

(h) *Examination and supervision.* Each bank service company in which a national bank 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. 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 and other limitations—(1) Investment limitations.* A bank may not invest more than ten percent of its capital and surplus in a bank service company. In addition, the bank's total investments in all bank service companies may not exceed five percent of the bank's total assets.

(2) *Other limitations.* Except as provided in paragraph (f)(4) of this section, a bank service company shall only conduct activities that the national bank could conduct directly. If the bank service company has both national and state bank shareholders or members, the activities conducted must also be permissible for the state bank shareholders or members.

[61 FR 60363, Nov. 27, 1996, as amended at 64 FR 60098, Nov. 4, 1999; 65 FR 12913, Mar. 10, 2000]

§ 5.36 Other equity investments.

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

(b) *Scope.* National banks are permitted to make various types of equity investments pursuant to 12 U.S.C. 24(Seventh) and other statutes. These investments are in addition to those subject to §§ 5.34, 5.35, and 5.37. This section describes the procedure governing the filing of the notice that the OCC requires in connection with certain of these investments. Other investments authorized under this section may be reviewed on a case-by-case basis by the OCC.

(c) *Definitions.* For purposes of this § 5.36:

(1) *Enterprise* means any corporation, limited liability company, partnership, trust, or similar business entity.

(2) *Well capitalized* means the capital level described in 12 CFR 6.4(b)(1).

(3) *Well managed* has the meaning set forth in § 5.34(d)(3).

(d) *Procedure.* (1) A national bank must provide the appropriate district office with written notice within ten days after making an equity investment in the following:

(i) An agricultural credit corporation;

(ii) A savings association eligible to be acquired under section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823); and

(iii) Any other equity investment that may be authorized by statute after February 12, 1990, if not covered by other applicable OCC regulation.

(2) The written notice required by paragraph (c)(1) of this section must include a description, and the amount, of the bank's investment.

(3) The OCC reserves the right to require additional information as necessary.

(e) *Non-controlling investments.* A national bank may make a non-controlling investment, directly or through its operating subsidiary, in an enterprise that engages in the activities described in paragraph (e)(2) of this section by filing a written notice. The written notice must be filed with the appropriate district office no later than 10 days after making the investment and must:

(1) Describe the structure of the investment and the activity or activities conducted by the enterprise in which the bank is investing. To the extent the notice relates to the initial affiliation of the bank with a company engaged in insurance activities, the bank should describe the type of insurance activity that the company is engaged in and has present plans to conduct. The bank must also 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;

(2) State which paragraphs of § 5.34(e)(5)(v) describe the activity or activities, or state that, and describe how, the activity is substantively the same as that contained in published OCC precedent approving a non-controlling investment by a national bank or its operating subsidiary, state that

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the activity will be conducted in accordance with the same terms and conditions applicable to the activity covered by the precedent, and provide the citation to the applicable precedent;

(3) Certify that the bank is well managed and well capitalized at the time of the investment;

(4) Describe how the bank has the ability to prevent the enterprise from engaging in activities that are not set forth in § 5.34(e)(5)(v) or not contained in published OCC precedent approving a non-controlling investment by a national bank or its operating subsidiary, or how the bank otherwise has the ability to withdraw its investment;

(5) Certify that the bank will account for its investment under this section under the equity or cost method of accounting;

(6) Describe how the investment is convenient and useful to the bank in carrying out its business and not a mere passive investment unrelated to the bank's banking business;

(7) Certify that the bank's loss exposure is limited, as a legal and accounting matter, and the bank does not have open-ended liability for the obligations of the enterprise; and

(8) Certify that the enterprise in which the bank is investing agrees to be subject to OCC supervision and examination, 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).

(f) *Non-controlling investments by Federal branches.* A Federal branch that satisfies the well capitalized and well managed standards in 12 CFR 4.7(b)(1)(iii) and § 5.34(d)(3)(ii) may make a non-controlling investment in accordance with paragraph (e) of this section in the same manner and subject to the same conditions and requirements as a national bank, and subject to any additional requirements that may apply under 12 CFR 28.10(c).

(g) *Exceptions to rules of general applicability.* Sections 5.8, 5.9, 5.10, and 5.11 of this part do not apply to filings for other equity investments.

[61 FR 60363, Nov. 27, 1996, as amended at 65 FR 12913, Mar. 10, 2000; 65 FR 41560, July 6, 2000; 68 FR 70698, Dec. 19, 2003]

§ 5.37 Investment in bank premises.

(a) *Authority.* 12 U.S.C. 29, 93a, and 371d.

(b) *Scope.* This section sets forth the procedures governing OCC review and approval of applications by national banks to invest in bank premises or in certain bank premises related investments, loans, or indebtedness, as described in paragraph (d)(1)(i) of this section.

(c) *Definition—Bank premises* for purposes of this section includes the following:

(1) Premises that are owned and occupied (or to be occupied, if under construction) by the bank, its branches, or its consolidated subsidiaries;

(2) Capitalized leases and leasehold improvements, vaults, and fixed machinery and equipment;

(3) Remodeling costs to existing premises;

(4) Real estate acquired and intended, in good faith, for use in future expansion; or

(5) Parking facilities that are used by customers or employees of the bank, its branches, and its consolidated subsidiaries.

(d) *Procedure—(1) Application.* (i) A national bank shall submit an application to the appropriate supervisory office to invest in bank premises, or in the stock, bonds, debentures, or other such obligations of any corporation holding the premises of the bank, or to make loans to or upon the security of the stock of such corporation, if the aggregate of all such investments and loans, together with the indebtedness incurred by any such corporation that is an affiliate of the bank, as defined in 12 U.S.C. 221a, will exceed the amount of the capital stock of the bank.

(ii) The application must include:

(A) A description of the bank's present investment in bank premises;

(B) The investment in bank premises that the bank intends to make, and the business reason for making the investment; and

(C) The amount by which the bank's aggregate investment will exceed the amount of the bank's capital stock.