

# 1980 Annual Report Federal Reserve

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Wednesday  
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## Part V

### Department of the Treasury

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Comptroller of the Currency

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Rules, Policies, and Procedures for  
Corporate Activities

**DEPARTMENT OF THE TREASURY****Comptroller of the Currency****12 CFR Parts 4, 5, 8, 13, 14, 15, and 28**

[Docket No. 80-11]

**Rules, Policies, and Procedures for Corporate Activities****AGENCY:** Office of the Comptroller of the Currency, Treasury.**ACTION:** Final rule; consolidation and reorganization of rules, policies, procedures and forms concerning corporate activities of national banks.**SUMMARY:** The Office of the Comptroller of the Currency ("Office") is consolidating and reorganizing its rules, policies, procedures and forms dealing with applications for branches, charters, mergers, capital increases and a variety of other structural and corporate activities and notices of proposed changes in control, as part of its Corporate Activities Review and Evaluation (CARE) Program. The Supplementary Information section below explains the consolidation and additional steps in the comprehensive review being undertaken as part of the CARE Program.**DATES:** These amendments are effective October 15, 1980. Comments should be received on or before December 15, 1980.**ADDRESS:** Comments should be sent to Docket No. 80-11, Communications Division, 3rd Floor, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, S.W., Washington, D.C. 20219, Attention: Marie Giblin. Telephone: (202) 447-1800. Comments will be available for inspection and photocopying.**FOR FURTHER INFORMATION CONTACT:** Darrel W. Dochow, Deputy Director, Bank Organization and Structure Division, Office of the Comptroller of the Currency, 4980 L'Enfant Plaza East, S.W., Washington, D.C. 20219. Telephone: (202) 447-1184. Further information also may be obtained from the Regional Director for Corporate Activities in any office of the Regional Administrator of National Banks.**SUPPLEMENTARY INFORMATION:** The principal authors of this final rulemaking are Darrel W. Dochow, Deputy Director, Bank Organization and Structure Division, and Alan Herlands, Regulations Analysis Division.

(12 U.S.C. §§ 1 et seq.)

*Summary of Comprehensive Review*

As part of the CARE Program, the Office is undertaking a comprehensive

review of all of its rules, policies, procedures and forms governing filings for charters, branches, mergers, changes in capital, and all other structural and corporate activities of national banks. The general purposes of the review are to minimize costs and burdens on applicants, the agency and the public; to provide a better understanding of policies; to modify or eliminate rules, policies, procedures and forms which are unnecessary or lead to inefficiencies; and to remove unnecessary barriers to competition. As a first step, Docket #80-11 consolidates all of the Office's rules, policies, and procedures and forms for national bank structural and corporate activities, which previously were located in several Parts of the Code of Federal Regulations and other documents, into a single regulation. This action should make it easier to locate and understand present requirements.

Subsequent steps involve developing proposed additions, deletions or modifications to the existing rules, policies, procedures and forms. Some proposals and final regulations are published today in accompanying documents, docket #s 80-12, 80-13, 80-14, and 80-15. Proposals on other specific issues will be issued in the future. Public comment is desired throughout the review process.

*Reorganization of Rules*

The Office's regulations governing structural and corporate filings previously were located in Parts 4, 5, 8, 13, 14, 15 and 28 of Title 12 of the Code of Federal Regulations. Sections 4.2 through 4.10 and § 4.12 of Part 4, Description of Office Procedures, Public Information, contained basic filing information for national bank charters, branches, conversions, mergers, fiduciary powers, domestic operating subsidiaries, voluntary liquidations, receiverships, conservatorships, Federal branches and agencies of foreign banks and changes in location, title and capital structure. Section 4.13 contained a list of all the forms used by the applicants and the Office in connection with corporate activities.

Part 5, Supplemental Application Procedures, described notice procedures for applications and provided rules for the participation of interested persons in the corporate filing process. Part 8, Assessment of Fees, established, among other matters, filing fees for charters, branches, mergers, consolidations and initial and additional Federal branches and agencies of foreign banks. It also established the fees charged for investigations and examinations necessary in connection with a filing.

Part 13, Employee Stock Option and Stock Purchase Plans, described the procedures and approval standards for those types of bank applications. Part 14, Changes in Capital Structure, set forth the procedures and approval standards for applications for the issuance of stock, stock dividends and subordinated notes and debentures. Part 15, Change in Bank Control, established filing requirements for changes in control of a national bank. Part 28, Federal Branches and Agencies of Foreign Banks, established, among other matters, filing requirements for establishing Federal branches and agencies of foreign banks.

All of the above provisions applicable to corporate filings are hereby reorganized into revised Part 5, Rules, Policies and Procedures for Corporate Activities. In addition, some of the policies and requirements have been partially rewritten for the purposes of clarification and simplification. Subpart A of the new Part 5 establishes rules applicable to all corporate filings unless exceptions are noted in sections dealing with a specific filing. Subpart B of the new Part 5 covers initial corporate activities decisions, such as chartering a national bank, conversion, fiduciary powers and the establishment of an initial Federal branch or Federal agency of a foreign bank. Subpart C includes applications for expanding activities such as branches, subsidiaries and mergers. Subpart D covers other filings, including changes in location, title, control and capital structure; voluntary liquidations; and other corporate activities for which the Office has approval or disapproval powers or provides comment to other agencies. The new Part 5 is prefaced by a comprehensive index which will permit interested parties to locate applicable sections easily.

The new Part 5 provides for the inclusion of Office policy statements for all such filings. Policies adopted in November 1976 (41 FR 47964) and February 1979 (44 FR 7262), which were not incorporated into the Code of Federal Regulations at those times, are adopted in the new Part 5 by this document, with the exception of the Office's chartering policy (see *Today's Other Actions* below) and subordinated debt policy covering the evaluation of subordinated debt applications. The portion of the 1976 subordinated debt policy dealing with evaluation of applications is rescinded. Publication of a new policy is reserved pending completion of the proposed rulemaking regarding subordinated debt. The proposed rule would gradually remove

such debt from the definition of capital. (See 45 FR 49276, July 24, 1980.) In the interim, applications will be decided in accordance with § 5.47(b)(1).

The Office finds that public comment procedures are neither necessary nor appropriate prior to the consolidation of regulations and policies. This action makes no substantive changes in existing requirements and should reduce the public's burden in understanding and complying with those requirements.

As described below, the Office invites suggestions for improvements on all aspects of its treatment of national bank structural and corporate activities. One reason the Office has consolidated and reorganized its rules into an accessible format as the first step in the comprehensive review is its belief that the new format will enhance the public's ability to participate in the review.

#### Today's Other Actions

The Office is issuing four other documents in the Federal Register on which comment is solicited.

These documents are Docket #80-12, a final regulation that clarifies and revises charter policy, #80-13, a final regulation on disclosure policy for changes in control of a national bank, #80-14, a proposed amendment to existing rules on written comments and hearings on applications, and #80-15, a proposed policy statement on charter applications filed solely to facilitate holding company formation or acquisitions. Further information on these matters is contained in the four documents.

#### Requests for Comments

In addition to the requests for comments contained in the four other documents issued today, the Office encourages input on the general issues and specific questions listed below. Parties commenting are requested to indicate the priority the Office should attach to accomplishing each change suggested and to report any prior experience with a corporate activity application or filing with the Office.

#### General Issues

A. What deletions, additions or other changes should be made in the Office's rules, policies or procedures on corporate activities?

B. What deletions, additions or changes should be made in the forms required or used by the Office for corporate activities?

C. What specific changes should the Office consider to reduce direct costs to applicants or to speed the Office's review and decision process?

D. What specific changes should the Office consider to reduce barriers to completion?

E. What specific changes should the Office consider to reduce regulatory interference with private sector decision-making?

F. What specific changes should the Office consider to distinguish between applicants based on their size, condition or other factors?

Specific Issues (listed in order of appearance of the subject in the text of Part 5)

G. Delegations of Authority (see § 5.3). Certain authority is delegated to Regional Administrators of National Banks. These delegations speed the decision process and permit some flexibility to take into account regional and local considerations. What additional authority should be delegated?

H. Forms (see § 5.4). The present rules provide specific forms for particular filings. The forms were designed to elicit what at the time was considered to be significant information. Each of the forms will be reviewed to remove unnecessary information requirement (see also General Issues C). In addition, the Office is considering a revision to the application form requirements generally. For example, some applications could be in the form of a letter or short notice with specific, additional information requested by the Office if more information is deemed necessary. Comment is invited on the merits of this or other alternative approaches to applications forms, and the specific filings for which the alternative would be most appropriate.

I. Notification and Publication of Decision (see § 5.13(a)). The Office issues public opinions whenever a decision represents a new or changed policy or presents issues of general importance to the public or the banking industry. Do existing Office procedures provide for adequate dissemination of important decisions? If not, what additional procedures should the Office adopt?

J. Reconsideration of Disapproved Applications (see § 5.13(d)). Under current rules (adopted in 1976), the Office generally does not accept requests for reconsideration. At the time the Office adopted this rule, little experience with written, published policies has been gained in this area, and many decisions were made by the highest agency official, the Comptroller. Currently, the Senior Deputy Comptroller for Policy and Regional Administrators have greater delegated authority; Regional Administrators are expected to gain still greater authority;

written, published policies are expected on subject not presently covered by such policies; and experience has been gained with existing written, published policies. The Office, therefore, invites comment as to whether it should permit reconsiderations under certain circumstances, such as when an applicant believes an exception to established policy is warranted, or when an applicant can demonstrate to the satisfaction of the Senior Deputy Comptroller for Policy that the Regional Administrator's action was inconsistent with established policy.

Adoption of Amendments: Accordingly, the Office adopts the changes in Title 12 of the Code of Federal Regulations set forth below.

1. By amending 12 CFR Part 5 to read as follows:

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

Sec.

5.1 Scope of part.

#### Subpart A—Rules of General Applicability

5.2 Rules of general applicability.

5.3 Corporate activities processing and delegations.

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5.9 Public file.

5.10 Written comments and requests for a hearing.

5.11 Hearings.

5.12 Computation of time.

5.13 Decisions.

5.14 [Reserved]

5.15 [Reserved]

5.16 [Reserved]

5.17 [Reserved]

5.18 [Reserved]

5.19 [Reserved]

#### Subpart B—Initial Activities

5.20 Organization of a national bank.

5.21 Organization of an interim national bank.

5.22 Organization of a national bank limited to trust powers.

5.23 Establishment of an initial Federal branch (including a limited Federal branch) and a Federal agency of a foreign bank.

5.24 Conversion.

5.25 Application for conversion of a branch or agency operated by a foreign bank or a commercial lending company controlled by a foreign bank into a Federal branch or a Federal agency.

5.26 Fiduciary powers.

5.27 [Reserved]

5.28 [Reserved]

5.29 [Reserved]

## Sec.

**Subpart C—Expansion of Activities**

- 5.30 Establishment of domestic branches and seasonal agencies.
- 5.31 Establishment of customer-bank communication terminal (CBCT) branches.
- 5.32 Additional Federal branch or Federal agency of a foreign bank.
- 5.33 Merger, consolidation, purchase and assumption.
- 5.34 Domestic operating subsidiaries.
- 5.35 [Reserved]
- 5.36 [Reserved]
- 5.37 [Reserved]
- 5.38 [Reserved]
- 5.39 [Reserved]

**Subpart D—Other Changes in Activities and Miscellaneous Activities**

- 5.40 Change in location of a head office or domestic branch.
- 5.41 Relocation of a Federal branch or Federal agency of a foreign bank.
- 5.42 Change of corporate title.
- 5.43 Change in designation of initial Federal branch or Federal agency to any other Federal branch or Federal agency.
- 5.44 Competitive factor reports to other agencies. [Reserved]
- 5.45 Comment letters on holding company acquisitions to Board of Governors of the Federal Reserve System. [Reserved]
- 5.46 Changes in capital structure.
- 5.47 Subordinated debt.
- 5.48 Voluntary liquidation.
- 5.49 Receivership and conservatorship.
- 5.50 Change in bank control.
- 5.51 Employee stock option and stock purchase plans.

Authority: 12 U.S.C. 1 et seq.

**§ 5.1 Scope of part.**

This part establishes rules, policies and procedures of the Office of the Comptroller of the Currency ("Office") on the national bank activities (hereinafter referred to as "corporate activities") enumerated in the index to this Part. The Office decides applications for corporate activities and acts on filings for proposed changes in bank control. Information on where and how to file, requirements and policies applicable to each type of filing, procedures which will be followed, and other rules of general and specific applicability are included.

**Subpart A—Rules of General Applicability****§ 5.2 Rules of general applicability.**

(a) The rules in this subpart apply to all corporate filings unless otherwise noted or clearly inappropriate in the context of a particular filing.

(b) The office reserves the right to adopt different procedures when it deems necessary and reasonable in acting upon any particular application or filing.

(c) For the purposes of this Part, the initial Federal branch or Federal agency

established in a state by a foreign bank shall be deemed the bank's head office in that state.

(d) The term "national bank" includes any national bank and any bank or trust company located and doing business in the District of Columbia.

(e) The term "application" does not encompass a notice under the Change in Bank Control Act.

**§ 5.3 Corporate activities processing and delegations.**

(a) The Comptroller of the Currency delegates certain functions of the Office as described in this Section. In any case in which a delegate deems it appropriate, the delegate may submit the matter to an authorized superior official or to the Comptroller. By order of an authorized superior official or by the Comptroller, delegated authority may be exercised in any specific case or cases by the authorized superior official, or by the Comptroller.

**(b) Headquarters ("Washington Office").**

(1) The Senior Deputy Comptroller for Policy or, in his or her absence, the Senior Deputy Comptroller for Operations, is authorized to act on any corporate applications and filings described in this Part.

(2) Under the general direction of the Senior Deputy Comptroller for Policy, the Deputy Comptroller for Research and Economic Programs supervises the Bank Organization and Structure Division ("BOSD"). BOSD processes and reviews applications and filings with the Washington Office.

**(c) Regional offices.**

(1) Under the general direction of the Regional Administrator, the Deputy Regional Administrator for Planning and Operations supervises the Regional Director for Corporate Activities ("RDCA"). The RDCA initially processes and reviews applications and filings and makes recommendations to the Regional Administrator on matters which the Regional Administrator may act on under delegated authority. The Regional Administrator, the Deputy Regional Administrator for Planning and Operations and the RDCA may each make an independent recommendation on all applications and filings forwarded to the Washington Office for decision.

(2) Each Regional Administrator is authorized to approve or disapprove any of the following applications:

(i) Capital increases through stock dividends or sales of additional common stock;

(ii) An increase in par value of common stock; and

(iii) The establishment of *de novo* operating subsidiaries for activities

previously approved by the Office for national banks.

(3) Each Regional Administrator is authorized to approve (but not disapprove) applications for the establishment of:

(i) Domestic branches and seasonal agencies;

(ii) CBCT branches;

(iii) Changes in locations of head offices or domestic branches; and

(iv) Change in corporate titles;

Provided that all of the following requirements are satisfied for each application:

(A) Applicant bank is rated in group "1" or "2" under the uniform interagency bank rating system, and has not been identified by the Special Projects, Division as a bank requiring review and comment;

(B) Applicant bank possesses a rating not lower than "fair" in the individual areas of management, asset quality, liquidity, earnings and capital;

(C) Applicant bank has received a Community Reinvestment Act examination performance rating not lower than "satisfactory," and has not been identified by the Regional Director of Customer and Community Programs as having substantive unresolved Community Reinvestment Act issues;

(D) There have been no substantive protests of the application;

(E) There is no known question concerning the legality of the proposal;

(F) The Regional Director for Corporate Activities and the Regional Administrator (and, in the case of a bank under the supervision of the Multinational Division, the Deputy Comptroller for Multinational Banking) have each considered all factors specified in applicable published policy statements and have recommended unconditional approval;

(G) The Regional Administrator has not noted any significant matters that would make a review by the Washington Office desirable; and

(H) Any additional requirements imposed by §§ 5.30, 5.31, 5.40 and 5.42 of this Part have been satisfied.

(4) Each Regional Administrator is authorized to issue a notice of the Office's intent not to disapprove a proposed acquisition of control of a national bank if all of the following criteria are met:

(i) The bank is rated in group "1" or "2" under the uniform interagency bank rating system and has not been identified by the Special Projects Division as a bank requiring review and comment;

(ii) The bank has received a Community Reinvestment Act

examination performance rating not lower than "satisfactory," and has not been identified by the Regional Director for Customer and Community Programs as having substantive unresolved Community Reinvestment Act issues;

(iii) The Regional Administrator has not noted any significant matters that would make a review by the Washington Office desirable; and

(iv) Any additional requirements imposed by § 5.50 of this Part have been satisfied.

**§ 5.4 Application forms and notices of change in bank control: availability and filing.**

Applications for the Office's prior approval of corporate activities covered by this Part and notices required under the Change in Bank Control Act must be filed with the Regional Administrator for the region where the national bank is (or will be) headquartered (see CFR 4.1a(b)). Application forms, notice forms and instructions are available from each Regional Office and from the Bank Organization and Structure Division, Office of the Comptroller of the Currency, 490 L'Enfant Plaza, S.W., Washington, D.C. 20219.

**§ 5.5 Fees.**

A filing fee must accompany certain filings before they will be accepted by the Office. Each section describing a particular filing indicates whether a filing fee is required and, if so, the amount of the fee. In addition, investigation fees may be charged at the rates established in 12 CFR Part 8 if the Office determines that special investigations or examinations are necessary to reach an informed decision. Fees must be paid by certified or cashier's check payable to the Office of the Comptroller of the Currency.

**§ 5.6 Pre-filing meetings. [Reserved]**

**§ 5.7 Investigation, examination and required information.**

The Office may conduct an investigation or examination into the facts of a filing or affairs of the persons or parties making a filing to the extent necessary to reach an informed decision. Additionally, the Office may require any person, persons, bank or banks submitting a filing or request, or any person, persons, bank or banks connected with the matter to which such a filing or request pertains, to submit such information, data, opinion of counsel, or other materials as may be specified by the Office. Failure to comply with such demand of the Office may be treated as abandonment of the filing or request to which the information, data, opinion of counsel, or

other material relates. Fees may be assessed for these investigations or examinations at the rates established in 12 CFR 8.

**§ 5.8 Notice of filing of an application.**

(a) *By the applicants.* Except in the case of proposed transactions where more extensive notice is required by statute, the applicant shall publish a notice in a newspaper of general circulation in the community in which the applicant proposes to engage in business (or engages in business in the case of a title change). The notice shall contain the name of the applicant(s), the subject matter of the application, and the date upon which the application was accepted for filing. The publication must be on the same day of two (2) consecutive weeks with the first publication within 15 days after the application has been accepted for filing. Immediately after publication, the applicant shall furnish the Regional Administrator with an affidavit(s) evidencing such publication(s).

