

## Comptroller of the Currency, Treasury

## §5.51

affiliate thereof, shall file a consolidated report with the appropriate district office of the national bank if the foreign bank or any affiliate thereof, has credit outstanding to any person or group of persons that, in the aggregate, is secured, directly or indirectly, by 25 percent or more of any class of voting securities of the same national bank.

(ii) The foreign bank, or any affiliate thereof, shall also file a copy of the report with its appropriate district office if that office is different from the national bank's appropriate district office. If the foreign bank, or any affiliate thereof, is not supervised by the OCC, it shall file a copy of the report filed with the OCC with its appropriate Federal banking agency.

(iii) Any shares of the national bank held by the foreign bank, or any affiliate thereof, as principal must be included in the calculation of the number of shares in which the foreign bank or any affiliate thereof has a security interest for purposes of paragraph (h)(1)(i) of this section.

(2) *Definitions.* For purposes of this paragraph (h):

(i) *Foreign bank and affiliate* have the same meanings as in section 1 of the International Banking Act of 1978, 12 U.S.C. 3101.

(ii) *Credit outstanding* includes any loan or extension of credit; the issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit; and any other type of transaction that extends credit or financing to a person or group of persons.

(iii) *Group of persons* includes any number of persons that a foreign bank, or an affiliate thereof, has reason to believe:

(A) Are acting together, in concert, or with one another to acquire or control shares of the same insured national bank, including an acquisition of shares of the same national bank at approximately the same time under substantially the same terms; or

(B) Have made, or propose to make, a joint filing under 15 U.S.C. 78m regarding ownership of the shares of the same depository institution.

(3) *Exceptions.* Compliance with paragraph (h)(1) of this section is not required if:

(i) The person or group of persons referred to in paragraph (h)(1) of this section has disclosed the amount borrowed and the security interest therein to the appropriate district office in connection with a notice filed under this section or any other application filed with the appropriate district office as a substitute for a notice under this section, such as for a national bank charter; or

(ii) The transaction involves a person or group of persons that has been the owner or owners of record of the stock for a period of one year or more or, if the transaction involves stock issued by a newly chartered bank, before the bank's opening.

(4) *Report requirements.* (i) The consolidated report must indicate the number and percentage of shares securing each applicable extension of credit, the identity of the borrower, and the number of shares held as principal by the foreign bank and any affiliate thereof.

(ii) The foreign bank and all affiliates thereof shall file the consolidated report in writing within 30 days of the date on which the foreign bank or affiliate thereof first believes that the security for any outstanding credit consists of 25 percent or more of any class of voting securities of a national bank.

(5) *Other reporting requirements.* A foreign bank or any affiliate thereof, supervised by the OCC and required to report credit outstanding secured by the shares of a depository institution to another Federal banking agency also shall file a copy of the report with its appropriate district office.

### §5.51 Changes in directors and senior executive officers.

(a) *Authority.* 12 U.S.C. 1831i.

(b) *Scope.* This section describes the circumstances when a national bank must notify the OCC of a change in its directors and senior executive officers, and the OCC's authority to disapprove those notices.

(c) *Definitions—*(1) *Director* means a person who serves on the board of directors of a national bank except:

(i) A director of a foreign bank that operates a Federal branch; and

(ii) An advisory director who does not have the authority to vote on matters before the board of directors and provides solely general policy advice to the board of directors.

(2) *National bank*, as defined in § 5.3(j), includes a Federal branch for purposes of this section only.

(3) *Senior executive officer* means the chief executive officer, chief operating officer, chief financial officer, chief lending officer, chief investment officer, and any other individual the OCC identifies to the national bank who exercises significant influence over, or participates in, major policy making decisions of the bank without regard to title, salary, or compensation. The term also includes employees of entities retained by a national bank to perform such functions in lieu of directly hiring the individuals, and, with respect to a Federal branch operated by a foreign bank, the individual functioning as the chief managing official of the Federal branch.

(4) *Technically complete notice* means a notice that provides all the information requested in paragraph (e)(2) of this section, including complete explanations where material issues arise regarding the competence, experience, character, or integrity of proposed directors or senior executive officers, and any additional information that the OCC may request following a determination that the original submission of the notice was not technically complete.

(5) *Technically complete notice date* means the date on which the OCC has received a technically complete notice.

