

§5.35

12 CFR Ch. I (1–1–25 Edition)

permitted by published OCC precedent for national banks;

(xxix) Providing payroll processing;

(xxx) Providing branch management services;

(xxxi) Providing merchant processing services except when the activity involves the use of third parties to solicit or underwrite merchants; and

(xxxii) Performing administrative tasks involved in benefits administration.

(6) *No application or notice required.* A national bank may acquire or establish an operating subsidiary, or perform a new activity in an existing operating subsidiary, without filing an application or providing notice to the OCC, if the bank is well managed and well capitalized and the:

(i) Activities of the new subsidiary are limited to those activities previously reported by the bank in connection with the establishment or acquisition of a prior operating subsidiary;

(ii) Activities in which the new subsidiary will engage continue to be legally permissible for the subsidiary;

(iii) Activities of the new subsidiary will be conducted in accordance with any conditions imposed by the OCC in approving the conduct of these activities for any prior operating subsidiary of the bank; and

(iv) The standards set forth in paragraphs (f)(2)(i)(B) and (C) of this section are satisfied.

(7) *Fiduciary powers.* (i) If an operating subsidiary proposes to accept fiduciary appointments for which fiduciary powers are required, such as acting as trustee or executor, then the national bank must have fiduciary powers under 12 U.S.C. 92a and the subsidiary also must have its own fiduciary powers under the law applicable to the subsidiary.

(ii) Unless the subsidiary is a registered investment adviser, if an operating subsidiary proposes to exercise investment discretion on behalf of customers or provide investment advice for a fee, the national bank must have prior OCC approval to exercise fiduciary powers pursuant to §5.26 and 12 CFR part 9.

(8) *Expiration of approval.* Approval expires if the national bank has not es-

tablished or acquired the operating subsidiary or commenced the new activity in an existing operating subsidiary within 12 months after the date of the approval, unless the OCC shortens or extends the time period.

(g) *Grandfathered operating subsidiaries.* Notwithstanding the requirements for a qualifying operating subsidiary in paragraph (e)(2) of this section and unless otherwise notified by the OCC with respect to a particular operating subsidiary, an entity that a national bank lawfully acquired or established as an operating subsidiary before April 24, 2008 may continue to operate as a national bank operating subsidiary under this section, provided that the bank and the operating subsidiary were, and continue to be, conducting authorized activities in compliance with the standards and requirements applicable when the bank established or acquired the operating subsidiary.

[80 FR 28444, May 18, 2015, as amended at 85 FR 80455, Dec. 11, 2020]

§5.35 Bank service company investments by a national bank or Federal savings association.

(a) *Authority.* 12 U.S.C. 93a, 1462a, 1463, 1464, 1861–1867, and 5412(b)(2)(B).

(b) *Licensing requirements.* Except where otherwise provided, a national bank or Federal savings association must submit a notice and obtain prior OCC approval to invest in the equity of a bank service company or to perform new activities in an existing bank service company.

(c) *Scope.* This section describes the procedures and requirements regarding OCC review and approval of a notice by a national bank or Federal savings association to invest in the equity of a bank service company. The OCC may, at any time, limit a national bank's or Federal savings association's investment in a bank service company or may limit or refuse to permit any activities in any bank service company for which a national bank or Federal savings association is the principal investor for supervisory, legal, or safety and soundness reasons.

(d) *Definitions—*(1) *Bank service company* means a corporation or limited liability company organized to provide

services authorized by the Bank Service Company Act, 12 U.S.C. 1861 *et seq.*, all of whose capital stock is owned by one or more insured depository institutions in the case of a corporation, or all of the members of which are one or more insured depository institutions in the case of a limited liability company.

(2) *Limited liability company* means any company, partnership, trust, or similar business entity organized under the law of a State (as defined in section 3(a)(3) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(a)(3)) which provides that a member or manager of such company is not personally liable for a debt, obligation, or liability of the company solely by reason of being, or acting as, a member or manager of such company.

(3) *Depository institution* for purposes of this section, means, except when such term appears in connection with the term 'insured depository institution', an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(h)), a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(b)(1)), a financial institution subject to examination by the appropriate Federal banking agency or the National Credit Union Administration Board, or a financial institution the accounts or deposits of which are insured or guaranteed under State law and are eligible to be insured by the FDIC or the National Credit Union Administration Board.

(4) *Insured depository institution*, for purposes of this section, has the same meaning as in section 3(c)(2) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c)(2).

(5) *Invest* includes making any advance of funds to a bank service company, whether by the purchase of stock, the making of a loan, or otherwise, except a payment for rent earned, goods sold and delivered, or services rendered before the payment was made.

(6) *Principal investor* means the insured depository institution that has the largest amount invested in the equity of a bank service company. In any case where two or more insured depository institutions have equal amounts invested and no other insured depository institution has a larger amount

invested, the bank service company must designate one of those insured depository institutions as its principal investor.

