

§ 6.20

and subpart N of part 19 of this chapter, unless otherwise provided in section 38 of the FDI Act or this part.

[78 FR 62275, Oct. 11, 2013, as amended at 88 FR 89842, Dec. 28, 2023]

Subpart B—Directives To Take Prompt Corrective Action

§ 6.20 Scope.

The rules and procedures set forth in this subpart apply to insured national banks, insured Federal branches, Federal savings associations, and senior executive officers and directors of national banks and Federal savings associations that are subject to the provisions of section 38 of the Federal Deposit Insurance Act (section 38) and subpart A of this part.

§ 6.21 Notice of intent to issue a directive.

(a) *Notice of intent to issue a directive—*(1) *In general.* The OCC shall provide an undercapitalized, significantly undercapitalized, or critically undercapitalized national bank or Federal savings association prior written notice of the OCC's intention to issue a directive requiring such national bank, Federal savings association, or company to take actions or to follow proscriptions described in section 38 that are within the OCC's discretion to require or impose under section 38 of the FDI Act, including section 38(e)(5), (f)(2), (f)(3), or (f)(5). The national bank or Federal savings association shall have such time to respond to a proposed directive as provided under § 6.22.

(2) *Immediate issuance of final directive.* If the OCC finds it necessary in order to carry out the purposes of section 38 of the FDI Act, the OCC may, without providing the notice prescribed in paragraph (a)(1) of this section, issue a directive requiring a national bank or Federal savings association immediately to take actions or to follow proscriptions described in section 38 that are within the OCC's discretion to require or impose under section 38 of the FDI Act, including section 38(e)(5), (f)(2), (f)(3), or (f)(5). A national bank or Federal savings association that is subject to such an immediately effective directive may submit a written appeal

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of the directive to the OCC. Such an appeal must be received by the OCC within 14 calendar days of the issuance of the directive, unless the OCC permits a longer period. The OCC shall consider any such appeal, if filed in a timely matter, within 60 days of receiving the appeal. During such period of review, the directive shall remain in effect unless the OCC, in its sole discretion, stays the effectiveness of the directive.

(b) *Contents of notice.* A notice of intention to issue a directive shall include:

(1) A statement of the national bank's or Federal savings association's capital measures and capital levels;

(2) A description of the restrictions, prohibitions or affirmative actions that the OCC proposes to impose or require;

(3) The proposed date when such restrictions or prohibitions would be effective or the proposed date for completion of such affirmative actions; and

(4) The date by which the national bank or Federal savings association subject to the directive may file with the OCC a written response to the notice.

§ 6.22 Response to notice.

(a) *Time for response.* A national bank or Federal savings association may file a written response to a notice of intent to issue a directive within the time period set by the OCC. The date shall be at least 14 calendar days from the date of the notice unless the OCC determines that a shorter period is appropriate in light of the financial condition of the national bank or Federal savings association or other relevant circumstances.

(b) *Content of response.* The response should include:

(1) An explanation why the action proposed by the OCC is not an appropriate exercise of discretion under section 38;

(2) Any recommended modification of the proposed directive; and

(3) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the national bank or Federal savings association regarding the proposed directive.