Office of the
Comptroller of the Currency

COMPTROLLER'S LICENSING MANUAL

Charters

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Introduction

This booklet of the *Comptroller's Licensing Manual* supports the Office of the Comptroller of the Currency's (OCC) supervisory activity with respect to the granting of charters to national banks and federal savings associations (collectively, banks).[1] Before establishing a national bank or a federal savings association (FSA), each organizing group must apply to, and obtain approval from, the OCC. New banks may be chartered for full-service or special purpose operations, such as trust banks, credit card banks, bankers' banks, community development (CD) banks, cash management banks, and other banks that limit their activities.

Each organizer and proposed director is responsible for understanding the chartering process and the role of a bank director. Each organizer and proposed director should review this booklet to become familiar with the chartering process.

National banks and FSAs are chartered under different legal authorities. As such, laws, regulations and rulings applying to each charter are sometimes different, although many laws and requirements apply to both charter types. The application process for both charters is similar, but differences in the process or factors the OCC considers when reviewing charter applications for the two charter types are highlighted in this booklet, as appropriate. National banking associations are owned by shareholders who own stock issued by the national bank. An FSA may also be organized as a stock entity (stock FSA) or may have a mutual form of organization (mutual FSA), in which the equity interest in the FSA is attributed to the FSA's members (members generally include depositors, but also may include borrowers).

Each bank is different and may present unique issues. The OCC's supervisory activity includes a licensing component, through which the OCC ensures that the corporate structure of banks is established and maintained in accordance with principles of safety and soundness and consistent with applicable laws and regulations. Accordingly, the OCC applies the guidance in this booklet consistent with the supervisory goals for each bank. The booklet

- describes OCC policies and procedures used in the charter application process, along with detailed guidance and instructions.
- discusses the factors that the OCC considers in deciding a proposed bank's application.
- describes the application process, including the prefiling process, filing and review of the application, the decision, and the organization phase of the new bank.
- provides information about the ongoing supervision of a federally chartered bank and issues applicable to a special purpose bank.

This booklet consists of an introduction, a key policies section outlining specific factors for chartering banks, a section on the application process, and a procedures section. A glossary

[1] This booklet also covers special purpose banks such as trust banks, credit card banks, and community development (CD) banks, which may be subject to specific regulations or guidance, as described in the "Bank Supervision Process" booklet of the *Comptroller's Handbook*. For information on national trust banks and FSA trust banks, refer to OCC Bulletin 2007-21, "Supervision of National Trust Banks, Revised Guidance: Capital and Liquidity" (as of June 7, 2012, this guidance also applies to FSAs).

of terms used in the booklet is provided as well as a reference section with statutory and regulatory citations and other useful materials. References are also made to other booklets of the *Comptroller's Licensing Manual* and the *Comptroller's Handbook*.

Throughout the electronic edition of this booklet are hyperlinks to sample documents on our public website, such as the Interagency Charter and Federal Deposit Insurance Application (interagency application), and other information that an applicant may find useful.

Throughout this booklet, national banks and FSAs are collectively referred to as banks or federally chartered banks, unless it is necessary to distinguish between the two types of charter.

Key Policies

The OCC grants approval of charter applications in two steps: preliminary conditional approval and final approval. Preliminary conditional approval is granted if the factors the OCC considers in reviewing charter applications are favorable; this approval permits the organizers to proceed with organizing the bank. Granting preliminary conditional approval provides the organizers of the bank with assurances that the application has passed the first phase of OCC review before additional funds are expended to raise capital, hire officers and employees, and complete the organization of the bank.

The OCC defines the organization phase as the period between the preliminary conditional approval and the bank opening. Refer to the "Organization Phase" section of this booklet. During the organization phase, the organizing bank's officers and directors hire management and staff, continue or begin to raise capital, prepare bank premises, and develop policies and procedures to guide the bank's operations.

Receipt of final approval from the OCC means the OCC has issued a charter for the bank, and the bank can begin to conduct banking business. By this point, the organizers must have completed all key phases of organizing the bank as determined by the OCC and received any other necessary regulatory approvals, including Federal Deposit Insurance Corporation (FDIC) deposit insurance, if applicable.

Capital must be raised[2] within 12 months of the OCC's preliminary conditional approval or the approval expires, unless the OCC grants an extension. If the preliminary approval expires, then all the cash collected on any subscriptions for the bank's stock must be returned.[3] Under certain circumstances, capital can be raised before preliminary conditional approval but after the proposed bank becomes a legal entity. Refer to the "Raising Capital" section of this booklet.

The bank must open within 18 months of the OCC's preliminary conditional approval or the approval expires, unless the OCC grants an extension.[4] The bank may not conduct banking business or engage in fiduciary or other activities until the OCC grants final approval and issues a charter.[5]

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[2] Organizers seeking to charter a mutual FSA should consult with the appropriate OCC Licensing office regarding capital raising efforts. Formations of mutual FSAs involve different challenges when raising capital compared with stock charters because mutual FSAs do not issue stock.

[3] Refer to 12 CFR 5.20(i)(5)(iv).

[4] Refer to 12 CFR 5.20(i)(5)(iv).

[5] Refer to 12 CFR 5.20(i)(5)(ii)(B).

In determining whether to approve an application to establish a national bank or FSA, the OCC is guided by the goal of maintaining a safe and sound banking system. The OCC approves proposals to establish banks that have a reasonable chance of success, will provide fair access to financial services by helping to meet the credit needs of its entire community (if the bank will extend credit), will ensure compliance with laws and regulations, will promote fair treatment of customers including efficiency and better service, and foster healthy competition. OCC approval does not assure that operating a bank is without risk to the organizers or the investors. In reaching its decision, the OCC considers[6] whether the proposed bank

- has organizers who are familiar with applicable federal banking laws and regulations.
- has competent management, including a board of directors, with the ability and experience relevant to the type of products and services to be provided.
- provides for sufficient capital in relation to the proposed business plan.
- can reasonably be expected to achieve and maintain profitability.
- will be operated in a safe and sound manner.
- does not have a title that misrepresents the nature of the institution or the types of services it offers.
- poses acceptable risk to the Federal Deposit Insurance Fund, if applicable.
- demonstrates that its corporate powers are consistent with the purposes of the Federal Deposit Insurance Act, the National Bank Act, and the Home Owners' Loan Act (HOLA) (12 USC 1464), as applicable.

In addition, the OCC considers a proposed bank's plans for meeting the credit needs of its community, including low- and moderate-income (LMI) neighborhoods, consistent with the safe and sound operation of the bank as required by the Community Reinvestment Act (CRA).[7]

The OCC considers the following additional factors[8] in reviewing an application to charter an FSA, as required by HOLA:

- A charter for an FSA may be granted only to persons of good character and responsibility.
- In the judgment of the OCC, a necessity exists for such an institution in the community to be served.
- There is a reasonable probability of the FSA's usefulness and success.

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[6] Refer to 12 CFR 5.20(e) and (f), which outline factors the OCC considers in reviewing a charter application.

[7] CRA requires the OCC to take into account a proposed insured bank's description of how it will meet its CRA objectives. Refer to 12 USC 2903(a)(2) and 12 CFR 5.20(e)(2). This requirement does not apply to proposed special purpose banks that will not perform commercial or retail banking services by granting credit to the public in the ordinary course of business, other than as incidental to their specialized operations. These special purpose banks include banker's banks, as defined in 12 USC 24(Seventh), and banks that engage in one or more of the following activities: providing cash management controlled disbursement services or serving as correspondent banks, trust companies, or clearing agents. Refer to 12 CFR 25.11(c)(3), 195.11(c)(2).

[8] Refer to 12 CFR 5.20(e)(1)(ii).

- The FSA can be established without undue injury to properly conducted existing local thrift and home financing institutions.

Further, the OCC considers whether a proposed FSA will be operated as a qualified thrift lender under 12 USC 1467a(m), and that lending and investment activities will be within the HOLA limits, or the bank otherwise qualifies under this section.

The OCC may deny an application, as specified in 12 CFR 5.13(b), based on any of the following factors:

- Significant supervisory, CRA (if applicable), or compliance concerns exist with respect to the proposed business plan.
- Approval of the filing is inconsistent with applicable laws, regulations, or OCC policy.
- The applicant failed to provide information requested by the OCC that is necessary for the OCC to make an informed decision.

Each charter application must include accurate statements and fully developed plans, and it must demonstrate that the organizers (and any sponsoring companies) are aware of and understand the laws, regulations, and safe and sound banking practices that would apply to the bank's operation.[9]

The OCC encourages each organizing group interested in establishing a bank to contact the OCC for information about the process and guidance about specific issues unique to the group's proposal. The OCC normally requires all of the organizers of a bank and the proposed chief executive officer (CEO) to attend a prefiling meeting before filing the application.

Certain aspects of a bank's business plan may require additional filings with the OCC, or additional information in the charter application. For example, if the organizers propose for the bank to exercise fiduciary powers, the charter application should include all relevant information normally filed with an application for fiduciary powers. Similarly, if the new bank proposes branch locations, separate branch applications are required, with separate requirements for public notice. Organizers should contact the OCC for guidance concerning additional filings that may be required.

The organizing group should file an interagency application for deposit insurance with the FDIC when it submits its charter application to the OCC, if the proposed bank will offer insured deposits. All FSAs must be FDIC-insured.[10]

A bank holding company (BHC) or savings and loan holding company (SLHC), or a company that would become a BHC or SLHC because of its ownership of a proposed bank,

[9] Refer to 12 CFR 5.20(h)(6).

[10] Refer to 12 CFR 5.20(e)(3).

must obtain approval from the Board of Governors of the Federal Reserve System (Federal Reserve Board) to acquire a newly established bank before the OCC will grant final approval.[11]

Organizing Group's Role and Responsibilities

A strong organizing group generally includes persons with diverse business and financial interests and community involvement. The business plan and other information supplied in the application must demonstrate an organizing group's collective ability to establish and operate a successful bank in the economic and competitive conditions of the market the bank will serve. A poor business plan reflects adversely on the organizing group's ability, and the OCC may deny such applications.

The organizing group must be composed of five or more persons.[12] Normally, all of the organizers serve as the bank's initial board of directors.

The organizers should

- ensure that the group consists of persons with diverse business and financial interests and community involvement and includes persons with some relevant banking or financial services experience.
- have a personal history that reflects responsibility, honesty, and integrity.
- exhibit substantial personal and financial commitment to the proposed bank relative to their individual and collective financial strength.
- select a capable CEO and, early in the organization process, other executive officers who have the necessary experience to successfully implement the proposed business plan and enhance the proposed bank's likelihood of success.
- develop a business plan that
  - demonstrates the group's collective ability to establish and operate a successful bank in the economic and competitive conditions of the market to be served.
  - articulates the risks of the proposed operation and the policies, processes, personnel, and control systems that the bank will use to monitor and control those risks.
- understand their role in the successful implementation of the business plan.
- design executive officer and other compensation proposals that are consistent with the OCC's guidelines. Refer to the "Insider Compensation" section of this booklet.

[11] There are exceptions to this requirement under the Bank Holding Company Act for certain national trust banks or national credit card banks. These exceptions are discussed in the "Special Purpose Banks" section of this booklet.

[12] Refer to 12 CFR 5.20(d)(7), and, for national banks, 12 USC 21.

The OCC requires each group to appoint a contact person to serve as the primary liaison between the OCC and the organizers. The contact person must be a member of the organizing group and a proposed director of the new bank.[13]

Sponsoring Organizations

A new bank may be affiliated with another organization, also called a sponsor, rather than choosing to operate independently. A sponsor usually is an existing corporation or holding company, including a BHC or SLHC. If the new bank is affiliated with an existing corporation or holding company, the OCC may consider the existing organization to be the sponsor of the new bank. The OCC looks closely at the proposed relationships between the bank and other organization(s) within the sponsor to determine whether to permit the affiliation.

The OCC does not consider as a sponsor a new BHC, SLHC, or other holding company established at the same time as a new bank. Such a new parent company generally does not offer significant financial and managerial resources to support the bank's operations. In addition, a new holding company generally has few activities separate from those of the bank.

A sponsor may also be a group of individuals who are currently affiliated with other depository institutions, or individuals who, in the OCC's view, are otherwise collectively experienced in banking and have demonstrated the ability to work together.

A representative of the sponsor or sponsors may serve as the contact person with the OCC.

Sponsor's Role

When a new bank proposal has a sponsor, the OCC may consider the financial and managerial resources of the sponsor and the sponsor's record of performance, rather than the financial and managerial resources of the organizing group. The OCC reviews, for consistency and compatibility with the proposed bank's business plan, a sponsor's record of performance, overall philosophy, capital, management, profitability, and plans, such as its strategic plan.

When the sponsor has adequate financial resources, the OCC may approve an application, even in a market in which economic conditions are marginal or competitive conditions are intense. In such cases, the OCC may require the bank to execute a written agreement with its holding company that provides for capital maintenance and liquidity support from the holding company. Refer to the "Standard or Special Conditions" section of this booklet. Conversely, the OCC may deny a sponsored new bank's application if the condition of the parent company or any affiliate is subject to supervisory concern or otherwise detracts from the application.

[13] Refer to 12 CFR 5.20(i)(3). There is an exception for banks that are sponsored by a qualifying holding company. See the "Sponsoring Organizations" section of this booklet.

With the OCC's prior approval, a sponsor may eliminate certain information from, or provide abbreviated information with, the charter application. To reduce the application burden of a proposal involving an insured bank, the OCC encourages the sponsor to file the same interagency application with both the OCC and the FDIC.

Each sponsor of a proposed bank must demonstrate in the application that any proposed holding company will meet all applicable requirements, including, among others, limitations on holding company activities, under federal and state law.

Conflicts of Interest

Conflicts may arise between a bank and its sponsoring entity in maintaining sufficient corporate separation between the organizations. To enhance corporate separation, the sponsor should evaluate the bank's activities and operations closely and address the following issues in the charter application:

- The need for bank directors to act primarily in the best interest of the bank rather than the bank's sponsor and to exercise objective judgment in carrying out their duties, independent of undue influence from sponsor management and affiliates. This independence is especially critical when the bank directors are considering
  - employment of bank management and employees dedicated to supporting the bank's operations.
  - maintenance of separate books and records for the bank, the sponsor, and other bank affiliates.
  - implementation of bank board-approved internal and external audit programs, internal controls and risk management policies, and other policies and procedures necessary to ensure safe, sound, and legal bank operations.
- Evaluation of the extent to which the bank needs to retain core operations and staff to conduct its business, as opposed to being essentially a dormant bank. Refer to the "Glossary" section of this booklet.
- Adoption of third-party relationship[14] policies that may include affiliated entities functioning as service providers for the bank.

Affiliate Transactions

The discussion that follows addresses only a few of the most common affiliate[15] issues that may arise in connection with new bank charters. For further detail on affiliate transactions, see the "Related Organizations" booklet of the *Comptroller's Handbook* or the "Other Activities" section 730 of the OTS Examination Handbook.

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[14] Refer to OCC Bulletin 2013-29, "Third-Party Relationships: Risk Management Guidance."

[15] The term affiliate includes, among other things, any company that controls a bank and any company that is controlled by the same person or company as controls the bank.

A bank that has a sponsor or other affiliate must be aware of the laws governing affiliate transactions. Sections 23A and 23B of the Federal Reserve Act, 12 USC 371c and 371c-1, respectively, are designed to protect a bank from transactions with its affiliates that are disadvantageous or abusive to the bank. The Federal Reserve Board implemented sections 23A and 23B through Regulation W, 12 CFR 223. Newly formed banks and their affiliates must comply with the provisions of this rule as well as with the statutes.[16]

Most subsidiaries of banks are not considered affiliates of the bank for purposes of sections 23A and 23B as implemented by Regulation W. Subsidiaries treated as affiliates include insured depository institutions, financial subsidiaries, and subsidiaries (including uninsured depository institutions) that are also controlled by one or more affiliates of the bank that are not themselves depository institutions.[17] In addition, as previously noted, the OCC and the Federal Reserve Board can determine that an otherwise exempt subsidiary should be treated as an affiliate. For more information on the treatment of subsidiaries of banks under Regulation W, refer to the "Subsidiaries and Equity Investments" booklet of the *Comptroller's Licensing Manual*.

Section 23A, as implemented by Regulation W, controls risk to banks by

- limiting covered transactions with any single affiliate to no more than 10 percent of the bank's capital and surplus, and limiting aggregate transactions with all affiliates to no more than 20 percent of capital and surplus. Covered transactions include
  - a bank's extensions of credit to, or guarantees on behalf of, its affiliates or purchases of assets from its affiliates.
  - purchases of, or investments in, securities issued by affiliates.
  - acceptance of securities or debt obligations issued by an affiliate as collateral for a loan.
  - transactions with an affiliate that involve the borrowing or lending of securities, or derivative transactions with an affiliate, that cause a bank to have credit exposure to the affiliate.
- requiring that all transactions between a bank and its affiliates be made on terms consistent with safe and sound banking practices.
- prohibiting the purchase of low-quality assets from the bank's affiliates.
- requiring that all credit transactions (including guarantees and extensions of credit to an affiliate) be secured by a statutorily defined amount of collateral. A full or partial exemption from these restrictions may be available for certain types of transactions. (For example, see section 23A(d) and 12 CFR 223.41 and 223.42.)

Section 23B of the Federal Reserve Act, as implemented by Regulation W, requires a bank to engage in certain transactions with its nonbank and uninsured bank affiliates only on terms and under circumstances that are substantially the same or at least as favorable to the bank as those prevailing at the time for comparable transactions with unaffiliated companies. This

[16] Sections 23A and 23B apply to FSAs to the same extent as Federal Reserve System member banks, pursuant to 12 USC 1468(a).

[17] Refer to 12 CFR 223.2(b)(1).

requirement generally means that the bank must conduct transactions with these affiliates on an arm's-length basis. Thus, for example, pricing or transaction valuation must usually reflect fair market value. Section 23B applies this restriction to any covered transaction, as defined by section 23A, and to other specified transactions, such as a bank's sale of securities or other assets to an affiliate and the payment of money or the furnishing of services to an affiliate. Section 23B, however, does not prohibit banks from receiving goods or services from affiliates at below market prices. In addition, transactions between a bank and an insured bank affiliate are generally exempt from section 23B. As is the case under section 23A, transactions between a bank and an uninsured bank affiliate are generally not exempt from section 23B.

FSAs are subject to the provisions of sections 23A and 23B, with two additional restrictions. First, an FSA may not make a loan to an affiliate unless that affiliate is engaged only in activities that are permissible for BHCs under section 4(c) of the Bank Holding Company Act (BHCA). Second, an FSA may not purchase or invest in securities of an affiliate, except for shares of a subsidiary. Refer to 12 USC 1468(a).

Regulation W sets forth exemptions from certain restrictions of sections 23A and 23B. Exemptions that may be of importance to sponsors of new banks include the "sister bank" exemption and the exemption for newly formed banks. The sister bank exemption exempts many covered transactions between a bank and an insured bank affiliate from the quantitative limits and collateral requirements of section 23A. Under Regulation W, however, covered transactions between a bank and an affiliated uninsured bank, such as a trust company, are not eligible for the sister bank exemption.

The exemption for newly formed banks allows such banks to purchase assets from an affiliate without regard to the restrictions of either section 23A or 23B. To qualify for these exemptions, the appropriate federal banking agency (the OCC, for federally chartered banks) must approve the asset purchase in writing in connection with its review of the formation of the bank. Refer to sections 223.42(i) and 223.52(a)(1). If a sponsor plans to rely on these exemptions, it should provide details of any proposed asset purchases in the business plan.

Parallel-Owned Banking Organizations

In a parallel-owned banking organization, at least one U.S. bank and at least one foreign bank are independently chartered but are controlled either directly or indirectly by the same individual, family, group of individuals, or a company or other entity who are closely associated in their business dealings or who otherwise act in concert. If a de novo bank is affiliated with a foreign bank through common control by individuals, these persons are considered members of the establishing party of the de novo bank. Processing a charter application that creates a parallel-owned banking organization generally is more complex than processing a typical charter application. This difference reflects the OCC's need to understand the following:

- How the overall strategy and management of the parallel-owned banking organization affect the de novo bank.

- How the activities of the foreign bank are supervised.
- How home-country supervisors view the condition and operations of foreign affiliates.
- How affiliates might affect the de novo bank.

These matters of supervisory interest add to the concerns addressed in the OCC's standard analysis of the background and financial information of the individual(s) filing the charter application.

Concerns about the bank arising from a potential parallel-owned banking organization typically result in expanded application requirements. The degree to which the OCC expands requirements varies, reflecting the specific structure of the proposed transaction and resulting organization. The OCC may request commitments or representations to facilitate the supervision of parallel-owned banking organizations. Refer to the appendix to the "Change in Bank Control" booklet of the *Comptroller's Licensing Manual* for specific examples. Also, see the interagency statement[18] on parallel banking.

To apply legal restrictions on a proposed bank's transactions with its affiliates within a parallel-owned banking organization, the 25 percent control threshold in sections 23A and 23B and Regulation W is relevant. Members of a parallel-owned banking organization that are affiliates cannot take advantage of the sister bank exemption because that exemption requires ownership by a holding company.

Because of the complexity of proposals that would establish a parallel-owned banking organization and the case-by-case nature of their processing, potential applicants are strongly encouraged to meet with Licensing staff before submitting an application.

Management and Directors' Banking Experience

The OCC requires all organizing groups and senior management teams to demonstrate sufficient relevant banking experience to operate a bank successfully. The OCC grants a charter only to organizers who have proposed a management team, including both the proposed managers and directors that the OCC considers competent. Competent management teams are usually characterized by

- high-caliber executive officers with the relevant experience necessary to implement the proposed business plan and to exercise corrective action in response to changing internal and external factors.
- successful business and community leaders, including some with prior banking experience, who effectively oversee the management of the bank's activities in their capacity as directors.

If a proposed directorate has limited banking experience or community involvement, the OCC expects the organizing group to recommend a stronger team of executive officers.

[18] Joint Agency Statement on Parallel-Owned Banking Organizations, April 23, 2002.

Directors

The affairs of each bank must be managed by directors who, initially, are elected by the shareholders (or in the case of a mutual FSA, named by the organizers [19]) at a meeting held before the new bank is authorized to commence business and, afterward, at meetings to be held at least annually, on a day specified in the bank's bylaws.

The board plays a pivotal role in the effective governance of its bank. The board is accountable to shareholders, regulators, and other stakeholders. The board is responsible for overseeing management, providing organizational leadership, and establishing core corporate values. The board should create a corporate and risk governance framework to facilitate oversight and helps set the bank's strategic direction, risk culture, and risk appetite. The board also oversees senior management, including the development, recruiting, succession planning, and compensation of senior managers.

The board should have a clear understanding of its roles and responsibilities. It should collectively have the skills and qualifications, committee structure, communication and reporting systems, and processes necessary to provide effective oversight. The board should be willing and able to act independently and provide a credible challenge to management's decisions and recommendations. The board also should have an appropriate level of commitment and engagement to carry out its duties.

The corporate and risk governance framework should provide for independent assessments about the quality, accuracy, and effectiveness of the bank's risk management functions, financial reporting, and compliance with laws and regulations. Most often performed by the bank's audit function, independent assurances are essential to the board's effective oversight of management.

The board's role in the governance of the bank is clearly distinct from management's role. The board is responsible for the overall direction and oversight of the bank—but is not responsible for managing the bank day-to-day. The board should oversee and hold management accountable for meeting strategic objectives within the bank's risk appetite. Both the board and management should ensure that the bank is operating in a safe and sound manner and is complying with laws and regulations.
Directors should have sufficient experience, competence, willingness, and ability to be active in overseeing the safety and soundness of the bank's affairs. Appendix A of this booklet, "Directors' Duties and Responsibilities, Qualifications, and Other Issues," provides a broader discussion.

Board composition should facilitate effective oversight. The ideal board is well diversified and composed of individuals with a mix of knowledge and expertise in line with the bank's size, strategy, risk profile, and complexity. Although the qualifications of individual directors will vary, the directors should provide the collective expertise, experience, and perspectives necessary for effectively overseeing the bank. Boards of larger, more complex banks should

[19] An FSA with a mutual ownership form has no stock issued and therefore no shareholders. The initial slate of directors is generally named by the organizers of a mutual FSA.

include directors who have the ability to understand the organizational complexities and the risks inherent in the bank's businesses. Individual directors also should lend expertise to the board's risk oversight and compliance responsibilities. In addition, the board and its directors must meet the statutory and regulatory requirements governing size, composition, and other aspects. Refer to appendix A of this booklet for a list of these requirements.

To promote director independence, the board should ensure an appropriate mix of "inside" and "outside" directors. Inside directors are bank officers or other bank employees. Outside directors are not bank employees. Directors are viewed as independent if they are free of any family relationships or any material business or professional relationships (other than stock ownership and directorship itself) with the bank or its management. Independent directors bring experiences from their fields of expertise. These experiences provide perspective and objectivity because independent directors oversee bank operations and evaluate management recommendations. This mix of inside and outside directors promotes arms-length oversight. A board that is subject to excessive management influence may not be able to effectively fulfill its fiduciary and oversight responsibilities.

In addition, the OCC may consider the following factors in its evaluation of the proposed board's banking experience and qualifications:

- Combined business expertise.
- Collective understanding of the financial industry and the regulatory framework under which the bank will operate.
- Willingness to put the interests of the financial institution ahead of personal interest.
- Understanding of and willingness to avoid conflicts of interest.
- Knowledge of the community to be served.
- Desire to commit an appropriate amount of time in carrying out the responsibilities of a director or organizer and an awareness of the importance of being an active participant in overseeing management.
- Personal and financial integrity (bankruptcies and previous arrests may reflect poorly on an individual's character).
- Individual experiences in highly regulated industries, for example, insurance or stock brokerage.

