

§ 5.1

12 CFR Ch. I (1–1–04 Edition)

- 5.46 Changes in permanent capital.
- 5.47 Subordinated debt as capital.
- 5.48 Voluntary liquidation.
- 5.50 Change in bank control; reporting of stock loans.
- 5.51 Changes in directors and senior executive officers.
- 5.52 Change of address.

Subpart E—Payment of Dividends

- 5.60 Authority, scope, and exceptions to rules of general applicability.
- 5.61 Definitions.
- 5.62 Date of declaration of dividend.
- 5.63 Capital limitation under 12 U.S.C. 56.
- 5.64 Earnings limitation under 12 U.S.C. 60.
- 5.65 Restrictions on undercapitalized institutions.
- 5.66 Dividends payable in property other than cash.
- 5.67 Fractional shares.

Subpart F—Federal Branches and Agencies

- 5.70 Federal branches and agencies.

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

EFFECTIVE DATE NOTE: At 68 FR 70128, Dec. 17, 2003, the authority for part 5 was revised, effective Jan. 16, 2004. For the convenience of the user, the revised authority reads as follows:

AUTHORITY: 12 U.S.C. 1 *et seq.*, 93a; 215a–2; 215a–3; and section 5136A of the Revised Statutes (12 U.S.C. 24a).

SOURCE: 61 FR 60363, Nov. 27, 1996, unless otherwise noted.

§ 5.1 Scope.

This part establishes rules, policies and procedures of the Office of the Comptroller of the Currency (OCC) for corporate activities and transactions involving national banks. It contains information on rules of general and specific 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.

Subpart A—Rules of General Applicability

§ 5.2 Rules of general applicability.

(a) *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, in exceptional circumstances or for unusual transactions, after providing notice of the change to the applicant and to any other party that the OCC determines should receive notice.

(c) *Additional information.* The “Comptroller’s Licensing Manual” (Manual) provides additional guidance, including policies, procedures, and sample forms. The Manual is available on the OCC’s Internet Web page at <http://www.occ.treas.gov>. Printed copies are available for a fee from Publications, Communications Division, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001.

(d) *Electronic filing.* The OCC may permit electronic filing for any class of filings. The Manual identifies filings that may be made electronically and describes the procedures that the OCC requires in those cases.

[61 FR 60363, Nov. 27, 1996, as amended at 68 FR 17892, Apr. 14, 2003]

§ 5.3 Definitions.

(a) *Applicant* means a person or entity that submits a notice or application to the OCC under this part.

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

(c) *Appropriate district office* means:

(1) Bank Organization and Structure for all national bank subsidiaries of certain holding companies assigned to the Washington, DC, licensing unit;

(2) The appropriate OCC district office for all national bank subsidiaries of certain holding companies assigned to a district office licensing unit;

(3) The OCC’s district office where the national bank’s supervisory office is located for all other banks; or

(4) The OCC’s International Banking and Finance Department for federal branches and agencies of foreign banks.

(d) *Capital and surplus* means:

(1) A bank’s Tier 1 and Tier 2 capital calculated under the OCC’s risk-based capital standards set forth in Appendix A to 12 CFR part 3 as reported in the bank’s Consolidated Report of Condition and Income filed under 12 U.S.C. 161; plus

Comptroller of the Currency, Treasury

§ 5.4

(2) The balance of a bank's allowance for loan and lease losses not included in the bank's Tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (d)(1) of this section, as reported in the bank's Consolidated Report of Condition and Income filed under 12 U.S.C. 161.

(e) *Central city* means the city or cities identified as central cities by the Director of the Office of Management and Budget.

(f) *Depository institution* means any bank or savings association.

(g) *Eligible bank* means a national bank that:

(1) Is well capitalized as defined in 12 CFR 6.4(b)(1);

(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"; and

(4) 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 may be treated as an "eligible bank" for purposes of this part.

(h) *Eligible depository institution* means a state bank or a Federal or state savings association that meets the criteria for an "eligible bank" under § 5.3(g) and is FDIC-insured.

(i) *Filing* means an application or notice submitted to the OCC under this part.

(j) *National bank* means any national banking association and any bank or trust company located in the District of Columbia operating under the OCC's supervision.

(k) *Notice* means a submission notifying the OCC that a national bank intends to engage in or has commenced certain corporate activities or transactions.

(l) *Short-distance relocation* means moving the premises of a branch or main office within a:

(1) One thousand foot-radius of the site if the branch is located within a central city of an MSA;

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

(3) Two-mile radius of the site if the branch is not located within an MSA.

[61 FR 60363, Nov. 27, 1996, as amended at 64 FR 60098, Nov. 4, 1999]

EFFECTIVE DATE NOTE: At 68 FR 70698, Dec. 19, 2003, § 5.3, was amended by revising paragraphs (c)(1) and (c)(4), effective Jan. 20, 2004. For the convenience of the user, the revised text is set forth as follows:

§ 5.3 Definitions.

* * * * *

(c) * * *

(1) The Licensing Department for all national bank subsidiaries of those holding companies assigned to the Washington, DC, licensing unit;

* * * * *

(4) The licensing unit in the Northeastern District Office for Federal branches and agencies of foreign banks.

* * * * *

§ 5.4 Filing required.

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

(b) *Availability of forms.* Individual sample forms and instructions for filings are available in the Manual and from each district office.

(c) *Other applications accepted.* At the request of the applicant, the OCC may accept an application form 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 may also require the applicant to submit supplemental information.

(d) *Where to file.* An applicant should address a filing or other submission under this part to the attention of the Licensing Manager at the appropriate district office. However, the OCC may advise an applicant through a pre-filing communication to send the filing or submission directly to the Bank Organization and Structure Department or elsewhere as otherwise directed by the