

§ 5.2

12 CFR Ch. I (1–1–25 Edition)

applicability, where and how to file, and requirements and policies applicable to filings. This part also establishes the corporate filing procedures for Federal branches and agencies of foreign banks.

[80 FR 28414, May 18, 2015]

Subpart A—Rules of General Applicability

SOURCE: 80 FR 28414, May 18, 2015, unless otherwise noted.

§ 5.2 Rules of general applicability.

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

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

(c) *Comptroller’s Licensing Manual.* The “Comptroller’s Licensing Manual” provides additional filing guidance, including policies and procedures. This Manual and sample forms are available at www.occ.gov.

(d) *Electronic filing.* The OCC encourages electronic filing for all filings. The Comptroller’s Licensing Manual describes the OCC’s electronic filing procedures.

[80 FR 28414, May 18, 2015, as amended at 85 FR 80434, Dec. 11, 2020]

§ 5.3 Definitions.

As used in this part:

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

Appropriate Federal banking agency has the meaning set forth in section 3(q) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(q).

Appropriate OCC licensing office means the OCC office that is responsible for processing applications or notices to engage in various corporate activities or transactions, as described at www.occ.gov.

Appropriate OCC supervisory office means the OCC office that is responsible for the supervision of a national bank or Federal savings association, as described in subpart A of 12 CFR part 4.

Capital and surplus means:

(1) For qualifying community banking organizations that have elected to use the community bank leverage ratio framework, as set forth under the OCC’s Capital Adequacy Standards at part 3 of this chapter:

(i) A qualifying community banking organization’s tier 1 capital, as used under § 3.12 of this chapter; plus

(ii) A qualifying community banking organization’s allowance for loan and lease losses or adjusted allowances for credit losses, as applicable, as reported in the national bank’s or Federal savings association’s Consolidated Report of Condition and Income (Call Report); or

(2) For all other national banks and Federal savings associations:

(i) A national bank’s or Federal savings association’s tier 1 and tier 2 capital calculated under the OCC’s risk-based capital standards set forth in part 3 of this chapter, as applicable, as reported in the Call Report, respectively; plus

(ii) The balance of the national bank’s or Federal savings association’s allowance for loan and lease losses or adjusted allowances for credit losses, as applicable, not included in the institution’s tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (2)(i) of this definition, as reported in the Call Report.

Depository institution means any bank or savings association.

Eligible bank or eligible savings association means a national bank or Federal savings association that:

(1) Is well capitalized under § 5.3;

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

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

(4) Has a consumer compliance rating of 1 or 2 under the Uniform Interagency Consumer Compliance Rating System; and

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

Eligible depository institution means:

(1) With respect to a national bank, a State bank or a Federal or State savings association that meets the criteria for an “eligible bank or eligible savings association” under § 5.3 and is FDIC-insured; and

(2) With respect to a Federal savings association, a State or national bank or a State savings association that meets the criteria for an “eligible bank or eligible savings association” under § 5.3 and is FDIC-insured.

FDIC means the Federal Deposit Insurance Corporation.

Filer means a person or entity that submits a notice or application to the OCC under this part.

Filing means an application or notice submitted to the OCC under this part.

GAAP means generally accepted accounting principles as used in the United States.

MSA means metropolitan statistical area as defined by the Director of the Office of Management and Budget.

Nonconforming assets and nonconforming activities mean assets or activities, respectively, that are impermissible for national banks or Federal savings associations to hold or conduct, as applicable, or, if permissible, are held or conducted in a manner that exceeds limits applicable to national banks or Federal savings associations, as applicable. Assets include investments in subsidiaries or other entities.

Notice, in general, means a submission notifying the OCC that a national bank or Federal savings association intends to engage in or has commenced certain corporate activities or transactions. The specific meaning of *notice* depends on the context of the rule in which it is used and may provide the OCC with authority to disapprove the notice or may be informational requiring no official OCC action.

OTS means the former Office of Thrift Supervision.

