

**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Part 5**

**Docket No. 04-08**

**RIN 1557-AC81**

**Rules, Policies, and Procedures for Corporate Activities;  
(Annual Report on Operating Subsidiaries)**

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is issuing this proposed rule to assist consumers in identifying national bank operating subsidiaries that are subject to OCC supervisory authority. These revisions require national banks to file an annual report with the OCC that identifies its operating subsidiaries that do business directly with consumers and are not functionally regulated as defined in section 5(c)(5) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(c)(5)). For each operating subsidiary, a national bank would be required to provide information including the name of the operating subsidiary, location and contact information, and the operating subsidiary's lines of business. The OCC will make this information available to the public on its Internet Web site.

**DATES:** Comments on this proposed rule must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comments on the paperwork burden associated with this proposed rule under the Paperwork Reduction Act must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Please direct your comments to: Office of the Comptroller of the Currency, 250 E Street, SW., Public Information Room, Mailstop 1-5, Washington, DC 20219, Attention: Docket No. 04-08, fax number (202) 874-4448; or Internet address:

*regs.comments@occ.treas.gov*. Due to delays in paper mail delivery in the Washington, DC area, we encourage the submission of comments by fax or e-mail whenever possible. Comments may be inspected and photocopied at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect comments by calling (202) 874-5043.

**FOR FURTHER INFORMATION CONTACT:** Stuart E. Feldstein, Assistant Director, Legislative and Regulatory Activities, (202) 874-5090, Patrick T. Tierney, Attorney, Legislative and Regulatory Activities (202) 874-5090, or Tim Driscoll, Project Manager, Supervisory Information (202) 874-4410.

**SUPPLEMENTARY INFORMATION:**

National banks may conduct aspects of their banking activities through operating subsidiaries.<sup>1</sup> These subsidiaries are corporations, limited liability companies, or similar types of business organizations where the parent bank owns more than 50 percent of the voting or similar type of interest of the operating subsidiary or the parent bank otherwise controls the operating

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<sup>1</sup> See generally, 12 CFR 5.34 (OCC operating subsidiary regulation).

subsidiary and no other entity controls more than 50 percent of the voting or similar type of interest in the subsidiary. Operating subsidiaries are permitted to conduct only activities that are permissible for the parent national bank. Operating subsidiaries conduct these activities “subject to the same authorization, terms and conditions” as apply to their parent bank.<sup>2</sup> In essence, operating subsidiaries are a Federally-licensed means by which national banks conduct Federally-authorized banking activities. As provided in our regulations, State laws apply to operating subsidiaries only to the extent that they apply to the parent bank.<sup>3</sup>

Questions recently have arisen about how consumers identify entities that are national bank operating subsidiaries, particularly in the context of where consumers would direct any complaints about their experiences with such an entity. Many national bank operating subsidiaries that deal with consumers use a trade name or brand closely identified with their parent bank. Some do not, however, and thus some consumers may be unsure of the character of the entity and the agency responsible for regulating it.

In order to provide more specific information to consumers, the proposal would add a new paragraph (e)(6) to § 5.34 of our regulations requiring national banks to file an annual report with the OCC containing information about national bank operating subsidiaries that are not functionally regulated by other regulators and that do business directly with consumers.<sup>4</sup> The

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<sup>2</sup> 12 CFR 5.34(e)(3).

<sup>3</sup> 12 CFR 7.4006.

<sup>4</sup> A subsidiary is a “functionally regulated” subsidiary if it is a broker or dealer that is registered under the Securities Exchange Act of 1934; a registered investment adviser, properly registered by or on behalf of either the Securities and Exchange Commission or any State, with respect to the investment advisory activities of such investment adviser and activities incidental to such investment advisory activities; an investment company that is registered under the Investment Company Act of 1940; an insurance company, with respect to insurance activities of the insurance company and activities incidental to such insurance activities, that is subject to supervision by a State insurance regulator; or an entity that is subject to regulation by the Commodity Futures Trading Commission, with respect to the commodities activities of such entity and activities incidental to such commodities activities. See 12 U.S.C. 1844(c)(5)(B)(i) – (v).

