempt from registration. Federal savings associations also rely upon SEC Regulation D [70] in addition to § 197.3(e) for this exemption.[71] Therefore, the OCC did not propose to maintain the exemption in § 197.3(e) because of the availability of the Regulation D private placement exemption in part 16.

We received no comments on these proposed changes to exemptions and adopt them as proposed. We believe that these changes will provide savings associations with additional flexibility when issuing securities, resulting in reduced costs and less regulatory burden for such issuances.[72]

Sales of nonconvertible debt. The OCC proposed to apply § 16.6, sales of nonconvertible debt, to Federal savings associations. While Federal savings associations have previously sold nonconvertible debt under similar restrictions through various interpretive letters, the OCC believes that adopting a single set of requirements is simpler and more efficient for Federal savings associations. We received no comments on this proposed change and adopt it as proposed.

Small issues. Section 16.8 provides an exemption for small issues of national bank securities under the SEC's Regulation A.[73] Currently, Federal savings associations do not have a Regulation A exemption for small issuances. The OCC proposed to amend § 16.8 to include savings associations. We received no comments on this proposed change and adopt it as proposed. As a result of this amendment, Federal savings associations will be able to issue small amounts of securities and remain exempt from filing registration statements and prospectuses, thereby reducing regulatory burden.

Securities offered and sold in holding company dissolution. Section 16.9 provides an exemption for securities offered and sold in a holding company dissolution. Part 197 does not contain a similar provision; however, Federal savings associations have relied on SEC rules for these transactions pursuant to informal OTS staff guidance. The OCC proposed to apply § 16.9 to securities issued by Federal savings associations to provide more certainty as to the applicability of the § 16.9 exemption to these transactions. We received no comments on this proposed change and adopt it as proposed.

Effectiveness. Section 16.16 provides that a registration statement and amendments will become effective in accordance with § 8(a) and (c) of the Securities Act and SEC Regulation C, 17 CFR part 230, which is the 20th day after filing or sooner if so determined by the OCC. Section 197.6 contains the same effective date but does not reference Regulation C. The Federal savings association rule also contains other provisions regarding a delay in effectiveness and provides that the OCC may pursue any remedy under section 5(d) of the HOLA if it appears that the offering circular contains any material misstatement or omission. The OCC proposed to apply § 16.16 to Federal savings associations. We received no comments on this proposed change and adopt it as proposed. As a result, SEC regulation C now applies to Federal savings associations instead of these additional provisions in § 197.6.

Sales of securities at an office of a savings association. Section 197.17 provides that the sale of securities of a Federal savings association or its affiliates at an office of the savings association may only be made in accordance with the provisions of § 163.76.[74] Section 163.76 generally prohibits the offer or sale of debt or equity securities issued by a Federal savings association or an affiliate at an office of the association, unless the equity securities are issued by the association or the affiliate in connection with the association's conversion from the mutual to stock form of organization and certain conditions are met. The OCC proposed to amend part 16 by adding a new § 16.10 to maintain this restriction on the sale of a Federal

[64] 17 CFR 230.152.

[65] 17 CFR 230.152a.

[66] 15 U.S.C. 77d.

[67] 17 CFR 230.236.

[68] 17 CFR 230.701.

[69] 15 U.S.C. 78n–1. Section 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) added section 14A to the Exchange Act.

[70] 17 CFR 230.501 *et seq.*

[71] 12 CFR 197.4(a).

[72] The OCC notes that the JOBS Act amended section 4 of the Securities Act to create a private placement exemption for crowdfunding (Securities Act, section 4(a)(6), 15 U.S.C. 77d(a)(6)), and the SEC has adopted rules to implement this exemption (80 FR 71387 (Nov. 16, 2015)). National banks and Federal savings associations may not rely on the private placement exemption for crowdfunding in Securities Act section 4(a)(6) unless and until the OCC adopts rules implementing this provision for national banks and Federal savings associations or affirmatively adopts SEC rules that implement this provision. At this time, the OCC is not proposing to amend its rules to permit the private placement exemption for crowdfunding.

[73] 17 CFR 230.251 *et seq.*

[74] Section 197.17 includes an inaccurate cross-reference to § 197.76. We have provided the correct cross-reference in the discussion above and in the proposed rule. *See* proposed § 16.10.

savings association's or affiliate's securities.

The OCC specifically requested in the proposed rule that commenters opine on whether the OCC should remove the limitations on the offer or sale of debt or equity securities at an office of a Federal savings association in light of amendments to the Exchange Act made by the Gramm-Leach-Bliley Act,[75] rules promulgated by the Financial Industry Regulatory Authority,[76] and the Interagency Statement on Retail Sales of Nondeposit Investment Products, all of which govern securities activities conducted on the premises of OCC-regulated financial institutions [77] In the alternative, the OCC asked whether we should amend part 16 to prohibit a national bank from offering or selling debt or equity securities issued by the bank or an affiliate at an office of the bank.

We received one comment on new § 16.10. This commenter did not agree with the suggestion to apply this restriction to national banks as it would be an increase in regulatory burden. In addition, this commenter suggested that the OCC remove this restriction for Federal savings associations. After further review of this provision, the OCC has decided to adopt the provision as proposed and maintain the restriction on Federal savings associations but not apply it to national banks. This provision was enacted in response to the savings and loan crisis of the 1980s, which had a devastating effect on the thrift industry as well as on its customers. This provision has prevented the recurrence of similar events and we believe that the benefit of this restriction outweighs any burden the restriction imposes on Federal savings associations. As there is no historical rationale for this restriction to be placed on national banks, and because we do not see a current need for this restriction to apply to national banks, we have not expanded it to cover these institutions.

Filing requirements and inspection of documents. Current §§ 16.17 and 197.5 require national banks and Federal savings associations, respectively, to submit by mail or otherwise four copies of all registration statements, offering documents, amendments, notices, or other documents to the SCP Division or, if related to a bank in organization or a de novo Federal savings association, to the appropriate district office. Similar to the amendment to § 11.3, the OCC proposed to amend § 16.17 to require instead that banks and savings associations submit one copy of their filings electronically to the SCP Division or the appropriate district office, as applicable, through *http://www.banknet.gov/.* Pursuant to proposed § 16.17(g), any filing of amendments or revisions to previously filed documents must include two copies, one of which must be marked to indicate clearly and precisely, by underlining or in some other appropriate manner, the changes made. Current § 16.17(e) requires a total of four copies of amendments or revisions.

The amendments to § 16.17 also provide that documents may be signed electronically using the signature provision in SEC Rule 402.[78] As indicated in the discussion of part 11, above, this SEC rule provides that required signatures may be typed or may be duplicated or facsimile versions of manual signatures. Where typed, duplicated, or facsimile signatures are used, each signatory to the filing is required to ''manually sign a signature page or other document authenticating, acknowledging, or otherwise adopting his or her signature that appears in the filing.'' [79] As provided by Rule 402, this document must be retained for five years and, upon request, a copy must be provided to the OCC.

Current §§ 16.17(d) and 197.1 provide the date on which papers are actually received by the OCC shall be the date of filing, if the person or bank filing the papers has complied with all applicable requirements. As with the amendment to § 11.3(a)(3)(i), the OCC proposed to update § 16.17(d) to conform to the electronic filing requirement. Specifically, we proposed that an electronic filing that is commenced on a nonholiday weekday on or before 5:30 p.m. Eastern Standard or Daylight Savings Time, whichever is currently in effect, would be deemed received by the OCC on the same business day. An electronic filing whose submission is commenced after 5:30 p.m. Eastern Standard or Daylight Savings Time, whichever is currently in effect, or on a Saturday, Sunday, or Federal holiday would be deemed received by the OCC on the next business day. We note, however, that paragraph (e) provides that with respect to any registration statement or any post-effective amendment filed pursuant to SEC Rule 462(b),[80] the cut-off time is 10 p.m. to be consistent with corresponding SEC rules.

As with section § 11.3(a)(3)(iii), proposed § 16.17(d) provided that if an electronic filer in good faith attempts to file a document pursuant to this part in a timely manner but the filing is delayed due to technical difficulties beyond the electronic filer's control, the electronic filer may request that the OCC adjust the filing date. The OCC may grant the request if it appears that such adjustment is appropriate and consistent with the public interest and the protection of investors. As indicated above, these rules for dating an electronic filing, and for providing a waiver for technical difficulties with the filing, are derived from SEC Regulation S–T.[81]

The OCC also proposed a new § 16.17(f) to establish an exception to the general electronic filing requirements that permits the use of paper filings where unanticipated technical difficulties prevent the use of electronic filings. This exception is modeled on SEC Regulation S–T, Rule 201,[82] which provides a temporary hardship exemption to the SEC's EDGAR filing requirements in cases of unanticipated technical difficulties. Similar to Rule 201, the OCC notes that the use of this exception should be extremely limited and should be relied upon only when unusual and unexpected circumstances create technical impediments to the use of electronic filings.

Finally, the OCC proposed technical changes to § 16.17(h), currently § 16.17(f), to update a cross-reference to 12 CFR part 4.

The OCC did not receive any comments on these proposed changes to the filing requirements in § 16.17 and we adopt them as proposed.

Use of prospectus. Section 16.18 provides that no person may use a prospectus or amendment declared effective by the OCC more than nine months after the effective date unless the information contained in the prospectus or amendment is as of a date not more than 16 months prior to the date of use. Furthermore, this section provides that no person may use a prospectus if an event arises or fact changes after the effective date that causes the prospectus to contain an untrue statement of material fact or to omit a material fact that causes the prospectus to be misleading until an amendment reflecting the event or change has been filed with and declared effective by the OCC. The OCC proposed

[75] *See* 15 U.S.C. 78c(a)(4). *See also* Regulation R, 17 CFR 247.100 *et seq.*

[76] *See* FINRA Rule 3160.

[77] *See* OCC Bulletin 94–13, Non deposit Investment Sales Examination Procedures (Feb. 24, 1994) and OCC Bulletin 95–52, Retail Sales of Nondeposit Investment Products (Sept. 22, 1995).

[78] 17 CFR 230.402.

[79] *Id.*

[80] 17 CFR 230.462(b).

[81] 17 CFR 232.

[82] 17 CFR 232.201.

to apply § 16.18 to Federal savings associations. We received no comments on this proposed change and adopt it as proposed. Because § 197.8 contains similar provisions, this amendment will not result in any changes for Federal savings associations.

Withdrawal or abandonment. In general, § 16.19 provides that a registration statement, amendment, or exhibit may be withdrawn prior to its effective date. Furthermore, this section provides that the OCC may deem abandoned a registration statement or amendment that has been on file with the OCC for nine months and has not become effective. The OCC proposed to apply § 16.19 to Federal savings associations. We received no comments on this proposed change and adopt it as proposed. Because § 197.11 contains the same provisions as § 16.19, applying § 16.19 to Federal savings associations will not result in any changes for Federal savings associations.

Request for interpretive advice or no-objection letter. As proposed, the OCC is adopting the amendment to § 16.30 that updates the cross-reference to where the address for filing a request for interpretive advice or a no-objection letter may be found.

Escrow requirement. For national banks, § 16.31 provides the OCC with discretion to require the establishment of an escrow account, while § 197.9 automatically requires an escrow account for Federal savings associations. By amending part 16 to include Federal savings associations and deleting § 197.9, the OCC proposed to remove the mandatory escrow requirement for Federal savings associations. We received no comments on this proposed change and adopt it as proposed.