Other items the OCC may consider about the organizing group include:

- Plans to establish and maintain an appropriate board and committee structure.
- Establishment of a compensation structure designed to attract and retain qualified management. Such structures should not be designed to reward unduly risky or unsafe practices, such as incentives based only on growth.
- Efforts to obtain directors with recent banking or financial services experience.
- Commitments or representations by the organizing group to obtain director education.

Director education and orientation are available from a variety of sources, including the proposed bank's management, bank consultants, and seminars or "colleges" for new directors

offered by local and national industry associations. In addition, the OCC periodically hosts director workshops to highlight regulatory changes and emerging industry trends.

To conclude that an organizing group has a satisfactory commitment to director education, the OCC considers whether the following are present:

- A specific plan with time frames.
- Initial training before the bank opening that focuses on the duties and responsibilities of new bank directors. This training should include the importance of an effective, independent risk-monitoring program to assist the board in its oversight of the bank's risk management system. Training should also address the significance of Bank Secrecy Act/Anti-Money Laundering (BSA/AML) regulatory requirements and the consequences of noncompliance.
- Plans for additional training during the first year of the bank's operations, tailored to the directors' needs relative to the bank's proposed business plan.
- Ongoing education about new risks, products, and services.

Selection of the CEO

Selection of a qualified CEO is a critical decision affecting the success of the new bank. The proposed CEO should

- be involved actively in developing the proposed business plan, since the CEO will be responsible for implementing the proposed plan successfully once the bank opens.
- have strong leadership skills and successful experience managing a bank or serving as a bank officer in a similar financial institution or financial services company in areas relevant to the proposed bank's marketing strategy and needs.
- possess skills that complement those of the directors and other proposed members of the executive officer team.

Selection of a CEO whom the OCC finds unqualified for the position, whose prior banking or financial services experience is unsatisfactory, or who otherwise is unacceptable reflects negatively on the organizers and normally results in disapproval or revocation of preliminary conditional approval. Decisions about a proposed CEO are based on a person's suitability for that position with a specific new bank and are not intended to determine that person's eligibility for other jobs.

Each organizing group must disclose its proposed CEO to the OCC at the time the group files the charter application. If the proposed CEO wants to have his or her name withheld from the public until the OCC grants preliminary conditional approval, the organizers should

- include a request for confidential treatment with the materials submitted in the charter application.
- provide support for their request that disclosure would constitute an unwarranted invasion of personal privacy under exemption 6 of the Freedom of Information Act (FOIA) or

result in substantial competitive harm to the organizers or the proposed CEO under exemption 4 of FOIA.

- list in the application the criteria that were used in the selection process.
- provide a detailed description of the person's background, experience, and qualifications in the public portion of the application that is sufficiently specific to permit matching the application information with the person once his or her identity is disclosed.
- discuss the proposed terms of employment for the CEO, including compensation and benefits.

The organizing group should submit documentation of its investigation of the proposed CEO's background and qualifications (refer to appendix A, "Management Review Guidelines," in the "Background Investigations" booklet of the *Comptroller's Licensing Manual*).

Executive Officers

The organizers, board of directors, and the CEO are responsible for hiring and retaining executive officers with skills and qualifications appropriate to the size of the institution, its corporate structure, and the nature, scope, and risk of its activities. The organizers must evaluate each proposed executive officer.

The OCC expects that when the application is filed, the CEO will be identified in the filing, with a presentation of the organizers' analysis of his or her qualifications. Other executive officers may be similarly identified in the application; however, if officer positions are unfilled, the OCC expects that job descriptions of the remaining senior executive officer positions will be thorough and allow the OCC to analyze the necessary qualifications.

Executive officers are responsible for managing and supervising the day-to-day activities of the bank. They should be able to identify and manage the material risks associated with the bank's activities and provide appropriate and accurate reports to the board of directors of the bank's condition and risk profile. Each proposed executive officer should therefore exhibit strong, relevant experience for the specific position for which he or she is proposed. While the lack of previous experience in a specific position may not disqualify a person for the position, the proposed officer should be able to demonstrate that he or she has the knowledge, skills, and abilities required to execute the duties of the position effectively.

The organizing group should include the following information in its application for each executive officer candidate:

- A job description outlining responsibilities for each officer's position.
- A detailed outline of each candidate's banking or other relevant experience.
- An assessment of each candidate's qualifications for the position and his or her ability to implement the business plan. Refer to appendix A, "Management Review Guidelines," in the "Background Investigations" booklet of the *Comptroller's Licensing Manual*.

The applicant's projected time frames should include adequate time for the OCC to complete its review of each executive officer's qualifications. The organizers must receive a non-objection determination on the CEO and on other senior executive officers before opening the bank. To avoid undue expense, the organizers should make no final commitments of employment to any officer before the OCC's review.

The OCC assesses the strength of the executive officers by considering the

- extent and quality of the proposed candidate's experience.
- candidate's skills for the position, including his or her level of knowledge of the businesses and activities that the candidate will manage, the attendant risks, and appropriate risk management functions.
- complexity of the proposed bank's business plan.

If, after appropriate investigation and consideration of a proposed executive officer, the OCC objects to that person, he or she cannot assume that position in the bank. Objection to a proposed executive officer does not mean that the person may not be suitable for a different position in the same bank or a similar position in another bank. It means only that the OCC does not consider the person acceptable for the particular position for which he or she was proposed in the new bank.

The OCC considers the qualifications of all proposed executive officers in its determination that the bank is ready to open for business.

Insider Policy

The OCC requires each bank to adopt a written insider[20] policy addressing its code of conduct and conflicts of interest. This policy must detail business practices the board of directors deems acceptable. The OCC requires this policy in writing for each bank, regardless of the bank's complexity or the degree of sophistication of its systems.

The board of directors must take the lead in protecting the bank from conflicts of interest. One way a board of directors can fulfill that role is by adopting and enforcing clear insider policies. These policies would govern conduct and transactions between the bank and its directors and principal shareholders and their related interests, as well as with the bank's officers and employees.

[20] Insider is defined as a proposed organizer, director, principal shareholder, or executive officer of a proposed bank. For purposes of determining applicability of and compliance with 12 USC 375(a) and 375(b) as implemented by Regulation O, the term "insider" is defined at 12 CFR 215.2(h) and means an executive officer, director, or principal shareholder, and includes any related interest of such a person.

Transactions With Insiders

Bank insiders have positions of responsibility and leadership in the community and should avoid even the appearance of conflicts of interest.

A bank may engage in safe and sound business and personal transactions with its insiders, consistent with law and regulation.[21] Transactions between a bank and its insiders can address legitimate banking needs and serve the interests of both parties. The challenge is to separate legitimate insider financial relationships from those that are, or could become, abusive, imprudent, or preferential.

Any financial or other business arrangement, direct or indirect, between the organizing group or other insiders and the bank must be made on nonpreferential terms. The bank may receive preferential treatment from the insider, but the insider may not charge the bank a higher rate or require more favorable terms than those provided to non-insiders in comparable transactions. Additional restrictions and requirements apply to loans made to executive officers. Banking statutes and regulations also impose a number of reporting and record-keeping requirements. Refer to the "Insider Activities" booklet of the *Comptroller's Handbook*.

Insider Personal and Financial Commitments

The OCC expects all organizers and directors to exhibit substantial personal and financial commitment to a new bank. Personal commitment includes contributions of time and expertise to the bank's organization. Refer to appendix A.

Personal wealth is not a prerequisite to becoming an organizer or director of a bank. Purchases of shares of bank stock, individually and in the aggregate, should, however, reflect a financial commitment to the success of the bank that is reasonable in relation to the individual and collective financial strength of the organizers. Financial commitment includes contributions of initial funding and stock subscriptions relative to each person's individual financial capacity. For a mutual FSA, the OCC expects that the organizers fund initial capital deposits to reflect a similar financial commitment. Further, organizers should act prudently on all financial and other aspects of the proposal.

Organizers should not bill excessive charges to the bank for professional and consulting services or unduly rely on these fees as a main source of income. Normally, the bank should not compensate organizers for marketing or aiding in stock solicitation. Directors of new banks should not be dependent on bank dividends, fees, or other bank-related compensation to satisfy financial obligations. Directors are often the primary source of additional capital for a bank that is not affiliated with an established sponsoring organization. Accordingly, the directors should be able to supply capital, or have a realistic plan to enable the bank to obtain capital, if needed.

[21] Refer to 12 CFR 215 and 12 USC 1828(z).

All insiders, including executive officers, should make substantial personal commitments to the organizing bank. Principal shareholders should demonstrate financial commitment through their stock purchases. Directors and principal shareholders also may provide support for the new bank by moving personal and business banking relationships to the bank that help the bank achieve success.

Insider Compensation

A bank insider's compensation can include salaries, bonuses, fees, benefits, or other goods and services. The organizing group should include in its interagency application a description of all forms of insider compensation, including stock-based compensation plans.

Organizers should establish executive compensation plans that are in the best interest of the bank and commensurate with the services the executives propose to offer. A new bank may include a stock benefit or compensation plan (stock benefit plan), including stock options, stock warrants, and similar stock-based compensation, in its overall compensation for organizers, directors, and officers, provided that it structures the plans appropriately. Refer to appendix B, "Stock Benefit Plans."

An FSA must also ensure that employment contracts with its officers (and other employees) are entered into in accordance with the requirements of 12 CFR 163.39. This rule requires that all employment contracts be in writing and approved by the board, and that they contain certain specified provisions. An FSA may not enter into a contract with its officers (or other employees) if such a contract would constitute an unsafe or unsound practice; for example, if the contract could lead to material financial loss or damage to the FSA or could interfere materially with the directors' exercise of their duty or discretion (provided by law, charter, bylaw, or regulation) as to restricting the ability of the board to take any needed action regarding the employment or termination of an officer or employee of the FSA.[22]

Section 956 of the Dodd–Frank Wall Street Reform and Consumer Protection Act requires the OCC and other federal agencies to jointly prescribe regulations or guidelines with respect to incentive-based compensation practices at national banks and FSAs. Specifically, the act requires that the OCC prohibit any types of incentive-based compensation arrangements, or any feature of any such arrangements, that (1) encourage inappropriate risks by a bank by providing an executive officer, employee, director, or principal shareholder of the bank with excessive compensation, fees, or benefits; or (2) could lead to material financial loss to the bank. Under the act, a bank also must disclose to the OCC the structure of its incentive-based compensation arrangements sufficient to determine whether the structure provides excessive compensation, fees, or benefits or could lead to material financial loss to the institution.

[22] While national banks are not subject to a similar explicit regulatory requirement, as a prudent practice, a national bank should not enter into an unsafe or unsound employment contract.

Regulatory Review

The OCC evaluates each proposed bank's total executive compensation package, including its stock benefit plan, to determine if the package is reasonable considering each person's contribution of time, expertise, and financial commitment. Refer to appendix B for a discussion of stock benefit plans. The OCC assesses the amount and basis of any cash or stock payments an organizer may receive as a return for funds placed at risk or for services rendered. In addition, the OCC considers the number and percentage of additional stock warrants or options that the organizers propose relative to the number of shares the bank will issue when it opens. The OCC's conclusions about the acceptability of the proposed insider compensation package have a bearing on the OCC's overall assessment of the charter application.

The OCC also reviews proposed insider compensation plans for each newly organized parent holding company for consistency with the OCC's criteria set forth in this booklet and for compliance with applicable laws and regulations. The organizers should provide documentation to support the reasonableness of the holding company compensation package, including the methodology used to value any stock options (such as a stock option pricing model or discounted cash flow analyses and relevant comparable data). The OCC has no preference about which method the organizing group uses for its valuation of stock options.

An established company that sponsors a new bank may have existing compensation plans in which the proposed bank's management and board participate. The OCC reviews such plans closely to determine whether the plan, in combination with other forms of compensation, is reasonable and provides management and the board with appropriate incentives to promote the safe and sound operation of the bank.

The FDIC reviews compensation plans in its assessment of each deposit insurance application. The OCC and the FDIC apply similar standards to their separate evaluations of compensation plans and stock benefit plans, including stock options, stock warrants, and other similar stock-based compensation plans. If the organizers would like the OCC and the FDIC to review proposals that may not conform to the stock benefit plan guidelines provided in this booklet and the applicable FDIC policies for such stock benefit plans, they should provide information and a justification to support the deviation.

In some circumstances, the exercise of rights granted by a stock benefit plan trigger a filing to the OCC under the Change in Bank Control Act (CBCA) (12 USC 1817(j)) or the OCC's implementing regulation, 12 CFR 5.50. The OCC's review of stock benefit plans in connection with a charter application does not satisfy the prior notice requirements under the CBCA. For CBCA purposes, options that are immediately exercisable at the option of the owner or holder are treated as the underlying security, even if they are not exercised.[23]

Generally, a material change to the new bank's overall compensation package after the application is filed is a "significant change," which requires a prior non-objection by the

[23] Refer to 12 CFR 5.50(d)(14)(ii).

OCC before the bank may open. In some cases, the organizers develop a stock benefit plan for directors or officers after filing the application. The OCC also may consider this development a "significant change." Refer to the "Significant Changes" section of this booklet.

Unacceptable Forms of Compensation

The OCC generally considers unacceptable any new bank compensation proposal that allows insiders to

- purchase stock at an original issue price lower than that paid by other investors.
- purchase or acquire a separate class of bank or holding company stock at a price lower than that offered other subscribers or with greater voting rights.
- receive a cash payment based on the market value of the bank's stock.
- receive funds from the bank's capital stock or surplus accounts.
- obtain more than one option or warrant for each share of stock subscribed for Type 2 plans at the time of the bank's opening. Refer to the "Primary Types" section of appendix B, "Stock Benefit Plans."
- receive stock options or warrants issued to a holder other than the name of the bank insider, such as a partnership, corporate entity, spouse, or other family member.
- exercise "cashless" stock options, such as stock appreciation rights or phantom shares.

These compensation arrangements cause concerns about the bank's ability to raise additional capital, allow control without a proportionate financial investment, and make it difficult for other shareholders to remove directors if they manage the bank in an unsafe or unsound manner.

Excessive Compensation

Each bank is required to maintain safeguards to prevent the payment of compensation that is excessive or could lead to material financial loss to the bank. Excessive compensation is an unsafe or unsound practice and is prohibited by regulatory safety and soundness standards. The commitment to pay, or payment of, unacceptable or excessive compensation also reflects negatively on the organizing group's charter proposal.[24]

The OCC considers compensation excessive when amounts paid are unreasonable or disproportionate to the services actually performed by any person for a bank. The OCC may request additional information from the organizing group to support the compensation, or may require the organizers to change or eliminate the form or amount of compensation, before it authorizes the bank to open for business.

After the bank opens, if the OCC determines that compensation has become excessive, the board is responsible for taking corrective action and seeking restitution. The "Interagency Guidelines Establishing Standards for Safety and Soundness" address excessive

[24] Refer to OCC Bulletin 2010-24, "Interagency Guidance on Sound Incentive Compensation Policies."

compensation and list the factors the OCC considers to evaluate compensation packages. Refer to 12 CFR 30, appendix A.

Accounting Considerations and Shareholder Disclosures

Organizers and boards must assure that each component of a bank's compensation package is accounted for properly and that public and periodic regulatory reports (such as Consolidated Reports of Condition and Income [call reports]) and securities filings under 12 CFR 16 are accurate. In addition, organizers and boards should refer to the Internal Revenue Code for guidance about shareholder approval and disclosure. Under 12 CFR 16, organizers of a bank must disclose and describe fully insider compensation, including stock benefit plans, to all prospective stock subscribers in the registration statement or private placement document, regardless of whether shareholder approval is required for the stock benefit plans.

Organizers' Business Plan

Organizers of a proposed bank must submit a business plan that adequately addresses regulatory and policy considerations presented in this booklet and set forth in 12 CFR 5.20(e) and (f)(2). The organizing group's business plan, including its financial projections, analysis of risk, and planned risk management systems and controls, is critical to the OCC's decision of whether to grant approval to the group's charter proposal.

Business Plan Requirements

The interagency application includes Business Plan Guidelines listing the OCC's required plan components. The business plan should be an integral part of the management and oversight of a de novo bank and should establish the bank's goals and objectives. The business plan is a written summary of how the bank will organize its resources to meet its goals and how it will measure progress.

The business plan should

- be comprehensive and reflect in-depth planning by the organizers and management.
- cover the greater of three years or the period until the bank is expected to achieve stable profitability.
- provide detailed proposed actions to accomplish the primary functions of the bank.
- realistically forecast market demand, the customer base, competition, and economic conditions.
- contain sufficient information to give realistic assessments of risk related to economic and competitive conditions in the market the bank will serve.
- be based on assumptions consistent with all other information presented in the application.

The organizing group demonstrates in the business plan its management and planning abilities by assuming reasonable risks and by developing comprehensive alternative business strategies to address various best-case and worst-case scenarios. The organizers should describe clearly their assessment of risks inherent in the products and services of the bank and the design of related risk management controls and management information systems. Refer to the "Risk Assessment System" and "Risk Management" sections of appendix C, "Supervision and Oversight Highlights."

The organizers should integrate an alternative business strategy into their business and strategic plans and bank policies, and discuss the alternative business strategy in the charter application. Through the alternative business strategy, the organizers demonstrate that they can manage potential scenarios prudently, efficiently, and effectively when the asset or deposit mixes, interest rates, operating expenses, marketing costs, or growth rates differ significantly from the original plan. This alternative plan should include realistic plans for how the board would access additional capital should it be needed. Refer to appendix C of this booklet and the "Bank Supervision Process" booklet of the *Comptroller's Handbook*, which includes a thorough discussion of each type of risk.

Organizers for a special purpose bank should tailor the contents of their business plan as appropriate. The OCC also expects these business plans to articulate clearly a comprehensive alternative business strategy if original plans do not materialize. Refer to the "Special Purpose Proposals" section in this booklet. The organizers should not omit or delete sections of the business plan without prior consultation with OCC staff. In addition to the financial information required by the interagency application and business plan, the OCC requires each application from a sponsoring organization to provide consolidated financial projections using the interagency format and designated time periods, as applicable.

Avoiding Potential Problems

Management and the board should have similar goals for the bank and similar plans about how the goals will be achieved. Management and the board should be committed to the proposed business plan and agree on the amount of risk that the bank is willing to take. They can identify and work out differences of opinion and potential problems before the bank opens through

- careful development of policies and procedures for functional areas of the bank, including systems and controls that will be used to manage and control attendant risks.
- preparation of financial projections.

In addition, organizers should be prepared to handle difficulties in hiring qualified personnel. They also should be able to project and control compensation and overhead expenses and to factor those expenses into their evaluations of capital adequacy and earnings.

OCC Evaluation of Proposal

The OCC evaluates the organizing group and its business plan at the same time. The OCC must be able to determine that the bank has a reasonable chance for success, will operate in a safe and sound manner, and will have adequate capital to support the proposed risk profile.

An organizing group and its business plan must be stronger in markets where economic conditions are marginal or competition is intense.[25] The OCC's judgment concerning one may affect its evaluation of the other. The OCC may offset perceived deficiencies in one factor by strengths in one or more other factors. Deficiencies in some factors, however, such as unrealistic earnings prospects or inadequate risk management systems, have a negative influence on the OCC's evaluation of other factors, such as capital adequacy. Some deficiencies may be serious enough to result in denial of an application. The OCC considers inadequacies in a business plan to reflect negatively on the organizing group's ability to operate a successful bank.

The OCC assesses how well an organizing group has evaluated potential risks in its preparation of the charter application and how well it integrates risk management into its bank operations. Refer to the "Risk Assessment System" and "Risk Management" sections in appendix C. The OCC considers safety and soundness issues and compliance with applicable laws and regulations in its evaluation of the business plan. The OCC has adopted interagency safety and soundness standards for insured banks, which are found in the appendixes to 12 CFR 30. These standards, which provide valuable guidance for all banks, including uninsured banks, cover operations, management, compensation, safeguarding of customer information, and residential mortgage lending practices. Additional information on how examiners assess a bank's risk management practices can be found in the various booklets of the *Comptroller's Handbook*.

The OCC conditionally approves an application to ensure that appropriate supervisory safeguards are in place when a bank opens for business. Alternatively, the OCC denies an application if it is not satisfied that the organizers have met these requirements. The OCC generally does not grant final approval for a bank to open unless and until the organizers have addressed adequately all substantive risk management concerns.

During a financial crisis or an economic downturn, de novo banks are more likely to fail or experience significant problems compared with established financial institutions. The causes for this are varied, but it could take several years for a de novo bank to achieve stability. To address the elevated risks present until a bank achieves this stability, the OCC imposes approval conditions and safety and soundness requirements during the first three years of the de novo bank's operations to help to reduce risk to the Federal Deposit Insurance Fund and to promote the success of de novo federal charters.

The approval to form a de novo bank includes enforceable supervisory conditions that address the following:

[25] Refer to 12 CFR 5.20(f)(3).

- Maintenance of minimum capital levels commensurate with the prospective risk of the bank's business plan, but a tier 1 leverage ratio of no less than 8.0 percent throughout the first three years of operations or until the bank is expected to maintain stable profitability.
- A requirement to obtain a written determination of non-objection from the OCC before engaging in any significant deviation from the approved business plan. Refer to the "Significant Deviations After Opening" section in this booklet.
- A requirement to obtain a written determination of non-objection from the OCC for the hiring of any executive officer or any changes to the board of directors after opening.

After the bank has been open and operating for three years, the OCC evaluates whether the above conditions should be removed or modified based on the financial condition of the bank and its prospects for sustained stability.

Capital Considerations

Organizers' Responsibilities

The organizers must propose and raise capital for the bank's operations. Throughout the chartering process, the organizers must be aware of the OCC's regulatory capital requirements.

The organizing group is responsible for proposing an appropriate level of capital based on

- a thorough assessment of the proposed business plan and the risks inherent in that plan.
- management's skills, experience, and ability relative to those required to execute the plan successfully.
- the degree of competition in the marketplace.
- prevailing economic conditions in the proposed market.

Policy and Legal Issues

Because charter proposals present varying degrees of complexity, the OCC does not have a single minimum level of capital for all federally chartered bank applications. Instead, consistent with the OCC's philosophy for supervising all banks on the basis of risk, the OCC evaluates sufficiency of the proposed capital level in light of the risks present for the specific proposal.

The OCC expects projected capital for a new bank to remain at or above the "well capitalized" level as defined in 12 CFR 6.4(b)(1), but a tier 1 leverage ratio of no less than 8.0 percent for the first three years of operations or until the bank is expected to maintain stable profitability. The OCC may determine that higher amounts of capital than those the organizers proposed are warranted based on local market conditions or the proposed business plan. When granting preliminary conditional approval, the OCC imposes a supervisory condition outlining a capital condition appropriate for the particular bank. After three years

of operation, the OCC evaluates whether the financial stability of the bank is such that the condition should be removed, modified, or continued.

Generally, the OCC requires higher levels of capital to support the operations of more complex bank proposals if the business plan presents higher risk factors. A complex charter proposal, for example, might offer a nontraditional or narrow range of products, propose an unproven business strategy resulting in uncertain financial projections, or operate in a highly competitive market. Conversely, a charter application for a community bank that would offer traditional products and services, operate within a small geographic area lacking intense competition, and have a management team implementing a proven business strategy would be noncomplex and, generally, would not require higher capital.

As appropriate, the OCC focuses on the consolidated company risk profile when reviewing an application filed by a sponsoring organization. The OCC's risk assessment also may include significant affiliated entities when the OCC considers it appropriate.

The FDIC has capital requirements for obtaining federal deposit insurance. Applicants should contact the FDIC to determine the FDIC's requirements if the bank will be FDIC insured.

Key Capital Considerations

Organizers must address key considerations in supporting the proposed capital level, including the following:

- On- and off-balance-sheet composition, including credit risk, concentration risks, market risks, and risks associated with any nontraditional products, services, or operating characteristics.
- Plans and prospects for growth, including management's past experience in managing growth.
- Stability or volatility of sources of funds.
- Access to capital sources.
- If sponsored by a holding company, the sponsor's track record when implementing plans and confronting emerging risks or needs.

Raising Capital

The organizing group and founders (refer to the "Glossary" section of this booklet) must lead the bank's efforts to raise capital in the marketplace by raising capital that is sufficient to

- pay for all organization costs.
- enable the bank to compete effectively in the market area.
- support the proposed bank's business plan until the bank can achieve and sustain profitable operations.
- address uncertainties in the marketplace.

When the organizing group files its application with the OCC, it should describe how it plans to raise capital. Before soliciting and selling stock of the proposed bank, the organizers must accomplish all of the following:

- Submit a completed application, including a business plan.
- Receive the OCC's determination that the application is complete. This determination is based on the review conducted by OCC Licensing staff using the Charter Application Checklist and does not mean the OCC has evaluated the application's merits.
- Receive a letter from the OCC's legal staff stating that the registration statement has been declared "effective," if the bank has filed a registration statement with the OCC under 12 CFR 16. For all capital that a proposed bank obtains through a public offering, the proposed bank must use an offering circular that complies with the OCC's applicable securities offering regulations. When a proposed bank obtains capital through a private placement, the proposed bank must comply with the applicable requirements for a nonpublic offering.
- Receive a letter from the Securities and Exchange Commission (SEC) stating that the registration statement has been declared "effective," if the proposed holding company has filed a registration statement with the SEC.
- Sell all securities of a particular class offered in connection with the organization of a new bank at the same price.[26]
- Designate an unrelated insured depository institution as escrow agent of the stock subscription funds and ensure sufficient liability coverage by either the bank or escrow agent.