OCC will make this information available to the public on its Internet customer service Web site at [www.occ.treas.gov/customer.htm](http://www.occ.treas.gov/customer.htm).

New 12 CFR 5.34(e)(6) specifies that an operating subsidiary “does business directly with consumers” if it provides products or services to individuals to be used primarily for personal, family, or household purposes. We invite comment on whether this definition adequately describes the intended scope of coverage of the reporting requirement and, if not, the definition the OCC should use.

The proposal requires a national bank to include in the annual report the name and charter number of the parent national bank together with each covered operating subsidiary’s mailing address and telephone number, and if different, its principal place of business. A national bank also must indicate the operating subsidiary’s lines of business by designating the appropriate code as listed in Appendix B (Federal Reserve Board Activity Codes) to the General Instructions for filing The Report of Changes in Organizational Structure, Form FR Y-10. Form FR Y-10 is used regularly by bank holding companies to report information on their investments and contains a useful list of activities that are familiar to most national banks. If this proposed rule is adopted as a final rule, a copy of the activities list will be made available on the OCC’s Internet Web site at [www.occ.treas.gov](http://www.occ.treas.gov) and at [www.banknet.gov](http://www.banknet.gov).

The OCC invites comment on whether reference to this list of activities for identifying operating subsidiary lines of business is convenient for national banks or whether there are other methods that would be less burdensome.

We also invite comment on whether the information requested is adequate to apprise consumers of the information they need to identify the company as a national bank operating subsidiary. Commenters also are invited to address whether national banks should report

information on operating subsidiaries that are functionally regulated by other regulators, and with respect to those subsidiaries, whether, and if so, how best to direct consumers to the appropriate regulator(s) for the particular “functionally regulated” company.

The proposal requires a national bank to prepare its report on an annual basis as of each March 31st and to file the report with the OCC by July 1st of that year. If the proposal is adopted as a final rule, these dates may be adjusted in order to assure that first report is received as soon as practicable in 2004, allowing adequate time for compliance. A national bank may file its report electronically with the OCC by consulting the filing requirements at [www.banknet.gov](http://www.banknet.gov).

### **Request for Comments**

The OCC welcomes comments on any aspect of this proposal, particularly, those issues specifically noted in this preamble.

### **Solicitation of Comments on Use of Plain Language**

Section 722 of the Gramm-Leach-Bliley Act, Pub. L. 106-102, sec. 722, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. We invite your comments on how to make the proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposal clearly stated? If not, how could the regulation be more clearly stated?
- Does the proposal contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings,

paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?

- What else could we do to make the regulation easier to understand?

### **Community Bank Comment Request**

In addition, we invite your comments on the impact of this proposal on community banks. The OCC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, the OCC specifically requests comments on the impact of the proposal on community banks' current resources and available personnel with the requisite expertise, and whether the goals of the proposal could be achieved, for community banks, through an alternative approach.

### **Regulatory Flexibility Act**

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OCC certifies that this proposal will not have a significant economic impact on a substantial number of small entities. The proposal would require national banks to report information that should be readily available to the banks. National banks that are part of a bank holding company structure are already reporting some or all of the information requested in a substantially similar manner. The economic impact upon national banks of this proposed rule is estimated to be negligible, thus the proposal will not have a significant impact on a substantial number of small entities.

### **Executive Order 12866**

The OCC has determined that this proposed rule is not a significant regulatory action under Executive Order 12866.

### **Unfunded Mandates Reform Act of 1995**

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4 (2 U.S.C.

1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that the proposal will not result in expenditures by State, local, and tribal governments, or by the private sector, of \$100 million or more in any one year. Accordingly, the proposal is not subject to section 202 of the Unfunded Mandates Act.