(6) *Troubled condition* means a national bank that:

(i) Has a composite rating of 4 or 5 under the Uniform Financial Institutions Rating System (CAMELS);

(ii) Is subject to a cease and desist order, a consent order, or a formal written agreement, unless otherwise informed in writing by the OCC; or

(iii) Is informed in writing by the OCC that as a result of an examination it has been designated in “troubled condition” for purposes of this section.

(d) *Prior notice*. A national bank shall provide written notice to the OCC at least 90 days before adding or replacing any member of its board of directors,

employing any person as a senior executive officer of the national bank, or changing the responsibilities of any senior executive officer so that the person would assume a different executive officer position, if:

(1) The national bank is not in compliance with minimum capital requirements applicable to such institution, as prescribed in 12 CFR part 3, or is otherwise in troubled condition; or

(2) The OCC determines, in connection with the review by the agency of the plan required under section 38 of the Federal Deposit Insurance Act, 12 USC 1831o, or otherwise, that such prior notice is appropriate.

(e) *Procedures*—(1) *Filing notice*. A national bank shall file a notice with its appropriate supervisory office. When a national bank files a notice, the individual to whom the filing pertains shall attest to the validity of the information pertaining to that individual. The 90-day review period begins on the technically complete notice date.

(2) *Content of notice*. A notice must contain the identity, personal history, business background, and experience of each person whose designation as a director or senior executive officer is subject to this section. The notice must include:

(i) A description of his or her material business activities and affiliations during the five years preceding the date of the notice;

(ii) A description of any material pending legal or administrative proceedings to which he or she is a party;

(iii) Any criminal indictment or conviction by a state or Federal court; and

(iv) Legible fingerprints of the person, except that fingerprints are not required for any person who, within the three years immediately preceding the date of the present notice, has been subject to a notice filed with the OCC pursuant to section 32 of the FDIA, 12 U.S.C. 1831i, or this section and has previously submitted fingerprints.

(3) *Requests for additional information*. Following receipt of a technically complete notice, the OCC may request additional information, in writing where feasible, and may specify a time period during which the information must be provided.

(4) *Notice of disapproval.* The OCC may disapprove an individual proposed as a member of the board of directors or as a senior executive officer if the OCC determines on the basis of the individual's competence, experience, character, or integrity that it would not be in the best interests of the depositors of the national bank or the public to permit the individual to be employed by, or associated with, the national bank. The OCC sends a notice of disapproval to both the national bank and the disapproved individual stating the basis for disapproval.

(5) *Notice of intent not to disapprove.* An individual proposed as a member of the board of directors or as a senior executive officer may begin service before the expiration of the review period if the OCC notifies the national bank that the OCC does not disapprove the proposed director or senior executive officer.

(6) *Waiver of prior notice.* (i) A national bank may send a letter to the appropriate supervisory office requesting a waiver of the prior notice requirement. The OCC may waive the prior notice requirement but not the filing required under this section. The OCC may grant a waiver if it finds that delay could harm the national bank or the public interest, or that other extraordinary circumstances justify waiving the prior notice requirement. The length of any waiver depends on the circumstances in each case. If the OCC grants a waiver, the national bank shall file the required notice within the time period specified in the waiver, and the proposed individual may assume the position on an interim basis until the individual and the national bank receive a notice of disapproval or, if an appeal has been filed, until a notice of disapproval has been upheld on appeal as set forth in paragraph (f) of this section. If the required notice is not filed within the time period specified in the waiver, the proposed individual shall resign his or her position. Thereafter, the individual may assume the position on a permanent basis only after the national bank receives a notice of intent not to disapprove, after the review period elapses, or after a notice of disapproval has been overturned on appeal as set forth in paragraph (f) of this sec-

tion. A waiver does not affect the OCC's authority to issue a notice of disapproval within 30 days of the expiration of such waiver.

(ii) In the case of the election at a meeting of the shareholders of a new director not proposed by management, a waiver is granted automatically and the elected individual may begin service as a director. However, under these circumstances, the national bank shall file the required notice with the appropriate supervisory office as soon as practical, but not later than seven days from the date the individual is notified of the election. The individual's continued service is subject to the conditions specified in paragraph (e)(6)(i) of this section.

