

NR 96-128

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PART 5
FACT SHEET

Part 5 Component of OCC Regulation Review Project

The revision to Part 5 is a component of OCC's on-going Regulation Review Project. This project involves a comprehensive review and revision of all OCC regulations to modernize and streamline these regulations and focus on key safety and soundness concerns, while reducing regulatory burden.

Risk-based Approach to Corporate Applications and Activities

The revised Part 5 incorporates a risk-based approach to corporate applications and corporate activities of national banks. Different application procedures are keyed to the risk, novelty and complexity of the proposed activity or procedure.

Expedited Processing for "Eligible Banks"

- o National banks that qualify as "eligible banks" may receive expedited processing of many different types of applications.
- o An "eligible bank" must: (a) be well capitalized, (b) be CAMEL rated 1 or 2, (c) have at least a "satisfactory" CRA rating, and (d) not be subject to specified enforcement orders.
- o In general, filings by eligible banks will be deemed approved by the OCC 15 days after the close of the comment period, or if no comment period applies, 30 days after the filing is received by the OCC, unless the application or filing is removed from the expedited process or decided before the specified date.

CRA Considerations

- o Expedited review does not affect the length of the comment period for applications subject to CRA. Moreover, if a significant CRA issue is raised during the comment period, the OCC may extend the expedited review period by 10 days to investigate specific factual allegations about a bank's CRA performance.
- o In order to do this, the OCC will invoke a new "rapid response" procedure that provides for an immediate targeted CRA inquiry to assess quickly the allegations made in the comment and to modify the processing of the application if warranted.

Corporate Applications Simplified

(Note: Processing times described below are based on the assumption that the application has not been removed from expedited processing because it was found to invoke a significant supervisory, policy, legal or CRA issue.)

- o Fiduciary activities. Applications to engage in fiduciary activities by eligible banks are deemed approved 30 days after filing, unless the OCC determines otherwise. A national bank resulting from a merger with a national bank that was authorized to engage in fiduciary activities may continue to do so without applying to the OCC.
- o Branching. ATMs and Remote Service Units are no longer considered to be "branches," so no applications are necessary. An application by an eligible national bank to establish or relocate a branch is deemed approved 15 days after the close of the comment period, or 45 days after the OCC receives the application, whichever is later.
- o New national banks. The process for chartering a new national bank is streamlined. A bank holding company whose largest bank subsidiary is an "eligible bank" may obtain approval for a new national bank 15 days after the close of the comment period, or 45 days after the application is received, whichever is later.
- o Conversions. Applications by state-chartered institutions that meet the qualifications for being "eligible" to convert to national bank status will be deemed approved 30 days after the application is received.
- o Business combinations. Certain types of mergers and consolidations among "eligible" depository institutions in which the resulting institution is a well capitalized national bank are deemed approved 15 days after the close of the comment period, or 45 days after the OCC receives the application, whichever is later. Reorganizations of "eligible" depository institutions that are part of the same holding company also receive expedited processing.
- o Bank service corporations. Bank service corporations may be

organized as either traditional corporations or as limited liability companies. The process for investment in a bank service corporation is streamlined and simplified.

Operating Subsidiaries

- o Corporate structure. Operating subsidiaries may be organized as traditional corporations, limited liability companies, or similar entities.
- o Investment. The national bank must have a controlling investment in the subsidiary usually more than 50 percent of the voting interest. A national bank may own less than 50 percent of the voting interest in the subsidiary, so long as the national bank "controls" the subsidiary, and no other party controls more than 50 percent.
- o Activities. An operating subsidiary may engage in activities that are part of or incidental to the business of banking or otherwise authorized by statute. In certain cases, the OCC may permit an operating subsidiary to engage in an activity that is part of or incidental to the business of banking, but different from that permissible for the parent bank to engage in directly.

- Standard procedures. An adequately capitalized or well capitalized bank may establish or acquire an operating subsidiary to engage in non-complex activities by providing the OCC a simple written notice. These activities include financial advice and consulting for the bank and its affiliates, data processing, and selling money orders, savings bonds and travelers' checks.

An eligible bank may obtain expedited approval of an application to establish or acquire an operating subsidiary that will engage in more complex activities. These activities include securities brokerage, investment advice, leasing of personal property, underwriting and dealing in securities permissible for banks under the National Bank Act, acting as investment adviser for investment companies, and acting as a futures commission merchant.

- Procedures for operating subsidiary engaging in activities not permissible for the bank. An eligible national bank must apply to the OCC for permission to engage in activities in an operating subsidiary that are part of the business of banking, or incidental thereto, or otherwise authorized by statute, but not permissible for the bank itself. Expedited procedures are not available. If the OCC has not previously approved the activity, the proposal will be published in the Federal Register, and public comments will be invited.
- Corporate safeguards

An operating subsidiary engaging in activities not permissible for the bank:

- must be physically separate and distinct in its operations from the bank, and employees must be compensated by the subsidiary;
- must clearly state in all written marketing material that the subsidiary is a separate entity from the bank;
- may not have the same name as the bank;
- must be adequately capitalized under appropriate industry standards;
- must have separate accounting and corporate records;
- must conduct its operations pursuant to independent policies and procedures, intended to inform customers that the subsidiary is separate from the bank;
- must observe separate corporate formalities;
- must ensure that any contracts with the bank are on terms and conditions comparable to contracts with independent entities;
- must have internal controls to manage the financial and operational risks; and
- must have at least one-third its directors who are not directors of the parent bank, and who have the relevant expertise that makes them capable of overseeing the subsidiary's activities.

If the subsidiary is to conduct activities as principal, additional safeguards apply:

- the bank's equity investment in the subsidiary must be deducted from the bank's capital;
- the assets and liabilities of the subsidiary may not be consolidated with those of the bank;
- the parent bank must qualify as an eligible bank both prior to commencing the activity in the subsidiary and after making the capital deduction required by part 5; and
- the restrictions on transactions found in sections 23A and 23B of the Federal Reserve Act shall apply to transactions with the subsidiary.

Generally, these sections limit extensions of credit to any affiliate to no more than 10 percent of the bank's capital, require that such extensions be over-collateralized, and require that they be made on an "arms-length" basis.

Other Provisions

- o Investment in bank premises. CAMEL rated 1 or 2 national banks may invest in bank premises up to 150 percent of capital and surplus without OCC prior approval, provided the bank remains well capitalized after the investment. The bank must notify the OCC within 30 days after the investment is made.

- o Change in location of main office. A national bank may relocate its main office to an authorized branch location within the limits of the same city, town, or village by submitting a notice to the OCC prior to the relocation. It must apply to the OCC to relocate its main office to any other location. In the case of an eligible bank, such application will be considered under an expedited approval process.

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