(b) *By the Regional Administrator.* The Regional Administrator shall give timely notice to the state official who supervises commercial banks in the state in which the applicant is or will be located, and to any other person requesting written notification. Notice may also be given to other parties that the Regional Administrator believes may have an interest in the application.

**§ 5.9 Public file.**

(a) *Contents.* A public file shall be established by the Office in the case of each application. That file shall consist of the application with supporting data and supplementary information, except for material deemed by the Regional Administrator to be confidential, such as trade secrets normally not available through commercial publication. In addition, the public file shall contain all data and information submitted by interested persons in favor of or in opposition to such application, excluding any material deemed by the Regional Administrator to be confidential. Information may be deemed confidential and withheld from the public file only upon request of the person submitting the information. All factual information contained in any field investigation report made by a national bank examiner or otherwise submitted to or obtained by Office staff shall also be made part of the public file, unless deemed confidential by the Regional Administrator. In no event shall the Regional Administrator make information required by statute or regulation to be treated as confidential a part of a public file.

(b) *Availability to interested persons.* The public file shall be available for inspection and photocopying in the office of the Regional Administrator upon written request from a protesting person and to such other persons as the Regional Administrator shall deem, in his or her discretion, to have a direct interest therein during such periods of time as the Regional Administrator shall prescribe. No documents in the public file may be removed from the Regional Administrator's office by persons other than employees of the Office. A charge for photocopying may be imposed in accordance with a written schedule maintained by the Regional Administrator.

**§ 5.10 Written comments and request for a hearing.**

Within 21 days after the last notice by publication required by § 5.8(a) or applicable statute, any interested person may submit to the Regional Administrator written comments and data concerning the application and/or a written request for a hearing before the Regional Administrator or designee. The 21-day time period may be extended by the Regional Administrator if the applicant has failed to file all required supporting data in time to permit review by interested persons or if other extenuating circumstances exist. In the absence of a request, the Comptroller, a Senior Deputy Comptroller or a Regional Administrator may order a hearing to be held if it is believed to be in the public interest.

**§ 5.11 Hearings.**

(a) *Granting of a hearing.* When a request for a hearing, made in accordance with § 5.10 of this Part, is granted, or when a hearing is otherwise ordered, the Regional Administrator shall issue a Notice of Hearing. This Notice of Hearing shall:

(1) set forth the subject matter of the application and the date, time and place where the hearing will be held, and,

(2) be sent to the person(s) requesting the hearing, the applicant and other interested persons who have sent written comments to the Regional Administrator.

(b) *Place of hearing.* Hearings ordinarily will be conducted in the city where the Office of the Regional Administrator is located. Hearings may be conducted at any other location deemed appropriate by the Office.

(c) *Date of hearing.* A hearing shall be scheduled as soon as practicable after requested or ordered.

(d) *Participation in hearings.* Each person who wishes to be heard shall notify the Regional Administrator within



10 days after the date of the notice described in § 5.11(a) of this Part of his or her intention to attend. Persons who participate shall submit, to the Regional Administrator, the applicant(s) and other participant(s), the number and names of witnesses and a copy of each exhibit he or she wishes to present. Such information must be received by all participants at least 5 days prior to the hearing.

(e) *Presiding officer.* When a hearing is held, the presiding officer shall be the Regional Administrator, his or her designee, or such other person as may be named by an authorized superior official or the Comptroller. The presiding officer shall have the authority to appoint a panel of assistants.

(f) *Hearing rules.*

(1) *Order of presentation.*

(i) *Opening statements.* The applicant and each other participant may make opening statements of a length within the discretion of the presiding officer. Such opening statements should state concisely what the participant intends to show. The applicant shall have the opportunity to present its statement first.

(ii) *Applicant's presentation.* Following the opening statements, the applicant shall present his or her data and materials, oral or documentary.

(iii) *Other presentations.* Following the applicant's presentation, the persons protesting the application shall present their data and materials, oral or documentary. The protestants may agree, with the approval of the presiding officer, to have one of their number make their presentation. Following the evidence of the applicant and the protestant, the presiding officer, in his or her discretion, may recognize other interested persons who may present their views with respect to the application under consideration.

(iv) *Summary statements.* After all the above presentations have been concluded, the participants may make short and concise summary statements reviewing their positions. The applicant shall present his or her concluding summary statement first.

(2) *Witnesses.* The obtaining and use of witnesses is the responsibility of the parties. All witnesses will be present on their own volition, but any person appearing as a witness may be subject to questioning by any participant, by the presiding officer, or by any of his or her assistants. The refusal of a witness to answer questions may be considered by the Office in determining the weight to be accorded the testimony of that witness. Witnesses shall not be sworn.

(3) *Information submitted.* The presiding officer shall have the authority

to exclude data or materials which he or she deems to be improper or irrelevant. Formal rules of evidence shall not be applicable to these hearings.

Documentary material must be of a size consistent with ease of handling, transportation and filing, and copies must be provided for each participant. Although large exhibits may be used during the hearing, copies of such exhibits must be provided by the party in reduced size for inclusion in the file. Two copies of all such documents shall be furnished to the Regional Administrator and one copy to each other person represented at the proceeding.

(4) *Procedural questions.* The Regional Administrator, presiding officer, or any designated assistant shall determine all procedural questions not governed by this section. The Regional Administrator and the presiding officer shall each have the authority to limit the number of witnesses to be used by any party, and to impose such time limitations as he or she deems reasonable. The Office may adopt such different procedures as deemed necessary and reasonable in acting upon any particular application.

(5) *Transcript.* A transcript of each proceeding shall be arranged for by the Office. Expenses of such service, including the furnishing of two copies of the transcript to the Regional Administrator, are borne by the person or persons requesting a hearing, except for hearings ordered by the Office, where the applicant will bear the expense of furnishing transcripts for the record.

(6) *Record.* The public file described in § 5.9 shall automatically be deemed a part of the record of the proceedings as will all information submitted pursuant to § 5.11(f)(3) and the transcript described in § 5.11(f)(5).

(g) *Closing the public file.* If requested by any participant, the public file shall remain open for 15 days following receipt of the transcript by the Regional Administrator during which time the applicant and protestants may submit additional written statements. A copy of any statement submitted during this period shall also be sent simultaneously to the other persons represented at the hearing.

(h) *Forms.*

(1) *Form to be used by the applicant:*

CC 7029-03: Procedures to be Observed at Public Hearings.

(2) *Forms to be used by Office:*

CC 7029-01: Regional Office Procedures—Public Hearing  
CC 7029-02: Notice of Hearing

CC 7029-03: Procedures to be Observed at Public Hearings  
CC 7029-10: Charge-out Card  
CC 7029-11: Protest Sheet  
CC 7029-19: Correspondence Control Slip

§ 5.12 *Computation of time.*

In computing any period of days provided for in this Part, the day of the act from which the period begins to run shall not be included. The last day of the period computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next computable day. As used in this section, "legal holiday" means a day on which the office of the appropriate Regional Administrator remains closed.

§ 5.13 *Decisions.*

(a) *Notification and publication of decisions.* The applicant and all persons so requesting in writing shall be notified of the final disposition of an application. The Office will issue a public opinion whenever the decision represents, in its judgment, a new or changed policy or presents issues of general importance to the public or the banking industry. If the Office determines it to be in the public interest, information deemed to be of a private and confidential nature will not be disclosed.

(b) *Approvals.* The Office issues a written decision in the event of approval. In some cases, the Office grants preliminary approval prior to final approval. A preliminary approval, usually in letter form, will normally contain conditions or requirements that must be satisfied prior to final approval. In such cases, documentation of the activities satisfying the conditions will normally be required from the applicant prior to the issuance by the Office of a final approval document. The Office may withdraw its preliminary approval at any time if it determines that such action is necessary or desirable for the protection of the public interest. Approvals requiring specific, formal certification are described in applicable sections below.

(c) *Disapprovals.* The Office will provide applicant(s) with a written statement of the reasons for a disapproval.

(d) *Reconsideration.* Requests for reconsideration of disapproved applications will not be accepted. A new application may be filed at any time by submitting substantive new or additional information in accordance with § 5.4. To the extent relevant, the Office will consider and incorporate the prior administrative record. The normal filing fee will be required.

§ 5.14 [Reserved]

§ 5.15 [Reserved]

§ 5.16 [Reserved]

§ 5.17 [Reserved]

§ 5.18 [Reserved]

§ 5.19 [Reserved]

#### Subpart B—Initial Activities

##### § 5.20 Organization of a national bank.

(a) *Scope.* This section applies to applications to organize a national bank not covered by other sections of this Part.

(b) *Authority.* 12 U.S.C. §§ 1, 21, 22, 26, 27, 93a, 1814(b) and 1816.

Prior to granting a charter, the Office must consider an application in light of the statutory factors contained in the Federal Deposit Insurance Act, 12 U.S.C. 1814b and 1816. This requirement is imposed to ensure that only those banks with reasonable prospects for success will be insured. The six statutory factors considered in deciding bank applications are: (1) the bank's future earnings prospects, (2) the general character of its management, (3) the adequacy of its capital structure, (4) the convenience and needs of the community to be served by the bank, (5) the financial history and condition of the bank, and (6) whether or not its corporate powers are consistent with the purposes of the Federal Deposit Insurance Act.

(c) *Policy.* [Reserved]

(d) *Pre-filing meetings.* [Reserved]

(e) *Fees.* A filing fee of \$2,500 is required for investigating, processing and deciding each "Application to Organize a National Bank."

(f) *Investigation.* An investigation will be conducted to the extent necessary. No additional fee will be charged except in unusual circumstances.

(g) *Other procedures.* An applicant cannot conduct banking business until final approval (a "charter") is received. If preliminary approval is granted, certain procedural actions must be taken by the applicants before a charter can be granted. These actions include establishing the bank as a body corporate with directors, articles of association and by-laws. The Office will include appropriate forms and instructions with a preliminary approval letter. The proposed bank does not become a body corporate until the Organization Certificate and Articles of Association have been accepted for filing by the Regional Administrator.

(h) *Commencement of business.* Normally, the bank must commence

business within 18 months from the date of preliminary approval.

(i) *Forms.*

(1) *Forms to be used by applicant:*

- CC 7020-01: Letter of Instruction to Applicant for a New Bank Charter
- CC 7020-02: Application to Organize a National Bank
- CC 7020-03: Confidential Biographical and Financial Report
- CC 7020-04: Supplement to Application to Organize a National Bank
- CC 7020-17: Legal Notice—Application to Organize a National Bank
- CC 7020-19: Instructions for Organization of a New National Bank after Receipt of the Comptroller's Preliminary Approval
- CC 7020-20: Organization Certificate
- CC 7020-21: Sample Waiver of Notice of First Meeting of Organizers
- CC 7020-22: Sample Minutes of First Meeting of Organizers
- CC 7020-23: Sample Waiver of Notice of First Meeting of Interim Board of Directors.
- CC 7020-24: Sample minutes of first Meeting of Interim Board of Directors
- CC 7020-25: Joint Oath of Interim Directors
- CC 7020-26: Oath of Interim Directors
- CC 7020-27: List of Interim Directors
- CC 7020-28: Sample Stock Certificate
- CC 7020-29: Sample Subscription Offer
- CC 7020-30: Certificate of Payment of Capital Stock and Compliance with Legal Requirements
- CC 7020-31: Sample Notice of First Meeting of Shareholders
- CC 7020-32: Sample Proxy Statement—First Meeting of Shareholders
- CC 7020-33: Sample Proxy—First Meeting of Shareholders
- CC 7020-34: Sample Minutes of First Meeting of Shareholders
- CC 7020-35: Sample Waiver of Notice of First Meeting of Board of Directors
- CC 7020-36: Sample Minutes of First Meeting of Board of Directors
- CC 7020-37: Instructions for Pre-Opening Review
- CC 7020-38: Final Status Report—Reconciliation of Disbursements from Capital Funds
- CC 7020-39: Sample Notice (Publication of Charter)
- CC 7020-40: Affidavit of Publication of Charter
- CC 7029-04: Sample Articles of Association
- CC 7029-05: Sample By-Laws
- CC 7029-06: Joint Oath of National Bank Directors
- CC 7029-07: Oath of National Bank Director
- CC 7029-08: List of National Bank Directors
- CC 7029-09: Sample Resolutions and Amendments to Articles of Association

(2) *Forms to be used by Office:*

- CC 7020-05: Confidential Memorandum to the Comptroller of the Currency on an Application for Permission to Organize a National Bank
- CC 7020-07: Regional Office Procedures—Charter Applications
- CC 7020-09: Regional Office Procedures—New Bank Organization
- CC 7020-10: Washington Office Procedures—Charter Applications
- CC 7020-12: Washington Office Procedures—New Bank in Organization
- CC 7020-13: Charter Processing Checklist
- CC 7020-14: New Bank in Organization Processing Checklist
- CC 7020-15: Charter Application—Review for Accuracy and Completeness
- CC 7020-16: New Bank in Organization—Review for Accuracy and Completeness

##### § 5.21 Organization of an interim national bank.

(a) *Scope; Interim National Bank defined.* [Reserved]

(b) *Authority.* 12 U.S.C. §§ 1, 21, 22, 26, 27, 93a, 214a, 215, 215a, 1814(b), 1816 and 1828(c).

(c) *Pre-filing meetings.* [Reserved]

(d) *Filing fee.* A filing fee of \$2,500 is required. This fee is separate from, and in addition to, the fee to process the application to merge or consolidate (see § 5.33).

(e) *Forms.*

(1) *Form to be used by applicant:*

- CC 7020-18: Legal Notice—Application to Organize a National Bank (Interim Bank)

(2) *Forms to be used by Office:*

- CC 7020-06: Confidential Memorandum to the Comptroller of the Currency—Application for Permission to Organize an Interim National Bank
- CC 7020-08: Regional Office Procedures—Interim Bank Applications
- CC 7020-11: Washington Office Procedures—Interim Bank Applications

##### § 5.22 Organization of a national bank limited to trust powers.

(a) *Authority and scope.*

(1) *Authority.* 12 U.S.C. §§ 1, 21, 22, 26, 27, 93a, 1814(b) and 1816.

(2) *Scope.* This section applies to applications to organize a national bank limited to trust powers which, by the terms of its charter, will not be permitted to exercise all of the express or implied powers of national banks.

(b) *Policy.* [Reserved]

(c) *Fees.* A filing fee of \$2,500 is required for processing each application.

(d) *Investigation.* An investigation will be conducted to the extent necessary. No additional fee will be charged except in unusual circumstances.

(e) *Other procedures.* An applicant cannot conduct banking business until final approval (a "charter") is received. If preliminary approval is granted, certain procedural actions must be taken by the applicants before a charter can be granted. These actions include establishing the bank as a body corporate with directors, articles of association and by-laws. The Office will include appropriate forms and instructions with a preliminary approval letter. The proposed bank does not become a body corporate until the Organization Certificate and Articles of Association have been accepted for filing by the Regional Administrator.

(f) *Commencement of business.* Normally, the bank must commence business within 18 months from the date of preliminary approval.

(g) *Forms.*

(1) *Forms to be used by applicant:*

- CC 7020-01: Letter of Instruction to Applicant for a New Bank Charter
- CC 7020-02: Application to Organize a National Bank
- CC 7020-03: Confidential Biographical and Financial Report
- CC 7020-04: Supplement to Application to Organize a National Bank
- CC 7020-17: Legal Notice—Application to Organize a National Bank
- CC 7020-19: Instructions for Organization of a New National Bank after Receipt of the Comptroller's Preliminary Approval
- CC 7020-20: Organization Certificate
- CC 7020-21: Sample Waiver of Notice of First Meeting of Organizers
- CC 7020-22: Sample Minutes of First Meeting of Organizers
- CC 7020-23: Sample Waiver of Notice of First Meeting of Interim Board of Directors
- CC 7020-24: Sample minutes of first Meeting of Interim Board of Directors
- CC 7020-25: Joint Oath of Interim Directors
- CC 7020-26: Oath of Interim Directors
- CC 7020-27: List of Interim Directors
- CC 7020-28: Sample Stock Certificate
- CC 7020-29: Sample Subscription Offer
- CC 7020-30: Certificate of Payment of Capital Stock and Compliance with Legal Requirements
- CC 7020-31: Sample Notice of First Meeting of Shareholders
- CC 7020-32: Sample Proxy Statement—First Meeting of Shareholders
- CC 7020-33: Sample Proxy—First Meeting of Shareholders
- CC 7020-34: Sample Minutes of First Meeting of Shareholders

- CC 7020-35: Sample Waiver of Notice of First Meeting of Directors
- CC 7020-36: Sample Minutes of First Meeting of Directors
- CC 7020-37: Instructions for Pre-Opening Review
- CC 7020-38: Final Status Report
- CC 7020-39: Sample Notice (Publication of Charter)
- CC 7020-40: Affidavit of Publication of Charter
- CC 7029-04: Sample Articles of Association
- CC 7029-05: Sample By-Laws
- CC 7029-06: Joint Oath of National Bank Directors
- CC 7029-07: Oath of National Bank Director
- CC 7029-08: List of National Bank Directors
- CC 7029-09: Sample Resolutions and Amendments to Articles of Association

(2) *Forms to be used by Office:*

- CC 7020-05: Confidential Memorandum to the Comptroller of the Currency on an Application for Permission to Organize a National Bank
- CC 7020-07: Regional Office Procedures—Charter Applications
- CC 7020-09: Regional Office Procedures—New Bank Organization
- CC 7020-10: Washington Office Procedures—Charter Applications
- CC 7020-12: Washington Office Procedures—New Bank in Organization
- CC 7020-13: Charter Processing Checklist
- CC 7020-14: New Bank in Organization Processing Checklist
- CC 7020-15: Charter Application—Review for Accuracy and Completeness
- CC 7020-16: New Bank in Organization—Review for Accuracy and Completeness

**§ 5.23 Establishment of an Initial Federal branch (including a limited Federal branch) and a Federal agency of a foreign bank.**

(a) *Authority.* 12 U.S.C. 3101 *et seq.* See also 12 CFR 28.

(b) *Policy.* (Reserved)

(c) *Place of filing application.*

Applications should be submitted for filing to the Office of the Comptroller of the Currency, Bank Organization and Structure Division, 490 L'Enfant Plaza East, S.W., Washington, D.C. 20219, instead of to the Regional Administrator.

(d) *Fees.* A filing fee of \$2,500 is required for investigating and processing each application.

(e) *Decisions.* If preliminary approval is granted, a condition normally will be included that the Federal branch or agency must commence business within 18 months from the date of preliminary approval.

(f) *Certification.* Upon satisfaction of conditions contained in the preliminary approval, a certificate will be issued evidencing approval for the establishment and operation of the Federal branch or Federal agency.

(g) *Form to be used by applicant:*

- CC 7030-01: Application to Establish a Federal Branch or Agency

**§ 5.24 Conversion.**

(a) *State Chartered Bank to National Bank.*

(1) *Authority.* 12 U.S.C. 1 *et seq.*, 12 U.S.C. 35.