Fraudulent transactions/unsafe or unsound practices. Section 16.32 prohibits fraudulent transactions in the offer or sale of bank securities and deems such transactions to be an unsafe or unsound practice under 12 U.S.C. 1818. Section 197.10 contains a similar prohibition. However, § 16.32 specifically cross-references the investor protections under section 17 of the Securities Act [83] and references SEC Rule 175 [84] on forward-looking statements. Although section 17 by its terms applies to Federal savings associations regardless of the OCC rule, neither it nor SEC Rule 175 is referenced in § 197.10. The OCC proposed to amend § 16.32 to include Federal savings associations. As a result, part 16 would put Federal savings associations on notice that the Securities Act section 17 investor protections apply. Furthermore, Federal savings associations would have the additional clarifying guidance on the liability of forward-looking statements provided by SEC Rule 175. We received no comments on this proposed change and adopt it as proposed.

Filing fees. Section 16.33 provides that the required filing fees, as provided for in the Notice of Comptroller of the Currency Fees published pursuant to 12 CFR 8.8, must accompany filings made pursuant to part 16. The OCC proposed to amend § 16.33(a) to clarify that the OCC may require filing fees before it may accept a filing. In addition, as with § 11.4, we proposed to amend § 16.33(b) to provide that such fees may be paid by means acceptable to the OCC, in addition to by check, to reflect the additional payment options now available. We received no comments on these proposed filing fee changes and adopt them as proposed. We note that the OCC is not currently imposing any filing fees for part 16 filings and is not imposing any new fees as part of this rulemaking.

Waiver and interpretive advice requests. The proposed rule did not include the blanket waiver provisions contained in §§ 197.14 and 197.15. Commenters did not discuss these provisions and the final rule as adopted does not contain these blanket waivers. However, we note that the OCC will continue to provide interpretive advice or no-objection letters under the terms provided in § 16.30. We also note that 12 CFR 100.2 provides that the Comptroller may, for good cause and to the extent permitted by statute, waive the applicability of any provision of 12 CFR parts 1 through 197, with respect to Federal savings associations.

Current and periodic reports. Section 197.18 requires a Federal savings association to file certain periodic reports with the OCC after its offering circular becomes effective, even if the savings association is not otherwise required to register its securities with the OCC under the Exchange Act. This filing requirement applies to Federal savings associations until the securities to which the savings association's offering circular relates are held of record by fewer than 300 persons in any fiscal year other than the fiscal year in which the offering circular becomes effective. The FDIC and the Federal Reserve Board have not imposed a comparable obligation on state banks, and the OCC removed this obligation on national banks in 2008.[85] Instead, a state or national bank is subject to Exchange Act periodic and current reporting requirements if the bank's total assets exceed $10,000,000 and it has a class of equity security (other than an exempted security) held of record by 2,000 or more persons.[86]

The proposed rule did not include filing requirement contained in § 197.18. As a result, a Federal savings association instead would be subject to Exchange Act periodic and current reporting requirements if it has total assets exceeding $10,000,000 and a class of equity security (other than an exempted security) held of record by 2,000 or more persons.[87] Commenters did not discuss the removal of this filing requirement and we adopt this change as proposed. As a result of this final rule, current and periodic reporting requirements for national banks and Federal savings associations will be identical. In addition, regulatory burden will be reduced by eliminating such filing requirements for Federal savings associations with fewer than 1,200 holders of record.[88] Financial information about a savings association will continue to be publicly available to investors through quarterly financial information, including balance sheets and statements of income, which is part of a savings association's Call Reports and is available at *https://cdr.ffiec.gov/public/.*

Periodic sales reports. Under § 197.12 Federal savings associations must file periodic reports on the sales of securities that are registered under § 197.2 or that are otherwise exempt from registration under § 197.4 (non-public offerings, including Regulation D and sales to 35 or more persons). National banks do not have to file similar reports. Institutions generally sell securities for the purpose of increasing their capital. The OCC can review any increases to a Federal savings association's capital through the institution's quarterly Call Report, and therefore the periodic sales report provides limited additional value for supervision. Furthermore, § 5.45 requires Federal savings associations subject to capital plans or other regulatory actions to file reports for increases in permanent capital, so the Securities Sales Report is redundant in cases that present the most supervisory

[83] 15 U.S.C. 77q.

[84] 17 CFR 230.175.

[85] 73 FR 22216 (Apr. 24, 2008).

[86] Exchange Act, section 12(g) (15 U.S.C. 78l(g)), as amended by section 601(a) of the JOBS Act.

[87] *Id.*

[88] *Id.* National banks and Federal savings associations that are currently registered under section 12(g) of the Exchange Act and have 1,200 or more holders of record for a class of securities must continue to comply with current and periodic reporting requirements.

risk.[89] Therefore, the OCC proposed to not include in part 16 the § 197.12 requirement that Federal savings associations file reports on sales of securities. We did not receive any comments on the removal of the periodic sales report requirement and adopt this change as proposed.

Disclosure of Financial and Other Information by National Banks (12 CFR Part 18)

Twelve CFR part 18 sets forth annual financial disclosure requirements for national banks. Specifically, part 18 requires national banks to prepare annual disclosure statements as of December 31 to be made available to bank security holders by March 31 of the following year. The rule specifies the types of information that must be included in the disclosure statements, which includes, at a minimum, certain information from the bank's Call Report. The Comptroller may require the inclusion of other information and the bank may include an optional narrative. Section 18.5 provides alternative ways a bank may meet the disclosure statement requirement. These alternatives include allowing Exchange Act registered banks to use the bank's annual report and allowing banks with audited financial statements to use those statements provided the statements include certain required information.

Although we did not receive any specific comments on part 18 during the EGRPRA review process, the OCC proposed to remove this rule to reduce unnecessary burden. The information part 18 requires a national bank to disclose is contained in other publicly available documents, such as the Call Report and the Uniform Bank Performance Report. Part 18 is therefore duplicative and unnecessary. We note that the Federal Reserve Board and the former OTS rescinded similar regulations for state member banks and savings associations, respectively. The OTS repealed 12 CFR 562.3 in December 1995 and the Federal Reserve Board eliminated 12 CFR 208.17 in 1998.[90]

We did not receive any specific comments on the removal of part 18 and, therefore, adopt the removal as proposed.

Extensions of Credit to Insiders and Affiliate Transactions (12 CFR Part 31, §§ 163.41 and 163.43

National banks and Federal savings associations must comply with rules of the Federal Reserve Board regarding extensions of credit to insiders, 12 CFR part 215 (Regulation O), which implements sections 22(g) and 22(h) of the Federal Reserve Act, and transactions with affiliates, 12 CFR part 223 (Regulation W), which implements sections 23A and 23B of the Federal Reserve Act.[91] Twelve CFR part 31 and 12 CFR 163.41 and 163.43 address these transactions for national banks and Federal savings associations, respectively. Specifically, § 31.2 requires national banks to comply with Regulation O. Appendix A to part 31 provides interpretive guidance on the application of Regulation W to deposits between affiliated banks. Sections 163.41 and 163.43 contain general statements that refer Federal savings associations to applicable regulations of the Federal Reserve Board, *i.e.,* Regulation O and Regulation W.

The OCC proposed to consolidate its rules that address insider lending and affiliate transactions by amending part 31 to state clearly that both national banks and Federal savings associations must comply with Regulation O and Regulation W and by removing §§ 163.41 and 163.43. Moreover, the OCC proposed to amend part 31 to add the statutory standards for authorizing an exemption from section 23A in accordance with section 608 of the Dodd-Frank Act.

Specifically, we proposed to add ''Federal savings associations'' to the text of § 31.2, Insider lending restrictions and reporting requirements, and to add a new § 31.3 to require both national banks and Federal savings associations to comply with the affiliate transaction requirements contained in Regulation W. Proposed § 31.3(b) clarified that the OCC administers and enforces affiliate transaction requirements as they apply to national banks and Federal savings associations.

Furthermore, proposed § 31.3(c) implemented the standards for authorizing an exemption from section 23A, as provided by section 608 of the Dodd-Frank Act. Section 608 amends section 23A and section 11 of the HOLA to authorize the OCC to exempt, by order, a transaction of a national bank or Federal savings association, respectively, from the affiliate transaction requirements of section 23A and section 11 of the HOLA if: (1) The OCC and the Federal Reserve Board jointly find the exemption to be in the public interest and consistent with the purposes of section 23A and section 11, as applicable, and (2) within 60 days of receiving notice of such finding, the FDIC does not object in writing to the finding based on a determination that the exemption presents an unacceptable risk to the Deposit Insurance Fund.[92] Proposed § 31.3(d) described the procedures that a national bank and Federal savings association must follow for requesting such an exemption. These procedures are modeled after the Federal Reserve Board's existing procedures in Regulation W.

Under the proposal, appendix A to part 31, which is specific to national banks, remains unchanged. However, the proposal amended appendix B, which contains a comparison between selected provisions of Regulation O and the OCC's lending limits rule, 12 CFR part 32, to include Federal savings associations and to make technical changes.

Lastly, the proposal updated the authority provision in § 31.1 to reference the appropriate statutory cite for Federal savings association, 12 U.S.C. 1463 and 1468, and to correct a duplicative reference to 12 U.S.C. 1817(k).

The OCC did not receive any specific comments on these proposed amendments to Part 31 and the removal of §§ 163.41 and 163.43, and we therefore adopt these changes as proposed.

It should be noted that the OCC may impose additional restrictions on any transaction between a Federal savings association or national bank and its affiliates that the OCC determines to be necessary to protect the safety and soundness of the institution.[93] This authority is unaffected by and not addressed in this final rule.

Electronic Operations and Activities of Federal Savings Associations (12 CFR Part 155)

Twelve CFR part 155 addresses the use of technology by Federal savings associations to deliver products and services. Specifically, § 155.200 provides that a Federal savings association may use electronic means or facilities to perform any function, or provide any product or service, as part of an otherwise authorized activity. In addition, § 155.200 permits Federal savings associations to use, or participate with others to use, electronic

[89] Section 5.46 requires national banks to file reports for increases in permanent capital.

[90] 60 FR 66866 (Dec. 27, 1995); 63 FR 37630 (July 13, 1998).

[91] 12 U.S.C. 371c, 371c–1, 375a, and 375b. In general, section 11 of the HOLA, 12 U.S.C. 1468, applies sections 22(g), 22(h), 23A and 23B of the Federal Reserve Act to savings associations in the same manner and to the same extent as if the savings association were a member bank.

[92] *See* section 608(a)(4)(A)(iv) of the Dodd-Frank Act (exemption authority for national banks) and section 608(c) of the Dodd-Frank Act (exemption authority for Federal savings associations).

[93] *See, e.g.,* 12 U.S.C. 93a, 371c(f)(2)(B)(i), 481, 1468(a)(4), 1468(b)(2), and 1831p–1.

means or facilities to perform any function, or provide any product or service, as part of an authorized activity; and to market and sell, or participate with others to market and sell, electronic capacities and by-products to third parties in order to optimize the use of resources, if the savings association acquired or developed these capacities and by-products in good faith as part of providing financial services. These authorizations are similar to what is provided for national banks in 12 CFR part 7, subpart E.

Section 155.210 requires management of the savings association to take steps to identify, assess and mitigate potential risks, establish prudent internal controls, and implement security measures designed to prevent unauthorized access, prevent fraud, and comply with applicable security device requirements of part 168.

Paragraph (a) of § 155.300 provides that Federal savings associations are not required to inform the OCC before using electronic means or facilities, except as provided in paragraphs (b) and (c) and encourages Federal savings associations to discuss any planned new products or services that will use electronic means or facilities with their assigned OCC supervisory office. Paragraph (b) of § 155.300 requires a Federal savings association to file a written notice with the OCC prior to establishing a transactional Web site. Paragraph (c) of § 155.300 requires a Federal savings association to follow any written procedures the OCC imposes with respect to any supervisory or compliance concerns regarding its use of electronic means or facilities. Finally, § 155.310 provides the procedures for filing the transactional Web site notice.

Part 155 was included in the first EGRPRA **Federal Register** request for comment. In response to this request, we received comments recommending that the OCC remove the transactional Web site prior notice requirement in § 155.300(b). The OCC agrees that this notice is no longer necessary and proposed to remove it, along with the related procedural requirements in § 155.310.