(e) *Standards and requirements.* A national bank or Federal savings association may invest in a bank service company that conducts activities described in paragraphs (f)(3) and (f)(4) of this section and activities (other than taking deposits) permissible for the national bank or Federal savings association and other insured depository institution shareholders or members of the bank service company.

(f) *Procedures*—(1) *OCC notice and approval required.* Except as provided in paragraphs (f)(3) and (f)(4) of this section, a national bank or Federal savings association that intends to invest in the equity of a bank service company, or to perform new activities in an existing bank service company, must submit a notice to and receive prior approval from the OCC. The notice must include the information required by paragraph (g) of this section. The OCC approves or denies a proposed investment within 60 days after the filing is received by the OCC, unless the OCC notifies the bank prior to that date that the filing presents a significant supervisory or compliance concern, or raises a significant legal or policy issue.

(2) *Expedited review for certain activities.* (i) A notice to invest in the equity of a bank service company, or to perform new activities in an existing bank service company, that meets the requirements of this paragraph is deemed approved by the OCC as of the 30th day after the notice is received by the OCC, unless the OCC notifies the filer prior to that date that the filing is not eligible for expedited review or the expedited review process is extended. Any bank or savings association making an investment pursuant to this paragraph is deemed to have agreed that the bank service company will conduct the activity in a manner consistent with the published OCC guidance.

(ii) A notice is eligible for expedited review if all of the following requirements are met:

(A) The national bank or Federal savings association is well capitalized and well managed; and

(B) The bank service company engages only in activities that are permissible for the bank service company under 12 U.S.C. 1864 and that are listed in § 5.34(f)(5) or § 5.38(f)(5), as applicable.

(3) *Investments requiring no approval or notice.* A national bank or Federal savings association does not need to submit a notice or obtain OCC approval to invest in a bank service company, or to perform a new activity in an existing bank service company, if the bank service company will provide only the following services only for depository institutions: Check and deposit posting and sorting; computation and posting of interest and other credits and charges; preparation and mailing of checks, statements, notices, and similar items; or any other clerical, book-keeping, accounting, statistical, or similar functions.

(4) *Federal Reserve approval.* A national bank or Federal savings association also may, with the approval of the Board of Governors of the Federal Reserve System (Federal Reserve Board), invest in the equity of a bank service company that provides any other service (except deposit taking) that the Federal Reserve Board has determined, by regulation, to be permissible for a bank holding company under 12 U.S.C. 1843(c)(8).

(5) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to a request for approval to invest in a bank service company. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that any or all provisions of §§ 5.8, 5.10, and 5.11 apply.

(g) *Required information.* A notice required under paragraph (f)(1) of this section must contain the following:

(1) The name and location of the bank service company;

(2) A complete description of the activities the bank service company will conduct and a representation and undertaking that the activities will be conducted in accordance with OCC guidance. To the extent the notice relates to the initial affiliation of the national bank or Federal savings association with a company engaged in insurance activities, the national bank or Federal savings association should de-

scribe the type of insurance activity that the company is engaged in and has present plans to conduct. The national bank or Federal savings association also must list for each State the lines of business for which the company holds, or will hold, an insurance license, indicating the State where the company holds a resident license or charter, as applicable;

(3) A complete description of the national bank's or Federal savings association's investment in the bank service company and information demonstrating that the national bank or Federal savings association will comply with the investment limitations of paragraph (i) of this section; and

(4) Information demonstrating that the bank service company will perform only those services that each insured depository institution shareholder or member is authorized to perform under applicable Federal or State law and will perform such services only at locations in a State in which each such shareholder or member is authorized to perform such services unless performing services that are authorized by the Federal Reserve Board under the authority of 12 U.S.C. 1865(b).

(h) *Examination and supervision.* Each bank service company in which a national bank or Federal savings association is the principal investor is subject to examination and supervision by the OCC in the same manner and to the same extent as that national bank or Federal savings association. OCC authority under this paragraph is subject to the limitations and requirements of section 45 of the Federal Deposit Insurance Act (12 U.S.C. 1831v) and section 115 of the Gramm-Leach-Bliley Act (12 U.S.C. 1820a).

(i) *Investment limitations.* A national bank or Federal savings association must comply with the investment limitations specified in 12 U.S.C. 1862.

[80 FR 28448, May 18, 2015, as amended at 85 FR 80458, Dec. 11, 2020]

§ 5.36 Other equity investments by a national bank.

(a) *Authority.* 12 U.S.C. 1 *et seq.*, 24(Seventh), 93a, and 3101 *et seq.*

(b) *Scope.* National banks are permitted to make various types of equity investments pursuant to 12 U.S.C.