(2) *Policy.*

(i) The Office ordinarily will approve an application by a state bank or other financial institution for conversion to a national bank when such approval is consistent with the basic objective of maintaining a sound national banking system. An application to convert should not be motivated by supervisory pressures from other regulatory authorities.

(ii) In determining the qualifications of an applicant for conversion, the following factors will be considered:

(A) *Condition.* The applicant's general condition should be satisfactory; significant or serious problems will normally preclude approval. The applicant should not have an undue amount of criticized assets, particularly in relation to gross capital; serious or frequent violations of law; inadequate liquidity; adverse operating trends; poor internal controls; or other significant problems. Capital, earnings and retention of earnings should be sufficient to support the current level of operations.

(B) *Management.* Management should have demonstrated the ability to supervise a sound banking operation. This determination will generally relate to the overall condition of the institution and management's ability to recognize and correct deficiencies.

(3) *Fees; investigation.* No filing fee is required at the time of application. An investigation and/or examination will normally be conducted and the applicant will be charged in accordance with 12 CFR 8.

(4) *Title of the bank.* The proposed title (name) of the bank will be considered in accordance with the policy for title changes (see § 5.42(b)).

(5) *Decisions.* If preliminary approval is granted, the applicant will be furnished with suggested forms of documents necessary to complete its conversion into a national bank.

(6) *Commencement of business as National Bank.* When all statutory requirements and other conditions have been satisfied, a certificate, known as a



charter, will be issued, which provides that the institution is authorized to commence the business of banking as a national bank as of a specified date.

(b) *National Bank to a State Chartered Bank.* The rules of general applicability (Subpart A) do not apply to the conversion of a national bank to a state chartered bank. A national bank desiring to become a state bank should submit a letter to the Regional Administrator advising of its intent to convert. The bank will be furnished with instructions regarding steps to be followed to terminate its status as a national bank.

(c) *Forms.*

(1) *Forms to be used by applicant:*

- CC 7022-01: Application to Convert to a National Banking Association  
 CC 7022-10: Instructions for Preparation of Forms for Conversion  
 CC 7022-12: Organization Certificate (Conversion)  
 CC 7022-13: Secretary's Certificate—Board of Directors' Resolution  
 CC 7022-14: Secretary's Certificate—Shareholders' Resolution  
 (2) *Forms to be used by Office:*  
 CC 7022-02: Confidential Memorandum—Application for Permission to Convert to a National Bank  
 CC 7022-03: Regional Office Procedures—Conversion Applications  
 CC 7022-04: Washington Office Procedures—Conversion Applications  
 CC 7022-05: Conversion Processing Checklist—State Chartered Institution to a National Banking Association (Regional Office)  
 CC 7022-06: Conversion Processing Checklist—State Chartered Institution to a National Banking Association (Washington Office)  
 CC 7022-07: Conversion Processing Checklist—National Bank to a State Chartered Institution (Regional Office)  
 CC 7022-08: Conversion Processing Checklist—National Bank to a State Chartered Institution (Washington Office)  
 CC 7022-09: Conversion Application—Review for Accuracy and Completeness  
 CC 7022-11: Authority for Conversion of Financial Institution

§ 5.25 **Application for conversion of a branch or agency operated by a foreign bank or a commercial lending company controlled by a foreign bank into a Federal branch or a Federal agency.**

(a) *Authority.* 12 U.S.C. 3101 *et seq.* See also 12 CFR Part 28.

(b) *Policy.* (Reserved)

(c) *Fees.* (Reserved)

(d) *Decisions.* If preliminary approval is granted, a condition normally will be

included that the conversion must be accomplished within 18 months from the date of preliminary approval.

(e) *Certificates.* Upon satisfaction of all conditions, a certificate will be issued evidencing approval for the conversion to a Federal branch or a Federal agency.

(f) *Form to be used by applicant:*  
 CC 7030-02: Application to Convert an Existing Office of a Foreign Bank to a Federal Branch or Agency

§ 5.26 **Fiduciary powers.**

(a) *Authority and scope.*

(1) *Authority.* 12 U.S.C. 92a. See also 12 CFR Part 9.

(2) *Scope.* This section applies to applications for fiduciary powers by existing national banks.

(b) *Policy.*

(1) *General.* The Office encourages a banking structure capable of fulfilling local, regional and national needs for banking services. The establishment of fiduciary powers affords banks the opportunity to better serve the public by offering greater services, choice and convenience. In evaluating an application for fiduciary powers, consideration will be given to the capacity of the applicant to support the proposed activity, the availability of competent trust personnel and the existence of sufficient business to achieve profitability.

(2) *Banking factors.*

(i) *Condition.* The applicant's general condition should be satisfactory; significant or serious problems will normally preclude approval. A bank should not have an undue amount of criticized assets, particularly in relation to gross capital; serious or frequent violations of law; inadequate liquidity; adverse operating trends; poor internal controls; or other significant problems.

(ii) *Capital and earnings.* Capital, earnings and retention of earnings should be sufficient to support the current level of operations, as well as the proposed expansion. In determining the applicant's capacity to support the proposed trust department, the estimated cost of establishing and operating the department and the volume and scope of anticipated business will be considered.

(iii) *Management.* Management should have demonstrated the ability to supervise a sound banking operation. This determination will generally relate to the condition and profitability of the bank and management's ability to recognize and correct deficiencies.

(iv) *Trust personnel.* The proposed head of the trust department should have demonstrated abilities and experience commensurate with the

proposed position. Directors and officers who will serve on trust committees should possess experience and knowledge in the trust or investment fields. The bank should have available the services of competent investment and legal counsel to advise on matters affecting the trust department.

(3) *Market factors.* The applicant should demonstrate that the population and general economy of the market possess characteristics requiring fiduciary services. Composition of the population within the market is an important indicator of the potential support for a trust department. Population characteristics such as income, wealth, age, educational level, occupation, and stability will be considered. In determining need, consideration should be given to the present fiduciary services available in the market. If fiduciary services are being offered, consideration will be given to the volume and character of the present trust business and the demand for additional services. Further, consideration will be given to any fiduciary services performed outside the market for customers in the applicant's service area which, because of convenience, might be brought to the applicant.

(c) *Fees.* No filing fee is required at time of application. An investigation will generally be conducted and the applicant will be charged in accordance with 12 CFR 8.

(d) *Decisions.* If preliminary approval is granted, a condition normally will be included that the trust department must commence business within 12 months from the date of preliminary approval.

(e) *Certificates.* Upon satisfaction of all conditions, a certificate will be issued evidencing approval to exercise fiduciary powers.

(f) *Forms.*

(1) *Form to be used by applicant:*  
 CC 7024-01: Application for Fiduciary Powers

- (2) *Forms to be used by Office:*  
 CC 7024-02: Confidential Memorandum—Application for Fiduciary Powers  
 CC 7024-03: Regional Office Procedures—Application for Fiduciary Powers  
 CC 7024-04: Fiduciary Powers Processing Checklist  
 CC 7024-05: Fiduciary Powers Application—Review for Accuracy and Completeness

§ 5.27 [Reserved]

§ 5.28 [Reserved]

§ 5.29 [Reserved]

### Subpart C—Expansion of Activities

#### § 5.30 Establishment of domestic branches and seasonal agencies.

(a) *Authority.* 12 U.S.C. 36 and state branching statutes.

(b) *Scope.* This section applies to branch applications other than for customer-bank communication terminal (CBCT) branches (see § 5.31).

(c) *Policy.*

(1) *General.* The Office encourages a banking structure capable of fulfilling local, regional and national needs for banking services. In the interest of increased competition, service to the public and efficiency, the Office considers branching a desirable means of bank expansion. In considering a branch application, the applicant's capacity to support such expansion is of major importance. The closing of a branch does not present the same risk of loss to the public as does the failure of a bank. Therefore, the judgment of the applicant as to the viability of a proposed branch will ordinarily be respected, provided that in the opinion of the Office the applicant's capacity is sufficient or will be enhanced by the new activity and the prospective effects on competition are positive. In evaluating an application, the factors described below will be considered.

(2) *Banking factors.*

(i) *Condition.* The applicant's general condition should be satisfactory; significant or serious problems will normally preclude approval. A bank should not have an undue amount of criticized assets, particularly in relation to gross capital; serious or frequent violations of law; inadequate liquidity; adverse operating trends; poor internal controls; or other significant problems.

(ii) *Capital and earnings.* Capital, earnings and retention of earnings should be sufficient to support the current level of operations as well as the proposed expansion. In determining the applicant's capacity to support the proposed branch, the estimated cost of establishing and operating the branch and the volume and scope of anticipated business will be considered.

(iii) *Management.* Management should have demonstrated the ability to supervise a sound banking operation. This determination will generally relate to the overall condition of the bank and management's ability to recognize and correct deficiencies. Depth and continuity of management are also relevant factors in considering the

bank's capacity to expand through branching.

(3) *Market factors.*

(i) *Economic condition and growth potential.* When a bank desires to establish a branch in an area not presently served by the bank, it is expected that, at a minimum, management will have considered the current economic condition or growth potential of the market in determining the probable success of the branch. Essential to the concept of banking opportunity is that there does or will exist a sufficient volume of business for which the branch can realistically compete. Also important is a determination of the portion of that business the branch will acquire. Evidence of banking opportunity may be demonstrated in a number of ways including trends in population, employment, residential and commercial construction, retail sales, company payrolls and businesses established. Geographic and environmental restrictions to further development should be fully explored. When an applicant desires to establish a branch primarily to retain existing customers or to serve them more efficiently or conveniently, greater emphasis will be given to the expense to be incurred in establishing and operating the branch, the anticipated loss of existing business if the branch is not established and the overall effect on bank profitability.

(ii) *Primary service area; community.* Within the broader concept of a market, the applicant should delineate a Primary Service Area (PSA). The dimensions of the PSA will necessarily vary with the type of market to be served. A rural banking office may serve a relatively large area if banking alternatives are limited; conversely, the PSA of an urban banking office may be limited to a city block. The PSA is defined as the smallest area from which the branch expects to draw approximately 75 percent of its deposits and should be drawn around a natural customer base. It should not be unrealistically delineated to exclude competing banks or to include areas of concentrated population. Barriers to access such as major highways, rivers, mountains or other impediments should be considered. In addition, the applicant must delineate a community for the purposes of the Community Reinvestment Act of 1977 (see 12 CFR 25).

(iii) *Location.* The importance of the specific site depends upon the community to be served. The precise location of a branch in a sparsely populated area with limited competition may be less significant than that of an

urban or suburban branch whose success and ability to provide banking services may be more dependent upon the convenience of its location.

(iv) *Population.* Composition of the population, including daily or seasonal inflows, within the community is an indicator of the potential support for a branch. Population characteristics such as income, age distribution, education level, occupation and stability should be considered. Ratios of population per banking office are not conclusive evidence of support for a new branch.

(v) *Competing financial institutions.* The growth rate and size of banking offices and other financial institutions in the community are also important indicators of economic condition and potential business for a new branch. The location and services offered are indicative of the competitive climate of the community. Other financial institutions such as savings and loan associations, credit unions, finance companies, mortgage companies and insurance companies may be considered competing institutions to the extent their services parallel those of the new branch.

(4) *Other factors.*

(i) *Protection of existing banks from adverse competition.* A branch will not be approved if its establishment would threaten the viability of a newly chartered independent bank. Such protection of a newly chartered independent bank typically will not exceed 1 year.

(ii) *Order of filing.* Although the order in which branch applications are filed will be a factor in the decision-making process, it will not be a controlling factor.

(iii) *Insider transactions.* Any financial arrangement or transaction involving the branch and directors of the bank, officers, major shareholders, or their associates or interests should ordinarily be avoided. If there are transactions of this nature they must be fair, fully disclosed, reasonable and comparable to similar arrangements which could have been made with unrelated parties.

(d) *Fees.* A filing fee of \$500 is required for processing each application.

(e) *Decisions.* If preliminary approval is granted, a condition normally will be included that the branch must commence business within 18 months from the date of preliminary approval.

(f) *Certification.* Upon satisfaction of all conditions, a certificate will be issued evidencing approval for the establishment and operation of the branch or seasonal agency at the designated location.

**(g) Forms.**

(1) *Forms to be used by applicant:*

CC 7021-01: Application to Establish a Branch

CC 7021-10: Legal Notice—Branch Application

(2) *Forms to be used by Office:*

CC 7021-02: Confidential Memorandum—Branch Application

CC 7021-03: Regional Office Procedures—Branch Applications

CC 7021-04: Branch Processing Checklist

CC 7021-05: Branch Application—Review for Accuracy and Completeness

**§ 5.31 Establishment of customer-bank communication terminal (CBCT) branches.**

(a) *Authority.* 12 U.S.C. 36.

(b) *Policy.* (Reserved)

(c) *Rules of General Applicability.*

Sections 5.8(a), 5.10 and 5.11 do not apply to this section.

(d) *Fees.* A filing fee of \$200 is required for processing each application.

(e) *Notice of filing of application.* Applicant shall, within 5 days after filing an application, publish one time, in a newspaper of general circulation in the community in which the applicant's head office is located, and one time, in a newspaper of general circulation in the community in which the applicant proposes to establish a CBCT branch, a notice containing the name of the applicant or applicants, the subject matter of the application, and the date on which the application was filed. Immediately thereafter, the applicant shall furnish the Regional Administrator with affidavits evidencing such publication. For the purposes of this section, the filing date of the application shall be the date upon which the application was placed in the United States mail, postage prepaid, addressed to the Regional Administrator.

(f) *Written comments on CBCT branch applications.* Within 10 days after the notice by public action described in § 5.31(e) above, any interested person may submit to the Regional Administrator written comments concerning the application.

(g) *Decisions.* If preliminary approval is granted, a condition normally will be included that the branch must commence business within 18 months from the date of preliminary approval.

(h) *Certification.* Upon satisfaction of all conditions, a certificate will be issued evidencing approval for the establishment and operation of the CBCT branch at the designated location.

(i) *Forms.*

(1) *Forms to be used by applicant:*

CC 7021-06: Application to Establish CBCT Branch

CC 7021-11: Legal Notice—CBCT Branch Application

(2) *Forms to be used by Office:*

CC 7021-07: CBCT Branch Processing Checklist

CC 7021-08: CBCT Branch Application—Review for Accuracy and Completeness

CC 7021-09: Confidential Memorandum—CBCT Branch Application

**§ 5.32 Additional Federal branch or Federal agency of a foreign bank.**

(a) *Authority.* 12 U.S.C. 3101 *et seq.* See also 12 CFR 28.

(b) *Policy.* (Reserved)

(c) *Fees.* A filing fee of \$500 is required for investigating and processing each application.

**§ 5.33 Merger, consolidation, purchase and assumption.**

(a) *Authority.* 12 U.S.C. 1 *et seq.*

§§ 93a, 181, 214a, 215, 215a, 1828(c).

(b) *Policy.*

(1) *General.* It is the policy of the Office to preserve the soundness of the national banking system and promote market structures conducive to competition. A proposed merger, consolidation or purchase of assets and assumption of liabilities are all hereinafter referred to as mergers. A merger which would not have a substantially adverse effect on competition and which would be beneficial to the merging banks and to the public normally will be approved.

(2) *Evaluative factors.* In evaluating a merger application the following factors will be considered:

(i) The effect of the transaction upon competition;

(ii) The convenience and needs of the community to be served;

(iii) The financial history of the merging banks;

(iv) The condition of the merging banks, including capital, management and earnings prospects;

(v) The existence of insider transactions; and

(vi) The adequacy of disclosure of the terms of the merger.

In order to determine the effect of a proposed merger upon competition, it is necessary to identify the relevant geographic market. The delineation of such market can seldom be precise, but realistic limits should be established so the effect of the merger upon competition can be properly analyzed. The market should be delineated to encompass an area where the effect upon competition will be direct and immediate. The Office recognizes that different banking services may have different relevant geographic markets.

Although the largest borrowers and depositors may find it convenient and practical to conduct part of their banking business outside the relevant geographic market, the market should not be drawn so expansively as to cause the competitive effect of the merger to seem insignificant because only the largest customers are considered. Conversely, the market should not be drawn so narrowly as to place competitors in different markets because only the smallest customers are considered. A fair delineation of the relevant geographic market should take into account the demands of most customers for the bank's services. After the relevant geographic market has been identified, the competitive effects of the proposed merger can be analyzed. Both the structure of the market and intensity of competition within the market will be considered. In measuring intensity of competition, consideration will be given to the number of competitors in the market, services offered, pricing of services, advertising, office hours and banking innovations.

(3) *Terms.* The following terms will be used to describe the competitive effects of a proposed merger:

(i) *Monopoly*—means the proposed merger must be disapproved in accordance with 12 U.S.C. 1828(c)(5)(A);

(ii) *Substantially Adverse*—means that the proposed transaction would have anticompetitive effects which preclude approval unless the anticompetitive effects are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(iii) *Adverse*—means that the proposed transaction would have anticompetitive effects which would be material to the decision, but which would not preclude approval; and

(iv) *No significant effect*—means that the anticompetitive effects of the proposed transaction, if any, would not be material to the decision.

(4) *Convenience and needs.* When substantially adverse competitive effects exist, they must be clearly outweighed in the public interest by the probable effects of the merger on improved convenience and needs. If not clearly outweighed, the merger will be disapproved. Convenience and needs factors which may outweigh the anticompetitive effects of a merger include:

(i) The elimination of a failing, weak or stagnating bank, thereby strengthening the banking system.

(ii) The achievement of economies of scale, including a better matching of sources and needs for funds, thereby

providing the basis for improved customer service and bank earnings.

(iii) The extension of services not available from the merging bank and for which there is a clearly definable need. Such services might include a larger lending limit, specialized forms of credit, data processing, international banking, financial counseling, or fiduciary services.

The Office must also consider the record of performance in meeting the convenience and needs of the community to be served, and the application for a merger may be denied on the basis of that record. (See 12 CFR Part 25)

(5) *Other factors.* In addition to the foregoing, the Office considers banking factors and will normally not approve a merger if it will result in a bank which has inadequate capital, unsatisfactory management or poor earnings prospects. Further, it is required that all shareholders be adequately informed of all aspects of the transaction.

(6) *Title.* If the title of the resulting bank is not the same as any of the banks involved in the merger, the proposed new title will be considered in accordance with the policy for title changes (see § 5.42(b)).

(c) *Policy on treatment of minority shareholders in mergers and consolidations.* (Reserved)

(d) *Place of filing of application.* Applications should be submitted for filing to the Office of the Comptroller of the Currency, Attention: Bank Organization and Structure Division, 490 L'Enfant Plaza East, SW., Washington, D.C. 20219.

(e) *Rules of General Applicability.* Statutory notice requirements should be observed by applicants in lieu of those contained in § 5.8(a).

(f) *Fees.* A filing fee of \$1,500 is assessed each participating bank.

(g) *Investigation and examination.* The Office may conduct an examination into the condition of the applicants, whether state or federally chartered, to the extent deemed necessary. The cost of such examination shall be charged to the applicants in addition to the filing fee prescribed in § 5.33(f) (see 12 CFR 8).