(7) *Commencement of service.* An individual proposed as a member of the board of directors or as a senior executive officer may assume the office following the end of the review period, which begins on the technically complete notice date, unless:

(i) The OCC issues a notice of disapproval during the review period; or

(ii) The national bank does not provide additional information within the time period required by the OCC pursuant to paragraph (e)(3) of this section and the OCC deems the notice to be abandoned pursuant to § 5.13(c).

(8) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, 5.11, and 5.13 (a) through (f) do not apply to a notice for a change in directors and senior executive officers.

(f) *Appeal*—(1) If the national bank, the proposed individual, or both, disagree with a disapproval, they may seek review by appealing the disapproval to the Comptroller, or an authorized delegate, within 15 days of the receipt of the notice of disapproval. The national bank or the individual may appeal on the grounds that the reasons for disapproval are contrary to fact or insufficient to justify disapproval. The appellant shall submit all documents and written arguments that the appellant wishes to be considered in support of the appeal.

(2) The Comptroller, or an authorized delegate, may designate an appellate official who was not previously involved in the decision leading to the appeal at issue. The Comptroller, an

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authorized delegate, or the appellate official considers all information submitted with the original notice, the material before the OCC official who made the initial decision, and any information submitted by the appellant at the time of the appeal.

(3) The Comptroller, an authorized delegate, or the appellate official shall independently determine whether the reasons given for the disapproval are contrary to fact or insufficient to justify the disapproval. If either is determined to be the case, the Comptroller, an authorized delegate, or the appellate official may reverse the disapproval.

(4) Upon completion of the review, the Comptroller, an authorized delegate, or the appellate official shall notify the appellant in writing of the decision. If the original decision is reversed, the individual may assume the position in the bank for which he or she was proposed.

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

### § 5.52 Change of address.

(a) *Authority.* 12 U.S.C. 93a, 161, and 481.

(b) *Scope.* This section describes the obligation of a national bank to notify the OCC of any change in its address. However, no notice is required if the change in address results from a transaction approved under this part.

(c) *Notice process.* Any national bank with a change in the address of its main office or in its post office box shall send a written notice to the appropriate district office.

(d) *Exceptions to rules of general applicability.* Sections 5.8, 5.9, 5.10, 5.11, and 5.13 do not apply to changes in a national bank's address.

### § 5.53 Change in asset composition.

(a) *Authority.* 12 U.S.C. 93a, 1818.

(b) *Scope.* This section requires a national bank to obtain the approval of the OCC before changing the composition of all, or substantially all, of its assets through sales or other dispositions, or, having sold or disposed of all, or substantially all, of its assets, through subsequent purchases or other acquisitions or other expansions of its operations. This section does not apply

to a change in composition of all, or substantially all, of a bank's assets that the bank undertakes in response to direction from the OCC (*e.g.*, in an enforcement action pursuant to 12 U.S.C. 1818) or as part of a voluntary liquidation pursuant to 12 U.S.C. 181 and 182 and 12 CFR 5.48, if the liquidating bank has stipulated in its notice of liquidation to the OCC that its liquidation will be completed, the bank dissolved and its charter returned to the OCC within one year of the date it filed this notice, unless the OCC extends the time period. This section does not apply to changes in asset composition that occur as a result of a bank's ordinary and ongoing business of originating and securitizing loans.

(c) *Approval requirement.* (1) A national bank must file an application and obtain the prior written approval of the OCC before changing the composition of all, or substantially all, of its assets (i) through sales or other dispositions, or, (ii) having sold or disposed of all or substantially all of its assets, through subsequent purchases or other acquisitions or other expansions of its operations.

(2) In determining whether to approve an application under paragraph (c)(1) of this section, the OCC will consider the purpose of the transaction, its impact on the safety and soundness of the bank, and any effect on the bank's customers. The OCC may deny the application if the transaction would have a negative effect in any of these respects. The OCC's review of any change in asset composition through purchase or other acquisition or other expansions of its operations under paragraph (c)(1)(ii) of this section will include, in addition to the foregoing factors, the factors governing the organization of a bank under § 5.20.

(d) *Exceptions to Rules of General Applicability.* Sections 5.8, 5.10, and 5.11 do not apply with respect to applications filed pursuant to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that some or all of the provisions of §§ 5.8, 5.10, and 5.11 apply.

[69 FR 50297, Aug. 16, 2004]