Previously approved activity means:

(1) In the case of a national bank, any activity approved in published OCC precedent for a national bank, an operating subsidiary of a national bank, or a non-controlling investment of a national bank; and

(2) In the case of a Federal savings association, any activity approved in published OCC or OTS precedent for a Federal savings association, an operating subsidiary of a Federal savings association, or a pass-through investment of a Federal savings association.

Principal city means an area designated as a “principal city” by the Office of Management and Budget.

Short-distance relocation means moving the premises of a branch or main office of a national bank or a branch or home office of a Federal savings association within a:

(1) One thousand foot-radius of the site if the branch, main office, or home office is located within a principal city of an MSA;

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

(3) Two-mile radius of the site if the branch, main office, or home office is not located within an MSA.

Well capitalized means:

(1) In the case of a national bank or Federal savings association, the capital level described in 12 CFR 6.4(b)(1);

(2) In the case of a Federal branch or agency, the capital level described in 12 CFR 4.7(b)(1)(iii); or

(3) In the case of another depository institution, the capital level designated as “well capitalized” by the institution’s appropriate Federal banking agency pursuant to section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o).

Well managed means:

(1) In the case of a national bank or Federal savings association:

(i) Unless otherwise determined in writing by the OCC, the national bank or Federal savings association has received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System in connection with its most recent examination, and

§5.4

12 CFR Ch. I (1–1–25 Edition)

at least a rating of 2 for management, if such a rating is given; or

(ii) In the case of a national bank or Federal savings association that has not been examined by the OCC, the existence and use of managerial resources that the OCC determines are satisfactory.

(2) In the case of a Federal branch or agency of a foreign bank:

(i) Unless determined otherwise in writing by the OCC, the Federal branch or agency has received a composite ROCA supervisory rating (which rates risk management, operational controls, compliance, and asset quality) of 1 or 2 at its most recent examination, and at least a rating of 2 for risk management, if such a rating is given; or

(ii) In the case of a Federal branch or agency that has not been examined by the OCC, the existence and use of managerial resources that the OCC determines are satisfactory.

(3) In the case of another depository institution:

(i) Unless otherwise determined in writing by the appropriate Federal banking agency, the institution has received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under an equivalent rating system) in connection with the most recent examination or subsequent review of the depository institution and, at least a rating of 2 for management, if such a rating is given; or

(ii) In the case of another depository institution that has not been examined by its appropriate Federal banking agency, the existence and use of managerial resources that the appropriate Federal banking agency determines are satisfactory.

[85 FR 80434, Dec. 11, 2020]

§5.4 Filing required.

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

(b) *Availability of forms.* Forms and instructions for filing are available at www.occ.gov.

(c) *Other agency's applications or filings.* At the request of the filer, the OCC may accept an application or

other filing submitted to another Federal agency that covers the proposed action or transaction and contains substantially the same information as required by the OCC. The OCC also may require the filer to submit supplemental information.

(d) *Where to file.* A filer should address a filing or other submission under this part to the appropriate OCC licensing office or appropriate OCC supervisory office, unless the OCC advises a filer otherwise. Relevant addresses are listed on www.occ.gov.

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

(f) *Prefiling meeting.* Before submitting a filing to the OCC, a potential filer is encouraged to contact the appropriate OCC licensing office to determine the need for a prefiling meeting. The OCC decides whether to require a prefiling meeting on a case-by-case basis. Submission of a draft business plan or other relevant information before any prefiling meeting may expedite the filing review process. A potential filer considering a novel, complex, or unique proposal is encouraged to contact the appropriate OCC licensing office to schedule a prefiling meeting early in the development of its proposal for the early identification and consideration of policy issues. Information on model business plans can be found in the Comptroller's Licensing Manual.

(g) *Certification.* A filer must certify that any filing or supporting material submitted to the OCC contains no material misrepresentations or omissions. The OCC may review and verify any information filed in connection with a notice or an application. Any person responsible for any material misrepresentation or omission in a filing or supporting materials may be subject to enforcement action and other penalties,