(h) *Opinions.* Public opinions naming the parties and containing the Office's findings are issued in all cases.

(i) *Certification.* If an approval is granted, one of the following will be issued:

(1) *Merger or consolidation.* Certificates to the resulting bank to evidence approval of the merger or consolidation and to authorize operation of permitted branches incident thereto; or

(2) *Purchase and assumption.* A certificate to the purchasing bank to authorize operation of permitted branches incident to the purchase and assumption.

(j) *Forms.*

- (1) *Forms to be used by applicant:*  
 CC7023-01: General Instruction and Procedures for Preparation of an Application for (Merger, Consolidation, Purchase)  
 CC7023-02: Application for Approval to (Merge, Consolidate, Purchase)  
 CC7023-03: Instructions for the Preparation of an Application for Merger—Corporate Reorganization  
 CC7023-04: Application for Approval to (Merge, Consolidation, Purchase)—Corporation Reorganization  
 CC7023-05: Agreement to Merge  
 CC7023-06: Agreement of Consolidation  
 CC7023-07: Purchase Agreement  
 CC7023-13: Sample Publication Notice—Mergers  
 CC7023-14: Secretary's Certificate—Publication Completion (Mergers)  
 CC7023-15: Sample Shareholders' Meeting Notice—Mergers  
 CC7023-16: Secretary's Certificate—Shareholders' Ratification of Merger Agreement

- (2) *Forms to be used by Office:*  
 CC7023-08: Confidential Memorandum—Application for Approval to (Merge, Consolidate, Purchase)  
 CC7023-09: Regional Office Procedures—Merger Applications  
 CC7023-10: Washington Office Procedures—Merger Applications  
 CC7023-11: Merger Processing checklist—Regional Office  
 CC7023-12: Merger Processing checklist—Washington Office  
 CC7023-17: Review for Accuracy and Completeness  
 CC7023-18: Merger—Preliminary Review Form

#### § 5.34 Domestic operating subsidiaries.

(a) *Authority.* 12 U.S.C. 1 *et seq.*, § 93a. See Interpretive Ruling 7.7376 (12 CFR Part 7.7376).

(b) *Policy.*

(1) The Office considers an application for the establishment of a *de novo* domestic operating subsidiary to be primarily a business decision of the applicant. An applicant's ownership of 80 percent or more of a company will be approved if the proposed activity is a part of the business of banking or incidental thereto and if the applicant has the capacity to support such expansion. However, if a bank or any of its subsidiaries proposes to acquire an existing business, the Office will also consider competitive factors similar to

those set forth in the policy for mergers and consolidations (§ 5.33). In evaluating an application, the factors below will be considered.

(2) *Condition.* The applicant's general condition should be satisfactory; the existence of conditions warranting special supervisory attention by the Office normally will preclude approval. A bank should not have an undue amount of criticized assets, particularly in relation to gross capital; serious or frequent violations of law; inadequate liquidity; adverse operating trends; poor internal controls; or other significant problems.

(3) *Capital and earnings.* Capital, earnings and retention of earnings should be sufficient to support the current level of operations as well as the proposed expansion. In determining the applicant's capacity to support the proposed subsidiary, the estimated cost of establishing or acquiring the subsidiary and the volume and scope of anticipated business will be considered.

(c) *Rules of general applicability.* Sections 5.8, 5.10 and 5.11 do not apply to applications for the establishment of a *de novo* operating subsidiary.

(d) *Fees.* No filing fee is required for processing an application. The cost of any examination into the condition of the operating subsidiary proposed to be acquired shall be paid by the applicant in accordance with 12 CFR 8.

(e) *Forms.*

- (1) *Forms to be used by Applicant:*  
 CC7025-01: Application to Establish an Operating Subsidiary  
 CC7025-02: Application to Acquire an Operating Subsidiary  
 CC7025-10: Legal Notice—Operating Subsidiary Application  
 (2) *Forms to be used by Office:*  
 CC7025-03: Confidential Memorandum—Application to Establish an Operating Subsidiary  
 CC7025-04: Confidential Memorandum—Application to Acquire an Operating Subsidiary  
 CC7025-05: Regional Office Procedures—Operating Subsidiary Application  
 CC7025-06: Operating Subsidiary (Establishment) Processing Checklist  
 CC7025-07: Operating Subsidiary (Acquisition) Processing Checklist  
 CC7025-08: Operating Subsidiary Application—Review for Accuracy and Completeness (*de novo*)  
 CC7025-09: Operating Subsidiary Application—Review for Accuracy and Completeness (Acquisition)



## § 5.35. [Reserved]

## § 5.36. [Reserved]

## § 5.37. [Reserved]

## § 5.38. [Reserved]

## § 5.39. [Reserved]

**Subpart D—Other Changes in Activities and Miscellaneous Activities****§ 5.40 Change in location of a head office or domestic branch.**

(a) *Authority.* 12 U.S.C. 30 and 36(e).

(b) *Policy.* The Office considers an application for a change in location of a head office or domestic branch to be primarily a business decision of the applicant. Such applications will be approved subject to the following limitations.

(1) An application for relocation of a banking office within the primary service area (PSA) will normally be approved if the applicant has capital and earnings sufficient to support any increased costs incident to the relocation and has a satisfactory record of performance under the Community Reinvestment Act of 1977 (see 12 CFR 25). In determining the sufficiency of capital and earnings, the estimated costs of establishing and operating the proposed office will be considered.

(2) A head office relocation from one PSA to another PSA will require the filing of an application for a new head office. In such instances, market factors similar to those set forth in the policy for organizing a national bank (§ 5.20) will be considered.

(3) A branch relocation from one PSA to another PSA will require the filing of a branch application and will be subject to the same considerations as those set forth in the policy for establishing domestic branches (§ 5.30). The Office also will consider the needs of the PSA being abandoned.

(4) Any financial arrangement or transaction involving the bank and its directors, officers, major shareholders or their associates or interests ordinarily should be avoided. If there are transactions of this nature they must be fair, fully disclosed, reasonable and comparable to similar arrangements which could have been made with unrelated parties.

(c) *Rules of General Applicability.* In addition to the notice requirements of § 5.8a, a notice must be published on the same day of 2 consecutive weeks in a newspaper of general circulation in the community in which the office to be relocated is located. On the date of the first such notice, a further, identical notice must be posted in the office to be

relocated, and must remain posted for 28 days.

(d) *Fees.* No filing fee is required for processing these applications.

(e) *Decisions.* If preliminary approval is granted, a condition normally will be included that the change in location must occur within 18 months from the date of preliminary approval.

(f) *Certification.* Upon satisfaction of all conditions, a certificate will be issued evidencing approval for the change in location.

(g) *Forms.*

(1) *Forms to be used by applicant:*

CC 7027-01: Application for Change in Location of Head Office or Branch

CC 7027-02: Application for a New Head Office (New Primary Service Area)

(2) *Forms to be used by Office:*

CC 7027-04: Confidential

Memorandum—Application for a

Change in Location

CC 7027-05: Regional Office

Procedures—Applications for

Location Changes

CC 7027-06: Relocation of Head Office

or Branch Processing Checklist (Same

PSA)

CC 7027-07: Relocation of Head Office

Processing Checklist (New PSA)

CC 7027-08: Change in Location

Application—Review for Accuracy

and Completeness (Same PSA)

CC 7027-09: Change in Location

Application—Review for Accuracy

and Completeness (Change in PSA)

**§ 5.41 Relocation of a Federal branch or Federal agency of a foreign bank.**

(a) *Authority.* 12 U.S.C. 3101 *et seq.* See also 12 CFR 28.

(b) *Policy.* [Reserved]

(c) *Place of filing of application.*

Applications should be submitted for filing to the Office of the Comptroller of the Currency, Bank Organization and Structure Division, 490 L'Enfant Plaza East, S.W., Washington, D.C. 20219.

(d) *Rules of General Applicability.* If the office to be relocated is an insured Federal branch, in addition to the notice requirements of § 5.8(a), a notice must be published on the same day of 2 consecutive weeks in a newspaper of general circulation in the community in which the insured Federal branch to be relocated is located. On the date of the first such notice, a further, identical notice must be posted in the insured Federal branch to be relocated, and must remain posted for 28 days.

(e) *Fees.* No filing fee is required for processing an application.

(f) *Decisions.* If preliminary approval is granted, a condition normally will be included that the branch must commence business within 18 months from the date of preliminary approval.

(g) *Certification.* Upon satisfaction of all conditions, a certificate will be issued evidencing approval of the relocation of the Federal branch or Federal agency.

(h) *Form to be used by applicant:*

CC 7030-03: Application to Relocate a Federal Branch or Agency

**§ 5.42 Change of corporate title.**

(a) *Authority.* 12 U.S.C. 30.

(b) *Policy.* The Office considers an application for change in corporate title to be primarily a business decision of the applicant. An application generally will be approved if the proposed new title is sufficiently dissimilar from that of any other existing or proposed unaffiliated bank or depository financial institution so as not to substantially confuse or mislead the public in a relevant market.

(c) *Fees.* No filing fee is required for processing an application.

(d) *Certification.* A certificate will be issued evidencing approval for the change of corporate title.

(e) *Forms.*

(1) *Forms to be used by Applicant:*

CC 7026-01: Application for a Change in Corporate Title

CC 7026-06: Legal Notice: Title Change Application

CC 7026-07: Secretary's Certificate (Change Article I)

(2) *Forms to be used by Office:*

CC 7026-02: Confidential Memorandum—Application for Title Change

CC 7026-03: Regional Office

Procedures—Title Change

Applications

CC 7026-04: Corporate Title Change

Processing Checklist

CC 7026-05: Corporate Title Change

Application—Review for Accuracy

and Completeness

**§ 5.43 Change in designation of initial Federal branch or Federal agency to any other Federal branch or Federal agency.**

(a) *Authority.* 12 U.S.C. 3101 *et seq.* See also 12 CFR 28.

(b) *Policy.* [Reserved]

(c) *Place of filing application.*

Applications should be submitted to the Office of the Comptroller of the Currency, Attention: Bank Organization and Structure Division, 490 L'Enfant Plaza East, S.W., Washington, D.C. 20219.

(d) *Fees.* No filing fee is required for processing an application.

(e) *Decisions.* If preliminary approval is granted, a condition normally will be included that the change in designation of the initial Federal branch or Federal agency must be accomplished within 18



months from date of preliminary approval.

(f) *Certification.* Upon satisfaction of all conditions, a certificate will be issued evidencing approval of the change in designation of the initial Federal branch or Federal agency.

(g) *Forms.* (Reserved)

§ 5.44 *Competitive factor reports to other agencies.* [Reserved]

§ 5.45 *Comment letters on holding company acquisitions to Board of Governors of the Federal Reserve System.* [Reserved]

§ 5.46 *Changes in capital structure.*

(a) *Authority.* 12 U.S.C. §§ 51, 51a, 51b-1, 56, 57, 59 and 93a.

(b) *Rules of general applicability.* Sections 5.8, 5.9, 5.10 and 5.11 do not apply to changes in capital structure.

(c) *Fees.* No filing fees are required for processing applications for a change in capital structure.

(d) *Office approval.* All changes in outstanding capital are subject to approval by the Comptroller or an authorized delegate. When shareholder approval is required, applications for Office approval should be filed and advice received prior to seeking shareholder approval.

(e) *Shareholder approval for increases in common stock.*

(1) A bank's Articles of Association must state a specific level of authorized common stock. Amendments to Articles of Association changing the authorized common stock require the approval of shareholders owning two-thirds of the outstanding stock. A certified original of every such amendment to the Articles of Association shall be sent to the Washington Office and a copy shall be sent to the appropriate Regional Administrator.

(2) A proposed increase in outstanding common stock requires an approval of shareholders owning two-thirds of the outstanding common stock. However, if the Articles of Association have been previously amended by a vote of shareholders owning two-thirds of the outstanding common stock to provide for a class of authorized but unissued stock, such stock may be issued for purposes approved by the Board of Directors and the Office without further shareholder approval.

(f) *Shareholder approval for increases in preferred stock.* Amendments to the Articles of Association to authorize preferred stock and proposed increases in the outstanding preferred stock require the approval of the holders of a majority of the shares. A certified original of every such amendment to the Articles of Association shall be sent to

the Washington Office and a copy shall be sent to the appropriate Regional Administrator.

(g) *Authorized but unissued common stock.* A national bank, with the approval of the Office and of stockholders owning two-thirds of the outstanding voting stock, may authorize an increase in the common stock of the bank in the category of authorized but unissued common stock. The approval of the Office shall not be required when the resulting amount of common stock in the category of authorized but unissued stock will satisfy either of the following criteria:

(1) When the resulting total amount of authorized but unissued stock will be free of preemptive rights of shareholders and will not exceed 25 percent of the currently issued and outstanding stock. The 25 percent limitation may be calculated without regard to authorized but unissued stock which is specifically designated as reserved for issuance in connection with employee stock option plans, employee stock purchase plans, employee bonus plans, or other similar programs (provided that such plans were approved by the Office) and shares held for the purpose of satisfying the requirements of convertible subordinated notes or convertible preferred stock (provided that the convertible subordinated notes or preferred stock were approved by the Office); or

(2) When the resulting total amount of authorized but unissued stock, exclusive of that amount specifically reserved for issuance in connection with employee compensation programs and for satisfying requirements of the convertible securities of the bank, will be subject to preemptive rights of shareholders and will not exceed 50 percent of the currently issued and outstanding stock.

(h) *Office approval policy.*

(1) *Common stock.*

(i) Office approval for the issuance of authorized but unissued common stock (A) to employees of the bank pursuant to a plan approved by the Office under § 5.51; or

(B) at the time of conversion, to the holders of convertible debt instruments approved by the Office under § 5.47 or to the holders of convertible preferred stock approved by the Office under this section, will be granted promptly by the Regional Administrator without substantive review, because the plans for issuance will have been previously approved when the stock was authorized.

(ii) The Regional Administrator will decide applications for the issuance of common stock for other purposes within

30 days after receipt of the application and shall communicate his decision in writing.

(2) *Stock dividends.*

(i) It is the policy of the Office not to discourage stock dividends. However, recurring stock dividends will not be approved when the market or book value of the stock dividend being proposed, whichever is greater, exceeds 100 percent of the bank's retained profits since the declaration of the last stock dividend. For the purpose of this policy, the term "retained profits" shall mean the remainder of all earnings from current operations plus actual recovery on loans and investments and other assets, after deducting from the total thereof all current operating expenses, actual losses, cash dividends, accrued dividends on preferred stock, if any, and all federal and state taxes.

(ii) As a general policy, stock dividends which are considered a realignment of capital accounts will not be subject to the above restrictions.

(iii) The Regional Administrator will decide applications for stock dividends within 15 days after receipt of the application and shall communicate his decision in writing. In cases where the Regional Administrator disapproves a proposed stock dividend, he shall forward the application to the Washington Office for final disposition and shall advise the bank of such referral.

(iv) Interpretive Ruling 7.6040 (12 CFR 7.6040) relates to the treatment of fractional shares created by stock dividends.

(3) *Preferred stock.* The Comptroller's or an authorized delegate's decision to approve the issuance of convertible or non-convertible preferred stock made in accordance with 12 U.S.C. 51a and 51b will be based on normal business considerations.

(4) *Other changes in capital.* Applications for a reduction of capital through a decrease in par value or otherwise, in accordance with the requirements of 12 U.S.C. 59, will be considered. Par value may be increased by amendment to the Articles of Association by a vote of the holders of two-thirds of the capital stock and with the approval of the Office.

(i) *Effectiveness of the increase in stock.*

(1) *Common stock.* No increase in the outstanding common stock of a national bank shall be valid until the whole amount of such increase is paid in (or in the case of an increase by way of stock dividend, until such stock dividend has been duly declared) and notice thereof, duly acknowledged before a notary public by the president, vice president

or cashier of the bank, has been transmitted to the Office and the Comptroller's certificate obtained specifying the amount of the increase, the approval thereof, and that it has been duly paid in. (See § 5.51(h) concerning Employee Stock Option and Stock Purchase Plans)

(2) *Preferred stock.* No increase in preferred stock shall be valid until the par value of all such stock is paid in and notice thereof, duly acknowledged before a notary public by the president, vice president or cashier of the bank, has been transmitted to the Office and the Comptroller's certificate obtained specifying the amount of such issue of preferred stock, his approval thereof and that it has been duly paid in.

(j) *Forms.*

(1) *Forms to be used by applicant:*

- CC 7028-01: Application for a Change in Equity Capital  
 CC 7028-03: Application for Issuance of Preferred Stock  
 CC 7028-07: Instructions to Applicant—Decrease in Common or Preferred Stock  
 CC 7028-08: Certificate of Payment for Additional Common Stock  
 CC 7028-09: Certificate of Payment for Additional Common Stock (For Assets)  
 CC 7028-11: Certificate of Payment for the Issuance of Preferred Stock  
 CC 7028-12: Certificate of Declaration—Stock Dividend  
 CC 7028-13: Certificate of Increase in Capital by Change in Par Value  
 CC 7028-14: Certificate of Completed Reductions in Outstanding Common Stock  
 CC 7028-15: Certificate of Completed Changes in Outstanding Common Stock  
 CC 7028-16: Certificate of Completed Reduction in Outstanding Preferred Capital Stock  
 CC 7028-17: Certificate of Conversion of Preferred Stock  
 CC 7028-31: Secretary's Certificate—Shareholders' Resolutions and Amendments  
 CC 7029-04: Sample Articles of Association  
 CC 7029-09: Sample Resolutions and Amendments to Articles of Association  
 (2) *Forms to be used by Office.*  
 CC 7028-05: Confidential Memorandum—Preferred Stock Application  
 CC 7028-20: Certificate of Approval—Common Stock Sale, Stock Dividend, and Issues of Previously Authorized but Unissued Shares  
 CC 7028-21: Certificate of Approval—Increase in Par Value

- CC 7028-22: Certificate of Approval—Reduction in Par Value  
 CC 7028-23: Certificate of Approval—Issuance of Preferred Stock  
 CC 7028-28: Regional Office Procedures—Capital Application  
 CC 7028-29: Capital Processing Checklist  
 CC 7028-30: Capital Application—Review for Accuracy and Completeness  
 CC 7028-32: History Sheet—Capital  
 CC 7028-33: Record of Capital Increases and Decreases  
 CC 7028-34: Capital Application—Review for Accuracy and Completeness (Stock Dividend)

§ 5.47 **Subordinated debt.**

(a) *Authority.* 12 U.S.C. 82.

(b) *Policy.*

(1) *General.* The issuance of convertible or nonconvertible subordinated debentures by national banks is largely a management decision, and the Office generally will approve such issuances in accordance with normal business considerations. Subordinated debt is considered as part of a bank's capital structure for the purpose of computing statutory limitations related to the amount of a bank's capital (see 12 CFR 7.1100). (Attention is drawn to the Office's proposed rule which would gradually remove debt from the definition of capital. See 45 FR 49276, July 24, 1980.)