Even if the group raises all of its capital during the OCC's review of the application, the OCC makes no assurances that it will grant preliminary conditional approval. Material changes may occur during the bank's organization that could require amendments to the bank's disclosures and rescission offers to stock subscribers. An organizing group must complete raising capital within 12 months of the OCC's preliminary conditional approval or the approval expires.[27] Failure to raise capital within 12 months generally indicates that the market is not supportive of the proposed bank.

Offerings

All organizing banks issuing securities must comply with 12 CFR 16 by filing a registration statement or by relying on a filing exemption. A bank seeking to sell or offer its securities must comply with both the applicable federal securities laws, including anti-fraud provisions, and OCC regulations. These requirements apply when organizers capitalize a newly chartered bank or when shareholders raise additional capital to support the bank's growth.

[26] Refer to 12 CFR 5.20(i)(5)(iii).

[27] Organizers seeking to charter a mutual FSA should consult with the appropriate OCC Licensing office regarding capital raising efforts. Formations of mutual FSAs involve different challenges when raising capital compared with stock charters.

Organizers should consult with securities counsel in preparing 12 CFR 16 filings and refer to guidance and sample forms provided in the regulation. Amended registration statements also must comply with 12 CFR 16.

The sale of holding company stock may require filing documents and registering them with the Securities and Exchange Commission (SEC). Organizers should discuss securities law issues with their legal counsel and appropriate OCC legal staff as part of the application process.

Brokers, Underwriters, and Other Consultants

Some organizing groups rely on third parties to raise capital. These third parties include brokers, underwriters, consultants, and marketing firms. Engaging third parties may be part of the original business plan or represent a significant change in the original business plan, particularly if the organizing group has trouble raising capital. When banks raise capital through a third party, the market test (refer to the "Glossary" section of this booklet) may be a less reliable indicator of market acceptance, especially if a significant portion of the stock is subscribed from outside the local market.

If the organizers use a third party, the charter proposal must still demonstrate that the target market will support the proposed bank, particularly if local stock subscriptions are limited. Local stock subscriptions include subscriptions from organizers who reside in, or otherwise have a meaningful presence in, the target market.[28]

Funds Collected by an Organizing Bank

Subscriptions received under a registration statement could end up exceeding the stated maximum number of shares offered. In this case, the organizers can accept the excess subscriptions if the registration statement is first amended to provide for a larger offering. The amendment must occur prior to the expiration of the original offering period.

To raise additional capital after the initial offering closes, the bank or holding company must prepare a new registration statement or rely on an applicable exemption under the relevant securities laws.[29]

Once opened, the bank must issue shares in accordance with 12 CFR 5.45 or 5.46. Refer to the "Capital and Dividends" booklet of the *Comptroller's Licensing Manual*.

Capital surplus generally is created when stock is sold. All money invested in the bank must be distributed between the bank's common stock and capital surplus accounts consistent with

[28] Traditional full-service banks typically propose to serve a local geographic market, and the source of capital is usually from investors in that market. However, special purpose banks, internet banks, or banks that propose to serve larger or national markets may have investors who do not live near the bank's main office.

[29] If the bank proposes to issue additional common stock, it may need to amend its charter or articles of association to increase the number of shares authorized.

generally accepted accounting principles (GAAP), specifically the Financial Accounting Standards Board's Accounting Standards Codification (ASC) 505-10, "Equity." Also, consistent with GAAP, direct costs associated with the sale of stock must be deducted from the related proceeds and the net amount recorded in the capital accounts (American Institute of Certified Public Accountants Technical Questions and Answers, Section 4110).

Body Corporate—Legal Entity

A national bank's organizing group may begin to solicit capital after becoming a body corporate, filing a completed application with the OCC, and having a registration statement declared effective by the OCC. Refer to the "Glossary" section of this booklet. After filing the national bank's articles of association and organization certificate with the OCC, a national bank becomes a body corporate or legal entity as of the date the organizers sign the organization certificate and adopt the articles of association (12 USC 24). After becoming a body corporate, the organizing group elects a board of directors and may begin entering into contracts and performing all necessary actions to form the national bank. The national bank may not open for business until it receives final OCC approval.

An FSA's organizing group may begin to solicit capital after becoming a legal entity, filing a completed application with the OCC, and having a registration statement declared effective by the OCC. Refer to the "Glossary" section of this booklet. After filing the FSA's proposed charter and bylaws with the OCC, the FSA becomes a legal entity. After becoming a legal entity, the organizing group appoints a board of directors and may begin entering into contracts and performing all necessary actions to form the FSA. The FSA, however, may not open for business until it receives final OCC approval.

Capital Structure

Generally, banks have only one class of common stock. National banks may not create classes of common stock with different or no voting rights. An FSA may have only one class of common stock. Federal banking law provides that common shareholders are entitled to one vote per share in all matters.[30] The law also allows the shareholders to choose whether to provide for cumulative voting when electing the bank's directors by authorizing it in the articles of association or charter. If a national bank proposes to issue more than one class of common stock, the bank must consider legal, supervisory, and policy issues. A national bank should consult with the OCC before issuing more than one class of common stock. To be included as common equity tier 1 capital, the common stock must meet the relevant requirements in 12 CFR 3.20.

A national bank or FSA may be organized as a Subchapter S corporation. A Subchapter S corporation generally has a limited number of shareholders as determined in 26 USC 1361. All members of a family may, however, elect to be treated as one shareholder to determine the total number of shareholders of an S corporation.

[30] Refer to 12 USC 61 and 12 CFR 5.22(e).

Preferred Stock

The OCC has no general prohibition against the inclusion of preferred stock in the initial capital structure of a new bank. All relevant terms and conditions should be set forth in the application. Preferred stock may qualify as additional tier 1 capital or tier 2 capital, subject to meeting the relevant eligibility requirements in 12 CFR 3.20.

Debt-Based Capitalization

While equity is the most traditional and acceptable form of capital, the OCC may consider debt-based capitalization of a new bank under certain circumstances. Business and financial plans must demonstrate, however, that the associated debt service requirements are not detrimental to the safety and soundness of the bank. Subordinated debt may qualify as tier 2 capital, subject to meeting the relevant eligibility requirements in 12 CFR 3.20.

Assessment of Community Credit Needs

In the charter application, the organizing group must submit a description of how the bank will meet its CRA[31] objectives. The application form requires the applicant to describe the proposed bank's plans for serving the proposed bank's assessment area or areas. The organizing group must evaluate the banking needs of the community, including its consumer, business, nonprofit, and government sectors. Refer to appendix D, "Community Reinvestment Act Highlights," for more information about responsibility under the CRA, the CRA assessment area, and performance standards. Also, see the "Community Reinvestment Act Examination Procedures" booklet in the *Consumer Compliance* series of the *Comptroller's Handbook* or section 1500 of the OTS Examination Handbook for an expanded discussion of this topic.

Compliance Issues

The OCC also considers compliance with laws and regulations in its review of charter applications. Issues often arise related to compliance with the following:

- Fair lending statutes
- BSA requirements and other AML regulations
- Economic sanction laws administered by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC)
- Privacy
- Advertising

[31] Refer to 12 CFR 5.20(e)(2) (for national banks and FSAs); 12 CFR 25.29(b) (for national banks) and 12 CFR 195.29(b) (for FSAs). As previously noted, this requirement does not apply to uninsured banks or proposed special purpose banks that will not perform commercial or retail banking services by granting credit to the public in the ordinary course of business, other than as incidental to their specialized operations (12 CFR 25.11(c)(3), 195.11(c)(2)).

For expanded discussions of these topics, refer to appendix E of this booklet, "Compliance Highlights," the *Federal Financial Institutions Examination Council Bank Secrecy Act/Anti-Money Laundering Examination Manual* (*FFIEC BSA/AML Examination Manual*), and related *Comptroller's Handbook* booklets.

Electronic Banking (E-Banking) Considerations

Novel questions and issues may arise in the application process about the use of the Internet and other alternative channels for delivery of banking products and services in nontraditional ways, or if electronic channels are the bank's primary delivery method. The OCC approves proposals to establish banks that will use an electronic delivery channel when the bank reasonably may be expected to operate in a safe and sound manner.

The IT-related risks and controls are similar for the various e-banking and alternative delivery channels but may vary from the risks associated with traditional banking operations. Risks associated with liquidity, third-party relationships, cybersecurity, interconnectivity, and e-banking support services are discussed in the "E-Banking" and "Information Security" booklets of the *FFIEC Information Technology Examination Handbook* (*FFIEC IT Examination Handbook*).

A bank's business plan that is heavily reliant on e-banking and other alternative delivery channels for attracting and retaining deposits, making and securitizing loans, or delivering other services may underestimate the necessary marketing and operating expenses. Consequently, this may increase the bank's risk, especially liquidity risk. The bank should discuss in its business plan how it expects to manage such increased liquidity risk. Refer to the "Bank Supervision Process" booklet of the *Comptroller's Handbook* for a discussion of liquidity risk. Likewise, excessive reliance on deposits generated by Internet solicitations can raise special concerns. Also refer to the "Liquidity" booklet of the *Comptroller's Handbook*.

Application Process

The OCC encourages organizers to review its website for more detailed information about the application process, including relevant charter policies and procedures. The website contains decision statements on previous OCC charter decisions and provides information on the policy matters that the OCC considers before making a decision on an application. The website also contains opinions and legal interpretations addressing a variety of permissible activities and the manner in which the activities may be established and conducted.

The OCC encourages each organizing or investor group, before filing an application, to contact the Director for District Licensing at the appropriate OCC district office to discuss its proposal. Each group should include requests for confidential treatment under FOIA with each submission of materials for which it seeks confidentiality. Refer to the "General Policies and Procedures" booklet of the *Comptroller's Licensing Manual* for further discussion about confidential treatment.

Exploratory Calls or Meetings

The organizing group's contact person may call the OCC Licensing staff at the appropriate district office at any time to ask for further information or assistance. As the organizing group develops key ideas, the contact person may request an exploratory conference call or meeting to ask questions, clarify concerns, and become acquainted with the regulatory environment. The district Licensing staff coordinates an initial meeting or conference call for the contact person and other key people associated with the proposal to discuss issues with appropriate OCC staff.

Prefiling Meeting

The OCC normally requires a prefiling meeting with the organizers of a proposed bank before the organizers file a charter application. Organizers should be familiar with the OCC's chartering policy and procedural requirements before the prefiling meeting. The prefiling meeting normally is held in the OCC district office where the application will be filed, but may be held at another location at the request of the applicant.[32]

Before this meeting, the organizers should submit briefing materials to the OCC that include

- a brief description of the proposal, including a listing of planned activities.
- biographical information on each member of the organizing group.
- identification of the CEO.
- a summary of insider transactions.
- the proposed amount of capital and subscription method.

[32] Refer to 12 CFR 5.20(i)(1).

The OCC rarely waives the prefiling meeting for applications that are accorded standard review. Refer to the "Types of Filings" section of this booklet. The OCC expects all organizers of the proposed new bank to attend this meeting.

At the prefiling meeting, or in informal discussions, the Licensing staff reviews with the organizing group the OCC's chartering policy and procedures. Licensing staff also discuss supervisory perspectives that may affect the proposal and the requirements for filing a charter application and organizing a bank. The topics discussed include

- the attributes of the proposed bank charter.
- the composition of the board of directors and the banking and business experience of its members.
- the management team and its banking experience.
- submission requirements, including confidentiality requests.
- the business plan.

FDIC staff also may participate in the prefiling meeting to discuss pertinent procedures and requirements for obtaining deposit insurance, if the bank will be FDIC insured. Refer to the FDIC's deposit insurance policy statement, available from its Communications Office, Public Information Center, 3501 North Fairfax Drive, Room E-1005, Arlington, VA 22226, by e-mail at publicinfo@fdic.gov, or from its website. If a holding company is involved in the proposal, Federal Reserve Bank staff may also participate.

Filing the Application

After the prefiling meeting, the organizing group files an interagency application, including a business plan and the appropriate Interagency Biographical and Financial Report on all identified insiders. Each applicant must

- prepare accurately and completely the charter application submitted to enable the OCC to reach an informed decision.
- sign a certification stipulating that the charter application and all supporting materials contain no material misrepresentations or omissions.
- determine compliance with all applicable statutes and regulations.
- seek advice from its own legal counsel, as appropriate.

Each proposed organizer must sign and date the OCC certification in the interagency application.

The OCC will not accept an application for filing unless the organizers identify the CEO. Refer to the "Selection of the CEO" section of this booklet for guidance about requesting confidential treatment.

The contact person should advise the OCC promptly whenever significant changes occur from the bank's original plan after the application is filed. Refer to the "Significant Changes" section of this booklet.

Biographical and Financial Reports

The OCC normally requires each proposed organizer, director, executive officer, or controlling shareholder (insider) to submit the Interagency Biographical and Financial Report. On a case-by-case basis, the OCC may waive the requirement for insiders to complete the financial report portion if a sponsoring organization provides the new bank's financial strength. Refer to the "Types of Filings" section of this booklet.

Sponsors must submit a Corporate Background and Financial Report and the following or similar financial information, as applicable:

- Federal Reserve Board Y-6 filings for the last three years.
- SEC Form 10K filings for the last three years.
- An annual report for the most recent fiscal period.

In the case of a bankers' bank (refer to the "Glossary" section of this booklet), the participating depository institutions and depository institution holding companies are the organizers. Each participating bank must submit its call reports as of June 30 and December 31 for the last three years and the annual report for the most recent fiscal period. In addition, each depository institution holding company must complete a Corporate Background and Financial Report and submit financial data similar to that required from participating banks.

The OCC typically conducts routine background checks on proposed insiders. In addition to submitting the Interagency Biographical and Financial Report, organizers, directors, executive officers, and controlling shareholders should also complete and file with the application an IRS Tax Check Waiver, fingerprint cards, and a general background check consent form. Refer to the "Background Investigations" booklet of the *Comptroller's Licensing Manual* for more information.

Bank Identifying Information

The name of a proposed national bank must include the word "national." There is no requirement for the name of an FSA other than that an FSA or a national bank shall not adopt a title that misrepresents the nature of the institution or the services it offers.

If the exact location of the proposed bank is unknown at the time the application is filed, the organizers must provide a "vicinity of" location. The amount of detail needed to identify the location is based on the size of the community. For instance, if the new charter will be located in a heavily populated area, the location should be specific to within 1,000 feet. If the desired location is rural, identification of an area within a one-mile radius could be acceptable, if no public confusion would result. If the mailing and street addresses differ, organizers should provide both.

Publication Requirements and Comment Periods

Each organizing group must publish a notice of its charter application in a general circulation newspaper in the community in which the proposed bank will be located as close to the date of filing as practicable. Refer to 12 CFR 5.8. If the application is an interstate filing (one that is filed by a BHC located[33] in a different state than the proposed charter, or an SLHC with a home state different than the proposed charter[34]), the OCC may extend the 30-day public comment period to allow sufficient time for all interested parties to comment. Refer to the "Public Notice and Comments" booklet of the *Comptroller's Licensing Manual*.

Types of Filings

The OCC has two types of guidelines for the OCC's review of charter filings: standard review and expedited review.

Standard Review

Most organizing groups and many sponsors must file their charter applications using the OCC's standard submission guidelines outlined in the interagency application. These applications are subject to a 30-day comment period. A well-researched and well-prepared application helps the OCC make a timely decision. The OCC seeks to make a decision within 120 days after receipt or as soon as possible thereafter. Charter proposals that receive standard review are not approved automatically.

Expedited Review

An application to establish a full-service federally chartered bank sponsored by a BHC or SLHC, whose lead depository institution is an eligible bank or eligible depository institution (refer to the "Glossary" section of this booklet), is deemed to receive preliminary conditional approval on the 15th day after the close of the public comment period, or the 45th day after receipt of the application, whichever is later, unless

- the OCC notifies the applicant before that date that the filing is not eligible for expedited review or the expedited review process is extended under 12 CFR 5.13(a)(2); or
- the OCC determines that the proposed bank will offer banking services that are materially different than those offered by the lead depository institution.

The applicant must provide identifying information about the lead depository institution for an application to qualify for expedited review. If one or more institutions are approximately

[33] A BHC is located in the state in which the total deposits of all of its banking subsidiaries was the largest on the later of July 1, 1966, or the date on which it became a BHC under the BHCA.

[34] An SLHC's home state is the state in which the amount of total deposits of all insured depository institution subsidiaries of such company was the greatest on the date on which the company became an SLHC.

the same size, the applicant must furnish additional information to support identification of the selected institution as the lead depository institution. Such information should include

- full legal names, locations (city and state of each main office), and OCC charter or FDIC certificate numbers for the institutions.
- total assets for each institution as reported in the most recent call report and the date of that report.
- total assets for each institution as reported in the reports of condition as of the date one year earlier than the most recent report.

Contracts and Other Arrangements

As part of its application, each organizing group must submit a description of any contract, transaction, professional fees, or any other type of business relationship involving the institution, the holding company, its affiliates, and any insider (refer to the "Glossary" section of this booklet). The OCC reviews each insider contract to be sure that it is made on nonpreferential terms. If the contract involves an insider, the OCC requires the submission of at least one independent appraisal of the contract or other arrangement that includes

- a description of the assets, property, or service.
- the terms of the contract, including responsibilities, liability, rights for audits and reviews, and termination requirements.
- evidence showing that the contract is fair, reasonable, and comparable to similar arrangements that could have been made with unrelated parties.

The organizing group generally must disclose each insider contract or arrangement to proposed or current shareholders. Refer to the "Insider Activities" booklet of the *Comptroller's Handbook*. The organizing group should maintain copies of the disclosures in the bank's files and provide them to shareholders on request. Typical contracts or other arrangements include the following:

- The sale or other transfer of any organizer's stock in the proposed bank, including a voting trust or other voting agreement.
- An organizer acting as representative of, or on behalf of, the proposed bank or any person associated with the proposed bank.
- The payment or receipt of any money or item of value as compensation for services rendered or property transferred in organizing the proposed bank. This may include the purchase or lease of banking premises, furniture, equipment, fixtures, or supplies; consultant or legal fees; preparation of a registration statement or nonpublic offering; or sale of stock.

Regardless of insider involvement, as a matter of prudent business practice every contract or other arrangement should include provisions addressing obligations of, and options available to, the parties if the OCC (1) experiences delays in processing the application; (2) denies the application; (3) revokes its preliminary conditional approval letter; or (4) objects to a person serving in any proposed capacity. Such contract or arrangement includes real estate or employment commitments.

A proposed bank may not pay any organizational fee contingent or dependent on an OCC action or decision.[35] Such action is grounds for denial of the application or revocation of preliminary conditional approval.

Use of Third-Party Service Providers

A bank may rely on, or outsource to, third parties for a variety of services or functions, some of which may be critical to the bank. Before selecting each third party, the bank should determine that outsourcing is in accordance with the bank's business and strategic plans and perform due diligence on the third party.[36] The bank should have a written contract or service level agreement with each third party that clearly addresses the duties and responsibilities of the third party and the bank. To limit risk if the application is not approved, organizers should enter into contracts contingent on preliminary conditional approval of their application.

The organizing group should include in its application details about functions or services the bank will outsource and those it will perform internally. For those functions that will be outsourced, the organizers should include the name of each third party under consideration along with its related background information, number of years in business, financial condition (statements), and a copy of the contract. Organizers should also describe the due diligence conducted on each third party. This description should assess the third party's operation, evaluate the total cost, and outline how the bank will conduct ongoing monitoring of the third party.

A bank is responsible for the security of its customer and bank records. When third parties are used, the bank also is expected to ensure that the third party secures those records properly. A bank's use of a third party does not diminish the responsibility of the bank's board and senior management to ensure that the activity is performed safely and soundly and in compliance with applicable laws.

When circumstances warrant, the OCC may use its authority to examine the functions or operations performed by a third party on the bank's behalf.[37] Such examinations may evaluate safety and soundness risks, the financial and operational viability of the third party to fulfill its contractual obligations, and compliance with applicable laws and regulations. For additional guidance, see the OCC issuances listed under "Third-Party Relationships" in the "References" section of this booklet.

Before the bank is granted final approval and allowed to open, it must develop a third-party risk management program, as applicable. The OCC reviews this program during the preopening examination (POE). Refer to the "Preopening Examination" section of this booklet.

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[35] Refer to 12 CFR 5.20(g)(4)(ii).

[36] Refer to OCC Bulletin 2013-29, "Third-Party Relationships: Risk Management Guidance."

[37] Refer to 12 USC 1464(d)(7) and 1867(c).

Deposit Insurance and Filing With the FDIC

The OCC generally requires FDIC deposit insurance for all bank charters, except for certain special purpose bank charters such as national trust bank charters. Refer to the "Trust Banks or Trust Companies" section of this booklet. All FSAs must be FDIC insured. The FDIC's Statement of Policy on Applications for Deposit Insurance discusses the criteria the FDIC considers when evaluating deposit insurance applications. These criteria are similar to those of the OCC. The OCC and the FDIC encourage simultaneous submission of the interagency application to each agency to expedite processing.

To the extent possible, the OCC and the FDIC coordinate their application investigations to minimize the burden to the applicant and to eliminate duplicative regulatory efforts. For example, the FDIC may rely on OCC background investigations and may conduct its field investigation concurrently with OCC staff.

The FDIC may take final action on its deposit insurance application before the OCC decides its application. Likewise, the OCC may grant preliminary approval of the charter application before actions of other agencies on related applications, such as FDIC action on the deposit insurance application or Federal Reserve Board action on a BHC or SLHC proposal.

Duplicate Charter Filings With Other Regulators

If an organizing group or persons representing the same interest file substantially similar state and federal charter applications, the OCC generally considers the federal bank application abandoned. The OCC may consider an exception if the organizing group requests one and unusual circumstances exist.

Additional Information

The OCC may require additional information at any time to reach an informed judgment about the application. The OCC requests clarifications or additional information through the contact person. Those requests generally do not reflect negatively on the organizing group. Conversely, the OCC may deny the proposal if the additional information the organizers provide is insufficient to determine the bank's prospects for success. Numerous requests by the OCC for additional or clarifying information is indicative of failure on the part of the organizers, directors, and senior management to demonstrate their knowledge of the operations of a financial institution and may be viewed negatively by the OCC.

Amendments

Organizers may file amendments to the application during the review process. The OCC may conclude, however, that the submission of numerous or significant amendments during the review period has rendered the original application obsolete. In such cases, the OCC may deem the original application to be withdrawn or deny it. The organizers may then file a new application.

Review of the Application

The OCC begins to process each application upon receipt. The OCC reviews and analyzes the proposal, completes background and field investigations, and resolves any unusual issues.

Background Investigations

The OCC conducts background checks to assess each insider's competence, experience, integrity, and financial ability. The OCC determines independently the accuracy and completeness of information submitted for each person. The OCC must reach a decision not to object to each insider serving in the proposed position. The "Background Investigations" booklet of the *Comptroller's Licensing Manual* provides more information about this review process, the authority of the OCC to object to a filer, and actions that the OCC may take if the materials submitted contain a misrepresentation or omission that could be misleading.

Field Investigations

The OCC generally conducts a field investigation when evaluating a charter application. During this investigation, OCC staff may interview the organizers, officers, and controlling shareholders to evaluate the proposal's prospects for success and to verify facts and projections. The field investigation is an important component in the review process for any proposed federally chartered bank. The findings from the field investigation are major factors in the OCC's overall analysis and review of the application; however, the field investigation is only one of the components evaluated before making a decision. The OCC conducts a field investigation for every charter sponsored by an independent group and for most BHC- or SLHC-sponsored charter applications. Generally, the field investigation is intended to develop background information and determine whether

- the organizing group is capable of successfully implementing the business plan.
- executive officers are knowledgeable and can execute the proposed business plan in a safe and sound manner.
- the financial projections are realistic for the proposed market.
- the organizers have made any major changes to the business plan that were not reported previously to the OCC.

The OCC tailors the scope of each investigation to the complexity of the application, with input from the supervisory office and other OCC divisions. OCC bank examiners (examiners) with appropriate expertise conduct the investigation. The OCC normally schedules an investigation as soon as practical. When possible, the OCC coordinates its investigation with that of FDIC staff if the bank will be insured to minimize burden on the applicant.

During the investigation, OCC staff members review relevant material, interview insiders and other identified persons, and explore matters related to the proposed bank's operations. The investigation team typically discusses certain aspects of the proposal with organizers, principal shareholders, and management.
Additionally, to assess market needs and support within the community, the team may meet with community groups, local government officials, and financial (bank and FSA) and nonbank competitors.

The examiners meet with the organizing group and management at the conclusion of the investigation to recap the investigation and its importance to the charter decision process, discuss any significant issues, and communicate the investigation findings in general terms. The results of the field investigation are only some of the factors the OCC considers in its review.