Furthermore, the OCC proposed to remove the remaining paragraphs of § 155.300. Paragraph (a) is no longer relevant without the requirement for a transactional Web site notice. Paragraph (c) is unnecessary as, pursuant to the OCC's safety and soundness authority, Federal savings associations are required to comply with any written procedures the OCC imposes for supervisory or compliance reasons.

Finally, the OCC proposed other non-substantive changes to update the rule and to present the regulatory provisions in a format more consistent with the OCC's other rules.

We received no specific comments on the removal of these provisions and the OCC adopts the amendments as proposed. Nonetheless, the OCC encourages Federal savings associations to discuss any planned new products or services that will use electronic means or facilities with their assigned OCC supervisory office.

Regulatory Reporting Requirements for Federal Savings Associations (12 CFR Part 162 and § 163.180)

Twelve CFR part 162 and § 163.180(a) set forth regulatory reporting and auditing standards and requirements for Federal savings associations. These rules were included in the first EGRPRA **Federal Register** notice and the OCC did not receive any comments on these rules in response to this request for comment. However, after conducting its own review of these rules, the OCC proposed to revise 12 CFR part 162 and remove § 163.180(a) in order to eliminate duplicative requirements.

Various Federal statutes impose reporting and audit requirements on Federal savings associations and national banks. Specifically, 12 U.S.C. 161(a) provides that national banks must submit reports of condition to the Comptroller in accordance with the requirements of the FDI Act. Twelve U.S.C. 1464(v)(1) is the comparable statute for Federal savings associations. In addition, 12 U.S.C. 1831m and FDIC implementing regulations at 12 CFR part 363 require insured depository institutions above a specified asset threshold to have annual independent audits and to submit annual reports and audited financial statements to the FDIC and the appropriate Federal banking agency.[94] These financial statements must be prepared in accordance with GAAP and such other disclosure requirements as the FDIC and the appropriate Federal banking agency may prescribe.[95] The *Interagency Policy Statement on External Audit Programs of Banks and Savings Associations* (1999 Interagency Policy Statement)[96] provides unified interagency guidance regarding independent external auditing programs of community banks and savings associations that are exempt from 12 CFR part 363 (*i.e.,* institutions with less than $500 million in total assets) or that are not otherwise subject to audit requirements by order, agreement, statute, or agency regulations. Furthermore, 12 U.S.C. 1463(b)(1) requires the Comptroller, by regulation, to prescribe uniform accounting and disclosure standards for Federal savings associations' compliance with all applicable regulations.

As indicated above, 12 CFR part 162 and § 163.180(a) also contain regulatory reporting and auditing requirements for Federal savings associations. Specifically, § 162.1 requires Federal savings associations to use forms prescribed by the OCC and to follow such regulatory reporting requirements as the OCC may require. This section also requires Federal savings associations and their affiliates to maintain accurate and complete records of all business transactions that support the regulatory reports submitted to the OCC and any financial reports prepared in accordance with GAAP. These records must be maintained in the United States and must be readily accessible by the OCC for examination and other supervisory purposes within five business days upon request by the OCC, at a location acceptable to the OCC.

Section 162.2 sets forth the minimum requirements to be included in all reports to the OCC, including Call Reports. In general, these reports must incorporate GAAP, as well as additional safety and soundness requirements more stringent than GAAP that the Comptroller prescribes. Section 163.180(a) provides that Federal savings associations and their service corporations must submit periodic and other reports as required by the appropriate Federal banking agency. Both §§ 162.1 and 162.2 implement the 12 U.S.C. 1463(b)(1) requirement, described above, that the OCC issue regulations prescribing uniform accounting and disclosure standards for Federal savings associations' compliance with all applicable regulations.

Section 162.4 sets forth requirements and standards for audits of Federal

[94] Among other requirements, 12 CFR part 363 requires insured depository institutions with total assets above certain thresholds to assess the effectiveness of internal controls over financial reporting, to establish independent audit committees, and to comply with related reporting requirements.

[95] Other statutes further clarify the use of GAAP by insured depository institutions. *See, e.g.,* 12 U.S.C. 1831n(a)(2)(A) (the accounting principles applicable to reports or statements required to be filed with Federal banking agencies by insured depository institutions shall be uniform and consistent with GAAP) and 12 U.S.C. 1831n(a)(2)(B) (in certain circumstances, the appropriate Federal banking agency or the FDIC may, with respect to such reports or statements, prescribe an accounting principle applicable to such institutions that is no less stringent than GAAP).

[96] *See* OCC Bulletin 99–37, Interagency Policy Statement on External Auditing Programs (Oct. 7, 1999) and 64 FR 52319 (Sept. 28, 1999).

savings associations. It generally provides that the OCC may require, at any time, an independent audit of a Federal savings association's financial statements when necessary for safety and soundness reasons. It further requires an independent audit if a Federal savings association receives a CAMELS rating of 3, 4, or 5, specifies qualifications for independent public accountants, and states that audit engagement letters provide the OCC with access to and copies of any work papers, policies, and procedures relating to the services performed.

There are no comparable OCC regulations for national banks. However, the OCC applies and enforces the above-referenced statutory requirements, as well as the applicable FDIC reporting and auditing requirements, with respect to both national banks and Federal savings associations.

The OCC proposed to remove the requirements contained in §§ 162.1 and 162.2. The OCC has adequate authority pursuant to its general examination authority to obtain records and reports from Federal savings associations, as well as national banks.[97] Furthermore, the frequently changing nature of accounting standards and disclosures makes it impractical to codify detailed standards in a regulation.

The OCC also proposed to remove the audit requirements of § 162.4 and the reporting requirements of § 163.180(a) because they are unnecessarily repetitive of other requirements. The OCC has adequate statutory authority to require reports and 12 CFR 363 already specifies requirements for independent audits and auditors for both Federal savings associations and national banks. In addition, as with national banks, the OCC does not believe that it is necessary to articulate this authority for Federal savings associations in a regulation.[98]

Because 12 U.S.C. 1463(b)(1) requires the Comptroller to prescribe by regulation uniform accounting and disclosure standards for Federal savings associations, the proposal included a provision requiring that a Federal savings association incorporate U.S. GAAP and the disclosure standards included therein when complying with all applicable regulations, unless otherwise specified by statute or regulation or by the OCC. We believe that this guidance satisfies the statutory requirement while being flexible enough to accommodate the evolving nature of the standards and disclosures. With respect to national banks, a similar regulation is not required by statute and would be redundant with other provisions that require compliance with GAAP, such as 12 U.S.C. 1831m and 1831n(a)(2), discussed above. We note that we proposed to reference GAAP as ''U.S. GAAP'' in this provision to clarify that the reference is to GAAP as used in the United States, in light of evolving global accounting standards.

We did not receive any specific comments on these proposed amendments to part 162 and § 163.180 and adopt them as proposed. We note that rescission of §§ 162.4 and 163.180(a) will not affect the OCC's ability, pursuant to our safety and soundness authority, to require at any time an independent audit of a Federal savings association, or to access work papers and related documents prepared in connection with any audit of a Federal savings association.[99]

Furthermore, the OCC reminds Federal savings associations that rescinding § 162.4 does not eliminate or affect the requirement that a savings association with $500 million or more in assets obtain an annual audit pursuant to 12 U.S.C. 1831m and 12 CFR part 363, nor does it minimize the importance of administering an external audit program. The OCC encourages all national banks and Federal savings associations, regardless of size, to have independent external reviews of their operations and financial statements and to establish audit committees made up entirely of outside directors. The form of that review can range from financial statement audits by independent public accountants to agreed-upon procedures (*i.e.,* directors' examinations) performed by other independent and qualified persons. In particular, Federal savings associations should be familiar with 12 CFR part 363 and the 1999 Interagency Policy Statement, which apply to all insured depository institutions.

Management and Financial Policies (12 CFR 163.161)

Twelve CFR 163.161(a)(1) generally requires each Federal savings association and each service corporation to be well-managed, to operate in a safe and sound manner, and to pursue financial policies that are safe and consistent with economical home financing and the purposes of savings associations. Section 163.161(a)(2) requires each Federal savings association and service corporation to maintain sufficient liquidity to ensure its safe and sound operations. Section 163.161(b) addresses the compensation of Federal savings association and service corporation officers, directors, and employees.

Federal savings associations and national banks are subject to many other regulations and guidance that require sound management and financial policies. Part 30 of the OCC's regulations contain guidelines establishing operational and managerial standards for safety and soundness applicable to national banks and Federal savings associations. Among other things, these safety and soundness guidelines, which implement the statutory safety and soundness provisions at section 39 of the FDI Act,[100] address executive compensation.[101] Furthermore, the OCC, along with the other Federal banking agencies, issued a joint policy statement in 2010 that provides guidance for the sound management of liquidity risk.[102] This policy statement is both more detailed and more current than the provisions of the regulation and is applicable to both national banks and Federal savings associations.

Section 163.161 was included in the third EGRPRA **Federal Register** notice. Although we did not receive any comments on this section in response to this request for comment, we determined that § 163.161 duplicates the provisions discussed above. Therefore, the OCC proposed to delete § 163.161 in its entirety. We did not receive any specific comments on this deletion, and adopt the amendment as proposed.

Financial Derivatives Transactions by Federal Savings Associations (12 CFR 163.172)

Twelve CFR 163.172 states that a Federal savings association may engage in a transaction involving a financial derivative provided that the association is authorized to invest in the assets underlying the derivative, the transaction is safe and sound, and the savings association's board of directors and management satisfy certain prudential requirements. It also states that, in general, if a Federal savings association should engage in a financial derivative transaction, it should do so to reduce its risk exposure.

[97] *See* 12 U.S.C. 1464(d)(1)(B) (Federal savings associations) and 12 U.S.C. 481 (national banks). *See also* 12 U.S.C. 1817.

[98] *See, e.g.,* 12 U.S.C. 1817(a)(3) and 12 CFR part 304 with respect to reports and 12 CFR part 363 and the *Interagency Policy Statement on External Audit Programs of Banks and Savings Associations* (64 FR 52319, Sept. 28, 1999) with respect to audits.

[99] *See* 12 U.S.C. 1831p–1.

[100] 12 U.S.C. 1831p–1.

[101] 12 CFR part 30, appendix A. The OCC, FDIC, and Federal Reserve Board also issued joint agency guidance on incentive compensation in 2010. *See* 75 FR 36395 (June 25, 2010).

[102] *Interagency Policy Statement on Funding and Liquidity Risk Management,* 75 FR 13656 (Mar. 13, 2010).

Section 163.172(a) defines ''financial derivative'' as a financial contract whose value depends on the value of one or more underlying assets, indices, or reference rates. It states that the most common types of financial derivatives are futures, forward commitments, options, and swaps.

We note that the OCC does not have a comparable regulation governing national bank derivative transactions, but has addressed these activities through interpretive letters.

Section 163.172 was included in the fourth EGRPRA **Federal Register** notice and we did not receive any comments on this section in response to this request for comment. However, to clarify any confusion caused by the wording of the current rule, the OCC proposed to replace the term ''forward commitment'' with ''forward contract.'' A ''forward commitment'' generally refers to an agreement to loan funds in the future and is not a financial derivative. In contrast, a ''forward contract'' is a well-known type of financial derivative to which this rule should apply. We do not expect this change to have a material effect on Federal savings associations or the securities marketplace. The OCC also proposed other non-substantive changes to clarify the rule further and to present the regulatory provisions in a format more consistent with the OCC's other rules.

We did not receive any specific comments on these amendments and adopt them as proposed.

Accounting Requirements (12 CFR Part 193)

Twelve U.S.C. 1463(b)(2)(A) requires savings associations to use U.S. GAAP in preparing reports to regulators. Part 193 requires Federal savings associations to make disclosures in financial statements filed in conversion applications or under the Exchange Act. These disclosures are in addition to those required under U.S. GAAP.