(2) *Evaluation.* (Reserved)

(c) *Rules of general applicability.* Sections 5.8 thru 5.11 do not apply to applications for subordinated debt.

(d) *Fees.* No filing fee is required for processing an application for subordinated debt.

(e) *Statutory limitation.* Subject to the provisions of 12 U.S.C. 82, the bank, with the approval of stockholders owning two-thirds of the voting stock of the bank, or without such approval if authorized by its Articles of Association, may issue convertible or nonconvertible subordinated debentures in such amounts and under such terms and conditions as shall be approved by the Office. However, the principal amount of subordinated debentures outstanding at any time, when added to all other outstanding indebtedness of the bank (except those forms of indebtedness exempt from the provisions of 12 U.S.C. § 82), shall not exceed an amount equal to 100 percent of the bank's paid-in capital stock plus 50 percent of the amount of its unimpaired surplus fund.

(f) *Forms.*

(1) *Forms to be used by the applicant:*

- CC 7028-02: Application for Issuance of Subordinated Notes or Debentures

- CC 7028-10: Certificate of Payment for Subordinated Notes or Debentures  
 CC 7028-18: Certificate of Completed Reduction in Outstanding Subordinated Notes or Debentures  
 CC 7028-19: Certificate of Conversion of Subordinated Notes or Debentures  
 (2) *Forms to be used by Office:*  
 CC 7028-04: Confidential Memorandum—Subordinated Note or Debenture  
 CC 7028-24: Certificate of Approval—Issuance of Debentures Approved by Shareholders  
 CC 7028-25: Certificate of Approval—Issuance of Notes  
 CC 7028-26: Certificate of Approval—Issuance of Notes Approved by Shareholders  
 CC 7028-27: Certificate of Approval—Issuance of Debentures Approved by Board of Directors  
 CC 7028-28: Regional Office Procedures—Capital Applications  
 CC 7028-35: Capital Processing Checklist—Analysis Sheet (Subordinated Notes and Debentures)

§ 5.48 **Voluntary liquidation.**

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

(b) *Rules of General Applicability.* Sections 5.8 thru 5.11 do not apply to voluntary liquidations.

(c) *Fees.* No fees are required for processing voluntary liquidations.

(d) *Notice of voluntary liquidation.* A solvent national bank desiring to liquidate voluntarily should submit to the Office of the Comptroller of the Currency, Bank Organization and Structure Division, 490 L'Enfant Plaza East, S.W., Washington, D.C. 20219, notification of its intent to do so.

(e) *National Bank as buyer.* If the liquidating bank's assets are to be purchased and its liabilities assumed by a national bank, see § 5.33.

(f) *Report of condition.* The liquidating bank must submit to the Office of the Comptroller of the Currency, Bank Organization and Structure Division, 490 L'Enfant Plaza East, S.W., Washington, D.C. 20219, reports of the condition of its commercial, trust, and other departments as of the date it discontinues the business of banking.

(g) *Report of progress.* The liquidating agent or committee must submit annually to the Office of the Comptroller of the Currency, Bank Organization and Structure Division, 490 L'Enfant Plaza East, S.W., Washington, D.C. 20219, until liquidation is complete, a "Report of Progress of Liquidation." This form and instructions for its preparation and filing are furnished to such agency or committee.

(h) *Forms to be used by applicant:*

- CC 7029-13: Report of Progress of Liquidation  
 CC 7029-14: Notice of Shareholders' Meeting (Voluntary Liquidation)  
 CC 7029-15: Resolution for Voluntary Liquidation  
 CC 7029-16: Resolutions for Voluntary Liquidation—Purchase and Sale  
 CC 7029-17: Publication Notice of Liquidation

#### § 5.49 Receivership and conservatorship.

(a) *Authority.* 12 U.S.C. §§ 191-212.  
 (b) *Procedures.* Sections 5.8 thru 5.11 do not apply to receiverships and conservatorships.

(c) *Fees.* No fee is required in connection with the Comptroller's declaration of a receivership or conservatorship situation.

(d) *Receivership.* If the Office becomes satisfied that a national bank is insolvent, it may appoint a receiver for such bank.

(1) *Federal Deposit Insurance Corporation as receiver.* In cases in which the Office is required to appoint the Federal Deposit Insurance Corporation as receiver, that corporation prescribes the procedures it follows in liquidation of the insolvent bank.

(2) *Other receivers.* In those cases in which the Office does not appoint the Federal Deposit Insurance Corporation as receiver, it may appoint a receiver of its choice. The Office prescribes a form of proof of claim. The receiver appointed by the Office issues a certificate of proof of claim to claimants who prove their claims to the satisfaction of the Office or establish their claims by litigation.

(e) *Conservatorship.* The Office may appoint a conservator of its own choice for any national bank when it deems it necessary in order to conserve the assets of the bank for the benefit of its depositors and other creditors. The conservator acts under the direction of the Office and has the powers and duties of a receiver. Because the Office's conservatorship authority is exercised in emergency situations, the procedures followed depend upon the circumstances of each case which dictate the action necessary to conserve the assets of the bank.

#### § 5.50 Change in bank control.

(a) *Authority.* The provisions of this section are issued under 12 U.S.C. §§ 93a and 1817(j)(13).

(b) *Rules of General Applicability.* Sections 5.8 thru 5.11 and 5.13 do not apply to changes in bank control. In addition, § 5.12 applies except that the last day of any applicable period shall be included regardless of whether it is a Saturday, Sunday or legal holiday.

(c) *Fees.* No filing fee is required for filing a notice of change in bank control.

(d) *Definitions.* As used in this Part, the terms "person," "acquiring person," "acquiring party," "insured bank," "notice," "control," "stock," and "voting securities," shall have the same meaning and content as given such terms in the Change in Bank Control Act of 1978 (the "Act"), P.L. No. 95-630, Section 602, 95 Stat. 3683.

(e) *Acquisitions of control.*<sup>1</sup>

(1) Under the Act, acquisitions by a person<sup>2</sup> or persons acting in concert of the power to vote 25 percent or more of a class of voting securities of a national bank, unless exempted, require prior notice to the Office. In addition, a purchase, assignment, transfer, pledge or other disposition of voting stock through which any person will acquire ownership, control or the power to vote 10 percent or more of a class of voting securities of a national bank will be presumed (subject to rebuttal) to be an acquisition by such person of the power to direct that institution's management or policies if:

(i) the institution has issued any class of securities subject to the registration requirements of Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 781); or

(ii) immediately after the transaction no other person will own a greater proportion of that class of voting securities.

(2) Other transactions resulting in a person's control of less than 25 percent of a class of voting shares of a national bank would not result in control for purposes of the Act.

(3) An acquiring person may request an opportunity to contest the presumption established in paragraph (e)(1) with respect to a proposed transaction. The Office will afford the person an opportunity informally to present views in writing or, when appropriate, orally before its designated representatives.

(f) *Notices.*

(1) Notices shall be filed pursuant to § 5.4.

(2) Notice shall not be considered given unless information provided is responsive to every item specified in paragraph 6 of the Act (12 U.S.C. 1817(j)(6)), or every item prescribed in

<sup>1</sup> "Control" is defined in the Act as "the power, directly or indirectly, to direct the management or policies, or to vote 25 percent or more of any class of voting securities, of an insured bank." 12 U.S.C. 1817(j)(6)(B).

<sup>2</sup> "Person" means an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed in 12 U.S.C. 1817(j)(8)(A).

the appropriate Notice form. With respect to personal financial statements required by paragraph 6(B) of the Act, an individual acquirer may include statements for only the most recently completed calendar year, together with interim statements required by that paragraph, subject to the authority of the Office to require additional information.

(g) *Exempt transactions.* The following transactions are not subject to the prior Notice requirements of the Act:

(1) The acquisition of additional shares of a national bank by a person who, continuously since March 9, 1979, held power to vote 25 percent or more of the voting shares of that institution, or by a person who has acquired and maintained control of that institution after complying with the Act's procedures;

(2) The acquisition of additional shares of a national bank by a person who, under § 5.50(d), would be deemed to have controlled that institution continuously since March 9, 1979, if:

(i) The transaction will not result in that person's direct or indirect ownership or power to vote 25 percent or more of any class of voting securities of the institution; or

(ii) In other cases, the Office determines that the person has controlled the institution since March 9, 1979;

(3) The acquisition of shares is in satisfaction of a debt previously contracted in good faith or through testate or intestate succession or *bona fide* gift, provided the acquirer advises the Office within 30 days after the acquisition and provides any information specified in paragraph 6 of the Act as requested by the Office;

(4) A transaction subject to approval under Section 3 of the Bank Holding Company Act or Section 18 of the Federal Deposit Insurance Act;

(5) A transaction described in Sections 2(c)(5) or 3(a) (A) or (B) of the Bank Holding Company Act by a person there described;

(6) A customary one-time proxy solicitation or receipt of *pro rata* stock dividends; and

(7) The acquisition of shares of foreign banks which have insured federally chartered branches in the United States: Provided, however, this exemption does not extend to reports and information required under paragraphs 9, 10, and 12 of the Act. (12 U.S.C. 1817(j) (9), (10), (12)).

(h) *General policy.*

(1) *Introduction.* (i) The Act gives the Federal bank supervisory agencies the authority to disapprove changes in control of insured banks and bank

holding companies.<sup>3</sup> The Office of the Comptroller of the Currency is the responsible Federal banking agency for changes in control of national banks. The Federal Reserve Board is responsible for the bank holding companies and State member banks, and the Federal Deposit Insurance Corporation is responsible for insured State non-member banks.

(ii) The Act requires any person seeking to acquire control of any insured bank or bank holding company to provide 60 days' prior written notice to the appropriate Federal banking agency. This requirement applies to all covered transactions that will be consummated after March 9, 1979. The Act specifically exempts transactions that are subject to Section 3 of the Bank Holding Company Act or Section 18 of the Federal Deposit Insurance Act, because those transactions are covered by existing regulatory approval procedures. Accordingly, changes in control due to acquisitions by bank holding companies and changes in control of insured banks resulting from mergers, consolidations or other similar transactions are not covered by the Act.

(iii) The Act describes the factors that the Office and the other Federal banking agencies are to consider in determining whether a transaction covered thereby should be disapproved. These factors include the financial condition, competence, experience and integrity of the acquiring person (or persons acting in concert) and the effect of the transaction on competition. That portion of the Act which contains information requirements is reproduced in the Appendix to this section. The Office's objectives in its administration of the Act are to enhance and maintain public confidence in the banking system by preventing identifiable serious adverse effects resulting from anticompetitive combinations of interests, inadequate financial support, and unsuitable management in these institutions. The Office will review each notice to acquire control of a national bank and will disapprove transactions that would have serious harmful effects.

(iv) If the Office disapproves a change in control, it will notify the proposed acquiring person in writing within 3 days after the decision. The notice of disapproval will contain a statement of the basis for disapproval. The Act provides that the acquiring person may

request a hearing by the Office in the event of a disapproval, and provides a procedure for further review by the courts. (See also 12 CFR 19, Subpart A)

(v) Forms for filing a Notice under the Act will be available from the Regional Administrator. When a substantially complete Notice is received by the Regional Administrator, a letter of acknowledgement will be sent to the acquiring person indicating the date of receipt. The transaction may be completed 61 days or more after that date unless notice has been given the acquiring person that the acquisition has been disapproved by the Office or that the 60-day period has been extended as provided for in the Act. To avoid undue interference with normal business transactions, the Office may issue a notice of its intention not to disapprove a proposed acquisition of control.

(2) *Information to be contained in a Notice.* The Act requires that the Notice contain personal and biographical information, detailed financial information, details of the proposed change in control, information on any structural or managerial changes contemplated for the institution, and other relevant information required by the Office. The elements of a Notice are set forth in 12 U.S.C. 1817(j)(13). In order to be filed properly in accordance with the Act, a Notice must be substantially complete and responsive to every item specified in paragraph 6 of the Act. When the acquiring person is an individual, or a group of individuals acting in concert, the requirement for 5 years' personal financial data is deleted in favor of a current statement of assets and liabilities, a brief income summary, and a statement of any material changes since the date thereof, but the Office specifically reserves the right to require up to 5 years of financial data from any acquiring person.

(3) *Transactions requiring submission of Notice.* (i) The Act defines "control" as the power to vote, directly or indirectly, 25 percent or more of any class of voting securities, or to direct the management or policies of a bank holding company or insured bank. Therefore, any transaction, unless exempted by the Act or this Section, that results in the acquiring party having voting control of 25 percent or more of any class of voting securities, or results in the power to direct the management or policies of such an institution would trigger the Notice requirement. However, any person who on March 9, 1979, controls a national bank shall not be required to file a Notice to maintain or increase such person's control position in the same institution. In

addition, the Office's regulation allows persons, who on March 9, 1979, fell within a presumption described in the next paragraph to acquire additional shares of an institution without filing a Notice as long as they will not have voting control of 25 percent or more of the shares. In connection with transactions that could result in greater voting control, such person may file the required Notice or request that the Office make a determination that they already control the institution.

With respect to persons who have the power to vote less than 25 percent of an institution's shares, the Office has established the following rebuttable presumptions for purposes of the Notice requirements under the Act:

(A) When the institution to be acquired has issued any class of securities subject to the registration requirements of the Securities Exchange Act of 1934 and a transaction would result in a person (or group of persons acting in concert) having voting control of 10 percent or more of any class of voting securities of that institution, the transaction results in control.

(B) When a transaction involving any class of voting securities of a national bank would result in a person (or group of persons acting in concert) having voting control of 10 percent or more, and after the transaction the acquiring person would be the largest shareholder of that institution, the transaction results in control.

(ii) Other transactions resulting in a person's control of less than 25 percent of a class of voting shares of a national bank would normally not result in control for purposes of the Act. In addition, customary one-time proxy solicitations and the receipt of *pro rata* stock dividends are not subject to the Notice requirements of the Act.

(iii) In some cases, corporations, partnerships, certain trusts, associations and similar organizations that are not already bank holding companies may be uncertain whether to proceed under the Act or under the Bank Holding Company Act with respect to a particular acquisition. These organizations should comply with the Notice requirements of the Act, if they are not required to secure prior Federal Reserve Board approval under the Bank Holding Company Act. However, some transactions, particularly foreclosures by institutional lenders, fiduciary acquisitions by banks and increases of majority holdings by bank holding companies, described in Sections 2(a)(5)(D) and 3(a) (A) and (B) of the Bank Holding Company Act, do not require the Federal Reserve Board's *prior* approval, but they are nevertheless

<sup>3</sup>The Act retains with some modification existing reporting requirements relating to loans by banks secured by stock or other banks and management changes occurring after a change in control and extends these requirements to bank holding companies and loans secured by bank holding company stock.



considered subject to Section 3 of the Bank Holding Company Act and do not require Notices under the Act.

(iv) Persons contemplating an acquisition that would result in a change in control of a national bank should request appropriate forms and instructions from the Regional Administrator in whose region the affected institution is located. If there is any doubt whether a proposed transaction requires a Notice, the acquiring person should consult the Regional Administrator for guidance. The Act places the burden of providing notice on the prospective acquiring person and substantial civil money penalties can be imposed for willful violations.

(4) *Certain control transactions exempt from prior notice requirements.*  
(i) Under § 5.50(f)(3), the following transactions are exempt from the prior notice requirement of the Act:

- (A) A foreclosure of a debt previously contracted in good faith;
- (B) Testate or intestate succession; and
- (C) A *bona fide* gift.

A person acquiring control in the situations describe above is required to furnish certain information to the Office promptly after the transaction, and the affected institution must report promptly any changes or replacement of its chief executive officer or of any director, in accordance with paragraph 12 of the Act.

(ii) Under this regulation, acquisitions of control of foreign banks with federally chartered branches are also exempt from the prior Notice requirements of the Act, but this exemption does not extend to the reports and information required under paragraphs 9, 10, and 12 of the Act.

(5) *Disapproval of changes in control.* The Act sets forth various factors to be considered in the evaluation of a proposal. The Office is required to review the competitive impact of the transaction; the financial condition of the acquiring person; and the competence, experience and integrity of that person and the proposed management of the institution. In assessing the financial condition of the acquiring person, the Office will weigh any debt servicing requirements in light of the acquiring person's overall financial strength; the institution's earnings performance, asset condition, capital adequacy and future prospects; and the likelihood of an acquiring party making unreasonable demands on the resources of the institution.

- (i) *Disclosure policy.* [Reserved]
- (j) *Form to be used by applicant:*

#### CC 7028-36: Notice of Change in Control of a National Bank

##### § 5.51 Employee stock option and stock purchase plans.

(a) *Authority.* 12 U.S.C., §§ 24, 57 and 93a.

(b) *Policy.* Generally, plans will be approved if their terms are fair and reasonable.

(c) *Rules of General Applicability.* Sections 5.8 thru 5.11 do not apply to this section.

(d) *Fees.* No filing fee is required for processing an application for an Employee Stock Option or Stock Purchase Plan.

(e) *Place of filing of application.* Application for approval shall be submitted to the Office of the Comptroller of the Currency, Bank Organization and Structure Division, 490 L'Enfant Plaza SW., Washington, D.C. 20219, in the form of a letter.

(f) *Required information.* Each letter of Application shall be accompanied by the following information.

- (1) Description of all material provisions of the plan.
- (2) Proposed notice of shareholders' meeting, proxy and proxy statement.
- (3) Number of shares of authorized but unissued stock to be allocated to the plan.
- (4) Proposed amendments to Articles of Association creating authorized but unissued stock and eliminating preemptive rights as to the shares reserved under the plan.

(g) *Granting options.* Any national bank may grant options to purchase, sell, or enter into agreements to sell, shares of its capital stock to its employees, whether or not such transactions qualify for special tax treatment under the Internal Revenue Code of 1954, as amended, and regulations promulgated thereunder: Provided, that the following conditions are met:

- (1) A letter of application is submitted in accordance with § 5.46(d);
- (2) The plan is administered by a committee, none of whose members may participate in the plan;
- (3) The number of shares allocable to any person under the plan is reasonable in relation to the purpose of the plan and the needs of the bank; and
- (4) In the case of a stock option plan, the number of shares subject to the plan is not unreasonable in relation to the bank's capital structure and anticipated growth.

(h) *Issuing shares.*

(1) Shares issued to employees pursuant to this section may be authorized but unissued stock which has been authorized by stockholders in

accordance with the procedures outlined in § 5.46.

(2) Employee stock option and stock purchase plans or agreements may provide that options may be exercisable or that shares may be purchased on any business day. Stock certificates representing the shares purchased pursuant to the exercise of options may be validly issued to such purchasers upon receipt of the purchase price. The increase in capital represented by stock certificates issued will not be applicable, however, for the purposes of permitted investment in banking premises (12 U.S.C. 371d), permitted indebtedness (12 U.S.C. 82), lending limits (12 U.S.C. 84), branches (12 U.S.C. 36) and other like purposes until a notarized notice, specifying the amount paid into the bank therefor, shall be executed by the president, vice president or cashier of the bank and filed with the Regional Administrator and until the Office's Certificate has been obtained specifying the amount of such increase of capital stock, its approval thereof, and that the increase has been duly paid in as part of the capital of the bank.