Decision

The OCC generally attempts to decide a charter application within 120 days of receipt (or sooner if the filing qualifies for expedited review). Therefore, the OCC expects that at the time an organizing group submits an application, the CEO has been identified and the filing is complete and accurate with a business plan that is well thought out and fully supported. The OCC does not approve applications that fail to provide the necessary information for the OCC to fully evaluate the proposal. The application is expected to stand on its own at the time of filing, with only general clarification from the organizing group concerning members of the organizing group, the CEO, and/or the business plan. An application with significant and material deficiencies does not reflect well on the organizing group, and it is not the OCC's role to offer alternative solutions for the organizers to obtain preliminary approval. The OCC will inform the group of significant deficiencies before acting on the application.

Following review of the application and the field investigation, the OCC determines whether the proposed bank charter has a reasonable chance of success, will be operated in a safe and sound manner, and meets other applicable criteria. It then decides whether to grant preliminary conditional approval or deny the application. The OCC notifies the contact person and interested parties of its decision in writing. Refer to the "Public Notice and Comments" booklet of the *Comptroller's Licensing Manual*.

Preliminary conditional approval (1) indicates the OCC's permission to proceed with the organization of the bank according to the plan set forth in the application; (2) specifies standard requirements and enforceable supervisory conditions, including minimum policies and procedures; and (3) may identify special requirements unique to the application for the proposed bank. In addition, the OCC requires the organizers to raise capital within 12 months of the OCC's preliminary conditional approval and to open within 18 months from that date, unless extended by the OCC.

A preliminary conditional approval decision is not an assurance that the OCC will grant final approval for a new bank charter. The organizing group must satisfy standard and special requirements, as well as certain procedural requirements, before the OCC grants final

approval. In addition, the OCC may impose special conditions that remain in place after the bank opens.

Standard and Special Requirements of Approval

When the OCC grants preliminary conditional approval to a charter proposal, it imposes standard requirements on the proposal. These requirements include finalizing appropriate policies and procedures for the bank, complying with certain capital raising requirements, and engaging audit staff.

The OCC may place additional special requirements on new bank charters with certain characteristics, such as special purpose banks. The OCC may also impose special requirements tailored to the specific individual proposal. For example, while each organizing group proposes to raise the minimum level of capital, net of organization costs, specified in its application, the OCC may require a group to raise an amount higher than originally proposed. Other special requirements may include

- submitting for review and prior approval a complete description of the bank's information systems and operations architecture and related control plans.
- implementing a comprehensive written information security program that includes administrative, technical, and physical safeguards appropriate to the size and complexity of the bank and the nature and scope of its activities.

The organizing group generally must satisfy standard and special requirements before the bank opens.

Standard and Special Conditions of Approval

Unlike standard or special requirements, conditions are considered "conditions imposed in writing" within the meaning of 12 USC 1818.[38] The OCC places two types of conditions on new bank charters. Some standard conditions apply to all new bank charters. Refer to the "OCC Evaluation of Proposal" section of this booklet. Others are special conditions tailored to specific proposals, such as the following:

- Maintaining a specified minimum capital floor (for example, no less than $5 million, or other appropriate amount).
- Maintaining a certain percentage of tier 1 capital (leverage ratio) for a specified period after the bank opens, which might be different than the standard condition to maintain no less than an 8 percent leverage ratio.
- Executing a written agreement between the proposed bank and its holding company that provides for capital maintenance, liquidity support, or other assurances to the bank, if and when necessary.

[38] A condition imposed in writing is one that is enforceable under 12 USC 1818. At a minimum, the OCC will cite and include in its examination report a violation of a Regulatory Condition Imposed in Writing. A violation of this condition can provide the basis for the assessment of civil money penalties or other enforcement actions.

- Entering into an operating agreement with the OCC shortly after opening to address any safeguards the OCC considers prudent regarding the bank's operations, growth, capital, liquidity, or other factors. An operating agreement is enforceable under 12 USC 1818. Developing a contingency business plan agreement between the proposed bank and the OCC setting forth certain actions that the bank will take if it does not achieve original business plan results. The agreement could include, but need not be limited to, obtaining additional capital; developing and implementing a corrective action plan or new satisfactory business plan to remedy plan shortfalls or failures; or developing and implementing a contingency plan to sell, merge, or liquidate the bank at no cost to the Deposit Insurance Fund.
- Requiring all final third-party relationship contracts to stipulate that the performance of services provided by the third party to the bank are subject to the OCC's examination and regulatory authority.

In most cases, the OCC requires these conditions to be met by the time the bank opens, and the conditions remain in place until removed or modified by the OCC.

The OCC includes the following language in each preliminary conditional approval letter:

> This preliminary conditional approval and the activities and communications by OCC employees in connection with the filing do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the United States, any agency or entity of the United States, or an officer or employee of the United States, and do not affect the ability of the OCC to exercise its supervisory, regulatory, and examination authorities under applicable law and regulations. Our approval is based on the bank's representations, submissions, and information available to the OCC as of this date. The OCC may modify, suspend or rescind this approval if a material change in the information on which the OCC relied occurs prior to the date of the transaction to which this decision pertains. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

Organization Phase

The organization phase for a bank covers the period between the time the OCC grants preliminary conditional approval and the day the bank opens for business. During the organization phase, the organizing group must satisfy the standard and special requirements, and most standard and special conditions imposed, before the OCC will grant final charter approval. In addition, the organizers hire the remainder of the bank's management team, establish the bank's premises at the proposed site, complete capital raising activities, develop policies and procedures, test the IT architecture, and establish management information and control systems.

Establishing Bank Premises

The organizing group must decide to lease or purchase bank premises consistent with statutory and regulatory requirements. Refer to the "Bank Premises and Equipment" booklet.

The organizing group finances the initial construction or acquisition of bank premises. The OCC reviews lease or purchase agreements for reasonableness and disallows any that are not made in the bank's best interest. Regulatory limits on investments in bank premises are provided in 12 USC 371d and 12 CFR 5.37.

Construction of the bank facility must comply with the minimum security standards in 12 USC 1882 and 12 CFR 21 or 12 CFR 168. Once the bank is open, the bank's security officer files an annual report with the board of directors certifying that the bank complies with the stated security standards. Refer to 12 CFR 21.4 or 168.4.

Internal and External Audits

The OCC requires each bank to adopt an internal audit system appropriate to its size, nature, and scope of activities. Some new banks may elect to adopt a system that incorporates independent reviews instead of dedicated audit staff. Many banks also outsource internal audits to third-parties. Refer to the "Internal and External Audits" booklet of the *Comptroller's Handbook* for a detailed discussion of audit programs. An effective audit program includes an evaluation of the quality of internal controls, including the reliability of financial information, safeguarding of assets, and the detection of errors and irregularities.

Banks that offer fiduciary services are subject to specific audit requirements for the trust area and requirements for an independent trust audit committee (12 CFR 9.9, 150.440-150.480). For further discussion of fiduciary audits, refer to booklets in the *Asset Management* series of the *Comptroller's Handbook*.

As a condition of preliminary approval of a newly chartered bank, the OCC normally requires the bank to have an annual independent external audit for a period of three years after it opens. The FDIC generally imposes a similar requirement on insured banks. The external audit must be of sufficient scope to enable the auditor to render an opinion on the financial statements of the bank or consolidated holding company.

The first audit should occur no later than 12 months after the bank opens for business and should audit the bank's operations from the formation of a body corporate or legal entity.

The OCC may grant exemptions from this external audit requirement to a new bank subsidiary of a BHC or SLHC when all of the following requirements are met:

- The new bank's financial statements are included in the audited consolidated financial statements of the parent holding company.
- The sponsoring company is an existing holding company that has operated for three years or more under Federal Reserve Board supervision and does not have any institutions subject to special supervisory concerns.
- Adequate internal audit coverage will be maintained at the bank level. At a minimum, the internal audit program must evaluate the quality of internal controls, including the reliability of financial information, safeguarding of assets, and the detection of errors and irregularities.

The OCC and the FDIC, as applicable, coordinate determinations about external audit exemptions consistent with the "Interagency Policy Statement on External Auditing Programs of Banks and Savings Associations." This statement focuses on banks holding less than $500 million in total assets. If the OCC grants an exemption, it includes that determination in its preliminary conditional approval letter. If any of the requirements listed above are not met during the first three years of the bank's operation, the OCC may withdraw the exemption at its discretion.

Management of new banks should be aware of the general limitations contained in the Sarbanes–Oxley Act of 2002 (Sarbanes–Oxley). Sarbanes–Oxley prohibits an accounting firm from acting as an external auditor of a public company during the same period that the firm provides internal audit outsourcing services. This prohibition applies to companies with securities registered with the SEC or a federal banking agency. Accordingly, national banks that are subject to the requirements of the Securities Exchange Act disclosure rules described at 12 CFR 11 and 16 would be covered by separate audit requirements.

Fidelity and Other Insurance

The bank's board of directors is responsible for the adequacy of the fidelity bond and other insurance needs. The board should research and document in meeting minutes its assessment of the bank's fidelity insurance and excess coverage needs.

Before a national bank opens for business, its board must assess the four factors listed in 12 CFR 7.2013 and obtain adequate fidelity bond coverage. The four factors are the

- internal auditing safeguards employed.
- number of employees.
- amount of deposit liabilities.
- amount of cash and securities normally held by the bank.

Boards of FSAs should consider similar factors to determine adequate insurance.

The OCC will not grant final approval of the charter until the bank has selected a permanent fidelity insurance carrier. The OCC must receive assurances from the bank that permanent insurance coverage will be in place on or before the bank's proposed opening date.

The bank also may acquire liability insurance to mitigate any loss it might incur for inadequate or faulty systems. Some insurance companies offer specialty policies to businesses that assume the risk of legal liability, including errors and omissions. Errors and omissions policies usually cover lawsuits from negligence and performance failure of a product or service.

Start-Up Costs, Including Organization Costs

Start-up costs (refer to the "Glossary" section of this booklet), including organization costs, of a bank must be funded by the organizers and founders through their own funds or

borrowings. Refer to the "Repayment of Start-up and Organization Costs to Organizers" section of this booklet.

At the first shareholders' or members' meeting, shareholders or members review documentation for start-up costs, including organization costs, and commitments; evaluate their reasonableness; and authorize them as appropriate. Therefore, all start-up costs should be adequately documented and fully disclosed to the proposed shareholders or members. Any public or private offerings of securities and proxy materials must properly disclose all fees and start-up costs to prospective shareholders.

For a new bank, pre-opening expenses (such as salaries and employee benefits, rent, depreciation, supplies, directors' fees, training, travel, postage, and telephone) and organization costs (the direct costs incurred to incorporate and charter the bank) are considered start-up costs. These costs cannot be capitalized but must be expensed as incurred.

On the other hand, costs of acquiring or constructing premises and fixed assets and getting them ready for their intended use are expenses that should be capitalized rather than treated as start-up costs. However, the costs of using such assets during the start-up period (such as depreciation) are considered start-up costs.

The start-up costs of forming a bank are sometimes paid by the organizing group (or founders or a sponsoring organization) without reimbursement from the bank. This may occur because the organizing group (or founders or sponsoring organization) want to contribute these funds; this contribution is considered a "forgiveness of payment." Accordingly, the bank must record these start-up costs as expenses of the bank, with a corresponding entry to surplus to reflect the capital contribution. This includes services provided by the sponsoring organization, such as legal or accounting expertise. In this case, the sponsoring organization should account for the cost of services, including salaries, and the bank should record them as start-up costs.

If the shareholders or the OCC disallow reimbursement of certain costs, the organizers, founders, or holding company are responsible for paying the expenses. The bank should treat such unreimbursed costs as capital contributions by the organizers, founders, or holding company. Accordingly, the bank must record these unreimbursed organization costs as expenses of the bank, with a corresponding entry to surplus to reflect the capital contribution.

Similarly, the organization costs of forming a holding company and the costs of other holding company start-up activities are sometimes paid by the de novo bank. Because these are the holding company's costs, they should not be reported as expenses of the bank. Accordingly, any unreimbursed costs paid by the bank on behalf of the holding company or organizers or founders should be reported as a return of capital at the bank level. This treatment as a return of capital is required whether or not the holding company formation is successful.

Under certain circumstances, the actual amount of start-up costs for the bank that are reimbursable may substantially exceed the amount projected when the application was filed initially. In such cases, the OCC may require that the organizing group raise additional capital to offset such unplanned or unanticipated expenses.

The bank should report start-up costs incurred from the bank's inception (including the period before receiving its charter) through the date it commences operations on the income statement during the calendar year that the bank begins operations. Detailed instructions for the definition of organization costs and the inclusion of these costs in the bank's call report are included in the call report instructions.[39]

Significant Changes

Proposed changes throughout the organizational phase before the bank opens for business may materially alter the underlying factors on which the OCC based its decision on the application.

Those changes may have a positive or negative effect on the application. The OCC evaluates each significant change to the original charter proposal to determine the overall impact on the proposal and decide whether to

- allow organization of the bank to continue.
- impose additional conditions on the approval.
- revoke preliminary conditional approval.

In some cases, the OCC may consider the change so materially different from the original application that the OCC considers the application abandoned. In such cases, the OCC requires the organizers to submit a new application.

Notifying the OCC of Significant Changes

Licensing staff maintain contact with the contact person throughout the organization phase and monitor any deviation from the business plan to identify significant changes. Organizers must notify the OCC promptly of significant changes when they occur or are proposed. Matters subject to this notification include, but are not limited to, changes in the following:

- Organizing group's cohesiveness or its composition, including the addition or loss of organizers, directors, or principal shareholders.
- CEO or other members of the proposed management team.
- Biographical or financial information of the CEO, organizers, directors or principal shareholders that is different from what they previously disclosed to the OCC.
- Ownership distribution. Refer to the "Ownership and Capital Raising Efforts" section of this booklet.

[39] Refer to ASC 720-15, "Other Expenses – Start-up Costs" and the OCC's Bank Accounting Advisory Series, Topic 9C, Question 2.

- Manner in which the organizers raise capital, if different than what is described in the charter application. Refer to the "Ownership and Capital Raising Efforts" section of this booklet.
- Development of, or a change in the terms to, a stock benefit plan.
- Business plan, including changes to proposed products, services, activities, growth plans, marketing plans, risk profile (such as more aggressive underwriting criteria or adding a fiduciary operation to a commercial bank's operations), or risk management controls.
- Location of the main/home or branch offices.

Ownership and Capital Raising Efforts

The OCC reviews the shareholders' list before or during a POE to confirm that the organizers' and directors' subscriptions are consistent with their original stock purchase commitments. The OCC also reviews stock subscriptions for potential control issues as specified under 12 USC 1817(j) and 12 CFR 5.50. The OCC verifies that the organizing group's effort to raise capital is consistent with the plans described in the application. Failure to raise capital, as described, is an example of a deviation that can occur late in the chartering process. For example, organizers may make last-minute material capital contributions, or a holding company may purchase stock in a bank that originally planned to raise capital from individual investors in the local community.

Licensing staff consider whether a deviation from described capital raising efforts constitutes a sale of the charter because of a material change in ownership. In some cases when the deviation strengthens a proposal without altering other aspects, such as implementation of the business plan, the OCC may decide not to require submission of a new application.

Repayment of Start-Up and Organization Costs to Organizers

Organizers and founders may not be reimbursed out of escrowed capital funds for personal loans or advances of funds made to the bank organizing effort until after the escrowed capital funds are deposited in the bank, the shareholders authorize repayment, and the OCC authorizes release of the escrowed capital funds. When it opens for business, the bank can repay organizers or founders in cash. Alternatively, the organizing group may request prior OCC approval so that an organizer or founder can receive stock, or a combination of stock and cash. The OCC expects that:

- The organizers provide information to demonstrate that any transaction, contract, professional fees, or any other type of business relationship involving the institution, the holding company, and its affiliates (if applicable)
  - is made in the normal course of business,
  - is made on substantially the same terms as those prevailing at the time for comparable transactions with non-insiders, and
  - does not present more than the normal risk of such a transaction or present other unfavorable features.

- The organizers document and properly disclose in any public or private offering of securities and proxy materials the expenses incurred by the organizing group for potential investors to evaluate the appropriateness and reasonableness of the expenses.
- The stock is issued at no less than par value.

Preopening Examination

The POE is the last major step of the chartering process. Organizers submit a request to the OCC to schedule this examination at least 60 calendar days before the proposed opening date. Examiners visit the bank at least 14 calendar days before the proposed opening date to determine whether the board of directors and management are prepared to commence operations.

The examination may be broad in scope and include an evaluation of the bank's final plans to identify, measure, monitor, and control all relevant risks. Refer to appendix C for information about the categories of risk and risk assessment. After the POE, the examiners meet with the board of directors and management to discuss examination findings.

The OCC may decide on a case-by-case basis to waive or perform an abbreviated POE for an organizing bank sponsored by an existing BHC or SLHC or other sponsoring company. The OCC bases its decision primarily on the OCC's prior knowledge of, and experience with, the sponsor and the sponsor's policies and procedures. If no POE is performed, the OCC requests that each BHC or SLHC sponsor organizing a bank certify that the necessary procedures have been performed to complete the bank's organization and file applicable corporate documents with the OCC.

Expiration or Revocation of Preliminary Conditional Approval

A bank must raise initial capital, net of organizational and preopening expenses, to meet or exceed the amount stated in the preliminary conditional approval letter. If the capital for the new bank is not raised within 12 months of the preliminary conditional approval, the organizing group fails to meet the market test (refer to the "Glossary" section of this booklet) and preliminary conditional approval expires unless the OCC grants an extension.

If the organizers raise capital within the deadline, they must open the bank no later than 18 months from the date the OCC granted preliminary conditional approval.

The OCC's preliminary conditional approval also expires for failure to open the bank within 18 months.

Extensions

The OCC normally does not grant extensions of time for either deadline. Under extenuating circumstances, the organizing group may request an extension of the time following approval from the Licensing staff in the appropriate office. The organizing group must provide sufficient information with its request to prove that the reason for the delay is beyond its

control (for example, weather delays, or delays in obtaining zoning or building permit authorizations to build a facility).

Revocation

The OCC revokes preliminary conditional approval if

- the OCC discovers material violations of law, misrepresentations, or any fraudulent activity by the organizers, directors, or officers.
- the OCC learns of any information that gives it sufficient cause to
  - change its evaluation of the proposed new bank's prospect for success (such as significant changes in proposed senior management, status of ownership or directors, deterioration of an affiliate institution, or a change in capitalization or deposit insurance status).
  - question that the bank will be operated in a safe and sound manner.

Notification

The OCC conveys reasons in writing for why it denied an application or withdrew preliminary conditional approval. The organizing group, directors, and founders alone are responsible for all expenses incurred for a withdrawn, expired, or disapproved application, including costs for returning funds to subscribers.

Final Approval

The OCC determines whether a bank is authorized to open. A bank may begin the business of banking or engage in fiduciary activities only when the OCC grants final approval. The OCC may delay opening if one or more of the following occur:

- During the POE, the examiners identify deficiencies that the directors must correct before opening. Such deficiencies may include systems or bank premises that are not ready to support bank operations.
- The directors have not selected a fidelity insurance carrier, or the fidelity insurance coverage will not be in effect when the bank opens.
- The OCC determines through other means that a significant change has occurred or that the organizing bank is not prepared to open. Significant deviations or changes that the OCC has not approved during the organization phase may be grounds for delaying issuance of the charter or revoking its preliminary conditional approval.
- The OCC determines that the organizers have not adequately addressed all substantive risk management concerns identified in the chartering process or POE.

Until final approval is granted, the OCC has the right to alter, suspend, or revoke preliminary conditional approval should the OCC deem that any interim development warrants such action.

Post-Opening Considerations

The OCC continuously supervises federally chartered banks through on-site supervisory activity and periodic off-site monitoring. Refer to the "Large Bank Supervision" and "Community Bank Supervision" booklets of the *Comptroller's Handbook*. Those activities help determine the condition of individual banks and the overall stability of the federal banking system. Also refer to appendix C in this booklet.

Significant Deviations After Opening

A bank's significant deviations (refer to the "Glossary" section of this booklet) or changes from its proposed business plan after opening for business may alter materially the underlying factors on which the decision to grant final approval of the charter application was based. Those deviations may have a positive or negative effect on the bank. The OCC makes its decision on a charter application conditional on the new bank not changing its operations significantly without the OCC's review and non-objection after opening. After the bank has been operating for three years, the OCC evaluates the stability and future prospects of the bank and may remove or continue the condition at that time.

After a bank opens for business, management and the board may discover that the bank is achieving slower or more rapid growth than anticipated. Management and the board also may determine that the bank is not able to generate quality loans, attract a significant volume of deposits, or generate the necessary volume of accounts or transactions. There also may be concerns about poor risk management practices. Management and the board should investigate thoroughly the underlying reason(s) for each item before taking action.

Examiners evaluate proposed significant deviations to determine if they are prudent. Refer to appendix F for specific guidance on identifying and evaluating significant deviations, communication requirements, and related procedures.

Expansion or Contraction of Assets or Activities

Apart from the significant deviation requirements, bank management wishing to expand or contract the bank's primary business may need to file with the OCC before implementing the proposed change. Refer to this subject in the "General Policies and Procedures" booklet of the *Comptroller's Licensing Manual* for specific details.

The OCC has a long-standing practice of discouraging a bank from removing substantially all of the assets and liabilities of the bank, creating a dormant bank. Refer to the "Glossary" section of this booklet. The OCC has serious supervisory concerns about such actions, including how the management or the board may use a dormant charter; the nature of the services and products that might later be initiated; and increased operations and concentration risk. For a detailed discussion, refer to the "General Policies and Procedures" booklet of the *Comptroller's Licensing Manual*.

Change in Control

Unless a transaction is subject to the Bank Merger Act (12 USC 1828(c)) or other statutory exemptions, the OCC applies the definitions and standards in the CBCA and the OCC's implementing regulations (12 USC 1817(j) and 12 CFR 5.50, respectively) to determine whether a change in ownership interest constitutes a change in control. Such changes include transactions that may result in control following the exercise of warrants or options by insiders under stock benefit plans.

If the OCC finds that a change in control would result from a change in ownership, the OCC requires the new owner(s) to file a change in control notice, generally before the proposed transaction. The OCC then decides whether to disapprove the proposed change. No person (refer to the "Glossary" section of this booklet) may take any action that would result in a change in control of the bank without prior OCC review, as provided in the CBCA, unless the transaction is subject to approval under certain other statutes. Refer to the "Change in Bank Control" booklet of the *Comptroller's Licensing Manual*.

OCC Review of Management

The OCC must review and not object to the hiring of any officer or the appointment or election of any director for two years from the date the bank commences business, unless this period is extended by the OCC.[40] The OCC may extend the period beyond two years if the OCC deems a longer period appropriate, particularly during the bank's de novo phase. During this time, each person proposed as an officer or director must provide the appropriate OCC supervisory office with the required Interagency Biographical and Financial Reports. The OCC provides a written decision about each person submitted for review.

Special Purpose Proposals

A national bank or FSA is generally authorized by its articles of association or charter to exercise all express and implied powers of the respective charter. Special purpose banks, however, may offer only a small number of products, target a limited customer base, incorporate nontraditional elements, or have narrowly targeted business plans. Depending on the type of business, the OCC may require a bank to specify the nature of its business in its articles of association or charter, and not to deviate from that business without OCC approval.

Special purpose banks must meet the same statutory and regulatory requirements as other banks, unless applicable laws or regulations provide otherwise. All institutions must comply with BSA and OFAC requirements.

In addition, organizers of special purpose banks are expected to adhere to established charter policies and procedures that are set forth in 12 CFR 5 and this booklet. Special purpose bank charter applications normally must provide the information required by the OCC's standard

[40] Refer to 12 CFR 5.20(g)(2).

review process. However, organizers should tailor the contents of the application to be consistent with the special purpose business line of the proposed charter.

Depending on the nature of the proposed activities, the OCC's review of a special purpose proposal may require additional scrutiny.

Special purpose bank proposals to date include those banks whose operations are limited to certain activities, such as credit card operations, fiduciary activities, community development, or cash management activities. Proposals for bankers' banks also fall into this category. The OCC will consider other special purpose bank proposals, provided the application meets the evaluative decision factors common to all bank charter applications.

Credit Card Banks

Credit card banks are institutions whose primary business line is the issuance of credit cards, the generation of credit card receivables, and activities incidental to that line of business. Some credit card banks may have other lines of business but they are not generally material to the bank.

A holding company or individual shareholders may control an insured bank that engages exclusively or predominantly in credit card activities. This bank may legally offer additional banking services, but generally the board has adopted a business plan focusing on credit cards and related products and services. These banks are generally "banks" under the BHCA or "savings associations" under HOLA, so a company that owns one is a BHC subject to the activity and geographic limitations of the BHCA, or an SLHC subject to the activity limitations of the Savings and Loan Holding Company Act.[41] Companies that own these credit card banks generally are subject to supervision and oversight by the Federal Reserve Board.

Some credit card national banks, however, are not "banks" as that term is defined under the BHCA if they meet certain requirements under law. The Competitive Equality Banking Act of 1987 (CEBA) created the BHCA exemption for these national banks (CEBA credit card banks). There is no similar exception for FSAs under the Savings and Loan Holding Company Act. The company that owns a national credit card bank that complies with the specific exceptions noted in the CEBA does not become a BHC solely by virtue of owning the bank, so the parent company is not subject to the activity and geographic limitations that generally apply to BHCs under the BHCA. Thus, nonbank holding companies, commercial entities, or banks that wish to have a subsidiary credit card bank usually own these CEBA credit card banks. However, a BHC that wants to operate a credit card bank in a state in which it would not be able to establish a de novo BHCA bank also could own a CEBA credit card bank in that state. This type of bank must meet all of the requirements for the credit card bank exemption created by the CEBA amendment to the BHCA (12 USC 1841(c)(2)(F)).

