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of this section for an increase in capital shall file only the letter of notification under paragraph (i)(3) of this section.

(2) *Preferred stock.* Notwithstanding paragraph (g)(1)(i) of this section, in the case of a sale of preferred stock, the national bank shall also submit provisions in the articles of association concerning preferred stock dividends, voting and conversion rights, retirement of the stock, and rights to exercise control over management to the appropriate district office prior to the sale of the preferred stock. The provisions will be deemed approved by the OCC within 30 days of its receipt, unless the OCC notifies the applicant otherwise, including a statement of the reason for the delay.

(h) *Decreases in permanent capital.* A national bank shall submit an application and obtain prior approval under paragraph (i)(1) or (i)(2) of this section for any reduction of its permanent capital.

(i) *Procedures*—(1) Prior approval. A national bank proposing to make a change in its permanent capital that requires prior OCC approval under paragraphs (g) or (h) of this section shall submit an application to the appropriate district office. The application must:

(i) Describe the type and amount of the proposed change in permanent capital and explain the reason for the change;

(ii) In the case of a reduction in capital, provide a schedule detailing the present and proposed capital structure;

(iii) In the case of a material noncash contribution to capital, provide a description of the method of valuing the contribution; and

(iv) State if the bank is subject to a capital plan with the OCC and how the proposed change would conform to a capital plan or if a capital plan is otherwise required in connection with the proposed change in permanent capital.

(2) *Expedited review.* An eligible bank's application is deemed approved by the OCC 30 days after the date the OCC receives the application described in paragraph (i)(1) of this section, unless the OCC notifies the bank prior to that date that the application is not eligible for expedited review under

§5.13(a)(2). A bank seeking to decrease its capital may request OCC approval for up to four consecutive quarters. An eligible bank may decrease its capital pursuant to such a plan only if the bank maintains its eligible bank status before and after each decrease in its capital.

(3) *Letter of notification.* After a bank completes an increase in capital it shall submit a letter of notification to the appropriate district office in order to obtain a certification from the OCC. The proposed change is deemed approved by the OCC and certified seven days after the date on which the OCC receives the letter of notification. The letter of notification must be acknowledged before a notary public by the bank's president, vice president, or cashier and contain:

(i) A description of the transaction, unless already provided pursuant to paragraph (i)(1) of this section;

(ii) The amount, including the par value of the stock, and effective date of the increase;

(iii) A certification that the funds have been paid in, if applicable;

(iv) A certified copy of the amendment to the articles of association, if required; and

(v) A statement that the bank has complied with all laws, regulations and conditions imposed by the OCC.

(4) *Notice process.* A national bank that decreases its capital in accordance with paragraphs (i)(1) or (i)(2) of this section shall notify the appropriate district office following the completion of the transaction.

(5) *Expiration of approval.* Approval expires if a national bank has not completed its change in permanent capital within one year of the date of approval.

(j) *Offers and sales of stock.* A national bank shall comply with the Securities Offering Disclosure Rules in 12 CFR part 16 for offers and sales of common and preferred stock.

(k) *Shareholder approval.* A national bank shall obtain the necessary shareholder approval required by statute for any change in its permanent capital.

§5.47 Subordinated debt as capital.

(a) *Authority.* 12 U.S.C. 93a.

(b) *Licensing requirements.* A national bank does not need prior OCC approval

to issue subordinated debt, or to prepay subordinated debt (including payment pursuant to an acceleration clause or redemption prior to maturity) provided the bank remains an eligible bank after the transaction, unless the OCC has previously notified the bank that prior approval is required, or unless prior approval is required by law. No prior approval is required for the bank to count the subordinated debt as Tier 2 or Tier 3 capital. However, a bank issuing subordinated debt shall notify the OCC after issuance if the debt is to be counted as Tier 2 or Tier 3 capital.

(c) *Scope.* This section sets forth the procedures for OCC review and approval of an application to issue or prepay subordinated debt.

(d) *Definitions*—(1) *Capital plan* means a plan describing the means and schedule by which a national bank will attain specified capital levels or ratios, including a plan to achieve minimum capital ratios filed with the appropriate district office under 12 CFR 3.7 and a capital restoration plan filed with the OCC under 12 U.S.C. 1831o and 12 CFR 6.5.

(2) *Tier 2 capital* has the same meaning as set forth in 12 CFR 3.2(d).

(3) *Tier 3 capital* has the same meaning as set forth in 12 CFR part 3, appendix B, section 2(d).

(e) *Qualification as regulatory capital.* (1) A national bank's subordinated debt qualifies as Tier 2 capital if the subordinated debt meets the requirements in 12 CFR part 3, appendix A, section 2(b)(4), and complies with the "OCC Guidelines for Subordinated Debt" in the Manual.

(2) A national bank's subordinated debt qualifies as Tier 3 capital if the subordinated debt meets the requirements in 12 CFR part 3, section 2(d) of Appendix B.

(3) If the OCC notifies a national bank that it must obtain OCC approval before issuing subordinated debt, the subordinated debt will not qualify as Tier 2 or Tier 3 capital until the bank obtains OCC approval for its inclusion in capital.