(i) *Form to be used by applicant:*  
CC 7028-06: Instructions to Applicant—  
Stock Option and Stock Purchase Plan

#### PART 4—DESCRIPTION OF OFFICE, PROCEDURES, PUBLIC INFORMATION

2. By deleting the following sections from 12 CFR 4, Description of Office, Procedures, Public Information.

- § 4.2 [Deleted]
- § 4.3 [Deleted]
- § 4.4 [Deleted]
- § 4.5 [Deleted]
- § 4.5a [Deleted]
- § 4.6 [Deleted]
- § 4.7 [Deleted]
- § 4.7a [Deleted]
- § 4.7b [Deleted]
- § 4.7c [Deleted]
- § 4.7d [Deleted]
- § 4.7e [Deleted]
- § 4.7f [Deleted]
- § 4.8 [Deleted]
- § 4.9 [Deleted]
- § 4.10 [Deleted]
- § 4.12 [Deleted]

3. In § 4.13(a) the introductory paragraph is revised below and the



entry shown is deleted from the list as follows:

**§ 4.13 Forms and Instructions.**

(a) *Numbered Forms.* The following numbered forms of the Office of the Comptroller of the Currency are currently in use (this list excludes forms applicable to corporate activities found in 12 CFR 5):

CC 7020-01 through CC 7030-03  
[Deleted]

**PART 8—ASSESSMENT OF FEES; NATIONAL BANKS; DISTRICT OF COLUMBIA BANKS**

4. By deleting the following sections of 12 CFR 8:

§ 8.3 [Deleted]

§ 8.4 [Deleted]

§ 8.5 [Deleted]

**PART 13—EMPLOYEE STOCK OPTION AND STOCK PURCHASE PLANS**

5. By rescinding 12 CFR Part 13.

**PART 14—CHANGES IN CAPITAL STRUCTURE**

6. By rescinding 12 CFR Part 14.

**PART 15—CHANGE IN BANK CONTROL**

7. By rescinding 12 CFR 15.

**PART 28—FEDERAL BRANCHES AND AGENCIES OF FOREIGN BANKS**

8. By amending paragraphs (a) and (b) of § 28.3 of 12 CFR to read as follows:

**§ 28.3 Applications.**

(a) *Corporate Applications.* A foreign bank desiring to establish a Federal branch or agency, to convert any state branch or agency or commercial lending company to a Federal branch or agency, to relocate a Federal branch or agency or to change the designation of its initial Federal branch or agency to any other Federal branch or agency, shall apply to the Office of the Comptroller of the Currency, Bank Organization and Structure Division, 490 L'Enfant Plaza, S.W., Washington, D.C. 20219 in accordance with 12 CFR 5.

(b) *Application to Exercise Fiduciary Powers.* A foreign bank shall not exercise fiduciary powers at a Federal branch unless it obtains approval of the Comptroller of the Currency in accordance with 12 CFR 5. An application to exercise fiduciary powers may be submitted by a foreign bank at the time of filing for a Federal branch license or at any subsequent date.

\* \* \* \* \*

Dated: October 1, 1980.

John G. Heimann,  
Comptroller of the Currency.

[FR Doc. 80-31913 Filed 10-14-80; 8:45 am]

BILLING CODE 4810-33-M

**12 CFR Part 5**

[Docket No. 80-12]

**Rules, Policies and Procedures for Corporate Activities; Charter Policy**

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

**ACTION:** Clarification and revision of charter policy; final rule and request for comments.

**SUMMARY:** The Office of the Comptroller of the Currency (Office) is clarifying and revising its policy statement covering applications to charter new national banks to facilitate applicant and public understanding of the decision-making process, to aid in the structuring of new bank proposals and the development of information necessary for the evaluation of proposals, and to minimize the filing of unwarranted proposals. The policy statement adopted below is revised to reflect more clearly the analytical framework within which the Office seeks to fulfill its statutory responsibilities. This policy statement revises § 5.20 (b) and (c) as they appear in Docket No. 80-11, also published today.

**DATES:** Effective date October 15, 1980.

**COMMENT DATE:** Comments should be received on or before December 15, 1980.

**ADDRESS:** Comments should be sent to Docket No. 80-12, Communications Division, 3rd Floor, Office of the Comptroller of the Currency, 490 L'Enfant Plaza, S.W., Washington, D.C. 20219. Attention: Marie Giblin. Telephone (202) 447-1800. Comments will be available for inspection and photocopying.

**FOR FURTHER INFORMATION CONTACT:** Darrel W. Dochow, Deputy Director, Bank Organization and Structure Division, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, S.W., Washington, D.C. 20219. Telephone (202) 447-1184. Further information may also be obtained from the Regional Director for Corporate Activities in any office of the Regional Administrator of National Banks.

**SUPPLEMENTARY INFORMATION:** Several persons contributed significantly to the drafting of this document.

**Background**

On November 1, 1976, the Office published a Policy Statement of Corporate Activities (41 FR 47964) setting forth its policies regarding applications to charter new national banks. The purpose of the 1976 policy statement was to advise potential applicants of the requirements and views of the Office in processing and deciding charter applications. Review of the 1976 charter policy has indicated a need for clarification. The policy statement adopted here more clearly reflects the existing policy of the Office.

The revised policy statement emphasizes the importance of the organizers and proposed directors (organizing group) and their capacity and plans (operating plan) to establish and operate a bank to serve the targeted community (market) in light of its economic and competitive characteristics. This represents a shift in emphasis from the appraisal of economic and competitive conditions in the community to be served to the appraisal of the organizing group and its operating plan. This shift in emphasis reflects the Office's experience that an excellent organizing group with solid financial backing and a well-conceived and developed operating plan normally is able to establish and operate a successful bank even in the most economically distressed or most highly competitive markets. Accordingly, neither the distressed condition of a market nor the existence of an "adequate" number of banking offices should provide the basis for denying organizing groups the opportunity to establish new banks to serve such markets. The shift in emphasis is consistent with the Office's view that the convenience and needs of communities for banking services are best served by a high degree of competition and with the Office's view that qualified persons should have the maximum opportunity to organize and operate a national bank.

Accordingly, although the revised policy statement does not alter the factors to be considered in evaluating an application, it reflects a policy that is somewhat less restrictive because market conditions alone will rarely provide the basis for denial. Rather, market conditions provide the context within which a new bank must operate and, therefore, provide the backdrop against which the organizers and their operating plan must be gauged. For example, an application that might be approved in a thriving but not yet fully competitive market might be denied in a market that poses special difficulties.

The revised policy statement also reflects a different mode of analysis in evaluating applications. The analytical framework within which decisions are made recognizes the complex relationships that exist among the factors considered in appraising the operating plan and between those factors and the organizing group. The policy makes it clear that weaknesses in certain elements of the application can be overcome by strengths in other aspects. Increased importance is placed on the reasonableness and consistency of the organizing group's operating plan. The operating plan must demonstrate, within the context of the community's economic and competitive characteristics, a reasonable likelihood that the organizing group will be able to establish and operate a successful bank.

In addition, the revised policy statement clarifies the Office's two-step process in analyzing and finally approving new bank applications. An extensive analysis is first made to determine whether an application should be disapproved or preliminarily approved. A preliminary approval normally includes conditions and procedural requirements that must be met before a final approval (charter) will be granted. The second step ensures that all conditions and procedural requirements for opening the bank that were required by the preliminary approval letter have been fulfilled, and that initial implementation of the operating plan has been undertaken by the organizing group. When all requirements are met a final charter is granted.

Because of the Office's emphasis on the appraisal of the organizing group and its operating plan, and because of the Office's desire to minimize unwarranted government intervention and to promote competition, several provisions of the 1976 policy statement are no longer included in the revised policy statement. These provisions include:

(a) Eliminating the requirement that the Office's prior approval be obtained for changes in the directorate during the first 2 years of operation. Recent changes in statutes have given the Office greater powers to require corrective actions by national banks and their directors. In addition, new banks are generally subject to more frequent examinations than other banks.

(b) Deleting the general requirement, for applications not associated with a bank holding company, that stock ownership by any one individual, partnership or corporation be limited to 10 percent of total capital stock and that a majority of the stock should be issued

to community residents, persons with substantial business interests in the community, or others who can be reasonably expected to utilize the services of the bank. In its place is a statement that wide distribution of stock and active shareholder and director participation encourage community support.

(c) Replacing the requirement that persons purchasing more than 5 percent of the stock not finance more than 50 percent of that purchase with a statement that organizers should not be dependent on funds from the proposed bank to satisfy their financial obligations during the bank's initial years of operation.

(d) Replacing the specific capital adequacy tests based on loans and deposits with a requirement that capital (net of organizational expenses) be sufficient to support the projected volume and type of business. In addition, directors should have realistic plans to obtain, or available resources to supply, capital when needed.

(e) Shifting the burden of determining whether organizational expenses are reasonable from the Office to the organizing group and prospective shareholders. The Office, however, may prohibit expenses from being paid from bank funds when they are clearly excessive and/or require that additional capital, sufficient to compensate for the excessive expenses, be raised prior to the bank opening.

(f) Replacing the provision that a new banking office will not be approved if its establishment would threaten the viability of a bank chartered within the past year with a statement of the principles the Office follows in deciding new bank applications. These principles are: The Office has responsibility for maintaining a sound banking system; the marketplace normally is the best regulator of economic activity; and competition allows the marketplace to function and promotes a sound and more efficient banking system that better serves customers.

The Office solicits comments on all provisions of its chartering policy and on whether any of the language in the policy statement is not sufficiently clear or concise. In addition, because the Office is reviewing the forms and procedures used in processing charter applications, the Office would welcome comments on ways to reduce the cost and burden and to minimize government interference associated with its forms and processing procedures.

Part 5 of Title 12, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 5 is as follows:

*Authority:* 12 U.S.C. 1 *et seq.*

2. Paragraphs (b) and (c) of § 5.20 are amended to read as follows:

[This amendment revises § 5.20(b) and (c) as they appear in Docket #80-11. Docket #80-11 consolidates § 5.20 into the new Part 5.]

**§ 5.20 Organization of a national bank.**

\* \* \* \* \*

(b) *Authority.* 12 U.S.C. 1 *et seq.* 21, 22, 26, 27, 92a, 1814(b) and 1816; and 12 CFR 25. The Office derives its chartering authority and standards for evaluating charter applications from the National Bank Act of 1864 and the Federal Deposit Insurance Act of 1935. These laws set forth the framework for chartering national banks and specify the factors that this Office must consider in determining whether to grant a national bank charter. In addition, the Community Reinvestment Act (CRA) requires the Office to assess the proposed CRA statement and anticipated record of meeting the credit needs of the proposed bank's entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the bank, and to take that assessment into account in its evaluation of a new bank application.

The statutory factors the Office must consider in deciding whether to approve or disapprove applications to establish new banks are:

- (1) The bank's future earnings prospects;
- (2) The general character of its management;
- (3) The adequacy of its capital structure;
- (4) The convenience and needs of the community to be served by the bank;
- (5) The financial history and condition of the bank; and
- (6) Whether or not it has complied with all provisions of the National Bank Act and whether or not its corporate powers are consistent with the purposes of the Federal Deposit Insurance Act.

(c) *Policy.* The purpose of this policy statement is to set forth the analytical framework within which the Office seeks to fulfill its responsibilities to determine whether a proposed bank is likely to be operated in a safe and sound manner, possesses reasonable prospects for success and can be expected to help meet the credit needs of its entire community. This policy statement is also intended to facilitate applicant and public understanding of the decision process, to aid in the structuring of new bank proposals and the development of information necessary for the evaluation of proposals, and to minimize the filing of unwarranted proposals. It should be emphasized at the outset that

administration of the statutes necessarily involves a rigorous appraisal and a weighing of the relevant statutory factors in the context of the economic and competitive conditions in the community (market) to be served. Because of complex relationships among the factors, evaluation of the application is based upon both objective facts and subjective judgments that reflect the experience of the Office as the principal supervisor and regulator of national banks. In making these judgments, the Office is guided by the following principles: the Office has responsibility for maintaining a sound banking system; the marketplace normally is the best regulator of economic activity; and competition allows the marketplace to function and promotes a sound and more efficient banking system that better serves customers. Accordingly, it is the policy of the Office to foster competition through the chartering of national banks proposed by organizers and proposed directors (hereinafter, "the organizing group") whose experience and resources, plans for establishing and operating a bank (hereinafter, "the operating plan"), financial strength, competency and honesty indicate that, within the context of the economic and competitive conditions in the market to be served, the proposed bank will have a reasonable likelihood of success and will be operated in a safe and sound manner. It is not the policy of the Office to ensure that a proposal is without risk nor to protect existing competitors from the competition a new bank will provide.

(1) To ensure identification of proposed banks that would have less than reasonable prospects for success, the Office evaluates a proposed bank's organizing group and the group's operating plan for establishing and operating a bank. The operating plan should address the statutory factors contained in the Federal Deposit Insurance Act. These factors are enumerated in paragraph (b) *Authority*. In evaluating the operating plan, the Office appraises the proposed bank's earnings prospects, ability of proposed management (directors and executive officers, if identified), adequacy of initial capital, reasonableness and appropriateness of anticipated community service and the safety and soundness of intended operations.

(i) Deficiencies in one factor may be compensated for by strengths in one or more of the other factors. However, deficiencies in certain factors, such as unrealistic earnings prospects, tend to reflect negatively on other factors, such as capital adequacy and community

service, and may result in denial. In addition, each element of the operating plan reflects either positively or negatively on the organizing group and will influence the appraisal of the organizing group's acceptability. For example, if any aspect of the operating plan is inappropriate in the context of the market to be served, it reflects negatively on the organizing group's ability to operate a successful bank.

(ii) The appraisal of each of the elements of the operating plan and the appraisal of the organizing group are evaluated together in light of the Office's experience in chartering national banks. That experience has shown that an organizing group and its operating plan must be stronger in markets in which economic conditions are marginal, or in which competition is intense. If the evaluation shows that a proposed bank has less than reasonable prospects for success or is not likely to be operated in a safe and sound manner, the application will be disapproved.

(iii) When an application is disapproved, a letter containing the basis for the disapproval is sent to the Agent (person named in the application to represent the organizing group) and other interested parties to the application. Likewise, when the evaluation shows that, on balance, the application should be approved, a preliminary approval letter is sent to the Agent which contains the conditions and procedural requirements (see § 5.20(g), Other Procedures) that must be fulfilled to the Office's satisfaction before a final approval (charter) is granted and the bank is permitted to open for business. Typical conditions included in the preliminary approval letter include the Office's prior approval of executive officers, the raising of adequate initial capital, and full disclosure of actual and anticipated organizational expenses. In addition, the Office may impose other conditions in order to strengthen a weak component of an otherwise sound operating plan. Initial implementation of the operating plan must also be underway before final approval will be granted.

(iv) Applications sponsored by holding companies or individuals affiliated with other banking institutions present a different set of circumstances than applications filed by organizing groups who have not previously organized a bank. In the case of applications associated with bank holding companies or affiliated institutions, the Office generally has the benefit of appraising service in the market to be served and prospects for success in light of a record of past

performance. That record of performance will be evaluated through a review of the holding company's and/or affiliated institution's Reports of Examination, financial statements, and other information available to the Office as part of its supervisory responsibilities. In addition, the holding company's overall philosophy and plans (strategic, capital, management, profitability, etc.) will be reviewed for consistency and compatibility with the new bank's operating plan. Although the existence of such a record facilitates analysis, it does not necessarily provide an advantage to the organizing group. In instances where the proposed bank is affiliated with institutions which are subject to more than ordinary supervisory concern, the application may be disapproved or it may be approved subject to a condition that the affiliates' problems be corrected prior to granting the charter. Conversely, where the holding company or affiliated institutions serve as substantial sources of strength, applications are likely to be approved even in markets in which economic and competitive conditions are the least hospitable.

(2) *Organizing group.* (i) An organizing group's collective ability to establish and operate a successful bank must be demonstrated by the operating plan and other information supplied in the application. A poorly conceived and developed operating plan reflects adversely on the organizing group and will generally result in a disapproval of the application. The organizing group must have the experience, competence, willingness and ability to be active in directing the bank's affairs in a safe and sound manner. Strong organizing groups generally have a balanced diversification of business and financial interests and community involvement. When the organizing group is affiliated with a holding company or one or more other financial institutions, the affiliated institutions' financial history and condition, ownership, management ability, scope of operations, performance under CRA and compliance with law are considered in appraising the organizing group.

(ii) The investigation and analysis of each organizer's financial and biographical background must reflect a history of responsibility and personal integrity. Personal wealth is not a prerequisite to being an organizer and/or a director. However, the directors' stock purchases in the aggregate should reflect a financial commitment to the success of the bank which is reasonable in relation to their financial strength. Moreover, the proposed directors'

individual and collective financial strengths should be sufficient to avoid having to depend on bank dividends, fees, or other compensation to satisfy their financial obligations during the bank's initial years of operation.

(iii) In the case of an application sponsored by a holding company, the holding company's financial condition must be sufficient to enable it to support the new bank's operations and to provide capital when needed. Because the directors are often the primary source of additional capital for banks not affiliated with a holding company, it is desirable that they have realistic plans to obtain, or available resources to supply, capital when needed.

(iv) Any financial or other business arrangement, direct or indirect, between the organizing group or other insiders and the bank must be above reproach, i.e., involving terms and conditions not more favorable to the insiders than would be available in a comparable transaction with unrelated parties otherwise similarly situated. All such dealings will be subject to special scrutiny.

(3) *Operating plan.* Within the context of the economic and competitive conditions in the market to be served, an operating plan must demonstrate that the proposed bank will have reasonable earnings prospects, that it will be able to hire and retain competent executive officers (chief executive officer and/or president, cashier or similar position, and other senior personnel), that it will maintain adequate capital, that it will offer services responsive to community needs and that it will be operated in a safe and sound manner in compliance with applicable laws.

(i) *Earnings prospects.* The risk associated with operating a newly chartered bank is significantly lessened when the bank achieves profitable operations. Therefore, the operating plan must demonstrate that, within the context of the economic and competitive conditions in the market to be served, the proposed bank can reasonably be expected to achieve and sustain profitability. Most successful new banks are profitable, on a yearly basis, between the second and fourth years of business. *Pro forma* balance sheets and income statements are required as part of the application and must demonstrate the ability of the proposed bank to attain profitable operations. The *pro forma* projections must be based upon the organizing group's plans for operating the bank and should reflect the anticipated asset and liability mix, planned fixed asset investment, volume of business, type and quantity of services to be offered, convenience and

suitability of the site selected, anticipated number of employees, and officer remuneration. All projections should be based on realistic assumptions. The projections will be reviewed for reasonableness and consistency with the rest of the operating plan.