Part 193 was included in the fourth EGRPRA **Federal Register** notice and we did not receive any comments on this rule in response to this request for comment. The OCC determined, however, that the additional financial disclosures required by part 193 are, in most cases, substantially similar to and largely repetitive of otherwise applicable public disclosure requirements that a Federal savings association or its holding company must satisfy under the Securities Act, the Exchange Act, or OCC regulations. Therefore, the OCC proposed to delete part 193. We did not receive any specific comments on the removal of part 193, and we adopt this removal as proposed. We note that Federal savings associations still are required to follow U.S. GAAP reporting and disclosure requirements.

III. Regulatory Analysis

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA), an agency must prepare a regulatory flexibility analysis for all proposed and final rules that describes the impact of the rule on small entities.[103] Under section 605(b) of the RFA, this analysis is not required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short explanatory statement in the **Federal Register** along with its rule.

The OCC currently supervises approximately 1,032 small entities.[104] Because some of the rule's provisions could affect any national bank and other provisions could affect any Federal savings association, the rule could have an impact on a substantial number of OCC-supervised small entities.

We believe that substantially all of national banks' and Federal savings associations' direct costs will be associated with reviewing the amendments and, when necessary, modifying policies and procedures to correct any inconsistencies between banks' internal policies and the modified rules. Once the bank has implemented the amendments, these costs will dissipate. We estimate that the monetized direct cost per bank or savings association will range from a low of approximately $1 thousand to a high of approximately $8 thousand. Using the upper bound average direct cost per entity, we believe the rule might have a significant economic impact on approximately three OCC-supervised small entities, which is not a substantial number. In other words, although the rule could have an impact on a substantial number of small entities, this impact might be significant for only a few small entities. Therefore the OCC certifies that this final rule does not have a significant economic impact on a substantial number of small entities supervised by the OCC. Accordingly, a regulatory flexibility analysis is not required.

We note that in determining this compliance cost, we do not offset the direct cost imposed by the rulemaking with savings that certain banks and savings associations will realize as a result of the rulemaking. Therefore, the cost described here does not include offsetting reductions in regulatory cost and burden.

Unfunded Mandates Reform Act of 1995

The OCC has analyzed the final rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA).[105] Under this analysis, the OCC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation). The UMRA does not apply to regulations that incorporate requirements specifically set forth in law.

The OCC finds that the rule does not trigger the UMRA cost threshold because we estimate that the UMRA cost is *nil.* The OCC believes that substantially all of banks' and savings associations' direct costs will be implementation costs associated with reviewing the amendments and, when necessary, modifying policies and procedures to correct any inconsistencies between banks' internal policies and the modified rules. Because these costs are not associated with mandates, they are not UMRA costs. Accordingly, the OCC has not prepared the written statement described in section 202 of the UMRA.

IV. Administrative Law Matters

Notice and Comment

Pursuant to the Administrative Procedure Act (APA), at 5 U.S.C. 553(b)(B), notice and comment are required prior to the issuance of a final rule unless an agency, for good cause, finds that ''notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' This final rule includes four amendments not originally included in the proposed rule published on March 14, 2016. Three of these amendments replace inaccurate terms in 12 CFR 5.21, 5.22, and 8.6(c)(3)(iv) and are purely technical in

[103] *See* 5 U.S.C. 601 *et seq.*

[104] We base our estimate of the number of small entities on the Small Business Administration's size thresholds for commercial banks and savings institutions, and trust companies, which are $550 million and $38.5 million, respectively. Consistent with the General Principles of Affiliation 13 CFR 121.103(a), we count the assets of affiliated financial institutions when determining if we should classify a bank or savings association as a small entity. We use December 31, 2015, to determine size because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* footnote 8 of the U.S. Small Business Administration's *Table of Size Standards.*

[105] 2 U.S.C. 1531 *et seq.*

nature. The fourth amendment modifies a reference in 12 CFR 5.48 to an internal agency procedure that does not affect a national bank, a Federal savings association, or other non-OCC party. Because these amendments are either technical changes or only affect the OCC, the OCC has good cause to conclude that advance notice and comment under the APA are not necessary prior to their issuance.

Effective Date

The APA requires that a substantive rule must be published not less than 30 days before its effective date, unless, among other things, the rule grants or recognizes an exemption or relieves a restriction.[106] Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that regulations imposing additional reporting, disclosure, or other requirements on insured depository institutions take effect on the first day of the calendar quarter after publication of the final rule, unless, among other things, the agency determines for good cause that the regulations should become effective before such time.[107] The April 1, 2017 effective date of this final rule meets both the APA and RCDRIA effective date requirements, as it will take effect at least 30 days after its publication date of January 23, 2017 and on the first day of the calendar quarter following publication, April 1, 2017.

Section 302 of the RCDRIA also requires the OCC to consider, consistent with the principles of safety and soundness and the public interest, any administrative burdens the final rule would place on insured depository institutions, including small depository institutions, and their customers as well as the benefits of such regulations when determining the effective date and administrative compliance requirements of new regulations that impose new reporting, disclosure, or other requirements on insured depository institutions.[108] The OCC has considered the changes made by this final rule and believes that the effective date of April 1, 2017 should provide national banks and Federal savings associations with adequate time to comply with these changes as they do not involve major revisions to bank or savings association operations. Furthermore, many of the changes will reduce burden on banks and savings associations or clarify requirements, which will lessen the administrative compliance burden of our regulations on these institutions. Some of these changes also will also benefit bank and savings association customers in that they eliminate unnecessary mailings or provide additional methods to access bank services or information.

Paperwork Reduction Act

Under the PRA of 1995,[109] the OCC may not conduct or sponsor, and a person is not required to respond to, an information collection unless the information collection displays a valid OMB control number. The OCC has submitted the information collection requirements imposed by this final rule to OMB for review.

The OCC also submitted the information collection requirements imposed by the proposed rule to OMB at the time the proposed rule was published. OMB filed comments on the information collections, instructing the OCC to examine public comment in response to the proposed rule and include in the supporting statement of the next submission, to be submitted to OMB at the final rule stage, a description of how the OCC has responded to any public comments on the collection, including comments on maximizing the practical utility of the collection and minimizing the burden. The OCC received no comments regarding the information collections and has resubmitted them to OMB for review in connection with the final rule.

The final rule amends § 5.20, where special purpose charters are discussed, to describe changes in charter purpose, set out the requirement for an application, and direct institutions to § 5.53 for the relevant application. A nonmaterial change has been filed with OMB for these revisions.

Section 9.18(b)(1) has been revised to replace the requirement that a national bank make a copy of any collective investment fund plan available for public inspection at its main office with the requirement that the plan could instead be available to the public on its Web site. A nonmaterial change has been filed with OMB for this revision.

Part 194 is removed and Federal savings associations would follow part 11. Section 11.3 has been revised to require that fewer copies be filed and to allow electronic signatures. A nonmaterial change has been filed with OMB for these revisions.

Section 12.4(b) has been amended to allow institutions to direct a broker-dealer to mail confirmations to customers without requiring a duplicate or other form of notification specified in § 12.4 or § 12.5 to be sent by the institution. Sections 12.101 and 12.102, which require the disclosure of remuneration for mutual fund transactions and electronic communications, have been removed. Section 151.60(a) and (b) have been amended to include the less detailed maintenance and storage procedures for customer securities transaction records found in part 12. Section 151.60(b) also has been amended to allow use of a third-party service provider for records storage and maintenance. Section 151.80 has been amended to provide that a Federal savings association that has previously determined compensation in a written agreement with the customer would not need to provide a remuneration statement for each securities transaction. The Recordkeeping Requirements for Securities Transactions information collection covering parts 12 and 151 has been submitted to OMB for review:

Title: Recordkeeping Requirements for Securities Transactions.

OMB Control No.: 1557–0142.

Frequency of Response: On occasion.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents:

Current: 399.

Revised: 399.

Estimated Total Annual Burden:

Current: 2,315 hours.

Revised: 1,916 hours.

Part 197 has been removed and Federal savings associations will follow part 16. In addition, § 16.5 has been amended to provide additional exemptions for private placements and sales of certain fractional interests for Federal savings associations. The filing requirement in § 197.18 for periodic reports on sales of securities has been removed and Federal savings associations with total assets exceeding $10,000,000 and a class of equity security (other than exempted security) held of record by 2,000 or more persons are subject to Exchange Act periodic and current reporting requirements. Section 16.17 has been revised to (i) reduce from four paper copies to one electronic copy the number of copies of documents required to be filed for banks and Federal savings associations and banks and Federal savings associations in organization, with certain paper submission exceptions; and (ii) reduces from four to two the number of paper copies of amendments that must be filed. In addition, documents may be signed electronically using the signature provision in SEC Rule 402. The Securities Offering Disclosure information collection covering parts 16

[106] 5 U.S.C. 553(d)(1).

[107] 12 U.S.C. 4802.

[108] 12 U.S.C. 4802.

[109] 44 U.S.C. 3501 *et seq.*

and 197 has been submitted to OMB for review:

Title: Securities Offering Disclosure Rules.

OMB Control No.: 1557–0120.

Frequency of Response: On occasion.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents:

Current: 61.

Revised: 37.

Estimated Total Burden:

Current: 1,310 hours.

Revised: 814 hours.

Part 18 is removed and the related information collection, OMB Control No. 1557–0182, has been discontinued.

Section 31.3(d) is added to provide procedures to be followed when seeking exemption from 23A of the Federal Reserve Act. A request for a new control number for this collection has been submitted to OMB:

Title: Extensions of Credit to Insiders and Transactions with Affiliates.

OMB Control No.: 1557–NEW.

Frequency of Response: On occasion.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 1 respondent.

Estimated Total Annual Burden: 10 hours.

The notice requirement in § 155.310, requiring a Federal savings association to file a written notice with the OCC at least 30 days prior to establishing a transactional Web site, has been removed. Therefore, OMB Control No. 1557–0301, covering § 155.310, has been discontinued.

The duplicative reporting requirements found in §§ 162.1 and 162.4 have been removed. The General Reporting and Recordkeeping information collection covering part 162 has been submitted to OMB for review:

Title: General Reporting and Recordkeeping.

OMB Control No.: 1557–0266.

Frequency of Response: On occasion.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents:

Current: 500.

Revised: 500.

Estimated Total Annual Burden:

Current: 68,345 hours.

Revised: 67,845 hours.