[41] Refer to 12 USC 1467a, "Regulation of Holding Companies," which is part of HOLA.

The bank

- must engage only in credit card activities.
- may not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties.
- may not accept any savings or time deposits of less than $100,000, unless they are used as collateral for secured credit card loans.
- may maintain only one office that accepts deposits.
- may not engage in the business of making commercial loans.

Those limitations must appear in the national bank's articles of association.

Although commercial entities may have proven experience in managing a credit card operation, the OCC expects a senior management team that can demonstrate sufficient relevant experience necessary to operate as a credit card bank in a regulatory environment.

A CEBA credit card bank proposal is processed as a special purpose charter application. Proposals with any of the following features are subject to greater scrutiny:

- Issuance of cards with closed-end credit features.
- The absence of a parent organization with an investment grade rating of A or higher by Moody's or Standard and Poor's.
- Issuance of cards to LMI customers with a higher credit risk profile, higher default probabilities, or collateral issues; or charging large upfront fees or higher than usual annual percentage rates (collectively, subprime lending issues).
- E-banking and Internet primary operations.

Each applicant should evaluate thoroughly and discuss potential issues with appropriate OCC staff before filing. Third-party relationship issues may significantly increase a bank's risk profile, notably strategic, reputation, compliance, and transaction risks. Refer to the "Third-Party Relationships" section in this booklet. Because those issues are sometimes complex, an applicant also may wish to consult its regulatory counsel.

A credit card bank must maintain its status as an insured depository institution within the meaning of 12 USC 1813(c)(2) and, if a national bank, apply for membership in the Federal Reserve System. If the FDIC initiates or takes any action to terminate the bank's status as an insured depository institution, the OCC reserves the right to impose additional conditions on the bank.

A credit card bank also must comply with BSA/AML and OFAC requirements, and with the CRA. For CRA purposes, however, it may seek designation as a limited purpose bank under 12 CFR 25.25 or 12 CFR 195.25.

Many credit card bank proposals raise affiliate transactions issues under sections 23A (12 USC 371c) and 23B (12 USC 371c–1) of the Federal Reserve Act and the implementing regulation, Regulation W, 12 CFR 223. The most common issues relate to the following:

- Initial capitalization of a newly chartered credit card bank.
- Transfers of assets between the credit card bank and its affiliates.
- The possibility that credit extended by a proprietary credit card bank to its cardholders may be treated as a loan to an affiliate, if customers use their credit cards to purchase goods and services from bank affiliates.

Regulation W contains an exemption from the restrictions of sections 23A and 23B that permits a newly formed bank to purchase assets from an affiliate, thus eliminating many of the issues pertaining to providing initial capitalization of any new bank, including a credit card bank.

Under section 23A's attribution rule, an extension of credit by a member bank to a nonaffiliated entity is treated as an extension of credit to an affiliate if the proceeds are transferred to, or used for the benefit of, an affiliate of the bank. These transactions thus become covered transactions. Accordingly, if a credit cardholder purchases goods or services from an affiliate of the member bank that issued the credit card, then the extension of credit to the cardholder may be attributed to the affiliate because the affiliate receives the benefit of the loan proceeds.

Regulation W contains complex rules regarding the treatment of credit cards under the attribution rule. The regulation provides an exemption from the attribution rule if the extension of credit is made through a "general purpose credit card." This is a credit card issued by a member bank that is widely accepted by merchants that are not affiliates of the bank and that satisfies a test set forth in the regulation. Specifically, the value of goods and services purchased with the card from affiliates of the bank must be less than 25 percent of the total value of all goods and services purchased with the card. Compliance with the test may be demonstrated in several ways. Organizers of a CEBA credit card bank with a sponsoring company should consult the regulation for details. If a card fails this test, all card transactions with affiliates are subject to the attribution rule.

Issuers of credit cards that cannot qualify as general purpose credit cards may still avoid the collateralization and other requirements for covered transactions by making use of the exemption provided in Regulation W for an intraday extension of credit. This is defined as an extension of credit to an affiliate that the bank expects to be repaid, sold, or terminated, or to qualify for a complete exemption under Regulation W, by the end of the U.S. business day. CEBA credit card banks commonly qualify for this exemption by selling their receivables to an affiliate or other entity at the end of each business day. Organizers of a CEBA credit card bank with a sponsoring company should consult the regulation concerning requirements to qualify for the intraday exemption.

Because credit card banks have different risks from traditional full service banks, the OCC may impose, as appropriate, enforceable conditions that provide safeguards for the bank. Such conditions may include requiring written agreements between the bank and its parent, or between the OCC, the bank, and its parent, to assure that the parent provides capital and liquidity support to the bank when needed. Refer to the "Additional Considerations" subsection in the following "Trust Banks or Trust Companies" section, which discusses

operating agreements, capital and liquidity maintenance agreements, and capital assurance and liquidity support agreements that the OCC may impose for credit card banks as well as trust banks.

Trust Banks or Trust Companies

The OCC may grant approval for a bank that will limit its operations to those of a fiduciary, meaning the bank will act as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, or in other fiduciary capacities and related activities. Banks that choose to so limit their services are referred to as trust banks or trust companies (collectively, trust banks). The OCC generally requires FDIC deposit insurance for all bank charters, except for certain national trust bank charters. All FSAs, including those that limit their activities to trust activities, must have FDIC insurance.

An organizing group or sponsor seeking to charter a trust bank should review this booklet as well as the "Fiduciary Powers" booklet of the *Comptroller's Licensing Manual*. For a national trust bank, the OCC requires that the bank's articles of association limit the bank to the operations of a trust bank and activities related to such operations. Similarly, the OCC generally requires that the charter of an FSA that engages exclusively in trust activities limit the bank to the exercise of fiduciary powers.

A national trust bank typically is not a bank for purposes of the BHCA, and so a company that owns a national trust bank and no other bank is not a BHC. Similarly, a company that controls an FSA that engages exclusively in trust activities (and does not control any other savings association in which activities are not limited exclusively to trust activities) is not an SLHC for purposes of HOLA. Therefore, a company other than a BHC or SLHC may own a trust bank.

There are two ways for a national trust bank not to be a bank under the BHCA. First, a national trust bank does not meet the general definition of a bank under 12 USC 1841(c)(1) if the trust bank (1) is not insured and (2) does not accept demand deposits and make commercial loans. Second, even if a trust bank is insured and otherwise would meet the definition of a bank, a trust bank is not considered a bank for purposes of the BHCA if it meets certain conditions (12 USC 1841(c)(2)(D)). These conditions are as follows:

- The institution must function solely in a trust or fiduciary capacity.
- All or substantially all of the trust bank deposits are in trust funds and are received in a bona fide fiduciary capacity.
- No trust bank deposits insured by the FDIC are offered or marketed by or through an affiliate.
- The trust bank does not make commercial loans or accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others.
- The trust bank may not obtain payment or payment-related services from any Federal Reserve Bank.
- The trust bank may not exercise Federal Reserve Bank discount or borrowing privileges.

For a trust-only FSA, the exemption under HOLA excludes from the definition of an SLHC a company that controls a savings association that functions solely in a trust or fiduciary capacity as described in 12 USC 1841(c)(2)(D).[42]

A bank's transactions with an uninsured trust bank owned directly by the same parent company do not qualify for certain exemptions from sections 23A and 23B that are available to a bank engaging in the same transactions with an insured bank affiliate. Thus, transactions between the bank and its uninsured trust bank affiliate generally must comply with all relevant requirements of sections 23A and 23B.

On the other hand, an uninsured trust bank that is wholly owned by a bank is not treated as an affiliate of the parent bank for purposes of sections 23A or 23B. Thus, from the perspective of the parent bank, transactions between the parent bank and the subsidiary uninsured trust bank are not subject to sections 23A and 23B. From the perspective of the uninsured trust bank, sections 23A and 23B apply to covered transactions with the bank parent, but the sister bank exemption or another exemption may be available.

Organizers of a trust bank should complete the Interagency Charter and Federal Deposit Insurance Application in addition to reviewing the Fiduciary Powers Application. While a separate application for fiduciary powers is not required to organize a special purpose charter for a national bank or FSA limited to fiduciary or trust activities, the OCC reviews the fiduciary powers as part of its review of the charter application. Therefore, the application should include all of the information requested in the charter application, as well as the information outlined in the Fiduciary Powers Application.

Capital and Liquidity Requirements

Trust banks are required by statute (12 USC 92a and 1464(n)) to have capital no less than that required by state law for companies offering similar services in the state in which the bank will be located.

Trust banks also are subject to the minimum leverage and risk-based capital ratios based on balance sheet assets defined in 12 CFR 3. These ratios are not, however, optimal measures of capital adequacy for trust banks because off-balance-sheet asset management activities are not captured in the capital ratio calculations. Accordingly, there ordinarily would be a higher level of capital than the ratios defined in 12 CFR 3. Trust banks also need to consider appropriate levels of liquidity. The OCC expects organizers for trust bank charters to provide a detailed analysis supporting their proposed capital and liquidity levels.

Organizers of a trust bank should refer to OCC Bulletin 2007-21, "Supervision of National Trust Banks: Revised Guidance: Capital and Liquidity," for further guidance on OCC expectations of trust bank directors and management to ensure that adequate capital and liquidity are maintained. In addition, organizers should refer to recent trust charter approvals available in Interpretations and Actions on the OCC's website to gain insight into the OCC's capital and liquidity expectations for trust bank charters.

[42] Refer to section 10(a)(1)(D)(ii) of HOLA (12 USC 1467a(a)(1)(D)(ii)).

After considering the organizers' proposed capital and liquidity levels and reviewing the bank's proposed business, the OCC imposes a minimum level of capital and liquidity the bank must maintain. In some cases, particularly if the trust bank is not part of a BHC or SLHC, the OCC may require that substantial portions of the required minimum capital and liquidity be composed of high-quality liquid assets.[43]

Additional Considerations

Trust banks are highly specialized and present a variety of risks that are not typically found in commercial and consumer banking operations. Based on the OCC's assessment of risk, management's qualifications, the ability of the bank to raise capital after commencing operations, proposed relationships with affiliates, and the ability of the parent company to be a source of strength for the trust bank, the OCC may impose a number of requirements and conditions enforceable under 12 USC 1818.

In some cases, particularly when the trust bank is not part of a BHC or SLHC or is not otherwise affiliated with an insured depository institution, the OCC may require that the requirements and conditions be in the form of written agreements between the OCC, the bank, and the bank's parent. These agreements generally include one or more of the following:

- An operating agreement between the trust bank and the OCC establishing minimum requirements for the operation of the trust bank. The agreement's provisions typically include
  - minimum capital and liquidity requirements.
  - a requirement to adopt and adhere to a business plan and not significantly deviate from it without prior OCC review.
  - provisions addressing corporate governance and internal controls, operations, and relationships with affiliates.
  - provisions setting out the obligation of the parent company to provide financial support.
  - a requirement that the trust bank monitor its financial condition and the parent company's condition and report to the OCC any material adverse changes. (The OCC also assesses compliance through the supervisory process.)
  - provisions addressing risk management, third-party relationships, and business continuation contingency plans.

[43] For example, the OCC may require that a substantial portion, such as 50 to 75 percent, of the capital minimum must be maintained in high-quality liquid assets, or the OCC may require that the bank maintain high-quality liquid assets sufficient to cover a minimum of 180 days of operating expenses. Assets eligible to meet these requirements typically are cash or cash equivalents, deposits at insured depository institutions, U.S. government obligations with a short remaining maturity, and similar readily marketable assets. The assets must not be pledged as security and must be free of any lien or other encumbrance.

  - provisions for early resolution steps requiring a sale, merger, or liquidation of the bank without loss or cost to the Deposit Insurance Fund or OCC[44] if the bank's condition deteriorates.
- A capital and liquidity support agreement (CSA) between the OCC, the bank, and the parent company when the OCC has jurisdiction over the parent company (i.e., the parent company is not a BHC or SLHC). This agreement requires the parent company to inject funds for the trust bank to maintain minimum capital or liquidity. The agreement may also include provisions for ongoing monitoring of the financial condition of the bank, the parent company, and other affiliates.
- A capital assurance and liquidity maintenance agreement (CALMA) between the trust bank and its parent company. This agreement also requires the parent company to inject funds for the trust bank to maintain minimum capital or liquidity.

The operating agreement and the CSA are written agreements under 12 USC 1818 and are enforceable by the OCC under 12 USC 1818. The CALMA is a contractual commitment between the bank and its parent company. Compliance with the agreements is assessed on a regular basis through the OCC's supervisory process.

Many trust banks are parts of much larger organizations, and the relationships with the larger organizations may impose unique risks, including those associated with BSA/AML. For operational efficiency, many trust banks use services provided by both affiliates and nonaffiliates. The OCC understands that third-party services are expected to remain integral to trust bank operations, but the OCC may impose conditions within the safeguard documents to minimize the risks related to these services. Third-party relationships should include initial and ongoing due diligence.[45] Central to the governance of these relationships are service-level agreements entered into by all parties. Services provided by unaffiliated third parties continue to be subject to the same regulatory requirements, including BSA/AML, as affiliate service providers.

While their parent companies may not be BHCs or SLHCs, trust banks are subject to OCC supervision. Therefore, the governance structure, including the ability to identify and manage risk and to meet client service requirements, should be consistent with those of other nationally chartered banks and FSAs.

Community Development Banks

A community development (CD) bank is a depository institution with a stated mission to primarily benefit the underserved communities in which it is chartered to conduct business. A CD bank pursues this specialized mission by primarily providing financial services to LMI individuals or areas, or by primarily benefiting other areas targeted for redevelopment by a

[44] If an insured federally chartered bank is placed into receivership under applicable laws, the FDIC is appointed receiver. If the federal charter is not insured, the OCC would act as receiver and incur any costs under that role.

[45] Refer to OCC Bulletin 2013-29, "Third-Party Relationships: Risk Management Guidance," and its supplement, OCC Bulletin 2017-21.

governmental entity, including LMI census tracts, designated disaster areas, or distressed or underserved nonmetropolitan middle-income geographies.

A de novo CD bank applicant's proposed business plan should outline the proposed business focus. Often, this means the bank's plans serve both its primary CD-focus market as well as a broader market to lay a foundation for its future operations. Diversified asset and liability portfolios, product selection, funding sources, and target markets help to sustain a bank through market fluctuations.

In addition, for a CD bank organized as a national bank or FSA, the OCC generally requires the bank's articles of association or charter to indicate the express intent to lend, invest, and provide services primarily to LMI individuals or areas or areas targeted for redevelopment by a governmental entity in which the bank is chartered to conduct business. Typically, this means that the CD bank's activities will support one or more of the following activities:

- Affordable housing, community services, or permanent jobs for LMI individuals.
- Equity or debt financing for small businesses, including minority- and women-owned small businesses.
- Economic development and area revitalization or stabilization.
- Other activities, services, or facilities that primarily promote the public welfare, such as financial education and other technical assistance for LMI and unbanked individuals, small businesses, and nonprofit organizations.

The CD bank charter makes the bank eligible for investment by national banks pursuant to the public welfare investment authority of 12 USC 24(Eleventh) and 12 CFR 24, and banks seeking to make an investment in a CD bank should follow the regulation's procedures. Alternatively, a national bank may make a noncontrolling investment in a CD bank under 12 USC 24(Seventh) and 12 CFR 5.36. Depending on the circumstances, FSAs may invest in CD banks pursuant to 12 CFR 5.58, 12 CFR 5.59(f)(8), or 12 CFR 160.36.

Investor institutions may assist a CD bank in a number of other ways, including providing an "officer-on-loan" for temporary training assistance; consulting and training on operations; and establishing two-way referral/correspondent relationships on loan business. Representatives of investor banks may also serve on an advisory board or as an honorary director of a CD bank, provided that the CD bank's total assets are less than $100 million. An investor bank may also seek OCC permission to grant a waiver from the Depository Institutions Management Interlocks Act[46] to allow representatives of the investor bank to serve on the board of an unaffiliated CD bank.

CD banks are evaluated under the same CRA criteria as all other community banks. Holding a CD charter is not a guarantee of an "outstanding" CRA rating. Organizers, management, and directors should recognize that, because of the unique risks associated with a CD bank's niche market, the institution may need to pursue its CD mission by gradually ramping up its CD activities while concentrating on the fundamentals of safety and soundness, prudent

[46] Refer to 12 USC 3201 et seq.

growth, and profitability during its early years. As a result, a CD bank's CRA performance may not be as strong in its early years as in later years, as its business and marketing plan develops.

The OCC provides technical assistance to organizers of each CD bank to assist in addressing unique features associated with each application. An OCC team of licensing, supervision, legal, and community affairs staff is available to meet with organizers to provide information and feedback on issues related to a de novo bank's proposed business plan and CD focus. OCC staff will respond to the group's questions and communicate options to assist in accomplishing the organizers' objectives.

The OCC will review a draft application and encourages organizers to fully explore any unique aspects of their proposals before submitting a draft for review. The OCC's technical assistance with the bank's proposal ends, however, when the charter application is filed. OCC technical assistance does not include providing instructions and direction to the bank organizers on developing a business plan, creating the group's strategies, or preparing the proposal or application.

For guidance regarding requirements for national banks with a CD focus, refer to the OCC memo to "Prospective Community Development Bank Organizing Groups." For additional resources for national banks and FSAs, please see the OCC's Community Development Financial Institution and CD Bank Resource Directory on OCC.gov.

Cash Management Banks

A cash management bank normally is affiliated through a BHC or SLHC structure with other banks that engage in a full array of commercial activities. A cash management bank provides certain financial services to its large corporate customers. In the cash management bank, all accounts are swept into money market mutual funds or repurchase agreements of the cash management bank at the end of each day as each customer clears its accounts daily to zero. Fees for services typically are charged to each customer based on the number of services used and the number of items processed. Cash management banks incur high operational risks.

Some cash management banks are chartered as de novo institutions. Some, however, are created by stripping down the operations of an existing bank to those of a cash management bank following a purchase and assumption transaction. In the latter case, refer to the requirements discussed in the "Expansion or Contraction of Assets or Activities" section of the "General Policies and Procedures" booklet.

A key consideration when a bank alters its operation in this manner is the appropriate level of capital. The holding company may wish to reallocate its capital and reduce capital in the cash management bank. Refer to the "Capital and Dividends" booklet. Normally, the OCC expects capital at the cash management bank to be maintained at the "well-capitalized" level as defined in 12 CFR 6.4(b)(1).

The CRA does not apply to a special purpose bank that does not engage in commercial or retail banking services by granting credit to the public in the ordinary course of business, including banks engaged only in providing cash management controlled disbursement services to the public. A cash management bank must comply with BSA/AML and OFAC requirements.

Bankers' Banks

A group organizing a bankers' bank (refer to the "Glossary" section of this booklet) may request that the OCC waive compliance with certain regulations based on the bank's operations. Requests for such waivers should accompany the application and must be supported by adequate justification and legal analysis. The OCC reviews each waiver request by a bankers' bank and decides whether it is justified. However, the OCC cannot waive statutory requirements that apply specifically to a bankers' bank.

Banks investing in a bankers' bank may own no more than 5 percent of any class of its voting securities. In addition, a federally chartered bank's total investment in the stock of one or more bankers' banks is limited to 10 percent of the investing bank's unimpaired capital and surplus. Stock in a bankers' bank may be sold only to depository institutions or their holding companies.

The CRA does not apply to special purpose banks, including bankers' banks that do not perform commercial or retail banking services by granting credit to the public in the ordinary course of business, other than as incidental to their specialized operations. A bankers' bank must comply with BSA/AML and OFAC requirements.

Nontraditional Focus Proposals

Nontraditional focus proposals often raise issues that require heightened review by the OCC.

Supervisory Risks

Certain supervisory risks, such as credit risks, are increased in a narrow focus bank due to its concentration in a single or very limited number of business activities. The OCC may discourage the filing of or deny a charter proposal that would focus primarily or exclusively on activities or services that carry a high degree of risk without appropriate controls or are determined to be predatory in nature.

The OCC requires any proposal for a narrow focus bank to have well-defined business strategies (including contingency plans, sound funding sources, and projected capital commensurate with the risks) and specialized management. The OCC reviews each business plan for a narrow focus proposal to ensure that the organizers adequately address the following risks:

Concentrations: Narrow focus banks, by their very nature, are not as diversified as traditional banks, and a bank's business plan should address how the bank will mitigate any

concentration risk. Diversified asset and liability portfolios, product selection, funding sources, higher minimum capital levels, and target markets help make the bank less vulnerable to a downturn that could significantly affect its income, liquidity, or asset quality.

Funding and liquidity: The organizers should clarify in the business plan how the bank's sources of funding are reasonably diverse, how the bank intends to maintain adequate liquidity, and how credit-sensitive funding risks will be managed.

Access to capital: The business plan should identify sufficient capital to address uncertainties and provide a clear ability to raise capital, if needed. Initial capital should be sufficient, at a minimum, to support the bank's operations and absorb anticipated losses until profitability is achieved, while maintaining capital at an appropriate level to support safe and sound operations. If the bank fails to achieve its projected levels of profitability, the OCC expects the directors to take steps to restore capital to an adequate level. Depending on the risk profile of a narrow focus bank's business plan, the OCC may require higher capital levels.

Compliance risk management: The organizers should outline their proposed plan for maintaining compliance with the AML requirements established under the BSA and the economic sanctions laws administered by OFAC. The plan should also address the management of risks associated with possible money laundering and terrorist financing, commensurate with the level and nature of these risks presented by the bank's business activities, product and service offerings, and target markets. This plan should address the AML compliance program and customer identification requirements of the BSA. Refer to the *FFIEC BSA/AML Examination Manual* for specific information.

Customer authentication and security: The application of a bank using the Internet as a significant means of product delivery must address authentication and security issues. The bank's method of customer authentication and fraud detection is critical because of the lack of personal contact with bank customers. Internet banking platforms allow bank customers to access information and systems directly, including those that enable funds transfers between banks (such as automated clearing houses, SWIFT, Fed Wire, and CHIPS). Also, pursuant to the BSA, banks must report and record customer transactions that exceed certain thresholds. In an Internet environment, a bank may need to modify its systems for monitoring customer transactions. Refer to the "E-Banking" booklet of the *FFIEC IT Examination Handbook* for specific information.

Strategic planning: Narrow focus banks often target a limited customer base and may need robust contingency plans for redirecting efforts if the business plan proves unsuccessful. Organizers should define clearly in the business plan their targeted audience (for example, by identifying products and geographic areas) and the strategic alternatives. In developing the strategic plan, the organizers should keep potential conflicts of interest in mind. Refer to the "Conflicts of Interest" section of this booklet.

CRA Policy Considerations

The CRA generally does not apply to uninsured banks and certain special purpose insured banks that do not perform commercial or retail services by granting credit to the public in the ordinary course of business, other than as incidental to their specialized operations. These banks include bankers' banks and banks that engage only in activities such as providing cash management controlled disbursement services or serving as correspondent banks, trust banks, or clearing agents.[47]

Some other banks may seek designation as a limited purpose or wholesale bank.[48] A limited purpose bank offers only a narrow product line, such as credit card or motor vehicle loans, to a regional or broader market. A wholesale bank is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers.

The organizers must submit a request, in writing, with the charter application to be designated as a limited purpose or wholesale bank. Since limited purpose and wholesale banks are subject to evaluation under the CD test, the organizers should submit a targeted discussion of the bank's CRA plan as part of the charter application.

Capital Considerations

The OCC requires proposed banks with higher risk profiles to have higher capital reserves than banks that present lower risk. The OCC normally does not approve tiered capital injections during the first three years of the business plan unless the bank has an established parent company to serve as a source of capital strength. Therefore, the business plan generally must indicate that all necessary capital for the three-year plan will be available on opening.

[47] Refer to 12 CFR 25.11(c)(3) and 12 CFR 195.11(c)(2).

[48] Refer to 12 CFR 25.12(n) and (x) and 12 CFR 25.25(b) for national banks or 12 CFR 195.12(n) and (x) and 12 CFR 195.25(b) for FSAs.

Procedures: Prefiling

Exploratory Inquiry, Conference Call, or Meeting

1. Request an exploratory conference call or meeting with the OCC through the contact person to clarify any questions or concerns. If available, mail or fax a copy of any written documents that describe the proposal to the appropriate Director for District Licensing for review before the call or meeting. Allow adequate time for OCC staff to review the material.

2. Request information about the chartering process from the Licensing staff in the appropriate district office if this information has not been requested previously. If information was previously requested, skip to step 3.

Prefiling Meeting

3. Request that a prefiling meeting be scheduled.

4. Provide the following:

   - Information about how the group came together and the factors that led to the decision to file.
   - Information about the organizers' qualifications, both individually and collectively.
   - An overview of the proposal, including a discussion of the business plan and the market with particular emphasis on any unique aspects or novel policy or legal issues.
   - [For a bankers' bank] If necessary, provide a written request and justification for waiver of certain legal requirements.

Procedures: Application Process

Filing the Application and Publication

Organizers

1. Submit a complete application, including the Interagency Biographical and Financial Reports, to the Director for District Licensing in the appropriate district office or to Headquarters Licensing. If applicable, file additional applications for fiduciary powers, branches, subsidiaries, etc.

2. Publish a notice on the date of filing or as soon as practical before or after the date of filing. Refer to the "Public Notice and Comments" booklet.

3. Respond to any OCC requests for clarification or additional information.

OCC Field Investigation

Licensing Staff

4. Requests a field investigation from the appropriate supervisory office and solicits its input to determine the scope of the investigation.