### **Paperwork Reduction Act**

The information collection requirements contained in this proposal have been submitted to OMB for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposal will increase paperwork burden for respondents by adding certain reporting requirements. The information collection requirements are contained in 12 CFR 5.34(e)(6) which requires each national bank to file an annual report on its operating subsidiaries.

The OCC estimates burden for this information collection as follows:

Number of Respondents: 2,100.

Number of Responses: 1 per year.

Estimated Time per Response: 3 hours.

Total Estimated Annual Burden: 6,300 burden hours.

The OCC invites comments on:

(1) Whether the collection of information contained in the proposal is necessary for the proper performance of the OCC's functions, including whether the information collection has practical utility;

(2) The accuracy of the OCC's estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments should be sent to John Ference or Camille Dixon, Office of the Comptroller of the Currency, Legislative and Regulatory Activities Division, Attention: 1557-AROS, 250 E Street, SW., Mailstop 8-4, Washington, DC 20219. Due to delays in paper mail in the Washington area, commenters are encouraged to submit their comments by fax to (202) 874-4889 or by email to [camille.dixon@occ.treas.gov](mailto:camille.dixon@occ.treas.gov). Comments should also be sent to Joseph F. Lackey, Jr., Desk Officer, Office of Information and Regulatory Affairs, Attention: 1557-AROS, Office of Management and Budget, Room 10235, Washington, DC 20503. Comments may also be sent by e-mail to [jlackeyj@omb.eop.gov](mailto:jlackeyj@omb.eop.gov).

### **Executive Order 13132**

The OCC has determined that this proposal does not have any Federalism implications, as required by Executive Order 13132.

### **List of Subjects in 12 CFR Part 5**



Administrative practice and procedure, National banks, Reporting and recordkeeping requirements.

### **Authority and Issuance**

For the reasons set forth in the preamble, part 5 of chapter I of title 12 of the Code of Federal Regulations are proposed to be amended as follows:

### **PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES**

1. The authority citation for part 5 continues to read 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).

### **Part 5—Rules, Policies, and Procedures for Corporate Activities**

2. In § 5.34, a new paragraph (e)(6) is added to read as follows:

§ 5.34 Operating subsidiaries.

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(e)(6) *Annual Report on Operating Subsidiaries – (i) Filing requirement.* Each national bank shall prepare and file with the OCC an Annual Report on Operating Subsidiaries containing the information set forth in paragraph (e)(6)(ii) of this section for each of its operating subsidiaries that:

(A) Is not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(c)(5)); and

(B) Does business directly with consumers in the United States. An operating subsidiary “does business directly with consumers” if it provides products or services to individuals to be used primarily for personal, family, or household purposes.

*(ii) Information required.* The Annual Report on Operating Subsidiaries must contain the following information for each covered operating subsidiary listed:

(A) The name and charter number of the parent national bank;

(B) The name, mailing address (which shall include the street address or post office box, city, state, and zip code), and telephone number of the operating subsidiary;

(C) The principal place of business of the operating subsidiary, if different from the address provided pursuant to paragraph (e)(6)(ii)(B); and

(D) The lines of business in which the operating subsidiary is engaged by designating the appropriate code contained in Appendix B (Federal Reserve Board Activity Codes) to the General Instructions for filing The Report of Changes in Organizational Structure, Form FR Y-10, a copy of which is set forth on the OCC’s Web site. If the operating subsidiary is engaged in an activity not set forth in this list, the national bank shall use the code 0000 and provide a brief description of the activity.

*(iii) Filing time frames and availability of information.* Each national bank's Annual Report on Operating Subsidiaries shall contain information current as of March 31 of the year in which the report is filed. The national bank shall submit its report to the OCC on or before July 1, 2004, and on or before July 1 of each year thereafter. The national bank may submit the Annual Report on Operating Subsidiaries electronically on the form prescribed by the OCC. The OCC will make available to the public the information contained in the Annual Report on Operating Subsidiaries on its Internet Web site at <http://www.occ.treas.gov>.

Dated: March 22, 2004

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John D. Hawke, Jr.  
Comptroller of the Currency.

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