(f) *Prior approval procedure*—(1) *Application.* A national bank required to obtain OCC approval before issuing or prepaying subordinated debt shall sub-

mit an application to the appropriate district office. The application must include:

(i) A description of the terms and amount of the proposed issuance or prepayment;

(ii) A statement of whether the bank is subject to a capital plan or required to file a capital plan with the OCC and, if so, how the proposed change conforms to the capital plan;

(iii) A copy of the proposed subordinated note format and note agreement; and

(iv) A statement of whether the subordinated debt issue complies with all laws, regulations, and the "OCC Guidelines for Subordinated Debt" in the Manual.

(2) *Approval*—(i) *General.* The application is deemed approved by the OCC as of the 30th day 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.

(ii) *Tier 2 and Tier 3 capital.* When the OCC notifies the bank that the OCC approves the bank's application to issue or prepay the subordinated debt, it also notifies the bank whether the subordinated debt qualifies as Tier 2 or Tier 3 capital.

(iii) *Expiration of approval.* Approval expires if a national bank does not complete the sale of the subordinated debt within one year of approval.

(g) *Notice procedure.* If a national bank is not required to obtain approval before issuing subordinated debt, the bank shall notify the appropriate district office in writing within ten days after issuing subordinated debt that is to be counted as Tier 2 or Tier 3 capital. The notice must include:

(1) The terms of the issuance;

(2) The amount and date of receipt of funds;

(3) A copy of the final subordinated note format and note agreement; and

(4) A statement that the issue complies with all laws, regulations, and the "OCC Guidelines for Subordinated Debt Instruments" in the Manual.

(h) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do

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not apply to the issuance of subordinated debt.

(i) *Issuance of subordinated debt.* A national bank shall comply with the Securities Offering Disclosure Rules in 12 CFR part 16 when issuing subordinated debt even if the bank is not required to obtain prior approval to issue subordinated debt.

§ 5.48 Voluntary liquidation.

(a) *Authority.* 12 U.S.C. 93a, 181, and 182.

(b) *Licensing requirements.* A national bank considering going into voluntary liquidation shall notify the OCC. The bank shall also file a notice with the OCC once a liquidation plan is definite.

(c) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to a voluntary liquidation. However, if the OCC concludes that the notice presents significant and novel policy, supervisory or legal issues, the OCC may determine that any or all parts of §§ 5.8, 5.10, and 5.11 apply.

(d) *Standards.* A national bank may liquidate in accordance with the terms of 12 U.S.C. 181 and 182.

(e) *Procedure—(1) Notice of voluntary liquidation.* When the shareholders of a solvent national bank have voted to voluntarily liquidate, the bank shall file a notice with the appropriate district office and publish public notice in accordance with 12 U.S.C. 182.

(2) *Report of condition.* The liquidating bank shall submit reports of the condition of its commercial, trust, and other departments to the appropriate district office by filing the quarterly Consolidated Reports of Condition and Income (Call Reports).

(3) *Report of progress.* The liquidating agent or committee shall submit a "Report of Progress of Liquidation" annually to the appropriate district office until the liquidation is complete.

(f) *Expedited liquidations in connection with acquisitions—(1) General.* When an acquiring depository institution in a business combination purchases all the assets, and assumes all the liabilities, including contingent liabilities, of a target national bank, the acquiring depository institution may dissolve the target national bank immediately after the combination. However, if any liabilities will remain in the target na-

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tional bank, then the standard liquidation procedures apply.

(2) *Procedure.* After its shareholders have voted to liquidate and the national bank has notified the appropriate district office of its plans, the bank may surrender its charter and dissolve immediately, if:

(i) The acquiring depository institution certifies to the OCC that it has purchased all the assets and assumed all the liabilities, including contingent liabilities, of the national bank in liquidation; and

(ii) The acquiring depository institution and the national bank in liquidation have published notice that the bank will dissolve after the purchase and assumption to the acquiror. This is included in the notice and publication for the purchase and assumption required under the Bank Merger Act, 12 U.S.C. 1828(c).

(g) *National bank as acquiror.* If another national bank plans to acquire a national bank in liquidation through merger or through the purchase of the assets and the assumption of the liabilities of the bank in liquidation, the acquiring bank shall comply with the Bank Merger Act, 12 U.S.C. 1828(c), and § 5.33.

§ 5.50 Change in bank control; reporting of stock loans.

(a) *Authority.* 12 U.S.C. 93a and 1817(j).

(b) *Licensing requirements.* Any person seeking to acquire control of a national bank shall provide 60 days prior written notice of a change in control to the OCC, except where otherwise provided in this section.

(c) *Scope—(1) General.* This section describes the procedures and standards governing OCC review of notices for a change in control of a national bank and reports of stock loans.

(2) *Exempt transactions.* The following transactions are not subject to the requirements of this section:

(i) The acquisition of additional shares of a national bank by a person who:

(A) Has, continuously since March 9, 1979, (or since that institution commenced business, if later) held power to vote 25 percent or more of the voting securities of that bank; or