(ii) *Ability of management.* The initial board of directors, generally comprised of many if not all the organizers, is responsible for selecting competent executive officers prior to final approval. The board of directors and executive officers comprise the management of the bank.

(A) Management ability is evaluated in terms of information contained in the operating plan and the overall experience of the organizing group. Where the organizing group has limited banking experience or community involvement, executive officers must have experience and community involvement sufficient to compensate for such deficiencies.

(B) If the operating plan encompasses specialized types of financial services, executive officers should have experience relevant to the administration, development and maintenance of those services. In the case of an application sponsored by a holding company or organizing group that has affiliations with one or more other financial institutions, the ability of the holding company or affiliate(s) to provide management support and specific expertise will be considered.

(C) The identification of acceptable executive officers at an early date is beneficial and reflects positively on the appraisal of the organizing group and its operating plan. Because of the critical importance of the character and competence of management, the Office's prior written approval of the organizing group's candidates is required before any selections are made for management positions (chief executive officer and/or president, cashier or similar position, and other senior personnel) identified in the preliminary approval letter. Because various statutory provisions require documents to be executed by either the president or the cashier or both, a president must be employed prior to solicitation of stock subscriptions and a cashier must be hired prior to the granting of the charter and the commencement of business.

(D) In addition, for a time period of two years from the date final approval is granted, the Office's prior written approval is required for any hiring or dismissal the board of directors wishes to make involving management positions (chief executive officer and/or president, cashier or similar position,

and other senior personnel) identified in the preliminary approval letter.

(iii) *Adequacy of capital.* The organizing group should propose capital (net of organizational expenses) that is sufficient to support the projected volume and type of business. Other factors that are considered in determining the adequacy of capital include earnings prospects, economic and competitive conditions in the community to be served, the experience and competence of management, the risks inherent in the expected assets and liabilities, the amount of fixed asset investment, and the dependability of plans to raise, or the ability of directors to supply, additional capital when needed. Initial capital should normally be in excess of \$1,000,000, net of any organizational expenses that will be charged to the bank's capital after it commences business. If initial capital is inadequate, but on balance the application would warrant approval had capital been adequate, preliminary approval may be given subject to the condition that additional capital be raised prior to the commencement of business.

(iv) *Community service.* The organizing group's knowledge of and plans for serving the community should be evident in the operating plan. A Community Reinvestment Act (CRA) statement must be prepared and submitted as part of the operating plan. The CRA statement must reflect the organizing group's plan for achieving the bank's affirmative obligation to help meet the credit needs of its entire community, including low- and moderate-income neighborhoods. (See 12 CFR Part 25)

(A) The organizing group must evaluate the community's (consumer, business and government) needs as part of the operating plan so that services to be offered will be responsive to those needs, will be convenient to customers, will be provided efficiently, and will be consistent with the safe and sound operation of the bank. Moreover, the operating plan should reflect realistic proposals for marketing the bank's services in light of the banking services currently provided in the community, and those not provided, and the current and anticipated competitive environment for banking services in the community.

(B) Community support is important to the long-run success of a bank. Therefore, plans for attracting and maintaining community support must be included in the application. For banks that are not affiliated with a holding company or another financial institution, a wide distribution of stock



in the community and active shareholder and local director participation encourage community support. Affiliated banks can obtain community support through similar means such as local residency of some directors or selection of a local advisory board.

(C) If economic conditions in the community to be served are marginal, or the competitive climate is intense, indicating a limited opportunity for a new bank, the organizing group should present information in the operating plan that demonstrates that the new bank will be able to cope with these conditions and have reasonable prospects for success.

(v) *Safety and soundness.* The operating plan must reflect sound banking proposals which demonstrate realistic assessments of risk in light of the economic and competitive conditions of the market to be served and which comply with applicable statutes and regulations. (A) Through the appraisal of the operating plan, the Office will evaluate the organizing group's awareness and understanding of national banking laws, and their ability to operate, not only within these laws, but also in a manner consistent with prudent banking practices. An application which does not meet safety and soundness requirements reflects adversely on the organizing group and will be disapproved.

(B) In the case of an application sponsored by a bank holding company or an application filed by an organizing group affiliated with another institution, an analysis will be made of those institutions' histories of safe and sound operations. In addition, if supervisory problems exist in the parent or affiliated institution(s), the Office may disapprove a new bank application or approve it subject to the condition that the problems be corrected prior to the granting of the charter.

(4) *Additional factors and requirements.* (i) *Material misrepresentation or omission of facts.* All information filed in connection with the application is subject to review and verification. Any material misrepresentation or omission of facts in the application or supporting materials may subject the organizing group to severe criminal penalties, including those provided in 18 U.S.C. 1001. Additionally, such findings reflect adversely on the character of the organizing group and will generally result in the disapproval of the application. If a misrepresentation or omission is discovered after the bank has commenced business, action to revoke the charter may be pursued.

(ii) *Offering circular.* An offering circular will be necessary for all capital obtained through a public offering. Compliance with the Office's Offering Circular regulations, 12 CFR Part 16, will be required.

(iii) *Organizational expenses.*

(A) Expenses incurred by the organizing group in making application for and organizing a bank will generally be allowed as a charge to an approved bank's capital if such expenses are documented and disclosed to current and/or prospective shareholders with sufficient information to enable them to evaluate the reasonableness of expenses. Organizational expenses typically include the filing fee, cost of professional and consulting services, travel expenses, printing, postage, telephone and supply costs. While some professional and consulting assistance is normal and may properly be charged to the bank's organizing expenses, organizers are expected to be able to contribute time and expertise to the organization of the bank and should neither unduly rely upon, nor make an excessive charge to, the bank's accounts for professional and consulting services.

(B) Organizational expenses which are not documented, not adequately disclosed, clearly unnecessary, or so large that the payment would render capital inadequate, reflect adversely on the organizing group. The Office may prohibit payment of clearly excessive expenses from bank funds and/or require that additional capital, sufficient to compensate excessive expenses, be raised prior to the opening of the bank.

(C) Organizational expenses for disapproved applications are the sole responsibility of the organizing group. Any fee which is contingent upon any action, decision, or forbearance on the part of the Office will generally be grounds for withdrawal of the preliminary approval or for disapproval of the application.

(iv) *Joint filing of similar applications.* When substantially similar state and national charter applications are filed by the same organizing group or person(s) representing the same interest, the Office will consider the national bank application abandoned unless a satisfactory demonstration can be made that the state bank application is not being processed in due course.

(v) *Choice of corporate title.* The name of the proposed bank will be approved in accordance with the policy on title changes. (See 12 CFR 5.42)

\* \* \* \* \*

Dated: October 1, 1980.

John G. Heimann,

Comptroller of the Currency.

[FR Doc. 80-31914 Filed 10-14-80; 8:45 am]

BILLING CODE 4810-33-M

## 12 CFR Part 5

[Docket No. 80-13]

### Rules, Policies, and Procedures for Corporate Activities: Change in Bank Control

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

**ACTIONS:** Adoption of new policy; request for comments on new policy and form, and on requirements generally.

**SUMMARY:** The Office of the Comptroller of the Currency ("Office") today consolidated its rules, policies and procedures on corporate activities filings by national banks and related matters into 12 CFR Part 5, Rules, Policies and Procedures for Corporate Activities. [See Docket No. 80-11.] The rules policies and procedures for changes in bank control, previously in 12 CFR Part 15, have been transferred to § 5.50 of Part 5. In addition, the Office is adopting a policy statement on disclosure of information filed with the Office concerning changes in bank control (§ 5.50(i)). Although the disclosure policy is adopted in final form, effective immediately, comments are requested on the disclosure policy statement, several specific issues, and any other aspects of § 5.50.

**DATES:** These amendments are effective October 15, 1980. Comments must be received on or before December 15, 1980.

**ADDRESS:** Comments should be directed to Docket No. 80-13, Communications Division, 3rd Floor, Office of the Comptroller of the Currency, 490 L'Enfant Plaza, S.W., Washington, D.C. 20219. Attention: Marie Giblin. Telephone: (202) 447-1800. Comments will be available for public inspection and photocopying.

**FOR FURTHER INFORMATION CONTACT:** W. Michael Herrick, Attorney, Securities Disclosure Division, Office of the Comptroller of the Currency, 490 L'Enfant Plaza, S.W., Washington, D.C. 20219. Telephone: (202) 447-1954.

**SUPPLEMENTARY INFORMATION:** The Principal drafters of this document were Frederick R. Medero (no longer with the Office of the Comptroller of the Currency), W. Michael Herrick and other staff of the Securities Disclosure Division.



**Disclosure policy.** Under the Change in Bank Control Act of 1978 ("Act"), a person<sup>1</sup> intending to acquire control of a national bank must give this Office written notice ("Notice") at least 60 days prior to acquiring control. The Office has received a number of requests pursuant to the Freedom of Information Act, 5 U.S.C. 552 ("FOIA") for information relating to the filing of Notices under the Act, the content of Notices and the disposition of Notices. The Office has denied such requests based on the exemptions provided in 5 U.S.C. 552 (b)(4), (b)(6), and (b)(8).

As to the existence of a Notice under the Act, the Office believes that such information generally is entitled to exemption from disclosure under FOIA until the 60-day statutory period (plus any extensions thereof) has expired without issuance of a written notice of disapproval or the issuance of a written notice of intent not to disapprove and after the transaction subject to the Notice has been consummated; or until the issuance of a written notice of disapproval is judicially appealed. In the latter case, the filing of an appeal in a Federal court of appeals will, in effect, disclose existence of the Notice. In addition, if, as a result of actions by the person filing the Notice or necessary verification or investigation by the Office, existence of the Notice becomes known to members of the public at earlier times, the Office may regard the existence of the Notice and certain summary information discussed below as no longer entitled to exemption under the FOIA.

The routine public disclosure that a Notice under the Act has been filed could have a material effect upon the ability of the person seeking to acquire control of a bank to consummate the transaction following a non-adverse disposition of the Notice. The release of such information could provide persons opposed to the subject transaction opportunities, which they might not otherwise have, to muster various defensive tactics to repel the proposed change of control. In addition, the release of such information could materially affect the price at which the change of control might be accomplished. A review of the language of the statute and the legislative history does not reveal Congressional intent that the Act serve either as a device for triggering defensive action on the part of persons who may be opposed to a change in control, or to alter the

economics of the marketplace in which control may be acquired. At the same time, the structure of the statute and its history reflect a clear Congressional expectation that public contacts necessary for appropriate verification will be pursued by the Office.

A person filing a Notice under the Act may, of course, voluntarily make public disclosure at any time of the existence of the Notice and/or its contents. The format of the Notice, as revised, enables such person to indicate affirmatively no objection to early public release by the Office of the Summary Fact Sheet, new Part E of the Notice.

Although not apparent with respect to the Act, an intent on the part of Congress to alter the dynamics of the marketplace for acquisitions of control where accomplished through certain securities transactions is evident in the enactment of the Williams Act Amendments to the Securities Exchange Act of 1934 ("Exchange Act") 15 U.S.C. 78a, *et seq.* Sections 13(d) and 14(d) of the Exchange Act require persons engaging in certain types of transactions involving the acquisition of securities to file, with the issuer of the securities and the Securities and Exchange Commission ("Commission"), statements setting forth information as delineated in the statute and by Commission rules and regulations. The requirements of the Exchange Act apply in the instance of bank securities required to be registered pursuant to Section 12 thereof, and the Federal banking agencies are vested with all the powers, functions and duties vested in the Commission to administer and enforce those and various other statutory requirements with respect to those financial institutions for which they are the primary regulator. Thus, persons seeking to acquire shares of a national bank having a class of securities registered under Section 12 of the Exchange Act, in transactions subject to Sections 13(d) and 14(d) of the Exchange Act, must comply with the filing and disclosure standards of that statute and the Office's regulations thereunder (12 CFR Part 11). However, there is no evidence that the Act extended Exchange Act-like requirements to similar transactions in non-registered securities of national banks.

This disclosure policy, adopted as 12 CFR 5.50(i), will result in the public release of specified information upon consummation of a change in control.

Where a change in control is disapproved, the Office will release the same information upon the expiration of the date within which an appeal must be

taken, or upon the filing of an appeal with the appropriate court. Normally, public release of the information will be made in the Office's *Weekly Bulletin* published by the appropriate Regional Office on the Friday following the operative date. In addition, the specified information may be released by the Office whenever knowledge of the existence of the Notice otherwise becomes available to members of the public. The information which will be disclosed is contained in the new Summary Fact Sheet, Part E of the Notice, as set forth below.

#### PART E—SUMMARY FACT SHEET

##### Summary Fact Sheet—Change in Bank Control Act ("Act")

- a. Name of bank.
- b. Address of bank.
- c. Name of person\* filing the Notice.
- d. Mailing address of person filing the Notice.
- e. Country of residence of person filing the Notice.
- f. Status of person [Check one or more of the following]:

- |  |   |
|--|---|
| <input type="checkbox"/> Individual    | <input type="checkbox"/> Pool             |
| <input type="checkbox"/> Corporation   | <input type="checkbox"/> Syndication      |
| <input type="checkbox"/> Partnership   | <input type="checkbox"/> Sole             |
| <input type="checkbox"/> Trust         | <input type="checkbox"/> Proprietorship   |
| <input type="checkbox"/> Association   | <input type="checkbox"/> Unincorporated   |
| <input type="checkbox"/> Joint Venture | <input type="checkbox"/> Organization     |
|  | <input type="checkbox"/> Other [Describe] |

- g. Citizenship or place of organization of each person.

- h. Number of shares of record owned by the person and the percentage of the class represented thereby.

- i. Number of shares owned beneficially, but not of record, by the person and the percentage of class represented thereby.

- j. Number and class of voting shares to be acquired and the percentage of the class represented thereby.

- k. Proposed date of acquisition of control.

- l. If the person filing does not object to disclosure of this information upon acceptance of the Notice for filing (see instructions), so indicate by checking this box:

##### Disposition

(This information will be inserted by the Office of the Comptroller of the Currency)

\*As used herein, the term "person" means an individual or a corporation, partnership, trust, association, joint venture, pool syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed herein. 12 U.S.C. 1817(j)(8)(A).

##### Instructions

This Part E sets forth a summary of information required in response to various items set forth in Parts A through D of the

<sup>1</sup>"Person" means an individual or a corporation, partnership, trust, association, joint venture, pool syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed herein." 12 U.S.C. 1817(j)(8)(A).

Notice. The information contained herein will be publicly released as follows:

1. Where there is an affirmative indication in the Notice of no objection by the filing person, public release will be made as soon as practicable after acceptance of the Notice for filing.

2. Where the statutory period (together with any extensions) expires without the issuance of a written notice of disapproval of a change of control or where a written notice of intention not to disapprove is issued, public release normally will be made after the date set forth in response to Item k. of Part E.

3. Where a written notice of disapproval of a change of control is issued, public release normally will be made upon the expiration of any applicable appeal date without appeal being taken or upon appeal being taken to the appropriate U.S. Circuit Court of Appeals.

4. Where the Notice is withdrawn prior to disposition, no public release normally will be made.

5. If members of the public become aware of the existence of the Notice, public release may be made at the discretion of the Office of the Comptroller of the Currency ("Office") at other times. Necessary verification and inquiry by the Office in processing a Notice may result in disclosure of its existence.

6. If the transaction is not completed by the date specified in response to Item k. of Part E, public release normally will be made on that date unless a written request is received prior thereto which specifies a different date for completion of the transaction and release of information. Reasonable requests involving short delays normally will be honored.

7. The public release of this information in no way affects the obligations and liabilities which the person filing the Notice may have under Sections 13(d) or 14(d) of the Securities Exchange Act of 1934.

\* \* \* \* \*

*Comments on Disclosure Policy.* The Office also believes that the entire subject of public release of information under the Act may be of broad interest to various persons. Consequently, the Office requests public comment on this policy generally and, in particular, with respect to the following questions:

A. To what extent would early release of the fact that a Notice has been filed with respect to an identified bank be useful in eliciting information from the community as to whether a notice of disapproval should be issued?

B. To what extent would the interests of a person filing a Notice be prejudiced by early disclosure of its existence?

C. To what extent should information in the Summary Fact Sheet be expanded or limited?

D. Should the Office as a matter of policy provide that, where possible, a person filing a Notice will be given prior

notice if, before the specified release time, information contained in Part E is to be placed in the public record in an administrative or judicial proceeding? (The Federal Trade Commission recently initiated such a policy with respect to pre-merger notification materials filed under Section 7A of the Clayton Act, 15 U.S.C. 18a. See 45 FR 21215, April 1, 1980.)

E. What guidelines or criteria should the Office employ in connection with releasing the Summary Fact Sheet where public knowledge of the existence of the Notice arises from the Office's verification efforts?

F. Section 5.50(d) provides that certain acquisitions create a rebuttable presumption that control has been acquired, and establishes that information may be submitted orally or in writing to rebut that presumption. Under what circumstances should any of such information be released? In addition, if the acquiring person files a Notice, as a precaution, and successfully rebuts the presumption of control (thereby rendering the filing of the Notice unnecessary), under what circumstances, if any, should the Summary Fact Sheet be released?

*Comments on Other Aspect of Changes in Bank Control.* Comments are requested on any aspect of § 5.50 (printed in its entirety in Docket No. 80-11 in today's Federal Register). Comments should be as specific as possible and include suggested revisions and reasons therefor. In particular:

G. Are there existing Office rules, policies or procedures not presented in § 5.50 but which should be included either in their present or modified form?

H. Should there be any deletions, other additions or other changes in the Office's rules, policies or procedures on changes in bank control?

I. Should there be any deletions, additions, or changes in the Notice required to be filed prior to a change in bank control?

The Office finds that receiving public comments prior to the adoption of the new policy statement on disclosures concerning changes in control of national banks and delaying the effective date would not be in the public interest because of the limited time permitted by the Freedom of Information Act to respond to requests for information. Accordingly, Part 5 of Title 12, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 5 is as follows:

Authority: 12 U.S.C. 1 *et seq.*

2. Section 5.50 revised in Docket 80-11 published elsewhere in this issue, is amended by adding paragraph (i) as follows:

**§ 5.50 Change in bank control.**

(i) *Disclosure Policy.* The contents of a Notice under the Act and the information provided therein is exempt from public disclosure under the Freedom of Information Act, 5 U.S.C. 552 ("FOIA"). Because consummation of the acquisition of control will remove the bases on which the existence of the Notice is entitled to exemption under FOIA, upon consummation the Office will publicly reveal the existence of the Notice and that information in the Notice not entitled to continued FOIA exemption. In order to facilitate such disclosure, Part E of the Notice format consists of a summary ("Summary Fact Sheet") which the person subject to the statute and regulations is required to complete as part of the Act filing. The information provided in the Summary Fact Sheet normally will be released publicly by the Office together with a statement as to the disposition of the Notice, in accordance with a specified time sequence. Normally, public release of the information will be made in the Office's *Weekly Bulletin* published by the respective Regional Office on the Friday following the operative date.