5. Provides OCC bank examiners documents to assist them in determining the scope of and conducting the field investigation.

OCC Bank Examiner

6. Contacts the contact person to arrange for the investigation.

7. Coordinates the investigation with the FDIC if applicable and when possible.

8. Reviews documents, interviews insiders and other identified persons, and explores matters related to the proposed bank's operations consistent with the scope tailored for the proposed bank by Licensing staff with input from other OCC staff.

9. Meets with the organizing group and proposed management to summarize the field investigation and its importance, discusses any significant issues, and communicates the investigation findings without offering a preliminary opinion about the likely decision on the charter application.

10. Prepares investigation findings, submits the report for supervisory office approval, and forwards the completed report to Licensing staff.

Public Comments and Hearings

11. If the public or interested persons request copies of the application, Licensing staff follows the information request procedures in the "General Policies and Procedures" booklet.

12. If public comments are filed or a hearing or meeting is requested, Licensing staff refers parties to the "Public Notice and Comments" booklet for guidance and procedures.

13. The OCC determines whether the public comments are material.

Decision

Organizers

14. Assuming the OCC grants preliminary conditional approval, proceed to organize the bank. Refer to the organization phase procedures in this booklet.

Procedures: Capitalizing the Bank

These procedures do not apply to banks that will be owned and capitalized by a BHC or SLHC. These banks should contact the appropriate Federal Reserve Bank regarding capital issues. Banks capitalized through a holding company should provide such information in their application.

These procedures do not apply to de novo mutual FSAs, since mutual charters do not issue stock. Organizers seeking to charter a mutual FSA should consult with the appropriate OCC Licensing office regarding capital raising efforts.

Organizing Directors

1. Take appropriate action to capitalize the bank and comply with the requirements of 12 CFR 16. Submit one original and three copies of the securities registration statement and offering materials for a proposed public offering (registration statement), or a private placement memorandum (PPM) for a proposed nonpublic offering, along with a completed application.

2. [Not applicable for holding company stock solicitation efforts.] Perform the following stock solicitation actions:

   - Designate an unrelated insured depository institution as escrow agent of stock subscription funds according to 12 CFR 16.31. Send a copy of the depository agreement to the OCC.
   - The OCC expects that escrow funds are invested in a manner to minimize any potential principal loss and provide needed liquidity. Acceptable vehicles include short-term U.S. Government securities, mutual funds that invest exclusively in short-term U.S. Government securities, or an insured deposit account at a financial institution which the organizers have concluded has satisfactory financial strength. The OCC generally requires that the escrow agreement provides that the subscription funds may not be released to the organizers without written authorization from the OCC, which generally is granted approximately three business days before the bank commences business. If the bank does not open for business or the OCC's approval of the charter expires, the escrow agreement should provide, upon the written authorization of the OCC that the subscription funds be returned to the investors.
   - Authorize the solicitation of stock subscriptions, including setting the price at which the bank's stock will be sold.
   - Authorize the preparation and filing of a registration statement and offering materials for a proposed public offering, or a PPM for a proposed nonpublic offering, with the appropriate OCC Licensing office. Refer to 12 CFR 16.15 for required information.

Contact Person

3. Forwards to the OCC the original and three copies of the registration statement and offering materials for a proposed public offering or the PPM for a proposed nonpublic offering.

4. Submits amendments to the application, any registration statement, preliminary offering materials, or preliminary PPM for review by the OCC.

OCC District Counsel

5. Generally, in connection with the charter application for the organization of the bank, the applicant provides either a registration statement, preliminary prospectus, and related offering materials for a proposed public stock offering, or a preliminary PPM and related offering materials for a proposed nonpublic stock offering, which must comply with the applicable OCC securities offering regulations. Depending on when the materials are submitted and the status of any revised materials submitted in response to any OCC staff comments or observations, OCC staff continues to review the preliminary public offering materials or preliminary PPM and provide additional comments or observations, as appropriate. When a revised registration statement and preliminary public stock offering materials are submitted with a request for effectiveness, OCC staff makes a determination whether to issue a letter declaring the registration statement and public offering materials effective. After a revised preliminary PPM is submitted with information as to the proposed start date, end date, any possible extensions, and the final termination date, OCC staff indicate whether there are any further comments or observations.

Organizing Directors

6. Before soliciting stock, verify the following:

   - The OCC has reviewed the registration statement and declared it to be effective for the proposed public offering.
   - The escrow agent or the legal entity/body corporate has sufficient liability coverage.

7. For a public offering, solicit stock by providing each prospective shareholder with the effective offering materials, the subscription agreement, and any other information required under 12 CFR 16. For a nonpublic offering, provide the PPM and subscription agreement after all OCC staff comments or observations have been addressed and there are no further comments.

8. Instruct each prospective subscriber, verbally and through the registration statement prospectus, or PPM, as appropriate, to send all subscription funds directly to the escrow agent identified in the subscription letter and subscription agreement. As needed, deposit any funds inadvertently collected by the organizers with the escrow agent. The OCC

generally objects to escrow arrangements in which the escrow agent is not independent of the organizers or organizing directors.

Escrow Agent

9. Invests escrow funds received from subscribers directly in U.S. government securities, such as bills, bonds, and notes, in a mutual fund consisting solely of those securities, or in an insured deposit account at a financial institution which the organizers have concluded has satisfactory financial strength. (Repurchase agreements are not considered direct deposits and cannot be used as escrow funds.)

Organizing Directors

10. If the stock is fully subscribed during the offering period, go to step 17.

11. If the organizing group believes that the bank may be unable to sell the minimum amount of securities before the expiration of the original offering period, and the registration statement and offering materials disclose a possible extension of the original offering period, the organizing group may file a prospectus supplement with the OCC to extend the offering period, provided that the proposed extension does not go beyond the maximum period disclosed in the registration statement and offering materials. The prospectus supplement should be submitted before the expiration of the original offering period, in sufficient time for the OCC to review the supplement. If the OCC declares the prospectus supplement effective before the end of the original offering period, the bank may proceed with the offering. If: (i) the original registration statement and offering materials did not disclose a possible extension to the original offering period; (ii) the original materials provided for an extension, but the organizers wish to extend the offering beyond the extended date; or (iii) a prospectus supplement submitted as described above was not declared effective before the expiration of the original offering period; then, in order to proceed with the offering, the organizers must file a post-effective amendment to the registration statement, which must be declared effective by the OCC. If a post-effective amendment to the registration statement is required, the organizers generally are required to offer rescission rights to the existing subscribers.

OCC Legal Staff

12. For a public offering, reviews the revised prospectus supplement or post-effective amendment, identifies and attempts to resolve any issues or concerns, declares any required post-effective amendment effective, and notifies the contact person. For a nonpublic offering, reviews and provides comments or observations on the PPM and any needed supplements, including any supplements for an extension of the offering period.

13. Reviews the terms of any proposed capital instruments to ensure compliance with eligibility requirements in 12 CFR 3.20.

Organizing Directors

14. For a public offering, if the extension is approved using a prospectus supplement, deliver a copy of the prospectus supplement to all existing subscribers and add the prospectus supplement to the prospectus before the continuation of any offers or sales. For a nonpublic offering, provide the PPM supplement for any approved extension of the offering period.

15. For a public offering, if the extension requires a post-effective amendment to be filed, once the amendment is declared effective, deliver a copy of the post-effective amendment to all existing subscribers and incorporate it into the offering materials.

16. Continue with subscription efforts.

17. Prepare and retain at the bank a shareholders' list that conforms to the requirements of 12 USC 63 for national banks, or 12 CFR 152.11 for stock FSAs.

Escrow Agent

18. Sends the certification letter for capital funds to the CEO.

CEO

19. Sends a copy of the certification letter for capital funds from the escrow agent to the OCC.

OCC Licensing Staff

20. Notifies the escrow agent to release funds.

Escrow Agent

21. After receiving authorization from the OCC to disburse the funds, takes one of the following actions:

    - Returns funds to subscribers, unless all prerequisites for release to the bank have occurred.
    - Releases funds to the bank (approximately two to three business days before the scheduled opening date).

Procedures: Organization Phase

Organizing the Bank

Organizers

1. Within 30 days after receiving preliminary conditional approval, take the following actions:

    - Establish the process for maintaining minutes of all meetings of the organizers and organizing the board at the bank's corporate headquarters.
    - At the first meeting of organizers or by unanimous written consent
        - execute the articles of association and organization certificate for a national bank, or a charter and bylaws for an FSA, and submit an original of each to the appropriate district office for processing by Licensing staff (if this was not done earlier).
        - fix the number of organizing directors to serve until the first meeting of the shareholders or members.
        - elect as organizing directors the persons who have been cleared by the OCC.
        - review and document in the minutes the OCC's preliminary conditional approval letter and all other correspondence from the OCC.
        - designate the organizing chairperson, secretary, or CEO as the person to initiate and receive all future correspondence from the OCC. If this person is different than the contact person during the pre-decision phase of the application, advise the OCC of the new designee.

2. Advise the Licensing staff of significant changes at any time during the organization phase.

Organizing Directors

3. Hold the organizing board's first meeting. Reflect in the minutes the discussion of each of the following items:

    - If not previously executed and filed with the charter application, execute Joint Oath of Bank Directors. Execute an Individual Oath of Bank Director, if necessary. The oath for FSA directors can be found as an appendix to the charter application form.
    - Authorize, at a minimum, the organizing chairperson and the organizing secretary to the board to sign checks and other documents.
    - Adopt a corporate seal [national banks only].

- For a national bank, adopt a stock certificate form containing all information required by 12 USC 52.[49] The par value of the stock should not appear on the face of the certificate, since par value is subject to change throughout the life of the bank.
- Adopt bylaws for a national bank or bylaws for an FSA.
- Authorize the purchase of adequate insurance, including fidelity bond insurance.
- Approve the specific location of the bank's office(s) and advise the OCC of any change in location from the location(s) identified in the charter application. The OCC may construe a change in location as a "significant change" and, if the organization is permitted to proceed, amend and republish the proposed bank's updated business plan, if needed.
- Approve organization costs. Attach to the minutes a copy of approved organization costs. Refer to the "Start-Up Costs, Including Organization Costs" section of this booklet for more information.
- Adopt a written insider policy consistent with safe and sound banking principles. For more information regarding the OCC's review of insider policies, refer to the "Insider Activities" booklet of the *Comptroller's Handbook*.
- Adopt appropriate written policies pertaining to other areas of bank operations.
- Establish an internal control system to ensure ongoing compliance with the currency reporting and record-keeping requirements of the BSA.

Establishing Management and Site

Several of the following steps may be modified or streamlined for established BHCs or SLHCs that are accorded expedited review.

4. Meet at least monthly as a group with the CEO and others, as needed, to oversee the organization of the bank.

5. Select remaining management officials and other insiders, including but not limited to a cashier or chief financial officer, a compliance officer, and a security officer. Submit to the OCC materials on each proposed management official, including the Interagency Biographical and Financial Reports. Also submit appropriate biographical and financial information on newly identified directors and principal shareholders (refer to the "Background Investigations" booklet), sending appropriate documentation to Licensing staff for prior review.

6. Thoroughly investigate the background and qualifications of each proposed executive officer, using criteria no less stringent than those detailed in the Management Review Guidelines in the "Background Investigations" booklet. Submit to the OCC a summary of the directors' investigative findings.

7. [For bankers' banks only] Submit to the OCC financial reports on newly identified banks that would like to participate in the bankers' bank. The reports should be consistent with those submitted by the organizing banks.

[49] For an FSA, the OCC reviews and approves the form of securities. Refer to 12 USC 1463(h)(2).

Organizing Directors

8. Review and document in the minutes of the board the following:

    - Any transactions with insiders. Include the following information for each transaction:
        - Name and address of the owner of the property or provider of the service.
        - Relationship to the bank.
        - Asset or service to be acquired.
        - Date the current owner acquired the property, if applicable.
        - Cost of the property to the current owner or estimate of the cost of services, if applicable.
        - An independent appraisal of any property acquired or an independent evaluation of lease terms.
        - Any other relevant information that demonstrates the proposed transaction is fair, reasonable, and comparable with similar arrangements that could have been made with unrelated parties.
        - A board resolution approving the specific details in advance of the transaction.
    - The lease or purchase agreement for all bank premises.

Meeting of Shareholders/Members and Directors

9. The organizers mail the Notice of First Shareholders' Meeting and Proxy Statement to shareholders at least 10 calendar days before the scheduled shareholders' meeting for a national bank, and 20 calendar days before the first shareholders' or members' meeting for an FSA. Submit a copy of each document to the Licensing staff.

Shareholders/Members

10. Conduct business that properly may arise and document those activities, including the following actions, in the minutes of the first shareholders' or members' meeting, as applicable:

    - Fix the number of directors.
    - Elect to the board of directors those persons approved by the OCC and identified in the proxy materials for the meeting.
    - Approve an itemized list of organization costs that should be attached to the minutes, as well as additional expenses, accrued but not paid, that will be paid or reimbursed from capital funds.
    - Ratify the articles of association, organization certificate (national banks) or charter and bylaws (FSAs), and all official acts of the organizers, organizing directors, and officers since the organization of the national bank or FSA.

Directors

11. Hold the organization meeting. Document the following accomplishments, at a minimum, in the minutes of the first meeting of directors:
    - Complete a Waiver of Notice of the Organizing Board's First Meeting.
    - Execute the Oath of Bank Director or Joint Oath of Bank Directors.
    - Elect the chairman, secretary, and other officers of the board and appoint the president, CEO, cashier, and other executives.
    - Certify and execute the Capital Stock Payment Certificate.
    - Ratify the bylaws.
    - Elect standing committees as set out in the bylaws.
    - Select a depository bank.
    - Authorize the CEO (or another person) to maintain contact with the FDIC about the status of the bank's deposit insurance application, if the bank will be insured.

Organizing Bank Operations

CEO

12. Establishes the operating, risk management, and control systems needed to conduct banking business.

13. Advises the OCC if there has been a change in location (for example, a specific location instead of a "vicinity of" location), since the OCC granted preliminary conditional approval to the application.

Preopening Examination

CEO

14. At least 60 calendar days before the proposed opening date, submits an Organization Completed letter to Licensing staff and requests the POE, indicating readiness for opening.

OCC Bank Examiner

15. Contacts the CEO to arrange for the POE.

16. Coordinates with other units and the FDIC, if needed.

17. Conducts the POE. Determines whether all substantive issues, including risk management concerns, have been addressed adequately. Discusses POE findings with Licensing staff.

18. Meets with management and the board of directors at the conclusion of the visit to inform them of the POE findings, but does not convey a recommendation about the final approval for the bank's opening.

19. Prepares the POE report.

Continuing to Organize Bank Operations

CEO

20. Requests from the Federal Reserve Bank application forms for membership [national banks only].

21. Submits application forms for membership to the appropriate Federal Reserve Bank at least four weeks before the projected opening date [national banks only].

Chartering and Commencing Business

CEO

22. Takes the following actions, as needed:

    - Resolves outstanding matters and advises Licensing staff members.
    - Continues with opening preparations, including
      - confirming receipt of final deposit insurance approval from the FDIC, if the bank will be insured.
      - confirming receipt of bank membership in the Federal Reserve System, if applicable [national banks only].
      - notifying the OCC and other federal regulators of any opening date delay, if appropriate.
      - requesting the certification letter for capital funds from the escrow agent.

Contact Person

23. Confirms the bank's opening date with the OCC one business day before opening. The OCC issues a letter authorizing the bank to open on a specific date.

CEO

24. On the opening day,

    - notifies Licensing staff members that the bank has opened.
    - issues stock certificates to the stockholders.

- pays or capitalizes organizing expenses, including bank premises, that are approved by the shareholders or members, consistent with GAAP, and not objected to by the OCC.

Appendix A: Directors' Duties and Responsibilities, Qualifications, and Other Issues

The OCC expects each director to be familiar with the statutory responsibilities associated with that position. The board of directors of a bank may not delegate responsibility for its duties, but may entrust the day-to-day bank operations to bank management. Directors can refer to OCC publications specifically addressing director responsibilities. Refer to *The Director's Book: The Role of Directors of National Banks and Federal Savings Associations* and the "Corporate and Risk Governance" booklet of the *Comptroller's Handbook*.

Duties and Responsibilities of Directors

A federally chartered bank, like other corporate organizations, has shareholders (or, for a mutual FSA, members) who elect a board of directors. Whether a financial institution is a stock or mutual form of ownership, the bank's board plays a pivotal role in the effective governance of its bank. The board is accountable to shareholders, regulators, and other stakeholders. The board is responsible for overseeing management, providing organizational leadership, and establishing core corporate values. The board should create a corporate and risk governance framework to facilitate oversight and should help set the bank's strategic direction, risk culture, and risk appetite. The board also oversees the talent management processes for senior management, which include development, recruiting, succession planning, and compensation.

Directors' activities are governed by common law fiduciary legal principles, which impose two duties—the duty of care and the duty of loyalty.

The duty of care requires that directors act in good faith, with the level of care that ordinary prudent persons would exercise in similar circumstances and in a manner that the directors reasonably believe is in the bank's best interests. The duty of care requires directors to acquire sufficient knowledge of the material facts related to proposed activities or transactions, thoroughly examine all information available to them, and actively participate in decision making.

The duty of loyalty requires that directors exercise their powers in the best interests of the bank and its shareholders rather than in the directors' own self-interest or in the interests of any other person. Directors taking action on particular activities or transactions must be objective, meaning the directors must consider the activities or transactions on their merits, free from any extraneous influences. The duty of loyalty primarily relates to conflicts of interest, confidentiality, and corporate opportunity. Directors of FSAs are also subject to specific conflict of interest and corporate opportunity regulations.[50]

[50] Refer to 12 CFR 163.200, "Conflicts of Interest" and 12 CFR 163.201, "Corporate Opportunity."

Each director should personally ensure that his or her conduct reflects the level of care and loyalty required of a bank director. A bank director—like the director of any corporate entity—may be held personally liable in lawsuits for losses resulting from his or her breach of fiduciary duties. Shareholders or members (either individually or on behalf of the bank), depositors, or creditors who allege injury by a director's failure to fulfill these duties may bring these suits. In addition, the OCC may take enforcement action, including assessment of civil money penalties, against a director for breach of fiduciary duty. The OCC may assess director liability individually because the nature of any breach of fiduciary duty can vary for each director.

Although a board of directors does not guarantee the bank's success, it must oversee and hold accountable bank management to ensure that the bank conducts business in a safe and sound manner and complies with laws and regulations. The board must keep informed about the bank's operating environment; hire and retain competent management; and understand the bank's material risks and ensure that the bank has a risk management structure and process suitable for the bank's size and activities. The board also must oversee the bank's business performance and as applicable, ensure that the bank serves the community's credit needs. Problems arising from failures in any of those areas represent the board's failure to exercise properly its oversight responsibilities and can result in individual liability if a director has not acted as a reasonably prudent director would act in similar circumstances.

Banks must take reasonable and prudent steps to guard against money laundering and terrorist financing and to identify and manage any risks related to such activities. The board is responsible for approving the BSA/AML compliance program and for overseeing the structure and management of the organization's BSA/AML compliance function. The BSA/AML compliance program must be written, commensurate with the bank's BSA/AML risk profile, approved by the board, and noted in the board minutes. Banks must also establish and maintain procedures reasonably designed to ensure and monitor their compliance with the BSA and its implementing regulations. This requires banks to establish, at a minimum, a compliance program that includes[51]

- a system of internal controls to ensure ongoing compliance.
- independent testing for compliance.
- a qualified individual or individuals responsible for managing BSA compliance (BSA compliance officer).
- training for appropriate personnel.
- a customer identification program.[52]

For more information, refer to the *FFIEC BSA/AML Examination Manual*.

Management works for the board of directors; the board of directors does not work for management. The long-term health of a bank depends on a strong, independent, and attentive

[51] Refer to 12 CFR 21.21, "Procedures for Monitoring Bank Secrecy Act Compliance."

[52] Refer to 12 CFR 21.21 (c)(2), "Contents of Compliance Program."

board. The board should evaluate its effectiveness periodically and determine whether it is taking steps necessary to fulfill its responsibilities. The board also should conduct orientation programs for new directors. Ongoing education programs that describe emerging industry trends and regulatory developments, opportunities, and risks also are often helpful.

When searching for new bank directors, banks should seek persons who will exercise independent judgment and actively participate in decision making. The principal qualities of an effective bank director include strength of character, an inquiring and independent mind, practical wisdom, and sound judgment.

In summary, the qualifications of a candidate seeking to become a member of the board of directors of a bank include the following:

- Basic knowledge of the banking industry, financial regulatory system, and laws and regulations that govern the bank's operation.
- Background, knowledge, and experience in business or another discipline to facilitate bank oversight, and knowledge of the communities served by the bank.
- Acceptance of fiduciary duties and obligations, including a firm commitment to put the bank's interests ahead of personal interests and to avoid conflicts of interests.
- Firm commitment to regularly attend and be prepared for all board and committee meetings.
- Willingness and ability to exercise independent judgment and provide credible challenge to management's decisions and recommendations.

The primary responsibilities of the board of directors of a bank include the following:

- Providing effective oversight. Board oversight is critical to maintain the bank's operations in a safe and sound manner, oversee compliance with laws and regulations, supervise major banking activities, and govern senior management.
- Establishing an appropriate corporate culture. Corporate culture refers to the norms and values that drive behaviors within an organization. This starts with the board, which is responsible for setting the tone at the top and overseeing management's role in fostering and maintaining a sound corporate and risk culture. Shared values, expectations, and objectives established by the board and senior management promote a sound corporate culture.
- Complying with fiduciary duties and the law. As noted above, directors' activities are governed by fiduciary legal principles, which impose the duties of care and loyalty.
- Hiring and retaining competent management with the skills, integrity, knowledge, and experience appropriate to the nature and scope of their responsibilities. A profitable and sound bank is largely the result of talented and capable management.
- Overseeing the compensation and benefits program. The board should determine that compensation practices for its executive officers and employees are safe and sound, are consistent with prudent compensation practices, and comply with laws and regulations governing compensation practices.

- Maintaining appropriate affiliate and holding company relationships. The bank's board should ensure that relationships between the bank and its holding company, its affiliates, and its subsidiaries do not pose safety and soundness issues for the bank and are appropriately managed.
- Establishing and maintaining an appropriate board structure. The board should establish committees that have the responsibility of overseeing significant functions or activities within the bank. The appropriate governance and committee structure depends on the bank's needs and is a key board decision. As the complexity and risk profile of the bank's products and services increase, additional committees may be necessary for the board to provide effective oversight.
- Performing board self-assessments. A meaningful self-assessment evaluates the board's effectiveness and functionality, board committee operations, and directors' skills and expertise. All boards should periodically undertake some form of self-assessment.
- Overseeing financial performance and risk reporting. Sound financial performance is a key indicator of the bank's success. The board should determine the types of reports required to help with its oversight and decision-making responsibilities.
- Serving community credit needs. Each bank that lends has a responsibility to help meet the credit needs of its communities, consistent with safe and sound lending practices, and has an obligation to ensure fair access and equal treatment to all bank customers. The CRA is intended to prevent redlining and to encourage insured banks to help meet the credit needs of all segments of their communities, including LMI neighborhoods.

Director Qualifications

National Banks

Each national bank director must meet the qualification requirements found in 12 USC 72, unless a residency or citizenship waiver request is submitted to and approved by the OCC. Refer to the "National Bank Director Waivers" booklet of the *Comptroller's Licensing Manual*. Specifically, each national bank director must

- hold a minimum $1,000 par value or fair market value of stock in his or her own right in the bank or an equivalent interest in the company that controls the national bank.
- be a citizen of the United States throughout his or her term of service (the OCC may waive this requirement for a minority of the total number of directors).

At least a majority of the directors of a national bank must have resided in the state, territory, or district in which the bank is located (that is, in which the bank has its main office or branches), or within 100 miles of the bank's main office location, for at least one year immediately preceding election as directors, unless the OCC grants a residency waiver. The directors must continue to meet this requirement unless the OCC grants a residency waiver.

FSAs

A director of an FSA need not be a stockholder of the association unless the bylaws so require. However, each director of a federal mutual savings association must be a member of the association.

An FSA's board of directors is not subject to citizenship and residency requirements. The composition of the board, however, is subject to the following requirements of 12 CFR 163.33:

- A majority of the directors must not be salaried officers or employees of the savings association or of any subsidiary.
- Not more than two of the directors may be members of the same immediate family.
- Not more than one director may be an attorney with a particular law firm.

Election of Directors

National Banks

A national bank's shareholders elect the directors at the annual shareholders' meeting. The number of directors of each national bank is authorized by its bylaws and limited to not less than five directors and ordinarily no more than 25, but the OCC may waive the 25-member limit.

Once national bank directors meet the 12 USC 72 qualification requirements (or these are waived by the OCC in accordance with the statute), they take the oath of office before a notary or other official authorized by state law.

Under 12 USC 71, national bank directors may hold office for a period of not more than three years and until their successors have been elected and qualified. Directors may serve staggered terms if authorized by the bank's bylaws.

The president (but not the CEO) of a national bank is required to be a member of the board. The board may elect a director other than the president to chair the board.

FSAs

An FSA's shareholders and a federal mutual savings association's members elect directors at the annual meeting of shareholders or members. For both types of FSAs, the number of directors is authorized by its bylaws and limited to not less than five and ordinarily no more than 15, unless otherwise approved by the OCC under 12 CFR 5.21 or 5.22.

