

Comptroller of the Currency, Treasury

§ 5.30

personnel to enable the OCC to assess their qualifications; and

(E) A description of the locations where the bank will conduct fiduciary activities.

(ii) If approval to exercise fiduciary powers is desired in connection with any other transaction subject to an application under this part, the applicant covered under paragraph (e)(1)(ii) or (e)(1)(iii) of this section may include a request for approval of fiduciary powers, including the information required by paragraph (e)(2)(i) of this section, as part of its other application. The OCC does not require a separate application requesting approval to exercise fiduciary powers under these circumstances.

(3) *Expedited review.* (i) An application by an eligible bank to exercise fiduciary powers is deemed approved by the OCC as of the 30th day after the application is received by the OCC, unless the OCC notifies the bank prior to that date that the filing is not eligible for expedited review under § 5.13(a)(2).

(ii) An eligible bank applying for fiduciary powers may omit the opinion of counsel required by paragraph (e)(2)(i)(B) of this section unless such opinion is specifically requested by the OCC.

(4) *Permit.* Approval of an application under this section constitutes a permit under 12 U.S.C. 92a to conduct the fiduciary powers requested in the application.

(5) *Notice of fiduciary activities in additional states.* No further application under this section is required when a national bank with existing OCC approval to exercise fiduciary powers plans to engage in any of the activities specified in § 9.7(d) of this chapter or to conduct activities ancillary to its fiduciary business, in a state in addition to the state described in the application for fiduciary powers that the OCC has approved. Instead, unless the bank provides notice through other means (such as a merger application), the bank shall provide written notice to the OCC no later than ten days after it begins to engage in any of the activities specified in § 9.7(d) of this chapter in the new state. The written notice must identify the new state or states involved, identify the fiduciary activities to be con-

ducted, and describe the extent to which the activities differ materially from the fiduciary activities that the bank was previously authorized to conduct. No notice is required if the bank is conducting only activities ancillary to its fiduciary business through a trust representative office or otherwise.

(6) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant and novel policy, supervisory, or legal issues, the OCC may determine that any or all parts of §§ 5.8, 5.10, and 5.11 apply.

(7) *Expiration of approval.* Approval expires if a national bank does not commence fiduciary activities within 18 months from the date of approval.

[61 FR 60363, Nov. 27, 1996, as amended at 66 FR 34797, July 2, 2001]

Subpart C—Expansion of Activities

§ 5.30 Establishment, acquisition, and relocation of a branch.

(a) *Authority.* 12 U.S.C. 1–42, and 2901–2907.

(b) *Licensing requirements.* A national bank shall submit an application and obtain prior OCC approval in order to establish or relocate a branch.

(c) *Scope.* This section describes the procedures and standards governing OCC review and approval of a national bank's application to establish a new branch or to relocate a branch. The standards of this section and, as applicable, 12 U.S.C. 36(b), but not the procedures set forth in this section, apply to a branch established as a result of a business combination approved under § 5.33. A branch established through a business combination is subject only to the procedures set forth in § 5.33.

(d) *Definitions*—(1) *Branch* includes any branch bank, branch office, branch agency, additional office, or any branch place of business established by a national bank in the United States or its territories at which deposits are received, checks paid, or money lent. A branch does not include an automated teller machine (ATM) or a remote service unit.

(i) A branch established by a national bank includes a mobile facility, temporary facility, drop box or a seasonal agency, as described in 12 U.S.C. 36(c).

(ii) A facility otherwise described in this paragraph (d)(1) is not a branch if:

(A) The bank establishing the facility does not permit members of the public to have physical access to the facility for purposes of making deposits, paying checks, or borrowing money (*e.g.*, an office established by the bank that receives deposits only through the mail); or

(B) It is located at the site of, or is an extension of, an approved main or branch office of the national bank. The OCC determines whether a facility is an extension of an existing main or branch office on a case-by-case basis.

(2) *Home state* means the state in which the national bank's main office is located.

(3) *Messenger service* has the meaning set forth in 12 CFR 7.1012.

(4) *Mobile branch* is a branch, other than a messenger service branch, that does not have a single, permanent site, and includes a vehicle that travels to various public locations to enable customers to conduct their banking business. A mobile branch may provide services at various regularly scheduled locations or it may be open at irregular times and locations such as at county fairs, sporting events, or school registration periods. A branch license is needed for each mobile unit.

(5) *Temporary branch* means a branch that is located at a fixed site and which, from the time of its opening, is scheduled to, and will, permanently close no later than a certain date (not longer than one year after the branch is first opened) specified in the branch application and the public notice.

(e) *Policy*. In determining whether to approve an application to establish or relocate a branch, the OCC is guided by the following principles:

(1) Maintaining a sound banking system;

(2) Encouraging a national bank to help meet the credit needs of its entire community;

(3) Relying on the marketplace as generally the best regulator of economic activity; and

(4) Encouraging healthy competition to promote efficiency and better service to customers.