Comments continue to be invited on:

(a) Whether the collections of information are necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimates of the burden of the collections of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

IV. Redesignation Tables

Subject	Current rule	Final rule
Electronic Notice for Securities Transactions	12 CFR 151.110	Removed.
Transactions with Affiliates	163.41	§ 31.3.
Loans by savings associations to their executive officers, directors and principal shareholders	163.43	§ 31.2.
Management and Financial Policies	163.161	Removed.
Periodic Reports	12 CFR 163.180(a)	Removed.
Notification of Loss and Reports of Increase in Deductible Amount of Bond	12 CFR 163.180(c)	§ 7.2013.
Bonds for Directors, Officers, Employees, and Agents; Form of and Amount of Bonds	12 CFR 163.190	§ 7.2013.
Bonds for Agents	12 CFR 163.191	§ 7.2013.
Accounting Requirements	12 CFR part 193	Removed.
Securities of Federal Savings Associations	12 CFR part 194	12 CFR part 11.
Requirements under certain sections of the Securities Exchange Act of 1934	§ 194.1	§ 11.2, § 11.3, § 11.4.
Liability for certain statements by Federal savings associations	§ 194.3.	
Form and content of financial statements	§ 194.210	§ 11.2.
Application of this subpart	§ 194.801.	
Description of business	§ 194.802.	
Securities Offerings	12 CFR part 197	12 CFR part 16.
Definitions	§ 197.1	§ 16.2.
Offering circular requirement	§ 197.2(a)	§ 16.3(a).ROW≤
—In General.		
—Communications not deemed an offer	§ 197.2(b)	§ 16.4.
—Preliminary offering circular	§ 197.2(c)	§ 16.3(b).
Exemptions	§ 197.3	§ 16.5.
Non-public offering	§ 197.4	§ 16.7.
Filing and signature requirements	§ 197.5	§ 16.17.
Effective date	§ 197.6	§ 16.16.
Form, content, and accounting	§ 197.7	§ 16.15.
Use of the offering circular	§ 197.8	§ 16.18.
Escrow requirement	§ 197.9	§ 16.31.
Unsafe or unsound practices	§ 197.10	§ 16.32.
Withdrawal or abandonment	§ 197.11	§ 16.19.
Securities sale report	§ 197.12	
Public disclosure and confidential treatment	§ 197.13	§ 16.17(f).
Waiver	§ 197.14.	
Requests for interpretive advice or waiver	§ 197.15	§ 16.30.
Delayed or continuous offering and sale of securities	§ 197.16.	
Sales of securities at an office of a savings association	§ 197.17	§ 16.10.
Current and periodic reports	§ 197.18.	
Approval of the security	§ 197.19.	
Filing of copies of offering circulars in certain exempt offerings	§ 197.21.	
Form for Securities Sale Report (Appendix A)	§ 197, Appendix A.	

List of Subjects

12 CFR Part 5

Administrative practice and procedure, Federal savings associations, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 7

Computer technology, Credit, Insurance, Investments, Federal savings associations, National banks, Reporting and recordkeeping requirements, Securities, Surety bonds.

12 CFR Part 8

Assessments, National banks, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 9

Estates, Investments, National banks, Reporting and recordkeeping requirements, Trusts and trustees.

12 CFR Part 10

Federal savings associations, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 11

Confidential business information, Federal savings associations, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 12

National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 16

Federal savings associations, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 18

National banks, Reporting and recordkeeping requirements.

12 CFR Part 31

Credit, Federal savings associations, National banks, Reporting and recordkeeping requirements.

12 CFR Part 150

Administrative practice and procedure, Reporting and recordkeeping requirements, Federal savings associations, Trusts and trustees.

12 CFR Part 151

Reporting and recordkeeping requirements, Federal savings associations, Securities, Trusts and trustees.

12 CFR Part 155

Accounting, Consumer protection, Electronic funds transfers, Reporting and recordkeeping requirements, Federal savings associations.

12 CFR Part 162

Accounting, Reporting and recordkeeping requirements, Federal savings associations.

12 CFR Part 163

Accounting, Administrative practice and procedure, Advertising, Conflict of interests, Crime, Currency, Investments, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 193

Accounting, Federal savings associations, Securities.

12 CFR Part 194

Authority delegations (Government agencies), Reporting and recordkeeping requirements.

12 CFR Part 197

Reporting and recordkeeping requirements, Federal savings associations, Securities.

For the reasons set forth in the preamble, and under the authority of 12 U.S.C. 93a and 5412(b)(2)(B), chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

■ 1. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 24a, 93a, 215a–2, 215a–3, 481, 1462a, 1463, 1464, 2901 *et seq.,* 3907, and 5412(b)(2)(B).

§ 5.8 [Amended]

■ 2. Section 5.8 is amended in paragraph (b) by:

■ a. Adding the phrase ''(if known at the time of publication of the notice)'' after the phrase ''the closing date of the public comment period''; and

■ b. Adding the phrase ''that the public may find information about the filing (including the closing date of the comment period) in the OCC's Weekly Bulletin available at *www.occ.gov,*'' before the phrase ''and any other information that the OCC requires''.

■ 3. Section 5.20 is amended by:

■ a. Adding a sentence at the end of paragraph (b);

■ b. Adding a sentence at the end of paragraph (c);

■ c. Redesignating the text in paragraph (l) as paragraph (l)(1) and adding a heading to newly redesignated paragraph (l)(1); and

■ d. Adding paragraph (l)(2).

The revisions and additions read as follows:

§ 5.20 Organizing a national bank or Federal savings association.

* * * * *

(b) * * * An existing national bank or Federal savings association desiring to change the purpose of its charter shall submit an application and obtain prior OCC approval.

(c) * * * This section also describes the requirements for an existing national bank or Federal savings association to change the purpose of its charter and refers such institutions to § 5.53 for the procedures to follow.

* * * * *

(l) *Special purpose institutions*—(1) *In general.* * * *

(2) *Changes in charter purpose.* An existing national bank or Federal savings association whose activities are limited to a special purpose that desires to change to another special purpose, to add another special purpose, or to no longer be limited to a special purpose charter shall submit an application and obtain prior OCC approval under § 5.53. An existing national bank or Federal savings association whose activities are not limited that desires to limit its activities and become a special purpose institution shall submit an application and obtain prior OCC approval under § 5.53.

§ 5.21 [Amended]

■ 4. Section 5.21 is amended by:

■ a. In paragraph (j)(3)(i)(B), removing the phrase ''paragraph (j)(2)'' and adding in its place the phrase ''paragraph (j)(3)'';

■ b. In paragraph (j)(3)(ii), removing the phrase ''paragraph (j)(2)(i)(A)'' and adding in its place the phrase ''paragraph (j)(3)(i)(A)'';

■ c. In paragraph (j)(3)(iii):

■ i. Removing the phrase ''main office'' and adding in its place the phrase ''home office''; and

■ ii. Removing the phrase ''paragraph (j)(2)(i)(A)'' wherever it appears and adding in its place the phrase ''paragraph (j)(3)(i)(A)''; and

■ d. In paragraph (j)(4):

■ i. Removing the phrase ''paragraph (j)(2)(ii)'' and adding in its place the phrase ''paragraph (j)(3)(ii)''; and

■ ii. Removing the phrase ''paragraph (j)(2)(i)'' and adding in its place the phrase ''paragraph (j)(3)(i)''.

§ 5.22 [Amended]

■ 5. Section 5.22 is amended in paragraph (j)(2)(iii) by removing the phrase ''main office'' and adding in its place the phrase ''home office''.

§ 5.33 [Amended]

■ 6. Section 5.33 is amended by:

■ a. In paragraph (i), removing the phrase ''the 45th day after the application is received by the OCC, or the 15th day after the close of the comment period, whichever is later,'' and adding in its place the phrase ''the 15th day after the close of the comment period,'';
■ b. In paragraph (n)(2)(iii) introductory text, removing the phrase ''mutually held savings association,'' and adding in its place the phrase ''mutually held depository institution that is insured by the FDIC,'';
■ c. In paragraph (n)(2)(iii)(B), adding the phrase ''or a similar transaction under state law'' at the end of the sentence; and
■ d. In paragraph (o)(3)(i), removing the phrase ''paragraph (n)(3)'' and adding in its place the phrase ''paragraph (o)(3)''.

§ 5.45 [Amended]

■ 7. Section 5.45 is amended in paragraph (g)(4)(i) introductory text by removing the word ''After'' and adding in its place the phrase ''If prior approval is required pursuant to this paragraph (g), after''.

■ 8. Section 5.46 is amended by adding paragraph (i)(6) to read as follows:

§ 5.46 Changes in permanent capital of a national bank.

* * * * *

(i) * * *

(6) *Exception for accounting adjustments.* (i) Changes to the permanent capital accounts that result solely from application of U.S. generally accepted accounting principles 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 U.S. GAAP.

* * * * *

§ 5.48 [Amended]

■ 9. Section 5.48 is amended in paragraph (e)(2)(ii) by removing the word ''supervisory''.

§ 5.50 [Amended]

■ 10. Section 5.50 is amended in paragraph (f)(2)(ii)(E) by removing ''§ 192.2(a)(39)'' and adding in its place ''§ 192.25''.

■ 11. Section 5.53 is amended by:
■ a. Removing the word ''or'' at the end of paragraph (c)(1)(iii);
■ b. Removing the period at the end of paragraph (c)(1)(iv) and adding in its place ''; or''; and
■ c. Adding a paragraph (c)(1)(v); and
■ d. Revising paragraph (d)(3)(ii).

The addition and revision read as follows:

§ 5.53 Substantial asset change by a national bank or Federal savings association.

* * * * *

(c) * * *

(1) * * *

(v) Any change in the purpose of the charter of the national bank or Federal savings association as described in § 5.20(l)(2).

(d) * * *

(3) * * *

(ii) *Additional factors.* The OCC's review of any substantial asset change that involves the purchase or other acquisition or other expansions of the bank's or savings association's operations or that involves a change in the purpose of the bank's or association's charter, as described in § 5.20(l)(2), will include, in addition to the foregoing factors, the factors governing the organization of a bank or savings association under § 5.20.

* * * * *

■ 12. Section 5.66 is amended by adding a sentence between the first and second sentences to read as follows:

§ 5.66 Dividends payable in property other than cash.

* * * A national bank shall submit a request for prior approval of a noncash dividend to the appropriate OCC licensing office. * * *

PART 7—ACTIVITIES AND OPERATIONS

■ 13. The authority citation for part 7 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 25b, 29, 71, 71a, 92, 92a, 93, 93a, 95(b)(1), 371, 371d, 481, 484, 1463, 1464, 1465, 1818, 1828(m) and 5412(b)(2)(B).

■ 14. Section 7.2008 is amended by revising paragraphs (b) and (c) to read as follows:

§ 7.2008 Oath of directors.

* * * * *

(b) *Execution of the oath.* Each director shall execute either a joint or individual oath at the first meeting of the board of directors that the director attends after the director is appointed or elected. A director shall take another oath upon re-election, notwithstanding uninterrupted service. Appropriate sample oaths may be found in the Charter Booklet of the Comptroller's Licensing Manual available at *www.occ.gov.*

(c) *Filing and recordkeeping.* A national bank must file the original executed oaths of directors with the appropriate OCC licensing office, as defined in 12 CFR 5.3(c), and retain a copy in the bank's records.

■ 15. Section 7.2013 is amended by:
■ a. Revising paragraph (a) and paragraph (b) introductory text; and
■ b. In paragraph (b)(4), by adding the phrase ''or savings association'' after the word ''bank''.

The revisions read as follows:

§ 7.2013 Fidelity bonds covering officers and employees.

(a) *Adequate coverage.* All officers and employees of a national bank or Federal savings association must have adequate fidelity bond coverage. The failure of directors to require bonds with adequate sureties and in sufficient amount may make the directors liable for any losses that the bank or savings association sustains because of the absence of such bonds. Directors should not serve as sureties on such bonds. Directors should consider whether agents who have access to assets of the bank or savings association should also have fidelity bond coverage.

(b) *Factors.* The board of directors of the national bank or Federal savings association, or a committee thereof, must determine the amount of such coverage, premised upon a consideration of factors, including:

* * * * *

PART 8—ASSESSMENT OF FEES

■ 16. The authority citation for part 8 is revised to read as follows:

Authority: 12 U.S.C. 16, 93a, 481, 482, 1467, 1831c, 1867, 3102, 3108, and 5412(b)(2)(B); and 15 U.S.C. 78c and 78*l.*

■ 17. Section 8.6 is amended by revising paragraph (c)(3)(iv) to read as follows:

§ 8.6 Fees for special examinations and investigations.

* * * * *

(c) * * *

(3) * * *

(iv) *Full-service Federal savings association* is a Federal savings association that generates more than 50% of its interest and non-interest income from activities other than credit card operations or trust activities and is authorized according to its charter to engage in all types of activities permissible for Federal savings associations.

* * * * *

PART 9—FIDUCIARY ACTIVITIES OF NATIONAL BANKS

■ 18. The authority citation for part 9 continues to read as follows:

Authority: 12 U.S.C. 24 (Seventh), 92a, and 93a; 15 U.S.C. 78q, 78q–1, and 78w.