For mutual or stock FSAs, directors may be elected for periods of one to three years and until their successors are elected and qualified. For mutual FSAs, if a staggered board is chosen,

provision shall be made for the election of approximately one-third or one-half of the board each year, as appropriate. For stock FSAs, if a staggered board is chosen, the directors should be divided into two or three classes as nearly equal in number as possible, and one class must be elected by ballot annually.

Unlike a national bank director, the president of an FSA is not required to be a board member, unless required by the bylaws.

Vacancies on the Board

Directors remaining on the board appoint a replacement if a vacancy occurs. The replacement must meet the applicable director qualification requirements. The newly appointed director serves until the next annual election of directors by the bank's shareholders or members.

Depository Institution Management Interlocks Act

The Depository Institution Management Interlocks Act (Interlocks Act) generally prohibits an official of a bank or depository institution holding company from simultaneously serving as a management official of an unaffiliated depository institution or depository institution holding company in situations in which the management interlock likely would have an anticompetitive effect.

There are certain exemptions from these interlock prohibitions. Some management interlocks are exempted by statute and some qualify for exemption under the OCC's regulations without filing an application. Other interlocks may be exempted if the OCC approves a specific application. The OCC may exempt a prohibited management interlock if it determines that dual service would not result in a monopoly or substantial lessening of competition and would not present safety and soundness concerns.

OCC regulations provide for two broad categories of permissible exemptions: the small market share exemption and the general exemption. The small market share exemption applies to depository organizations with limited control of an area's deposits. This exemption does not require an application or prior OCC approval. Under the general exemption, the OCC may, through the application process, exempt a management official's service that the Interlocks Act otherwise would prohibit.

The OCC's regulations provide that in certain instances in which a general exemption is sought, the agency applies a rebuttable presumption that an interlock will not result in a monopoly or substantial lessening of competition. Under the OCC's regulation governing the general exemption, 12 CFR 26.6(b), these instances include a depository institution seeking to add a management official when it

- serves primarily LMI areas.
- is controlled or managed by members of a minority group or women.
- has been chartered for less than two years.

- is deemed to be in "troubled condition" by the OCC.

Organizers interested in establishing a management interlock should review the OCC's Management Official Interlocks regulation before submitting a request for an interlock exemption. Organizers should include their request with their charter application. Refer to the "Management Interlocks" booklet of the *Comptroller's Licensing Manual* for more information.

Potential Liability

Directors and officers may be named as defendants in lawsuits that challenge their business decisions or activities or allege a breach of fiduciary duty. Directors and officers, however, may obtain some protection against judgments and legal and other costs through indemnification agreements.

National Banks

A national bank may make or agree to make indemnification payments to an institution-affiliated party, as defined at 12 USC 1813(u), for damages and expenses, including the advancement of expenses and legal fees. This may occur in cases involving an administrative proceeding or civil action initiated by a federal banking agency only if such payments are reasonable and in accordance with 12 USC 1828(k) and the OCC's and FDIC's implementing regulations, 12 CFR 7.2014 and 12 CFR 359, respectively. For administrative proceedings or civil actions not initiated by a federal banking agency, such payments must be made in accordance with

- the law of the state in which the main office of the bank is located.
- the law of the state in which the bank's holding company is incorporated.
- the relevant provisions of the Model Business Corporation Act (1984, as amended 1994, and as amended thereafter), or Delaware General Corporation Law, Delaware Code Annotated Title 8 (1991, as amended 1994, and as amended thereafter).

Payments also must be consistent with safe and sound banking practices.

While a national bank is not required to obtain OCC non-objection for indemnification payments, the OCC may review any payment made by the bank to evaluate whether it is consistent with safe and sound banking practices, standards adopted by the bank in its bylaws, and applicable laws and regulations.

FSAs

For actions not initiated by a federal banking agency, an FSA is required to indemnify any person against whom an action is brought or threatened because that person is or was a director, officer, or employee of the association for

- any amount for which that person becomes liable under a judgment and
- reasonable costs and expenses.

Such indemnification applies only if final judgment on the merits is in his or her favor.

An FSA is permitted to indemnify any such person for the amounts described above in the case of settlement, final judgment against the persons, or final judgment in his or her favor other than on the merits, if a majority of the disinterested directors determine that the individual was acting in good faith within the scope of his or her employment or authority as he or she could reasonably have perceived it under the circumstances and for a purpose he or she could reasonably have believed under the circumstances was in the best interests of the association or its members.

In either of the situations described in the previous paragraph, however, no indemnification shall be made unless the FSA gives the supervisory office at least 60 days' notice of its intention to make such indemnification pursuant to 12 CFR 145.121(c). No such indemnification shall be made if the OCC advises the association in writing within the notice period of its objection to the payment.

No FSA shall indemnify any person covered by 12 CFR 145.121, other than in accordance with 12 CFR 145.121. However, an association that had a bylaw in effect relating to indemnification of its personnel before the 1969 implementation date of the indemnification regulation is governed solely by that bylaw.

Appendix B: Stock Benefit Plans

Bank organizers should structure any proposed stock benefit plan to encourage the participants' continued involvement in the bank. The plan also should serve as an incentive for the successful, long-term operation of the bank.

Stock benefit plans should contain no feature that would

- encourage speculative or high-risk activities.
- serve as an obstacle or otherwise impede the sale of additional stock to the general public.
- be structured to convey control of a bank or otherwise provide preferential treatment to the bank's insiders.

Primary Types

In general, two primary types of stock benefit plans exist:

- Type 1 plans grant options or warrants to directors and active executive officers to reward future performance.
- Type 2 plans grant options or warrants to organizers and founders as compensation for
  - financial risk undertaken to fund the formation or organization of a bank (seed money).
  - noncash contribution of assets (such as land for a banking facility). Refer to the "Capital and Dividends" booklet of the *Comptroller's Licensing Manual*.
  - the guarantee of a loan to finance a bank's organization.
  - professional services (for example, legal, accounting, or underwriting services) rendered to facilitate the establishment of the bank.

Type 1 Plans

Banks typically use type 1 plans to reward executive officers and directors for future performance. Accordingly, the continuing involvement of these persons to support successful operations of the bank after it opens is required for participation in type 1 plans. The plan need not grant stock options to all executive officers or directors of the new bank, but the organizing group should provide support for the number of options made available to each plan participant.

In some new banks, CEOs and other key officers may receive stock options at the bank opening similar to "signing bonuses," which are intended to compensate them for financial risks they assume in joining a new bank's management team. Financial risks to senior executive officers can be twofold. First, they often leave positions in established institutions that they may have held for extended periods. Second, these officers may find themselves subsequently unemployed for an extended period of time or need to take lesser positions in another institution if the new positions do not work out and they leave after a relatively short tenure. Stock option plans that fail to conform to OCC policy raise significant issues and

receive intense scrutiny. In addition, the OCC considers this form of compensation in its evaluation of overall compensation.

Type 2 Plans

Organizers and founders may participate in type 2 plans. Type 2 plans provide vehicles for organizing groups to reimburse organizers and founders for financial risk assumed during the organization phase, such as providing seed money, contributing organization funds or noncash assets, or guaranteeing a loan. An organizer or founder could elect to receive as compensation either cash or stock, or any combination of the two.

The number of shares received is determined by dividing the amount to be reimbursed by the value of each share. Organizers and founders may not receive stock options for additional stock subscribed that would exceed the amount for which they are being reimbursed. If stock options or warrants are received in exchange for an organizer's or founder's guarantee of a loan, each person's options or warrants should not exceed his or her pro rata amount of the loan guarantee or the amount drawn, if less than the guaranteed amount of the loan.

Professional services normally are paid for in cash. Professional service providers, however, may participate in Type 2 plans if the service provider lowers the cash payment for the service rendered to the organization as a result of plan participation.

If an organizer or founder who is also a service provider is fully reimbursed in cash for all professional services, he or she can participate in a type 2 plan only if stock compensation is elected for reimbursement of seed money, organization funds, contributions of noncash assets, or a loan guarantee.

Type 1 and Type 2 Plan Requirements

Type 1 and 2 stock benefit plans generally must include the following:

- A limited duration of rights (maximum of 10 years).
- An exercise, or strike, price of stock rights, which should be no less than the fair market value of the stock at the time that the rights are granted.
- A clause that allows the OCC to direct the bank to require plan participants to "exercise or forfeit" their stock rights if one of the following occurs:
  - Capital falls below regulatory minimums as set forth in 12 CFR 3, or a higher requirement as the OCC may determine.
  - The existence of outstanding warrants impairs the bank's ability to raise capital.

Additional Type 1 Requirements

Type 1 stock benefit plans generally must include the following additional requirements:

- A maximum of one option or warrant for each share subscribed or purchased in the initial offering (in other words, a “one-for-one” stock option or warrant plan).
- Vesting requirements that encourage the participant to remain involved in the bank’s operations (for example, vesting approximately equal percentages each year over the initial three years of operations).
- Restrictions on the transferability of the options or warrants, except transfer to a holder’s estate in the event of death or permanent disability.
- Rights on termination of a relationship as an officer or director of the bank.

Acceleration and Vesting of Earned and Unearned Options or Warrants

If the stock options or warrants have a vesting period in excess of three years, the OCC permits acceleration and vesting of earned and unearned options or warrants if

- the stock benefit plan required a three-year minimum vesting period, and
- the three-year period has elapsed.

The OCC permits immediate acceleration and vesting without regard to the previous criteria if an executive officer or director becomes permanently disabled or dies. The OCC requires an executive officer or director to forfeit unvested options or warrants under all other circumstances.

Exercise After Termination

An executive officer or director who ceases to be an active participant in the bank’s operations generally must exercise or forfeit options or warrants within 90 calendar days after separation from or termination by the bank. In the event of permanent disability or death, the stock option holder or the person’s estate should exercise options or warrants within 12 months or forfeit the options.

Additional Type 2 Requirements

Type 2 stock benefit plans, unlike type 1 plans, do not require vesting, transferability restrictions, or continued association with the national bank. Type 2 stock compensation plans generally must meet the following additional plan requirements:

- A maximum of one option or warrant per share subscribed for the contribution of organization funds, noncash assets, or guaranty of a loan for the new bank.
- A maximum of one option or warrant per share subscribed for the payment of professional services.

Management and Employee Stock Benefit Plans

In addition to Type 1 and Type 2 plans, the bank’s board of directors may authorize a prospective management stock benefit plan (also called a stock incentive plan) for its

executive officers, or an employee stock option plan for its employees. In this context, the definition of executive officer is not confined to that included in Regulation O. Any insider who participates in a management stock incentive plan also is considered an executive officer. Directors may participate in the plan as a method of payment for their services to the bank. In many cases, participation may be tied to specific individual or bank performance criteria.

Management and employee stock benefit plans should encourage the continued involvement of the participants and serve as an incentive for the successful, long-term operation of the bank. In addition, such plans should

- be viewed as part of a person's total compensation.
- be reasonable, relative to the service provided.
- include compliance with appropriate other laws, including applicable federal and state tax laws.

Management and employee stock benefit plans, like other stock benefit plans, should not encourage speculative or high-risk activities or serve as an obstacle to, or otherwise impede, the sale of additional stock to the general public.

The exercise of rights granted by a stock benefit plan may trigger a filing to the OCC under the CBCA (12 USC 1817(j)) or the OCC's implementing regulation, 12 CFR 5.50. For CBCA purposes, options that are immediately exercisable at the option of the owner or holder are treated as the underlying security, even if they are not exercised.[53]

Accounting for Employee Stock Options

A bank should account for employee stock compensation in accordance with GAAP. Charter applicants should consider the effect of ASC 718, "Compensation – Stock Compensation," in developing stock benefit plans and financial projections. ASC 718 requires entities to recognize compensation expense in an amount equal to the fair value of the share-based payments. This compensation will generally be recognized over the period that the employee must provide services to the entity.

[53] Refer to 12 CFR 5.50(d)(14)(ii).

Appendix C: Supervision and Oversight Highlights

The OCC strives to deliver to all banks the highest possible quality of supervision. Supervisory efforts are directed toward identifying material problems, or emerging problems, in individual banks or the banking system, and toward ensuring that such problems are corrected appropriately. Because banking is essentially a business of managing risk, supervision is centered on the accurate evaluation and management of risks. The OCC applies that philosophy in all supervision activities it conducts, which include safety and soundness, compliance, IT, and asset management activities.

Clear and meaningful communication between the OCC and the banks it supervises is a vital component of high-quality supervision. To that end, the OCC publishes on its website examination procedures and guidance about evolving issues so that bankers are apprised of OCC examination and supervision activities. Further, the OCC believes that bankers, not regulators, should manage their banks; as a result, it expects banks to establish and follow appropriate risk management practices.

The Evaluation Process

The OCC determines the frequency of its on-site examinations (the supervisory cycle) based on the bank's size, complexity, risk profile, and condition. Full-scope on-site examinations normally are conducted either annually or up to every 18 months (12 CFR 4.6), but examination activities may be spread throughout the supervisory cycle.

Examiners meet with bank management and the bank's board of directors throughout the supervisory cycle to obtain information or discuss issues. At the completion of the cycle, the examiners prepare a report and conduct a meeting with the bank's board of directors to discuss the results. Those meetings allow participants to discuss the objectives of the OCC's supervision; strategic issues that may be confronting the bank; any major concerns, risks, or issues that may need to be addressed; and other matters of mutual interest. Directors review and sign the report of examination (ROE).

An environment in which examiners and board members openly and honestly communicate benefits a bank. OCC examiners and professional staff have experience with a broad range of banking activities and can provide independent, objective information on safe and sound banking principles and compliance with laws and regulations.

Risk Assessment System

The OCC recognizes that banking is a business of taking risk to earn profits. The OCC expects banks to manage and control risk levels appropriately. Banking risks also should be evaluated in terms of their significance. These assessments should be ongoing.

The OCC's primary supervisory objective is to assess each bank's ability to identify, measure, monitor, and control risks through its risk management systems. The OCC does this

through its risk assessment system (RAS), which enables the OCC to measure and assess existing and emerging risks in banks, regardless of their size and complexity.[54] The OCC has defined eight categories of risk for bank supervisory purposes. Those categories are credit, interest rate, liquidity, price, operational, compliance, strategic, and reputation. The organizers should become familiar with these eight risk categories as they apply to the charter proposal. They are discussed thoroughly in the "Bank Supervision Process" booklet of the *Comptroller's Handbook*.

From a supervisory perspective, risk is the potential that events will have an adverse effect on a bank's current or projected financial condition[55] and resilience.[56] The presence of risk is not necessarily reason for supervisory concern. To put risks in perspective, the OCC determines whether the risks a bank undertakes or plans to undertake are warranted. Generally, risks are warranted when they can be identified, understood, measured, monitored, and controlled, and are within the bank's capacity to readily withstand in the event of adverse performance.

Risk Management

Because market conditions and company structures vary, no single risk management system works for all banks. Each institution should develop its own risk management program tailored to its needs and circumstances. The sophistication of the risk management system should be proportional to the size, complexity, and geographic diversity of each bank. All sound risk management systems, however, have several common fundamentals. For example, bank staff responsible for implementing sound risk management systems performs those duties independent of the bank's risk-taking activities. Regardless of the risk management program's design, each program should include the following:

Risk identification: Proper risk identification focuses on recognizing and understanding existing risks or risks that may arise from new business initiatives, including risks that originate from nonbank subsidiaries and affiliates, third-party relationships, and external market forces or regulatory or statutory changes. Risk identification should be a continuous process and occur at both the transaction and portfolio levels.

Risk measurement: Accurate and timely measurement of risks is a critical component of effective risk management systems. A bank that does not have a risk measurement system has limited ability to control or monitor risk levels. Further, more sophisticated measurement tools are needed as the complexity of the risk increases. A bank should periodically test to make sure that the measurement tools are accurate. Sound risk measurement systems assess the risks of both individual transactions and portfolios.

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[54] A full discussion of the RAS can be found in the "Community Bank Supervision" and "Large Bank Supervision" booklets of the *Comptroller's Handbook*.

[55] Financial condition includes impacts from diminished capital and liquidity. Capital in this context includes potential impacts from losses, reduced earnings, and market value of equity.

[56] Resilience recognizes the bank's ability to withstand periods of stress.

Risk monitoring: Banks should monitor risk levels to ensure timely review of risk positions and exceptions. Monitoring reports should be timely, accurate, and relevant, and should be distributed to appropriate individuals to ensure action, when needed.

Risk control: The bank should establish and communicate risk limits through policies, standards, and procedures that define responsibility and authority. These limits should serve as a means to control exposures to the various risks associated with the bank's activities. The limits should be tools that management can adjust when conditions or risk appetite changes. Banks should also have a process to authorize and document exceptions or changes to risk limits when warranted.

Effective risk management requires an informed board of directors. The board guides the bank's strategic direction, risk appetite, and core values. Setting an appropriate tone at the top is critical to establishing a sound risk culture. In carrying out these responsibilities, the board should approve policies that set operational standards and risk limits. Well-designed monitoring systems allow the board to hold management accountable for operating within established standards and limits.

Capable management and the appropriate level of qualified staff also are critical to effective risk management. Bank management is responsible for the implementation, integrity, and maintenance of risk management systems. Management also should keep the directors adequately informed. Management is expected to

- keep directors adequately informed about risk-taking activities.
- implement the bank's strategic plan.
- establish and adhere to written policies consistent with the bank's risk appetite and compatible strategic goals.
- ensure that strategic direction, risk appetite, and core values are effectively communicated and adhered to throughout the organization.
- oversee the development and maintenance of management information systems to ensure that information is timely, accurate, and relevant.

When the OCC assesses risk management systems, it considers policies, processes, personnel, and control systems. Deficiencies in one or more of these components constitute deficient risk management. All of those components are important, but the sophistication of each should be proportionate to the complexity, size, and geographic diversity of the bank. Noncomplex banks normally have less formalized policies, processes, and control systems in place than do larger, more complex banks. Those components are defined as follows:

Policies are statements of actions adopted by a bank to pursue certain objectives. Policies guide decisions and often set standards (on risk limits, for example) and should be consistent with the bank's underlying mission, risk appetite, and core values. Policies should be reviewed periodically for effectiveness and approved by the board of directors or designated board committee.

Processes are the procedures, programs, and practices that impose order on the bank's pursuit of its objectives. Processes define how activities are carried out and help manage risk. Effective processes are consistent with the underlying policies and are governed by appropriate checks and balances (such as internal controls).

Personnel are the bank's staff and managers who execute or oversee processes. Personnel should be qualified and competent, have clearly defined responsibilities, and be held accountable for their actions. They should understand the bank's mission, risk appetite, core values, policies, and processes. Banks should design compensation programs to attract and retain qualified personnel, align with bank strategy, and appropriately balance risk-taking and reward.

Control systems are the functions (such as internal and external audits and quality assurance) and information systems that bank managers use to measure performance, make decisions about risk, and assess the effectiveness of processes and personnel. Control functions should have clear reporting lines, sufficient resources, and appropriate access and authority. Management information systems should provide timely, accurate, and relevant feedback.

RAS and the CAMELS Rating System

The RAS is a concise method of communicating and documenting conclusions regarding eight risk categories: credit, interest rate, liquidity, price, operational, compliance, strategic, and reputation. After each bank opens for business, examiners draw conclusions regarding the quantity of risk, quality of risk management, aggregate risk, and direction of risk for each of the aforementioned eight categories of risk.

Additionally, all financial institutions are evaluated and rated under the following:

- FFIEC's Uniform Financial Institutions Rating System (more commonly referred to as CAMELS, or capital adequacy, asset quality, management, earnings, liquidity, and sensitivity to market risk).
- Uniform Rating System for Information Technology (URSIT).
- Uniform Interagency Consumer Compliance Rating System.
- Uniform Interagency Trust Rating System (UITRS), if applicable.

Each component within each rating system is rated on a scale of 1 to 5, with 1 being the most favorable rating.

A composite or overall rating ranging from 1 to 5 also is assigned under each of these rating systems. A rating of 1 indicates the strongest performance and risk management practices relative to the institution's size, complexity, and risk profile. Those institutions present the lowest level of supervisory concern. Conversely, a 5-rated institution demonstrates critically deficient performance, inadequate risk management practices, and the highest level of supervisory concern.

The RAS and the CAMELS rating system are used together during the supervisory process to evaluate a bank's financial condition and resilience. The RAS provides both a current (aggregate risk) and prospective (direction of risk) view of the bank's risk profile that examiners incorporate when assigning regulatory ratings. The CAMELS rating system, which includes forward-looking elements, references the primary risk categories that examiners consider within each component area, as well as the quality of risk management practices. CAMELS component ratings reflect the level of supervisory concern posed by the related RAS ratings.

Enhanced Supervision

All de novo institutions receive enhanced supervision, which includes the following:

- Periodic monitoring—the OCC performs at least quarterly reviews of the de novo bank's performance to assess progress in achieving its business plan projections and compliance with supervisory conditions.
- Interim examinations—the OCC performs an on-site interim examination within the first six months and thereafter between full-scope exams. Interim examinations include assessing compliance with the supervisory conditions in the approval, measuring progress in achieving the business plan objectives, assessing the sufficiency of risk management processes, and following up on any corrective actions required in prior examinations or periodic monitoring. As the bank approaches stability, the interim examination may become more streamlined and targeted toward areas of highest risk.
- Full-scope examinations—the OCC performs the initial full-scope examination within the de novo bank's first 12 months of operations. The bank is subject to a 12-month examination cycle until it is no longer designated a de novo institution.

Review of De Novo Status and Supervisory Conditions

The de novo designation and supervisory conditions remain in place for as long as the OCC deems necessary, but in no case less than three years. For most de novo banks, some combination of supervisory conditions and enhanced supervision is warranted until the bank has achieved financial stability. De novo status is not removed until the bank achieves stability with regard to each of the following:

- Earnings—the bank has achieved profitability consistent with its business plan for at least four consecutive quarters, and reasonably achievable projections indicate that profitability is sustainable.
- Core business operations—internal controls and risk management processes have proven effective, have been assessed through audits and regulatory examinations, and are sufficiently robust to support projected growth.
- Management—the senior management team and board of directors have been in place for sufficient time to demonstrate their effectiveness, and examiners have concluded management and the board have the capacity to execute the approved business plan.

- Business and capital plans—the bank has operated consistently with its most recently approved business plan for a sufficient period of time to demonstrate that the plan is viable and sustainable. The bank's capital planning processes are sufficiently robust and include contingency plans that identify viable sources of additional capital.

Certain supervisory conditions, such as regulatory capital minimums, may warrant continuation for some period after de novo status has been removed. In addition, it may be appropriate to extend the requirement for a supervisory non-objection for significant deviations to the business plan.

Specialty Area Assessments

Specialty areas consist of IT, asset management, BSA/AML, consumer compliance, CRA, and municipal and government securities dealers. Specialty area examinations are integrated within supervisory cycles of all banks. Examination frequencies and scopes of some specialty areas are influenced by statutory mandates, interagency commitments, or OCC policy. Examinations of specialty areas are conducted as part of a full-scope or target examination, depending on the circumstances.

BSA/AML

Pursuant to 12 USC 1818(s), the OCC is required to review the BSA compliance program of each bank during every supervisory cycle. The scope of the BSA/AML review must include the minimum procedures in the "Core Examination Overview and Procedures for Assessing the BSA/AML Compliance Program" section of the *FFIEC BSA/AML Examination Manual*, plus any additional core or expanded procedures as determined during the scoping and planning process. Risk-based transaction testing is also performed at least once per supervisory cycle. While Office of Foreign Assets Controls (OFAC) regulations are not part of the BSA, evaluation of OFAC compliance is generally included in BSA/AML examinations.

Findings are considered in a safety and soundness context as part of the management component of a bank's CAMELS ratings. Serious deficiencies in a bank's BSA/AML compliance create a presumption that the bank's management rating will be adversely affected because risk management practices are less than satisfactory. While BSA/AML risk compliance is not a defined RAS category, examiners assess the quantity of risk and quality of risk management. These assessments are then considered when determining the bank's overall compliance risk (and other risks, as appropriate).

Consumer Compliance

Consumer compliance encompasses reviews of a bank's compliance with consumer protection-related laws and regulations and the adequacy of a bank's compliance management system (CMS) as it pertains to consumer compliance. Under the Interagency Consumer Compliance Rating System, the OCC adopted a risk-based consumer compliance examination approach to promote strong compliance risk management practices and

consumer protection. Risk-based consumer compliance supervision evaluates whether an institution's compliance management system effectively manages the compliance risk inherent in the products and services offered to its customers. Under risk-based supervision, examiners tailor supervisory activities to the size, complexity, and risk profile of each institution, and assign a consumer compliance rating. Ratings are given on a scale of 1 through 5 in increasing order of supervisory concern. Thus, a 1 represents the highest rating and consequently the lowest level of supervisory concern, while a 5 represents the lowest, most critically deficient level of performance and therefore the highest degree of supervisory concern.

CRA Performance

The CRA requires the OCC and other federal regulators to provide written public evaluations of insured banks' records of CRA performance under the applicable assessment standards. The four ratings that may be assigned for a CRA evaluation are "outstanding," "satisfactory," "needs to improve," and "substantial noncompliance."

The first CRA evaluation of a de novo bank is generally conducted within 24–36 months after opening. Subsequent CRA evaluations are ordinarily performed on a three-, four-, or five-year cycle, depending on bank size and overall CRA rating.