(f) *Procedures*—(1) *General*. Except as provided in paragraph (f)(2) of this section, each national bank proposing to establish a branch shall submit to the appropriate district office a separate application for each proposed branch.

(2) *Messenger services*. A national bank may request approval, through a single application, for multiple messenger services to serve the same general geographic area. (*See* 12 CFR 7.1012). Unless otherwise required by law, the bank need not list the specific locations to be served.

(3) *Jointly established branches*. If a national bank proposes to establish a branch jointly with one or more national banks or depository institutions, only one of the national banks must submit a branch application. The national bank submitting the application may act as agent for all national banks in the group of depository institutions proposing to share the branch. The application must include the name and main office address of each national bank in the group.

(4) *Authorization*. The OCC authorizes operation of the branch when all requirements and conditions for opening are satisfied.

(5) *Expedited review*. An application submitted by an eligible bank to establish or relocate a branch is deemed approved by the OCC as of the 15th day after the close of the applicable public comment period, or the 45th day after the filing is received by the OCC, whichever is later, unless the OCC notifies the bank prior to that date that the filing is not eligible for expedited review, or the expedited review process is extended, under §5.13(a)(2). An application to establish or relocate more than one branch is deemed approved by the OCC as of the 15th day after the close of the last public comment period.

(g) *Interstate branches*. A national bank that seeks to establish and operate a de novo branch in any state other than the bank's home state or a state in which the bank already has a branch shall satisfy the standards and requirements of 12 U.S.C. 36(g).

(h) *Exceptions to rules of general applicability.* (1) A national bank filing an application for a mobile branch or messenger service branch shall publish a public notice, as described in § 5.8, in the communities in which the bank proposes to engage in business.

(2) The comment period on an application to engage in a short-distance branch relocation is 15 days.

(3) The OCC may waive or reduce the public notice and comment period, as appropriate, with respect to an application to establish a branch to restore banking services to a community affected by a disaster or to temporarily replace banking facilities where, because of an emergency, the bank cannot provide services or must curtail banking services.

(4) The OCC may waive or reduce the public notice and comment period, as appropriate, for an application by a national bank with a CRA rating of Satisfactory or better to establish a temporary branch which, if it were established by a state bank to operate in the manner proposed, would be permissible under state law without state approval.

(i) *Expiration of approval.* Approval expires if a branch has not commenced business within 18 months after the date of approval.

(j) *Branch closings.* A national bank shall comply with the requirements of 12 U.S.C. 1831r-1 with respect to procedures for branch closings.

§ 5.32 Expedited procedures for certain reorganizations.

(a) *Authority.* 12 U.S.C. 93a and 215a-2.

(b) *Scope.* This section prescribes the procedures for OCC review and approval of a national bank's reorganization to become a subsidiary of a bank holding company or a company that will, upon consummation of such reorganization, become a bank holding company. For purposes of this section, a "bank holding company" means any company that owns or controls a national bank, or will own or control one as a result of the reorganization.

(c) *Licensing requirements.* A national bank shall submit an application to, and obtain approval from, the OCC prior to participating in a reorganization described in paragraph (b) of this section.

(d) *Procedures—(1) General.* An application filed in accordance with this section shall be deemed approved on the 30th day after the OCC receives the application, unless the OCC notifies the bank otherwise. Approval is subject to the condition that the bank provide the OCC with 60 days' prior notice of any significant deviation from the bank's business plan or any significant deviation from the proposed changes to the bank's business plan described in the bank's plan of reorganization.

(2) *Reorganization plan.* The application must include a reorganization plan that:

(i) Specifies the manner in which the reorganization shall be carried out;

(ii) Is approved by a majority of the entire board of directors of the national bank;

(iii) Specifies:

(A) The amount and type of consideration that the bank holding company will provide to the shareholders of the reorganizing bank for their shares of stock of the bank;

(B) The date as of which the rights of each shareholder to participate in that exchange will be determined; and

(C) The manner in which the exchange will be carried out;

(iv) Is submitted to the shareholders of the reorganizing bank at a meeting to be held at the call of the directors in accordance with the procedures prescribed in connection with a merger of a national bank under section 3 of the National Bank Consolidation and Merger Act, 12 U.S.C. 215a(a)(2); and

(v) Describes any changes to the bank's business plan resulting from the reorganization.

(3) *Financial and managerial resources and future prospects.* In reviewing an application under this section, the OCC will consider the impact of the proposed affiliation on the financial and managerial resources and future prospects of the national bank.

(e) *Rights of dissenting shareholders.* Any shareholder of a bank who has voted against an approved reorganization at the meeting referred to in paragraph (d)(2)(iv) of this section, or who has given notice of dissent in writing to the presiding officer at or prior to that meeting, is entitled to receive the value of his or her shares by providing