■ 19. Section 9.13 is amended by adding a sentence at the end of paragraph (a) to read as follows:

§ 9.13 Custody of fiduciary assets.

(a) * * * A bank that is deemed a fiduciary based solely on its capacity as investment advisor, as that capacity is defined in § 9.101(a), and has no other fiduciary capacity as enumerated in § 9.2(e) is not required to serve as custodian when offering those fiduciary services.

* * * * *

§ 9.14 [Amended]

■ 20. Section 9.14 is amended in paragraph (a) by adding the phrase ''or Federal Home Loan Bank'' after the phrase ''with the Federal Reserve Bank''.

■ 21. Section 9.18 is amended:

■ a. In paragraph (b)(1) by revising the second sentence; and

■ b. In paragraph (c)(2) by:

■ i. Removing ''$1,000,000'' and adding in its place ''$1,500,000''; and

■ ii. Adding a sentence at the end.

The revision and addition reads as follows:

§ 9.18 Collective investment funds.

* * * * *

(b) * * *

(1) * * * The bank shall make a copy of the Plan available either for public inspection at its main office during all banking hours or on its Web site and shall provide a written or electronic copy of the Plan to any person who requests it. * * *

* * * * *

(c) * * *

(2) * * * The OCC shall adjust this $1,500,000 threshold amount on January 1 of every year by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1, rounded to the nearest $100 increment, and make this adjusted amount available to the public.

* * * * *

PART 10—MUNICIPAL SECURITIES DEALERS

■ 22. The authority citation for part 10 is revised to read as follows:

Authority: 12 U.S.C. 93a, 481, 1462a, 1463, 1464(c), 1818, and 5412(b)(2)(B); 15 U.S.C. 78o–4(c)(5) and 78q–78w.

■ 23. Amend § 10.1 by:

■ a. Adding the phrase ''or Federal savings association'' after the word ''bank'', wherever it appears;

■ b. In paragraph (b), removing the phrase ''to be'' and adding in its place the phrase ''will be'';

■ c. In paragraph (b), removing footnote 1; and

■ d. Adding a sentence at the end of paragraph (b).

The addition reads as follows.

§ 10.1 Scope.

* * * * *

(b) * * * MSRB rules may be obtained at *www.msrb.org.*

§ 10.2 [Amended]

■ 24. Amend § 10.2 by:

■ a. In paragraph (a):

■ i. Adding ''or Federal savings association'' after the phrase ''national bank'', wherever it appears; and

■ ii. Removing the phrase ''Rule G–7(b)(i)–(x)'' and adding in its place the phrase ''Rule G–7(b)'';

■ b. In paragraph (b):

■ i. Removing the word ''must'' and adding in its place the phrase ''or Federal savings association shall''; and

■ ii. Removing the phrase ''the bank as a municipal'' and adding in its place the phrase ''the national bank or Federal savings association as a municipal''; and

■ c. In paragraph (c), removing the phrase ''by contacting the OCC at 400 7th Street, SW., Washington, DC 20219, Attention: Bank Dealer Activities'' and adding in its place ''at *http://www.banknet.gov/*''.

PART 11—SECURITIES EXCHANGE ACT DISCLOSURE RULES

■ 25. The authority citation for part 11 is revised to read as follows:

Authority: 12 U.S.C. 93a, 1462a, 1463, 1464 and 5412(b)(2)(B); 15 U.S.C. 78j–1(m), 78m, 78n, 78p, 78w, 78l, 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265.

■ 26. Section 11.1 is revised to read as follows:

§ 11.1 Authority.

The Office of the Comptroller of the Currency (OCC) is vested with the powers, functions, and duties otherwise vested in the Securities and Exchange Commission (SEC) to administer and enforce the provisions of sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Securities Exchange Act of 1934, as amended (Exchange Act) (15 U.S.C. 78j–1(m), 78l, 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78p), and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley Act), as amended (15 U.S.C. 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265), for national banks and Federal savings associations with one or more classes of securities subject to the registration provisions of sections 12(b) and (g) of the Exchange Act (registered national banks or registered Federal savings associations). Further, the OCC has general rulemaking authority under 12 U.S.C. 93a, 1462a, 1463, and 1464, to promulgate rules and regulations concerning the activities of national banks and Federal savings associations.

■ 27. Section 11.2 is revised to read as follows:

§ 11.2 Reporting requirements for registered national banks and Federal savings associations.

(a) *Filing, disclosure and other requirements*—(1) *General.* Except as otherwise provided in this section, a national bank or Federal savings association whose securities are subject to registration pursuant to section 12(b) or section 12(g) of the Exchange Act (15 U.S.C. 78l(b) and (g)) shall comply with the rules, regulations, and forms adopted by the SEC pursuant to:

(i) Sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act (15 U.S.C. 78j–1(m), 78l, 78m, 78n(a), (c), (d) and (f), and 78p); and

(ii) Sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act (codified at 15 U.S.C. 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265).

(2) [Reserved]

(b) *References to the Securities Exchange Commission, SEC, or Commission.* Any references to the ''Securities and Exchange Commission,'' the ''SEC,'' or the ''Commission'' in the rules, regulations and forms described in paragraph (a)(1) of this section with respect to securities issued by registered national banks or registered Federal savings associations shall be deemed to refer to the OCC unless the context otherwise requires.

(c) *References to registration requirements.* For national banks and Federal savings associations, any references to registration requirements under the Securities Act of 1933 and its accompanying rules in the rules, regulations, and forms described in paragraph (a)(1) of this section mean the registration requirements in 12 CFR part 16.

(d) *Emerging growth company eligibility*—(1) *General.* A national bank or Federal savings association that meets the criteria to qualify as an emerging growth company under section 3(a)(80) of the Exchange Act (15 U.S.C. 78c(a)(80)) shall be eligible for treatment as an emerging growth company for purposes of any rule, regulation or form described in paragraph (a)(1) of this section, except as provided in paragraph (d)(3) of this section.

(2) *Opt-in right.* With respect to an exemption provided to a national bank or Federal savings association that is an emerging growth company under this part, the bank or savings association may choose to forgo such exemption and instead comply with the requirements that apply to a bank or savings association that is not an emerging growth company.

(3) *Exclusions.* A national bank or Federal savings association that otherwise meets the definition of emerging growth company in section 3(a)(80) of the Exchange Act (15 U.S.C. 78c(a)(80)) shall not be considered an emerging growth company for purposes of this part if:

(i) The first sale of its common equity securities pursuant to an effective registration statement or offering circular occurred on or before December 8, 2011; or

(ii) It has reached the last day of its fiscal year following the fifth anniversary of the date of the first sale of its common equity securities pursuant to an effective registration statement or offering circular.

■ 28. Section 11.3 is amended by:
■ a. Revising paragraphs (a)(1) and (a)(3)(i) and the heading to paragraph (a)(3)(ii);
■ b. Adding a paragraph (a)(3)(iii);
■ c. Removing paragraph (a)(4); and
■ d. Removing the phrase '', at the address listed in paragraph (a) of this section'' in paragraph (b) and adding in its place the phrase '', at the address listed on *www.occ.gov.*''.

The revisions read as follows:

§ 11.3 Filing requirements and inspection of documents.

(a) *Filing requirements*—(1)(i) *In general.* Except as otherwise provided in this section, all papers required to be filed with the OCC pursuant to the Exchange Act or regulations thereunder shall be submitted to the Securities and Corporate Practices Division of the OCC electronically at *http://www.banknet.gov/.* Documents may be signed electronically using the signature provision in SEC Rule 12b–11 (17 CFR 240.12b–11).

(ii) *Electronic filing exception.* If a national bank or Federal savings association experiences unanticipated technical difficulties preventing the timely preparation and submission of an electronic filing, other than the filings described in paragraph (a)(3)(ii) of this section, the bank may, upon notice to the OCC's Securities and Corporate Practices Division, file the subject filing in paper format no later than one business day after the date on which the filing was to be made. Paper filings should be submitted to the Securities and Corporate Practices Division, Office of the Comptroller of the Currency at the address provided at *www.occ.gov.*

* * * * *

(3) *Date of filing*—(i) *General.* The date of filing is the date the OCC receives the filing, provided the person, bank, or savings association submitting the filing has complied with all applicable requirements. An electronic filing that is submitted on a business day by direct transmission commencing on or before 5:30 p.m. Eastern Standard or Daylight Savings Time, whichever is currently in effect, would be deemed received by the OCC on the same business day. An electronic filing that is submitted by direct transmission commencing after 5:30 p.m. Eastern Standard or Daylight Savings Time, whichever is currently in effect, or on a Saturday, Sunday, or Federal holiday, would be deemed received by the OCC on the next business day.

(ii) *Beneficial ownership filings.* * * *

(iii) *Adjustment of filing date.* If an electronic filer in good faith attempts to file a document pursuant to this part in a timely manner but the filing is delayed due to technical difficulties beyond the electronic filer's control, the electronic filer may request that the OCC adjust the filing date of such document. The OCC may grant the request if it appears that such adjustment is appropriate and consistent with the public interest and the protection of investors.

* * * * *

■ 29. Section 11.4 is amended by revising paragraph (b) to read as follows:

§ 11.4 Filing fees.

* * * * *

(b) Fees must be paid by check payable to the Comptroller of the Currency or by other means acceptable to the OCC.

PART 12—RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR SECURITIES TRANSACTIONS

■ 30. The authority citation for part 12 continues to read as follows:

Authority: 12 U.S.C. 24, 92a, and 93a.

§ 12.1 [Amended]

■ 31. Section 12.1 is amended:
■ a. In paragraph (c)(1) by removing the phrase ''Securities and Exchange Commission'' and adding in its place the phrase ''Securities and Exchange Commission (SEC)''; and
■ b. By removing the phrase ''Securities and Exchange Commission'' in paragraph (c)(2)(iii) and the phrase ''Securities and Exchange Commission (SEC)'' in paragraph (c)(2)(v) and adding ''SEC'' in their place.
■ 32. Section 12.2 is amended by:
■ a. In paragraph (g)(3), removing the phrase ''Securities and Exchange Commission'' and adding in its place ''SEC''; and
■ b. Revising paragraph (i)(3).

The revision reads as follows:

§ 12.2 Definitions.

* * * * *

(i) * * *

(3) A security that is an industrial development bond.

* * * * *

■ 33. Section 12.3 is amended by adding a sentence at the end of paragraph (b) to read as follows:

§ 12.3 Recordkeeping.

* * * * *

(b) * * * A national bank may contract with a third-party service provider to maintain the records, provided that the bank maintains effective oversight of the third-party service provider to ensure the records meet the requirements of this section.

■ 34. Section 12.4 is amended by revising paragraph (b) to read as follows:

§ 12.4 Content and time of notification.

* * * * *

(b) *Copy of the registered broker/dealer's confirmation.* A copy of the confirmation of a registered broker/dealer relating to the securities transaction, which the bank may direct the registered broker/dealer to send directly to the customer; and, if the customer or any other source will provide remuneration to the bank in connection with the transaction and a written agreement between the bank and the customer does not determine the remuneration, a statement of the source and amount of any remuneration that the customer or any other source is to provide the bank.

§ 12.7 [Amended]

■ 35. Section 12.7(d) is amended by removing the phrase ''Securities and Exchange Commission (SEC)'' adding in its place ''SEC''.

§ 12.9 [Amended]

■ 36. Section 12.9(b)(2) is amended by removing the phrase ''Securities and Exchange Commission (SEC)'' and adding in their place ''SEC''.

§§ 12.101 through 12.102 [Removed]

■ 37. The undesignated center heading ''Interpretations'' and §§ 12.101 and12.102 are removed.

PART 16—SECURITIES OFFERING DISCLOSURE RULES

■ 38. The authority citation for part 16 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 93a, 1462a, 1463, 1464, and 5412(b)(2)(B).