(1) The instructions to Part E of the Notice indicate that when the person filing the Notice affirmatively indicates no objection to public release of the information contained in the Summary Fact Sheet, public release normally will be made as soon as practicable after acceptance of the Notice for filing.

(2) When the Office has not disapproved an acquisition of control within the statutory period (and any extensions thereof) the Office normally will release publicly the information contained in the Summary Fact Sheet upon completion of such acquisition of control.

(3) When the Office has issued a written notice disapproving the proposed acquisition of control, the Office normally will release publicly the information set forth in the Summary Fact Sheet upon expiration of the date within which any appeal must be taken, or upon the filing of an appeal with the

United States Court of Appeals for the appropriate circuit.

(4) When a Notice under the Act is filed but withdrawn prior to agency action or expiration of the statutory waiting period, the Office normally will not release publicly the Summary Fact Sheet. Since the proposed change of control would be rendered moot, any release of information with respect thereto could prejudice the filing person in future proposed transactions.

(5) If the existence or content of a Notice becomes known to members of the public, the Office may release publicly the Summary Fact Sheet at its discretion.

\* \* \* \* \*  
Dated: October 1, 1980.

John C. Heimann,  
*Comptroller of the Currency.*

[FR Doc. 80-31915 Filed 10-14-80; 8:45 am]  
BILLING CODE 4810-33-M

**12 CFR Part 5****[Docket No. 80-14]****Rules, Policies, and Procedures for Corporate Activities; Written Comments and Hearings on Applications****AGENCY:** Office of the Comptroller of the Currency, Treasury.**ACTION:** Proposed rule.

**SUMMARY:** As part of a comprehensive review of the treatment of applications by national banks for structural and corporate activities, the Office of the Comptroller of the Currency ("Office") is proposing amendments to its rules governing public participation, through written comments and hearing, in the Office's decision process. The Office consolidated these rules today into the new Part 5 as set out in Docket # 80-11 published elsewhere in this issue.

**DATE:** Comments should be received on or before December 15, 1980.

**ADDRESS:** Comments should be sent to Docket No. 80-14, Communications Division, 3rd Floor, Office of the Comptroller of the Currency, 490 L'Enfant Plaza, S.W., Washington, D.C. 20219, Attention: Marie Giblin. Telephone (202) 447-1800. Comments will be available for inspection and photocopying.

**FOR FURTHER INFORMATION CONTACT:** Darrel W. Dochow, Deputy Director, Bank Organization and Structure Division, Office of the Comptroller of the Currency, 490 L'Enfant Plaza, S.W., Washington, D.C. 20219. Telephone (202) 447-1184. Further information may also be obtained from the Regional Director for Corporate Activities in any office of the Regional Administrator of National Banks.

**SUPPLEMENTARY INFORMATION:** The staffs of the Bank Organization and Structure Division and Regulations Analysis Division contributed significantly to the drafting of this document.

The Office is proposing amendments to its rules governing written comments and hearings on applications (§§ 5.10 and 5.11 revised in Docket 80-11 published elsewhere in this issue) in order to improve the quality of information presented orally and in writing, to eliminate any unnecessary costs or delays in the decisionmaking process and to facilitate the receipt of information from interested members of the public. The Office holds a hearing on an application, upon request or on its own motion, whenever a hearing appears necessary to obtain facts in

reaching a decision. Hearings on applications are informal, fact-gathering proceedings and are separate and distinct from the Administrative Procedures Act hearing procedures found in 12 CFR 19.

The proposed amendments contain significant differences from the existing rules (as consolidated in Docket #80-11) in five respects. First, the proposed rule specifies that the request for a hearing must explain why an oral presentation, rather than submission of written comments, is necessary. Current rules do not require such an explanation. Second, the proposed rule specifies that a request for a hearing must state the nature of the issues or facts to be presented. Current rules do not require this information. Under current rules, neither the Office nor parties to a hearing may be aware of the issues until the hearing commences, which decreases the opportunity for full presentation of relevant information and may result in hearings even when essential facts are undisputed. These changes would enable the Office to determine early in the process when a hearing is needed and would improve the quality of the arguments and counter-arguments be made in oral or written submissions.

The third and fourth changes are designed to reduce the costs of participating in a hearing. Current rules generally provide that hearings be held in one of the 14 offices of the Regional Administrators of National Banks and that certain costs of the hearing are paid by the party requesting the hearing. The proposed rules provide that parties requesting a hearing may also request that, if a hearing is granted, it be held at a particular time and location and that the costs of the hearing be paid by the Office. These changes would enable the Office to encourage participation by persons who might not otherwise be able to do so.

Fifth, the current hearing rules are written to describe the parties to a hearing as either "applicants" or "protestants." However, the Office recognizes that hearings may involve supporters, opponents and other persons whose input is appropriate, although they may be neither applicants nor protestants. (For example, in light of the Community Reinvestment Act of 1977, a group which has knowledge of a bank's activities may desire to participate but does not desire to formally "protest" the application.) Accordingly, the proposed rules replace references to "protestants" with "other participants."

Comment is requested concerning these proposed changes and any other changes that should be made.

Accordingly, it is proposed that Part 5 of Title 12, Code of Federal Regulations be amended as follows:

1. The authority citation for Part 5 is as follows:

Authority: 12 U.S.C. §§ 1 *et seq.*

2. §§ 5.10 and 5.11 of 12 CFR 5 are proposed to be amended to read as follows:

**§ 5.10 Written comments and requests for a hearing.****(a) Written Comments.**

(1) Within 21 days after the last notice by publication required by § 5.8(a) or an applicable statute, any interested person may submit to the Regional Administrator written comments and data on an application. The 21-day period may be extended by the Regional Administrator if the applicant has failed to file all required supporting data in time to permit review by interested persons, or if other extenuating circumstances occur.

(2) When no hearing is held the public file (§ 5.9) will close on the expiration of the 21-day comment period, or any extensions thereof as provided in paragraph (a)(1) of this section.

**(b) Requests for a Hearing.**

(1) Within 21 days after the last notice of publication required by § 5.8(a) or an applicable statute, any interested person may submit to the Regional Administrator a written request for a hearing on an application. The 21-day period may be extended by the Regional Administrator if the applicant has failed to file all required supporting data in time to permit review by interested persons, or if other extenuating circumstances occur.

(2) The request shall state the nature of the issues or facts to be presented and the reasons why written submissions would be insufficient to make an adequate presentation to the Office. If the reasons are related to factual disputes, the disputes must be described.

(3) Hearings are ordinarily conducted in the city where the Office of the Regional Administrator is located. If a party requesting a hearing desires another location, or an unusual time of day, the written request for the hearing shall state the desired location and/or time of day and the reasons such alternatives are necessary or appropriate.

(4) A transcript of each hearing is arranged for by the Office. Transcript expenses, including two copies for the Office, and the cost of a hearing room, are generally borne by the person(s) requesting the hearing. If a person requesting a hearing desires a waiver of

these costs, the written request for the hearing shall state the reasons such waiver is appropriate and shall include a showing of need. When a waiver is granted, the costs of the transcripts for the Office and the person requesting the waiver, as well as the costs of the hearing room generally will be borne by the Office.

(5) Written requests for hearings will be evaluated by the Regional Administrator, who may grant or deny such requests in whole or in part (or may refer the request to the Washington Office for decision). A hearing may be limited to issues considered material by the Office. A hearing request may be denied if it is determined that written submissions would be adequate or that a hearing would not otherwise be beneficial to the decisionmaking process.

(c) *Action on Requests for Hearings.* If a request for a hearing has been made and denied, the Regional Administrator shall notify all interested persons and shall state the reasons for the denial. Interested persons may submit to the Regional Administrator, with simultaneous copies to the applicant, additional written comments or data on the application within 14 days after the date of the notice of denial. Copies of such written submissions or data shall simultaneously be sent by the person to the applicant. The applicant shall be provided an additional 7 days, after the 14-day deadline has expired within which to respond to any comments submitted within the 14-day period. The Regional Administrator may waive this 7-day period if so requested by the applicant. A copy of any response submitted by the applicant shall also be sent simultaneously to the other interested persons.

#### § 5.11 Hearings.

(a) *Notice of Hearing.* When a request for a hearing made in accordance with § 5.10 is granted, or when a hearing is determined by the Office to be in the public interest in the absence of a request, the Regional Administrator shall issue a Notice of Hearing. This Notice of Hearing shall:

(1) set forth the subject matter of the application and the date, time and place where the hearing will be held, and, if applicable, the issues which will be addressed at the hearing;

(2) be sent to the person(s) requesting the hearing, the applicant, and other interested persons who have sent written comments to the Regional Administrator.

(b) *Date of Hearing.* A hearing shall be held as soon as practicable after ordered, but generally not sooner than

21 days from the close of the 21-day comment period described in § 5.10(a).

(c) *Participation in Hearings.* Each person who wishes to be heard shall notify the Regional Administrator within 10 days after the date of the Notice of Hearing of his or her intention to participate in the hearing. The Regional Administrator will determine which persons will be permitted to participate. Persons who participate shall submit to the Regional Administrator, applicant(s), and such other person(s) as the Regional Administrator may require, the number and names of witnesses and a copy of each exhibit he or she wishes to present. Such information must be received by all participants at least 5 days prior to the hearing.

(d) *Presiding Officer.* The Office will designate the presiding officer at a hearing who shall have the authority to appoint a panel of assistants. The presiding officer shall determine all procedural questions not governed by this section. The presiding officer shall have the authority to limit the number of witnesses to be used by any party, and to impose such time limitations as he or she deems reasonable.

#### (e) *Hearing Rules.*

(1) *Presentations.* The applicant and each other party will each be permitted to make an opening statement, stating concisely what will be presented. Each party may then present witnesses, materials and data. Each party will then concisely summarize its position. The length and order of appearances will be determined by the presiding officer.

(2) *Witnesses.* The presence of witnesses is the responsibility of the parties. All witnesses will be present on their own volition, but any person appearing as a witness may be subject to questioning by any participant, by the presiding officer, or by any member of the panel. The refusal of a witness to answer questions may be considered by the Office in determining the weight to be accorded the testimony of that witness. Witnesses shall not be sworn.

(3) *Information Submitted.* The presiding officer shall have the authority to exclude data or materials which he or she deems to be improper or irrelevant. Formal rules of evidence shall not be applicable to these hearings. Documentary material must be of a size consistent with ease of handling, transportation and filing. Two copies of all documentary materials shall be furnished to the Office and one copy to each other participant in the hearing. While large exhibits may be used during the hearing, copies of such exhibits must be provided by the party in reduced size for submission as part of the record.

(f) *Closing the Public File.* If requested by any participant, the public file (§ 5.9) shall remain open for 14 days following receipt of the transcript by the Regional Administrator, during which time the applicant and other participants may submit additional written statements. A copy of any statement submitted during this period of time shall also be sent simultaneously to the other participants to the hearing. These statements, the hearing transcript and documentary material presented at the hearing shall automatically be deemed a part of the public file. The Office will complete the processing of the application after the public file has been closed.

#### (g) *Forms to be used by the Office:*

CC 7029-01: Regional Office  
Procedures—Public Hearings  
CC 7029-02: Notice of Hearing  
CC 7029-11: Protest Sheet

Dated: October 1, 1980.

John G. Heimann,  
Comptroller of the Currency.

[FR Doc. 80-31918 Filed 10-14-80; 8:45 am]  
BILLING CODE 4810-33-M

## 12 CFR Part 5

[Docket No. 80-15]

### Rules, Policies, and Procedures for Corporate Activities: Organization of an Interim National Bank; Delegated Authority

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

**ACTION:** Proposed rule.

**SUMMARY:** As part of a comprehensive review of the treatment of applications by national banks for structural and corporate activities, the Office of the Comptroller of the Currency ("Office") is proposing a rule to eliminate unnecessary duplication and delay in charter applications filed solely to facilitate bank holding company acquisitions or reorganizations.

**DATE:** Comments should be received on or before December 15, 1980.

**ADDRESS:** Comments should be sent to Docket No. 80-15, Communications Division, 3rd Floor, Office of the Comptroller of the Currency, 490 L'Enfant Plaza, S.W., Washington, D.C. 20219, Attention: Marie Giblin. Telephone (202) 447-1800. Comments will be available for inspection and photocopying.

**FOR FURTHER INFORMATION CONTACT:** James V. Elliott, Director, Bank Organization and Structure Division, Office of the Comptroller of the Currency, 490 L'Enfant Plaza, S.W., Washington, D.C. 20219. Telephone (202)



447-1184. Further information may also be obtained from the Regional Director for Corporate Activities in any office of the Regional Administrator of National Banks.

**SUPPLEMENTARY INFORMATION:** The primary draftsman of this document is James V. Elliot, Director, BOSD. Several other persons contributed to the draft.

The Office is proposing a revised rule (12 CFR 5.21) to eliminate duplication and delay in charter applications filed solely to facilitate the creation of a new bank holding company or the acquisition of 100 percent of the outstanding voting shares of an existing bank. The current rule is consolidated into the new Part 5 published today in Docket No. 80-11.

The statutory framework for national bank mergers and acquisitions was established prior to the expansion of bank holding companies. These statutes (12 U.S.C. §§ 181, 214a, 215, 215a and 1828(c)) generally provide only for mergers between two banks or an acquisition of a bank by another bank. Thus, if a bank desires to reorganize into a one-bank holding company structure, or if an existing bank holding company and an independent bank desire to have the bank become a subsidiary national bank of the bank holding company, only two avenues are available. First, the holding company may make an exchange or tender offer for all of the outstanding bank stock. In practice, however, it is extremely difficult to obtain 100 percent acceptance of such an offer, and the desired result, a wholly-owned subsidiary bank, is unattainable.

Second, a new bank subsidiary of the holding company can be created, and the new bank and the existing bank can merge or consolidate. The new bank, in such cases, does not engage in the business of banking until it becomes the surviving bank after the merger or consolidation. Thus, the new bank is known as an "interim bank," because it exists as a non-operating shell during the interim between its chartering and the effective date of the merger or consolidation. Under current rules, the interim bank charter application and the subsequent merger or consolidation application are each subject to full processing requirements as if they were totally independent events. Many procedures are either duplicated or occur consecutively.

Adoption of the proposal is expected to eliminate these duplications and delays. Proposed revised Part 5.21 states that the Office normally will grant preliminary approval promptly to an interim bank charter application, and substantive review of the entire

proposed transaction will occur after the subsequent application for merger or consolidation is filed. Regional Administrators will be delegated authority to grant preliminary approval, but not to disapprove applications, and normally will act within 2 weeks. The periods for public input and notices by applicants would run concurrently, rather than consecutively. This treatment would appear to ensure that substantive factors, including public comments, are taken into account, while minimizing unnecessary duplication and delay.

It is proposed that Part 5 of Title 12, Code of Federal Regulations, be amended as follows:

1. The authority citation for Part 5 is as follows:

Authority: 12 U.S.C. §§ 1 *et seq.*

2. 12 CFR 5.21 is proposed to be amended to read as follows:

**§ 5.21 Organization of an Interim National Bank.**

(a) *Scope; Interim National Bank Defined.* This section applies to applications to organize an interim national bank, as defined. An interim national bank is a new national bank which is organized solely in order to facilitate the creation of a bank holding company or the acquisition of 100 percent of the voting shares of an existing bank. It is always part of a proposed two-step process wherein the interim national bank, prior to commencing business, will be a party to a merger or consolidation with an existing bank.

(b) *Authority.* 12 U.S.C. §§ 1, 21, 22, 26, 27, 92a, 214, 215, 215a, 1814(b), 1816 and 1828(c).

(c) *Rules of General Applicability.* Sections 5.8(a), 5.10 and 5.11 do not apply to applications to organize an interim national bank. The application for an interim national bank and the subsequent merger or consideration application will be melded into a single process requiring, after the filing of the subsequent merger or consolidation application, one opportunity for public comment after notice is published by the applicant and one substantive review by the Office (see § 5.33).

(d) *Pre-filing Meetings.* The proposed organizers of a national bank should schedule a meeting with the Regional Administrator in the region where the application will be filed, prior to submitting an application for filing. The purpose of the meeting is to discuss the proposal and the Office rules, policies and procedures, including means to combine many procedural and processing requirements. Applicants will

be furnished forms and documents which should be filed with the application.

(e) *Filing Fee.* A filing fee of \$2,500 is required. This fee is separate from, and in addition to, the fee to process the application to merge or consolidate (see § 5.33).

(f) *Investigation.* No investigation of the interim bank application will be conducted. However, the Regional Office generally will perform an investigation after the filing of the subsequent merger or consolidation application. An additional fee will not be charged except in unusual circumstances.

(g) *Decisions.* Preliminary approval of all interim national banks will be specifically conditioned on approval of the subsequent merger or consolidation and will be automatically rescinded if the merger or consolidation is not approved. If the merger or consolidation application is not filed within 6 months of preliminary approval of the interim national bank, that preliminary approval automatically will be withdrawn unless an extension has been requested and granted.

(h) *Delegated Authority to Grant Preliminary Approval.* Each Regional Administrator has delegated authority to grant preliminary approval of, but not to disapprove, applications to charter interim national banks. The Regional Administrator will normally act on applications for an interim national bank within 2 weeks of submission of a complete application.

(i) *Subsequent Merger or Consolidation.* The application to merge or consolidate the interim and existing banks may not be filed until the Office gives preliminary approval to organize the interim bank and duly executed Articles of Association and the organization certificate have been filed with the Regional Office.

(j) *Consummation.* Prior to consummating the merger or consolidation, all steps necessary to perfect the organization of a national bank must be completed.

(k) *Forms.*

(1) *Forms to be used by Applicant:*

(Unassigned): Application to Organize a National Bank (Interim Bank)  
(Reserved)

CC 7020-18: Legal Notice—Application to Organize a National Bank (Interim Bank).

(2) *Forms to be used by Office:*

CC 7020-06: Confidential Memorandum to the Comptroller of the Currency—Application to Organize an Interim National Bank.

CC 7020-08: Regional Office  
Procedures—Interim Bank  
Applications

CC 7020-11: Washington Office  
Procedures—Interim Bank  
Applications

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2. The Office proposes to amend 12  
CFR 5.3 by adding a new subparagraph  
(5) to the end of paragraph (c) thereof to  
read as follows:

[See Docket #80-11 where the current  
regulation appears in its entirety as  
consolidated into the new Part 5.]

**§ 5.3 Corporate Activities Processing and  
Delegations.**

\* \* \* \* \*

(c) \* \* \*

(5) Each Regional Administrator is  
authorized to grant preliminary approval  
of, but not to disapprove, applications to  
organize an interim national bank.

Dated: October 1, 1980.

**John G. Heimann,**  
*Comptroller of the Currency.*

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