■ 39. Section 16.1 is amended by:
■ a. Revising paragraph (a); and
■ b. In paragraphs (b) and (c), removing the word ''bank'' wherever it appears and adding in its place the phrase ''national bank or Federal savings association''.

The revision reads as follows:

§ 16.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued under the rulemaking authority of the Comptroller of the Currency (OCC) for national banks in 12 U.S.C. 1 *et seq.,* and 93a, and for Federal savings associations in 12 U.S.C. 1462a, 1463, 1464, and 5412(b)(2)(B).

* * * * *

■ 40. Section 16.2 is amended by:
■ a. In paragraph (a), removing the phrase ''Commission Rule'' and adding in its place ''SEC Rule'';
■ b. Removing paragraphs (b), (c), and (j) and redesignating paragraphs (d) through (f) as paragraphs (b) through (d), respectively; redesignating paragraphs (g) and (h) as paragraphs (f) and (g), respectively; and redesignating paragraphs (k) through (n) as paragraphs (j) through (m), respectively;
■ c. In newly designated paragraph (b), removing ''2(12)'' and ''77b(12))'' and adding ''2(a)(12)'' and ''77b(a)(12))'', respectively, in their places;
■ d. In newly redesignated paragraph (c), removing ''78a through 78jj'' and adding ''78a *et seq.*'' in its place;
■ e. Adding new paragraphs (e), (h), and (n);
■ f. In newly redesignated paragraph (g) and paragraph (i), removing the word ''bank'' and adding in its place the phrase ''national bank or Federal savings association'';
■ g. In newly redesignated paragraph (j):
■ i. Removing ''2(2)'' and ''77b(2))'' and adding ''2(a)(2)'' and ''77b(a)(2))'', respectively, in their places; and
■ ii. Removing the word ''bank'' and adding in its place the phrase ''national bank and a Federal savings association'';
■ h. In newly redesignated paragraph (m), removing ''2(3)'' and ''77b(3))'' and adding ''2(a)(3)'' and ''77b(a)(3))'', respectively, in their places;
■ i. In paragraph (o), removing ''through 77aa'' and adding ''*et seq.*'' in its place;
■ j. In paragraph (p), removing ''2(1)'' and ''77b(1))'' and adding ''2(a)(1)'' and ''77b(a)(1))'', respectively, in their places; and
■ k. In paragraph (q):
■ i. Removing ''77b(11))'' and adding ''77b(a)(11))'' in its place;
■ ii. Removing ''2(11)'' wherever it appears and adding ''2(a)(11)'' in its place; and
■ iii. Removing the phrase ''Commission Rules'' and adding in its place ''SEC Rules''.

The additions read as follows:

§ 16.2 Definitions.

* * * * *

(e) *Federal savings association* means an existing Federal savings association chartered under section 5 of the Home Owners' Loan Act (HOLA) (12 U.S.C. 1464 *et seq.*) or a Federal savings association in organization.

* * * * *

(h) *National bank* means an existing national bank, a national bank in organization, or a Federal branch or agency of a foreign bank.

* * * * *

(n) *SEC* means the Securities and Exchange Commission. When used in the rules, regulations, or forms of the SEC referred to in this part, the term ''SEC'' shall be deemed to refer to the OCC.

* * * * *

§ 16.3 [Amended]

■ 41. Section 16.3 is amended by:
■ a. In paragraphs (a) introductory text and (b) introductory text, removing the word ''bank'' and adding in its place the phrase ''national bank or Federal savings association''; and
■ b. In paragraph (c):
■ i. Removing ''Commission Rule'' and adding in its place ''SEC Rule'';
■ ii. Removing the citation ''section 4(3)'' and adding in its place the citation ''section 4(a)(3)''; and
■ iii. Removing the word ''bank'' and adding in its place the phrase ''national bank and Federal savings association''.

§ 16.4 [Amended]

■ 42. Section 16.4 is amended by removing the phrase ''Commission Rule'' and adding in its place the phrase ''SEC Rule'' wherever it occurs.

■ 43. Section 16.5 is amended by:
■ a. Revising the introductory text and paragraphs (a), (b), and (e);
■ b. In paragraph (f), removing the phrase ''Commission Rule'' and adding in its place the phrase ''SEC Rule''; and
■ c. In paragraph (g), removing the phrase ''Commission Regulation'' and adding in its place the phrase ''SEC Regulation''.

The revisions read as follows.

§ 16.5 Exemptions.

The registration statement and prospectus requirements of § 16.3 do not apply to an offer or sale of national bank or Federal savings association securities:

(a) If the securities are exempt from registration under section 3 of the Securities Act (15 U.S.C. 77c), but only by reason of an exemption other than section 3(a)(2) (exemption for bank securities), section 3(a)(5) (exemption for savings association securities), section 3(a)(11) (exemption for intrastate offerings), and section 3(a)(12) (exemption for bank holding company formation) of the Securities Act.

(b) In a transaction exempt from registration under section 4 of the Securities Act (15 U.S.C. 77d). SEC Rules 152 and 152a (17 CFR 230.152 and 230.152a) (which apply to sections 4(a)(2) and 4(a)(1) of the Securities Act) apply to this part;

* * * * *

(e) In a transaction that satisfies the requirements of SEC Rule 144, 144A, or 236 (17 CFR 230.144, 230.144A, or 230.236);

* * * * *

■ 44. Section 16.6 is amended by:
■ a. In paragraph (a) introductory text, removing the word ''bank'' and adding in its place the phrase ''national bank or Federal savings association'';
■ b. Revising paragraphs (a)(1) and (5);
■ c. In paragraph (a)(3), removing the word ''bank'' and adding in its place the phrase ''national bank or Federal savings association''; and
■ d. In paragraph (b), removing the phrase ''Commission Rule'' and adding in its place the phrase ''SEC Rule'', wherever it appears.

The revisions read as follows:

§ 16.6 Sales of nonconvertible debt.

(a) * * *

(1) The national bank or Federal savings association issuing the debt has securities registered under the Exchange Act or is a subsidiary of a holding

company that has securities registered under the Exchange Act;

* * * * *

(5) Prior to or simultaneously with the sale of the debt, each purchaser receives an offering document that contains a description of the terms of the debt, the use of proceeds, and method of distribution, and incorporates the national bank's or Federal savings association's latest Consolidated Reports of Condition and Income (Call Report) and the national bank's, Federal savings association's, or the holding company's Forms 10–K, 10–Q, and 8–K (17 CFR part 249) filed under the Exchange Act; and

* * * * *

§ 16.7 [Amended]

■ 45. Section 16.7 is amended by:
■ a. Removing the phrase ''Commission Regulation'' and adding in its place the phrase ''SEC Regulation'', wherever it appears;
■ b. In paragraphs (a) introductory text, removing the word ''bank'' and adding in its place the phrase ''national bank or Federal savings association'';
■ c. In paragraph (b):
■ i. Removing the word ''bank'' and adding in its place the phrase ''national bank or Federal savings association''; and
■ ii. Removing the phrase ''Commission Rule'' and adding in its place the phrase ''SEC Rule''; and
■ d. In paragraph (c), removing the word ''bank'' and adding in its place the phrase ''national bank or Federal savings association''.

§ 16.8 [Amended]

■ 46. Section 16.8 is amended:
■ a. By removing the phrase ''Commission Regulation'' and adding in its place the phrase ''SEC Regulation'', wherever it appears;
■ b. In paragraph (a), by removing the word ''bank'' and adding in its place the phrase ''national bank or Federal savings association''; and
■ c. In paragraph (b), by removing the word ''Commission's'' and adding in its place the word ''SEC's''.

■ 47. Section 16.9 is amended by:
■ a. Revising paragraph (a); and
■ b. In the introductory text and paragraphs (b) through (d), removing the word ''bank'' and adding in its place the phrase ''national bank or Federal savings association'', wherever it appears.

The revision reads as follows:

§ 16.9 Securities offered and sold in holding company dissolution.

* * * * *

(a) The offer and sale of national bank or Federal savings association issued securities occurs solely as part of a dissolution in which the security holders exchange their shares of stock in a holding company that had no significant assets other than securities of the bank or savings association, for bank or savings association stock;

* * * * *

■ 48. Section 16.10 is added to read as follows:

§ 16.10 Sales of securities at an office of a Federal savings association.

Sales of securities of a Federal savings association or its affiliates at an office of a Federal savings association may be made only in accordance with the provisions of 12 CFR 163.76. For the purpose of this section, ''affiliate'' has the same meaning as in 12 CFR 161.4.

§ 16.15 [Amended]

■ 49. Section 16.15 is amended by:
■ a. In paragraph (a):
■ i. Removing the word ''Commission's'' and adding in its place the word ''SEC's'';
■ ii. Removing the phrase ''Commission regulations'' and adding in its place the phrase ''SEC regulations''; and
■ iii. Removing the word ''bank'' and adding in its place the phrase ''national bank or Federal savings association'';
■ b. In paragraph (b), removing the phrase ''Commission Regulation'' and adding in its place the phrase ''SEC Regulation'';
■ c. In paragraph (d), removing the word ''bank'' and adding in its place the phrase ''national bank or Federal savings association''; and
■ d. In paragraph (e), adding the phrase ''or Federal savings association'' after the word ''bank'', wherever it appears.

§ 16.16 [Amended]

■ 50. Section 16.16 is amended in paragraph (a) by removing the phrase ''Commission Regulation'' and adding in its place the phrase ''SEC Regulation''.

■ 51. Section 16.17 is revised to read as follows:

§ 16.17 Filing requirements and inspection of documents.

(a) Except as otherwise provided in this section, all registration statements, offering documents, amendments, notices, or other documents must be filed with the OCC's Securities and Corporate Practices Division electronically at *http://www.banknet.gov/.* Documents may be signed electronically using the signature provision in SEC Rule 402 (17 CFR 230.402).

(b) All registration statements, offering documents, amendments, notices, or other documents relating to a national bank or Federal savings association in organization must be filed with the appropriate district office of the OCC at *http://www.banknet.gov/.*

(c) Where this part refers to a section of the Securities Act or the Exchange Act or an SEC rule that requires the filing of a notice or other document with the SEC, that notice or other document must be filed with the OCC.

(d) Provided the person filing the document has complied with all requirements regarding the filing, including the submission of any fee required under § 16.33, the date of filing of the document is the date the OCC receives the filing. An electronic filing that is submitted on a business day by direct transmission commencing on or before 5:30 p.m. Eastern Standard or Daylight Savings Time, whichever is currently in effect, would be deemed received by the OCC on the same business day. An electronic filing that is submitted by direct transmission commencing after 5:30 p.m. Eastern Standard or Daylight Savings Time, whichever is currently in effect, or on a Saturday, Sunday, or Federal holiday, would be deemed received by the OCC on the next business day. If an electronic filer in good faith attempts to file a document with the OCC in a timely manner but the filing is delayed due to technical difficulties beyond the electronic filer's control, the electronic filer may request that the OCC adjust the filing date of such document. The OCC may grant the request if it appears that such adjustment is appropriate and consistent with the public interest and the protection of investors.

(e) Notwithstanding paragraph (d) of this section, any registration statement or any post-effective amendment thereto filed pursuant to SEC Rule 462(b) (17 CFR 230.462(b)) shall be deemed received by the OCC on the same business day if its submission commenced on or before 10 p.m. Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect, and on the next business day if its submission commenced after 10 p.m. Eastern Standard or Daylight Savings Time, whichever is currently in effect, or any time on a Saturday, Sunday, or Federal holiday.

(f) If a national bank or Federal savings association experiences unanticipated technical difficulties preventing the timely preparation and submission of an electronic filing, the bank or savings association may, upon notice to the OCC's Securities and

Corporate Practices Division or district office, as appropriate, file the subject filing in paper format no later than one business day after the date on which the filing was to be made. Paper filings should be submitted to the OCC's Securities and Corporate Practices Division or appropriate district office, at the address provided at *www.occ.gov.*

(g) Any filing of amendments or revisions must include two copies, one of which must be marked to indicate clearly and precisely, by underlining or in some other appropriate manner, the changes made.

(h) The OCC will make available for public inspection copies of the registration statements, offering documents, amendments, exhibits, notices or reports filed pursuant to this part at the address identified in § 4.14 of this chapter.

■ 52. Section 16.30 is amended by revising paragraph (a) to read as follows:

§ 16.30 Request for interpretive advice or no-objection letter.

* * * * *

(a) File a copy of the request, including any supporting attachments, with the OCC's Securities and Corporate Practices Division at the address provided at *www.occ.gov;*

* * * * *

■ 53. Section 16.32 is amended:

■ a. By revising the section heading;

■ b. In paragraphs (a) introductory text and (a)(3), removing the word ''bank'' and adding in its place the phrase ''national bank or Federal savings association''; and

■ c. In paragraph (d), removing the phrase ''Commission Rule'' and adding in its place the phrase ''SEC Rule''.

The revision reads as follows.

§ 16.32 Fraudulent transactions and unsafe or unsound practices.

* * * * *

■ 54. Section 16.33 is revised to read as follows:

§ 16.33 Filing fees.

(a) The OCC may require filing fees to accompany certain filings made under this part before it will accept those filings. The OCC provides an applicable fee schedule in the *Notice of Comptroller of the Currency Fees* published pursuant to § 8.8 of this chapter.

(b) Filing fees must be paid by check payable to the Comptroller of the Currency or by other means acceptable to the OCC.

PART 18 [REMOVED]

■ 55. Remove part 18.

PART 31—EXTENSIONS OF CREDIT TO INSIDERS AND TRANSACTIONS WITH AFFILIATES

■ 56. The authority citation for part 31 is revised to read as follows:

Authority: 12 U.S.C. 93a, 375a(4), 375b(3), 1463, 1467a(d), 1468, 1817(k), and 5412(b)(2)(B).

■ 57. Section 31.1 is revised to read as follows:

§ 31.1 Authority.

This part is issued pursuant to 12 U.S.C. 93a, 375a(4), 375b(3), 1463, 1467a(d), 1468, 1817(k), and 5412(b)(2)(B), as amended.

§ 31.2 [Amended]

■ 58. Section 31.2 is amended by:

■ a. In paragraph (a):

■ i. Removing the phrase ''A national bank and its'' and adding in its place the phrase ''National banks, Federal savings associations, and their''; and

■ ii. Adding ''(Regulation O)'' to the end of the sentence; and

■ b. In paragraph (b), adding '', Federal savings associations,'' after the word ''banks''.

■ 59. Add § 31.3 to read as follows:

§ 31.3 Affiliate transactions requirements.

(a) *General rule.* National banks and Federal savings associations shall comply with the provisions contained in 12 CFR part 223 (Regulation W).

(b) *Enforcement.* The Comptroller of the Currency administers and enforces affiliate transactions requirements as they apply to national banks and Federal savings associations.

(c) *Standard for exemptions.* The OCC may, by order, exempt transactions or relationships of a national bank or Federal savings association from the requirements of section 23A and section 11 of the Home Owners' Loan Act (HOLA), as applicable, and 12 CFR part 223 if:

(1) The OCC, jointly with the Federal Reserve Board, finds the exemption to be in the public interest and consistent with the purposes of section 23A or section 11 of the HOLA, as applicable; and

(2) The FDIC, within 60 days of receiving notice of such joint finding, does not object in writing to the finding based on a determination that the exemption presents an unacceptable risk to the Deposit Insurance Fund.

(d) *Procedures for exemptions.* A national bank or Federal savings association may request an exemption from the requirements of section 23A or section 11 of the HOLA, as applicable, and 12 CFR part 223 for a national bank or Federal savings association by submitting a written request to the Deputy Comptroller for Licensing with a copy to the appropriate Federal Reserve Bank. Such a request must:

(1) Describe in detail the transaction or relationship for which the national bank or Federal savings association seeks exemption;

(2) Explain why the OCC should exempt the transaction or relationship;

(3) Explain how the exemption would be in the public interest and consistent with the purposes of section 23A or section 11 of the HOLA, as applicable; and

(4) Explain why the exemption does not present an unacceptable risk to the Deposit Insurance Fund.

60. Appendix B to part 31 is amended by:

a. Revising the appendix heading and introductory note;

b. Removing the references ''part 31'', ''Part 31'', and ''Parts 31 and 32'' and adding in their place the references ''part 215'', ''Part 215'', and ''parts 32 and 215'', respectively, wherever they appear;

c. Under the heading ''Definition of 'Loan or Extension of Credit''', in the first sentence under ''Renewals'', removing the phrase ''will be applied in the same manner'' and adding in its place the phrase ''are equivalent''; and

d. Under the heading ''Combination/Attribution Rules'', in the fourth sentence, under ''Loans to corporate groups'', removing the word ''until'' and adding in its place the word ''unless''.

The revisions read as follows:

Appendix B to Part 31—Comparison of Selected Provisions of Parts 32 and 215

Note: This appendix compares certain provisions of 12 CFR part 32 with those of 12 CFR part 215. As used in this appendix, the term ''bank'' refers to both national banks and Federal savings associations.

* * * * *

PART 150—FIDUCIARY POWERS OF FEDERAL SAVINGS ASSOCIATIONS

■ 61. The authority citation for part 150 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 5412(b)(2)(B).

■ 62. Section 150.245 is added to read as follows:

§ 150.245 When is a fiduciary not required to maintain custody or control of fiduciary assets?

If you are deemed a fiduciary based solely on your capacity as investment advisor, as that capacity is defined in § 9.101(a) of this chapter, and have no other fiduciary capacity as enumerated in § 150.30, you are not required to maintain custody or control of fiduciary assets as set forth in § 150.220 or § 150.240.

PART 151—RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR SECURITIES TRANSACTIONS

■ 63. The authority citation for part 151 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 5412(b)(2)(B).

■ 64. Section 151.40 is amended by revising paragraph (3) of the definition of *Municipal security* to read as follows:

§ 151.40 What definitions apply to this part?

* * * * *

Municipal security * * *

(3) A security that is an industrial development bond.

* * * * *

■ 65. Section 151.60 is revised to read as follows:

§ 151.60 How must I maintain my records?

(a) *In general.* The records required by § 151.50 must clearly and accurately reflect the information required and provide an adequate basis for the audit of the information. Record maintenance may include the use of automated or electronic records provided the records are easily retrievable, readily available for inspection, and capable of being reproduced in a hard copy.

(b) *Use of third party.* You may contract with third-party service providers to maintain the records required by this section, provided that you maintain effective oversight of the third-party vendor to ensure records meet the requirements of § 150.50 and this section.

■ 66. Revise § 151.80(b) to read as follows:

§ 151.80 How do I provide a registered broker-dealer confirmation?

* * * * *

(b) Unless you have determined remuneration in a written agreement with the customer, if you have received or will receive remuneration from any source, including the customer, in connection with the transaction, you must provide a statement of the source and amount of the remuneration in addition to the registered broker-dealer confirmation described in paragraph (a) of this section.

§ 151.110 [Removed]

■ 67. Section 151.110 is removed.

■ 68. Part 155 is revised to read as follows:

PART 155—ELECTRONIC OPERATIONS OF FEDERAL SAVINGS ASSOCIATIONS

Authority: 12 U.S.C. 1462a, 1463, 1464, 5412(b)(2)(B).

§ 155.100 Scope.

This part describes how a Federal savings association may provide products and services through electronic means and facilities.

§ 155.200 Use of electronic means and facilities.

(a) *General.* A Federal savings association may use, or participate with others to use, electronic means or facilities to perform any function, or provide any product or service, as part of an authorized activity. Electronic means or facilities include, but are not limited to, automated teller machines, automated loan machines, personal computers, the internet, telephones, and other similar electronic devices.

(b) *Other.* To optimize the use of resources, a Federal savings association may market and sell, or participate with others to market and sell, electronic capacities and by-products to third-parties, if the savings association acquired or developed these capacities and by-products in good faith as part of providing financial services.

§ 155.210 Requirements for using electronic means and facilities.

To use electronic means and facilities under this subpart, a Federal savings association's management must:

(a) Identify, assess, and mitigate potential risks and establish prudent internal controls; and

(b) Implement security measures designed to ensure secure operations. Such measures must be adequate to:

(1) Prevent unauthorized access to the savings association's records and its customers' records;

(2) Prevent financial fraud through the use of electronic means or facilities; and

(3) Comply with applicable security devices requirements of part 168 of this chapter.

■ 69. Part 162 is revised to read as follows:

PART 162—ACCOUNTING AND DISCLOSURE STANDARDS

Authority: 12 U.S.C. 1463, 5412(b)(2)(B).

§ 162.1 Accounting and disclosure standards.

A Federal savings association shall follow U.S. generally accepted accounting principles (GAAP) and the disclosure standards included therein when complying with all applicable regulations, unless otherwise required by statute, regulation, or the OCC.

PART 163—SAVINGS ASSOCIATIONS—OPERATIONS

■ 70. The authority citation for part 163 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1817, 1820, 1828, 1831o, 3806, 5101 *et seq.,* 5412(b)(2)(B); 31 U.S.C. 5318; 42 U.S.C. 4106.

§ 163.41 [Removed]

■ 71. Remove § 163.41.

§ 163.43 [Removed]

■ 72. Remove § 163.43.

§ 163.161 [Removed]

■ 73. Remove § 163.161.

■ 74. Section 163.172 is amended by:

■ a. In paragraph (a), revising the paragraph heading and removing the word "commitments" and adding the word "contracts" in its place;

■ b. Revising paragraph (b), the heading to paragraph (c) and paragraph (c)(1);

■ c. In paragraph (c)(2):

■ i. Removing the word "you" and adding in its place the phrase "a savings association"; and

■ ii. Removing the word "Your" and adding in its place the word "The";

■ d. In paragraphs (c)(3) introductory text and (c)(4), removing the word "Your" wherever it appears and adding in its place the word "The";

■ e. In paragraph (c)(3)(ii), removing the word "your" and adding in its place the phrase "the savings association's";

■ f. Revising the heading to paragraph (d);

■ g. In paragraph (d)(1), removing the word "Management" and adding in its place the phrase "The management of a Federal savings association"; and

■ h. Revising paragraph (e).

The revisions read as follows.

§ 163.172 Financial derivatives.

(a) *Definition.* * * *

(b) *Permissible financial derivatives transactions.* A Federal savings association may engage in a transaction involving a financial derivative if the savings association is authorized to invest in the assets underlying the financial derivative, the transaction is safe and sound, and the requirements in paragraphs (c) through (e) of this section are met. In general, a Federal savings association that engages in a transaction involving a financial derivative should do so to reduce its risk exposure.

(c) *Board of directors' responsibilities.* (1) A Federal savings association's board of directors is responsible for effective oversight of financial derivatives activities.

* * * * *

(d) *Management responsibilities.* * * *

(e) *Recordkeeping requirement.* A Federal savings association must maintain records adequate to demonstrate compliance with this section and with its board of directors' policies and procedures on financial derivatives.

§ 163.180 [Amended]

■ 75. Section 163.180 is amended by removing and reserving paragraphs (a) and (c).

§ 163.190 [Removed]

■ 76. Remove § 163.190.

§ 163.191 [Removed]

■ 77. Remove § 163.191.

PART 193 [REMOVED]

■ 78. Remove part 193.

PART 194—[REMOVED]

■ 79. Remove part 194.

PART 197 [REMOVED]

■ 80. Remove part 197.

Dated: December 13, 2016.

Thomas J. Curry,

Comptroller of the Currency.

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