Information Technology

The OCC and the other FFIEC regulatory agencies use URSIT to uniformly assess financial institution and service provider risks introduced by IT. URSIT consists of a composite rating and four component ratings. The composite rating uses a 1–5 scale reflecting the significance of technology-related risks. The higher the composite rating, the greater the risk. The OCC assigns the URSIT composite rating to all national banks and FSAs.

The component areas assessed under the URSIT rating correspond to the functional activities and related areas of risk that support IT services and processes. The functional components include

- adequacy of risk management practices.
- management of IT resources.
- ability to ensure integrity, confidentiality, and availability of automated information.
- degree of supervisory concern posed by the bank.

Examiners assign a composite-only rating to all national banks, FSAs, trust banks, credit card banks, and other special purpose banks. Examiners assign component ratings in the examination of technology service providers.

Asset Management

The core assessment for on-site asset management examinations is structured according to the Uniform Interagency Trust Rating System. Each bank is assigned a component rating based on an evaluation and rating of five essential components of an institution's fiduciary activities. Those components are

- capability of management.
- adequacy of operations, controls, and audits.
- quality and level of earnings.
- compliance with governing instruments, sound fiduciary principles, and applicable laws and regulations (including those regarding self-dealing and conflicts of interest).
- management of fiduciary assets.

Composite and component ratings are assigned based on a scale of 1 to 5. As with other examination areas, a 1 rating indicates the strongest performance and risk management practices and the least degree of supervisory concern. A 5 is the lowest rating and indicates the weakest performance and risk management practices, and therefore the highest degree of supervisory concern. Evaluation of the composite and component ratings considers the size and sophistication, the nature and complexity, and the risk profile of the bank's fiduciary activities.

Enforcement Actions

The OCC uses enforcement actions to require a bank's board and management to take timely actions to correct a bank's deficiencies. The OCC takes enforcement actions against banks and their current or former institution-affiliated parties.

Appendix D: Community Reinvestment Act Highlights

Responsibility Under the CRA[57]

Each insured bank has a responsibility under the CRA to help meet the credit needs of its entire community, consistent with the safe and sound operations of the bank. The charter application should demonstrate how the proposed bank would respond to those needs. The OCC's CRA regulations (12 CFR 25 and 195) establish the framework and criteria by which the OCC assesses a bank's record of helping meet the credit needs of its community.

CRA Assessment Area

The CRA regulations require each bank to delineate at least one assessment area. A retail bank's assessment area or areas generally must consist of one or more metropolitan statistical area or areas or one or more contiguous political subdivisions, such as counties, cities, or towns. The assessment area must include the geographies[58] in which the bank has its main office, branches, and deposit-taking automated teller machines, if any, as well as the surrounding geographies in which the bank has originated or purchased a substantial portion of its loans.[59] A bank may adjust the boundaries of its assessment area[60] to include only the portion of a political subdivision that it reasonably can be expected to serve.

Each bank's assessment area(s)

- must consist only of whole geographies.
- may not reflect illegal discrimination or redlining.
- may not arbitrarily exclude LMI geographies, taking into account the bank's size and financial condition.
- may not extend substantially beyond a consolidated metropolitan statistical area boundary or beyond a state boundary unless the assessment area is located in a multistate metropolitan statistical area.[61]

[57] As previously noted, the CRA does not apply to uninsured banks or special purpose banks that will not perform commercial or retail banking services by granting credit to the public in the ordinary course of business, other than as incidental to their specialized operations (12 CFR 25.11(c)(3), 195.11(c)(2)).

[58] "Geography" is defined in the CRA regulations to mean a census tract or block numbering area delineated by the U.S. Census Bureau in the most recent decennial census (12 CFR 25.12(l), 196.12(k)).

[59] Refer to 12 CFR 25.41(c) and 195.41(c).

[60] Refer to 12 CFR 25.41(d) and 195.41(d).

[61] Refer to 12 CFR 25.41(e) and 195.41(e).

Performance Standards

The CRA regulations provide the methods by which the OCC evaluates a bank's record of helping to meet the credit needs of its assessment area(s). Different evaluation methods are employed based on the bank's size and business strategy. A description of the evaluation methods follows.

Small Banks That Are Not Intermediate Small Banks

These are banks that as of December 31 of either of the prior two calendar years had assets of less than the annually established threshold for small banks (visit www.occ.gov for current threshold). The OCC evaluates the CRA performance of a small bank that is not an intermediate small bank through the small bank lending test. This test focuses primarily on lending and lending-related activities in the bank's assessment area(s). The test includes an evaluation of the bank's

- loan-to-deposit ratio.
- percentage of loans and other lending-related activities located in the bank's assessment area(s).
- the record of lending to and engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes.
- geographic distribution of loans.
- record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment area(s).

Intermediate Small Banks

These are banks with assets of at least the annually established threshold for intermediate small banks as of December 31 of both of the prior two calendar years and less than the threshold established for large banks as of December 31 of either of the prior two calendar years (visit www.occ.gov for current thresholds). The overall CRA rating for an intermediate small bank is based both on the rating from the small bank lending test, described in the preceding paragraph, and the rating from a CD test that is applicable to intermediate small banks only. The CD test evaluates the number and amount of CD loans, the number and amount of qualified investments, and the provision of CD services, as well as the bank's responsiveness through such activities to CD lending, investment, and service needs. The bank's responsiveness to CD needs in its assessment area(s) is evaluated in the context of the bank's capacity and business strategy and the CD opportunities in the assessment area(s).

The CRA regulation allows both small and intermediate small banks the option to be examined as a large bank under the lending, investment, and service tests (as described in the following paragraph), provided the bank collects, maintains, and reports the data required by the CRA regulations. The asset threshold dollar figures for both small and intermediate small banks are adjusted annually based on the year-to-year change in the average of the consumer price index for urban wage earners and clerical workers, not seasonally adjusted, for each

12–month period ending in November, with rounding to the nearest million. The asset threshold adjustments are published in the *Federal Register*. For further details regarding the definition of small and intermediate small banks, refer to OCC Bulletin 2005-28, "Community Reinvestment Act: Final Rule," and OCC Bulletin 2016-1, "Community Reinvestment Act Regulations: Revision of Small and Intermediate Small Bank and Savings Association Asset Thresholds."

Large Banks

Banks that do not meet the definition of a small bank or intermediate small bank typically are evaluated under the lending, investment, and service tests, which focus on the banks' performance in the following areas:

- Lending: Home mortgage, small business, small farm, CD, and consumer lending, with a primary focus on the bank's assessment area(s).
- Investments: Qualified investments that benefit the bank's assessment area(s) or a broader statewide or regional area that includes the assessment area(s).
- Services: Retail banking services, alternative delivery systems, and CD services.

Limited Purpose or Wholesale Banks

The CD test is available to insured banks that the OCC has designated limited purpose or wholesale banks. Refer to the "Glossary" section of this booklet. This test evaluates the bank's CD lending, qualified investments, and CD services, first in the bank's assessment area(s) or the broader statewide or regional area that includes its assessment area(s), and then, if the bank has adequately addressed credit needs in that area, nationwide.

Strategic Plan

The strategic plan evaluation method is available to all banks without regard to size or business strategy. A bank electing this evaluation method seeks informal and formal public comment during the development of its plan. The plan, which is submitted to the OCC for approval, may have a term of up to five years. It must include annual interim measurable goals for helping to meet the credit needs of the bank's assessment area(s) through various lending, investment, and service activities. Although a plan must address all three types of activities, emphasis may be placed on one or more of the activities, depending on the bank's capacity and constraints, product offerings, and business strategy. If the bank meets the goals specified in the plan for satisfactory performance, the bank is rated satisfactory. (The bank also may include goals that represent outstanding performance.)

The strategic plan option provides a more flexible alternative to a bank concerned that the requirements of the other tests are too rigid for the nature of its operations. Some banks open under the small bank test or the lending, investment, and service tests, but plan to develop a strategic plan after a period of transactional history.

Appendix E: Compliance Highlights

This appendix highlights some of the concerns that the OCC frequently identifies about fair lending statutes, BSA/AML provisions, privacy, and advertising. More detailed information about compliance with these and other consumer compliance issues is available in pertinent booklets in the *Comptroller's Handbook* and the *FFIEC BSA/AML Examination Manual*.

Fair Lending Statutes

The federal fair lending statutes are the Equal Credit Opportunity Act (ECOA) and the Fair Housing Act. The ECOA prohibits discrimination in any part of a credit transaction. The ECOA applies to any extension of credit, including extensions of credit to persons, small businesses, corporations, partnerships, and trusts. The Fair Housing Act applies to residential real estate-related transactions. Both of these acts prohibit discrimination based on race, color, religion, sex, or national origin. The ECOA also prohibits discrimination based on age, marital status, receipt of public assistance, or the exercise of a right under the Consumer Credit Protection Act. The Fair Housing Act also prohibits discrimination based on disability or familial status. Generally, discrimination in a credit transaction against persons because they are (or are not) members of a group previously categorized violates the ECOA and, if the transaction is related to residential real estate, violates the Fair Housing Act.

BSA/AML Provisions

The BSA and its implementing regulations established reporting and recordkeeping requirements for banks, other financial institutions, and private individuals. Reports and records required under these provisions may be used in criminal, tax, and regulatory proceedings.[62] Congress enacted the BSA to attempt to safeguard financial institutions from being used as intermediaries for the movement of criminally derived funds to conceal the true source, ownership, or use of the funds (that is, money laundering). Although attempts to launder money through a legitimate financial institution can come from many different sources, certain kinds of businesses, transactions, and geographic locations may be more vulnerable to potential criminal activity than others.

Banks must take reasonable and prudent steps to guard against money laundering and terrorist financing and to identify and manage any risks related to such activities. All banks must establish and maintain procedures reasonably designed to ensure and monitor their compliance with the BSA and its implementing regulations. This requires banks to establish a compliance program that includes, at a minimum

- a system of internal controls to ensure ongoing compliance.
- independent testing of BSA/AML compliance.

[62] Refer to 12 USC 1951-1959, 12 USC 1818(s), 12 USC 1829b, 12 CFR 21.11, 12 CFR 21.21, 12 CFR 163.180, 31 CFR 1000-1009, and 31 CFR 5311.

- a qualified individual or individuals responsible for managing BSA compliance (BSA compliance officer).
- training for appropriate personnel.

The BSA/AML compliance program must be written, approved by the board of directors, and noted in the board minutes. A bank must have a BSA/AML compliance program commensurate with its respective BSA/AML risk profile. In addition, a customer identification program must be included as part of the BSA/AML compliance program.

Banks must be aware of various criminal statutes prohibiting money laundering and structuring of deposits to evade the BSA reporting requirements. (Refer to 18 USC 1956, 1957 and 31 USC 5324.)

Federal regulations require each bank and BHC and their subsidiaries to file a Suspicious Activities Report (SAR) with respect to the following:

- Criminal violations involving insider abuse in any amount.
- Criminal violations aggregating $5,000 or more when a suspect can be identified.
- Criminal violations aggregating $25,000 or more regardless of a potential suspect.
- Transactions conducted or attempted by, at, or through the bank (or an affiliate) and aggregating $5,000 or more, if the bank or affiliate knows, suspects, or has reason to suspect that the transaction
  - may involve potential money laundering or other illegal activity (e.g., terrorism financing).
  - is designed to evade the BSA or its implementing regulations.
  - has no business or apparent lawful purpose or is not the type of transaction that the particular customer would normally be expected to engage in, and the bank knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

The SAR reporting requirements are provided in 12 CFR 21.11 and 163.180.

Economic sanctions laws administered by OFAC require that banks

- block accounts and other property of specified countries, entities, and individuals.
- prohibit or reject unlicensed trade and financial transactions with specified countries, entities, and individuals.
- comply with recordkeeping and reporting requirements.

Refer to the *FFIEC BSA/AML Examination Manual* for additional information.

Verification

The OCC expects banks to exercise appropriate caution and due diligence when opening accounts. All banks must implement effective processes to ensure that they adequately verify

the identity of new customers at account opening and to authenticate existing customers when they initiate transactions.

The customer verification process involves requesting various customer information items, including name, address, phone number, Social Security number, and driver's license information. Banks should independently verify the accuracy of this information.

A bank's internal systems and controls should include appropriate procedures to verify customer information as part of the account opening process and to monitor for fraud and suspicious activity after an account has been opened. The bank should monitor the verification and account authorization procedures continually to ensure a rigorous process for identifying, measuring, and managing the risk exposures. This process should include a regular audit function to test the controls and ensure they continue to meet the defined control objectives.

These procedures for access control also are essential for preventing fraud, money laundering, and other abuses. To limit the risk of money laundering, some banks may define the types of businesses or customer they accept, consistent with their risk profile and business operations. Banks should have policies and procedures for assessing the risks posed by individual customers on a case-by-case basis and implement controls to manage the relationships commensurate with these risks. The choice to open, close or maintain an account is a decision for each bank, made on a case-by-case basis, after appropriate assessment of the risk posed by the customer or account, and the controls necessary to manage risks presented by that customer.

Safeguarding Customer Information

Information is one of a bank's most important assets. As mandated by section 501 of Gramm–Leach–Bliley Act of 1999 (GLBA), a bank must establish appropriate processes to safeguard customer information. Such safeguards must

- ensure the security and confidentiality of customer records and information.
- protect against any anticipated threats or hazards to the security or integrity of such records.
- protect against unauthorized access to or use of such records or information that could result in substantial harm or inconvenience to any customer.

The bank must implement a comprehensive written information security program that includes administrative, technical, and physical safeguards appropriate to the size and complexity of the bank and the nature and scope of its activities. Refer to 12 CFR 30, appendix B, "Interagency Guidelines Establishing Information Security Standards," and OCC Bulletin 2001-35, "Examination Procedures to Evaluate Compliance with the Guidelines to Safeguard Customer Information." Also refer to the *FFIEC IT Examination Handbook* "Information Security" booklet.

Privacy

Banks are subject to a number of federal statutes and regulations that govern the disclosure of consumer information. The most comprehensive of these provisions is Title V of the GLBA, which requires banks and other financial institutions to provide consumers of their financial products or services with privacy notices and an opportunity to opt out of certain information sharing with nonaffiliated third parties. Banks also are subject to the Fair Credit Reporting Act (FCRA), which governs the use and disclosure of consumer reporting information. Additionally, banks should be aware of the Electronic Fund Transfer Act, the Right to Financial Privacy Act, the Children's Online Privacy Protection Act, and the Federal Trade Commission Act (FTC Act).

Gramm–Leach–Bliley Act Privacy Provisions

The GLBA enacted privacy-related provisions applicable to financial institutions. In 2000, the federal banking regulatory agencies promulgated final rules to implement these provisions. In 2010, the Dodd–Frank Wall Street Reform and Consumer Protection Act granted rulemaking authority to the Consumer Financial Protection Bureau for most of the privacy-related provisions of the GLBA applicable to financial institutions. In 2011, the bureau recodified in Regulation P the regulations that were previously issued by the federal banking regulatory agencies (12 CFR 1016).

In general, the regulations require banks to provide their customers with notices that accurately describe their privacy policies and practices, including their policies for the disclosure of nonpublic personal information[63] to their affiliates and to nonaffiliated third parties. The notices must be provided at the time the customer relationship is established and annually thereafter. Notices must be clear and conspicuous and provided so that each intended recipient reasonably could be expected to receive actual notice. The notices must be in writing or may be delivered electronically if the consumer agrees.

Subject to specified exceptions that permit banks to share information in the ordinary course of business, banks may not disclose nonpublic personal information about consumers to any nonaffiliated third party, unless consumers are given a reasonable opportunity to direct that their information not be shared (opt out). Thus, before a bank may disclose nonpublic personal information about a consumer (even if that person is not a customer of the bank) to a nonaffiliated third party, the bank must provide the consumer with an initial privacy notice and an opt-out notice (which may be included in the privacy notice).

The GLBA regulations also provide that a bank generally may not disclose an account number or similar form of access number or code for a credit card account, deposit account,

[63] Generally, this means any information that is provided by a consumer to a bank to obtain a financial product or service; that results from a transaction between a bank and a consumer involving a financial product or service; or that is otherwise obtained by a bank in connection with providing a financial product or service to a consumer. If a bank obtains information about consumers from a publicly available source, that information is not protected (that is, subject to notice and opt out) unless the information is disclosed as part of a list, description, or other grouping of a bank's customers.

or transaction account of a consumer to any nonaffiliated third party for use in marketing. The bank may, however, disclose its customer account numbers to third-party agents or servicers to market the bank's own products or services, provided the bank does not authorize the third party to initiate charges to customer accounts. The regulations also limit the redisclosure and reuse of nonpublic personal information obtained from other nonaffiliated financial institutions.

Fair Credit Reporting Act Information Sharing Provisions

The FCRA sets standards for the collection, communication, and use of information bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living. The communication of this type of information may be a "consumer report" subject to the FCRA's requirements. However, the FCRA specifically excepts from the definition of consumer report (1) the disclosure of a bank's own transaction and experience information to any third party and (2) the disclosure of consumer reporting information to a bank's affiliates if the bank first notifies its consumers that it intends to share such information and allows them to opt out of this information sharing (affiliate information sharing).

A bank generally is not subject to the FCRA's requirements that apply to consumer reporting agencies[64] if the bank communicates information only in a manner consistent with the two exceptions described previously. The bank may, however, be subject to other FCRA requirements (for example, as a user of credit reports).

Banks' information disclosures may be subject to both the GLBA and the FCRA. Therefore, banks must understand the differences between the GLBA and the FCRA provisions to reduce compliance risks in this area. The statutes differ in the scope of their coverage and their requirements for a bank's treatment of consumer information. As a result, what may be a permissible disclosure under one statute may be prohibited or subject to different conditions under the other statute. Because compliance with one statute does not ensure compliance with the other, banks are strongly advised to evaluate the requirements of both laws in connection with their disclosures of consumer information. (For a more detailed discussion, see OCC Bulletin 2000-25, "Privacy Laws and Regulations: Summary of Requirements.")

Other Privacy Provisions

Banks and their subsidiaries should be aware of the following federal laws that may affect their consumer financial information practices:

[64] These requirements relate to furnishing consumer reports only for permissible purposes, maintaining high standards for ensuring the accuracy of information in consumer reports, resolving consumer disputes, and other matters.

- The Electronic Fund Transfer Act and Regulation E require that banks make certain disclosures when a consumer contracts for an electronic transfer service or before the first electronic fund transfer is made involving the consumer's account.
- The Right to Financial Privacy Act prohibits a bank from disclosing a customer's financial record to the federal government, except in limited circumstances, such as pursuant to the customer's authorization, an administrative subpoena or summons, a search warrant, a judicial subpoena, or a formal written request for a legitimate law enforcement inquiry, or to a supervisory agency for its supervisory, regulatory, or monetary functions.
- The Children's Online Privacy Protection Act establishes requirements applicable to the collection, use, or disclosure of personal information about children that is collected through the Internet or another online service. Banks are subject to the act if they operate a website or online service (or portion thereof) directed to children, or have actual knowledge that they are collecting or maintaining personal information from a child online.
- The FTC Act prohibits unfair or deceptive acts or practices in or affecting commerce, and provides a basis for government enforcement actions against deception resulting from misleading statements concerning a company's privacy practices or policies, or failures to abide by a stated policy.

Advertising

Advertisements on websites must meet the advertising requirements of Regulation B (ECOA), Regulation M (Consumer Leasing Act), Regulation Z (Truth in Lending Act), Regulation DD (Truth in Savings Act), and the FTC Act.[65]

Banks must be aware of the regulatory requirements for the prominence of certain disclosures in their advertisements. Banks also must consider the requirements of Regulations M and Z that permit creditors and lessors to provide required advertising disclosures on more than one page, if certain conditions are met. Banks should monitor carefully amendments to these regulations to ensure compliance with multipage advertising requirements in the context of electronic advertisements. Banks must comply with the triggering term requirements of Regulations M, Z, and DD, ensuring that the terms are disclosed appropriately and are set forth clearly and conspicuously.

[65] There are no FTC Act regulations addressing electronic advertisements. However, non-electronic advertisements, such as print advertisements, may not be unfair or deceptive.

Appendix F: Significant Deviations After Opening

The OCC requires that, for at least the first three years of operation, each de novo bank provide prior notice and obtain a non-objection letter from the appropriate OCC supervisory office before making a significant deviation from the business plan submitted with the proposed bank's charter application. This is a condition imposed in writing within the meaning of 12 USC 1818. After three years of operation, the OCC evaluates the condition and financial stability of the de novo bank to determine if this condition should be removed or retained.

Purpose

Generally, the OCC uses this significant deviation condition to address heightened supervisory risk that exists during the first several years of a new bank's operations, or that exists in unusual cases after a conversion, merger, or other filing. This condition is a standard condition imposed in connection with all new bank charter approvals.

New banks are particularly vulnerable to internal and external risks until they achieve a certain level of stability and profitability, clearly justifying the imposition of the significant deviation condition. The condition provides the OCC with the opportunity to evaluate any enhanced risks presented before the bank initiates a significant change to its business plan or operations.

Identification

A significant deviation or change for the purposes of this condition is defined as a material variance from the bank's business plan or operations, or introduction of any new product, service, or activity or change in market that was not part of the approved business plan, that occurs after the proposed bank has opened for business. Significant deviations may include, but are not limited to, deviations in the bank's

- projected growth, such as planning significant growth in a product or service.
- strategy or philosophy, such as significantly reducing the emphasis on its targeted niche (e.g., small business lending) in favor of significantly expanding another area (e.g., funding large commercial real estate projects).
- lines of business, such as initiating a new program for subprime lending, automobile lending, credit cards, or transactional services that elevate the bank's risk profile.
- funding sources, such as shifting from core deposits to brokered deposits.
- scope of activities, such as entering new, untested markets.
- stock benefit plans, including the introduction of plans that were not previously reviewed during the chartering process by the OCC.
- relationships with a parent company or affiliate, such as a shift to significant reliance on a parent or affiliate as a funding source or provider of back-office support.

Changes in bank control or management are not considered significant deviations for purposes of this condition because existing laws and regulations[66] provide other means for prior notification and an opportunity for OCC objection.

Deviations in financial performance alone are not significant deviations under this condition. The OCC still may, however, consider the underlying reason(s) for a deviation in financial performance a significant deviation. For example, a bank could deviate from its pro forma balance sheet or budget because of significant growth caused by a new product that was not disclosed in the business plan or initial plan of operations. This is an example of a significant deviation that requires prior written notification to, and a written determination of non-objection from, the supervisory office. On the other hand, if the bank's strategies are consistent with its business plan, but the bank simply experiences significantly more growth than planned, that growth may or may not qualify as a significant deviation for this condition depending on the type of growth.

Nevertheless, examiners evaluate the supervisory risk that deviations from projected financial performance may pose to the bank and what, if any, supervisory response is appropriate under the circumstances. For example, an examiner could determine that the bank's risk management systems are no longer adequate given the magnitude of the unplanned growth, and that deficient systems are a matter requiring attention by the board.

Evaluation

Upon receipt of a prior notice, the supervisory office evaluates the proposed deviation to the bank's business plan or operations. The evaluation should determine whether the deviation significantly elevates the bank's risk profile. The OCC assesses risk by its potential impact on a bank's earnings and capital. The OCC recognizes that some deviations are necessary or prudent. For example, a deviation from the business plan may be necessary to meet changes in local market conditions.

Examiners determine whether the risks that a bank undertakes, or proposes to undertake, are properly managed. Generally, risks are warranted if they are identified, understood, measured, monitored, controlled, and within the bank's capacity to withstand any financially adverse results such a risk could cause. If examiners determine that risks are unwarranted, they communicate to the bank's management and directors that a need exists to mitigate or eliminate the excessive risks. Appropriate actions may include reducing exposures, increasing capital, or strengthening risk management processes. Refer to the "Bank Supervision Process" booklet of the *Comptroller's Handbook* for more detailed discussions of risks and risk management systems.

[66] The CBCA in 12 USC 1817(j) and the OCC's implementing regulation in 12 CFR 5.50 generally require prior notification of a change in bank control. As a condition of the charter approval, the OCC retains the right to object to and preclude the hiring of any officer, or the appointment or election of any director, for a three-year period from the date the bank commences business, or longer as appropriate (12 CFR 5.20(g)(2)).

Examiners, bank management, and directors may find it beneficial to consult their district's Licensing staff when reviewing adherence to, or evaluating significant deviations from, a bank's business plan.

Supervisory Actions and Communications

If the evaluation of a proposed significant deviation results in little or no supervisory concern, the supervisory office sends a non-objection letter to the bank. To mitigate concerns, the supervisory office may determine that it is prudent to condition its determination of non-objection. In these cases, the non-objection letter identifies the conditions as ones "imposed in writing by the agency in connection with the granting of any application or other request." The OCC is required to publish documents containing enforceable conditions. Accordingly, the supervisory office must submit a copy of all conditional non-objection letters to OCC Headquarters Licensing for publication in the monthly list of Interpretations and Actions.

If the evaluation discloses supervisory concerns with a proposed deviation, the supervisory office sends an objection letter detailing the reasons for this determination. If, despite the issuance of an objection letter, a bank subsequently engages in actions that reflect a significant deviation to, or change from, its business plan, additional supervisory or enforcement action will be considered, consistent with the OCC's enforcement policy (*Policies and Procedures Manual* 5310-3 (REV)).

If a significant deviation from the bank's business plan is disclosed during a supervisory activity (examination or periodic monitoring), and the bank has failed to obtain prior written determination of non-objection, the resulting supervisory action will reflect the degree of supervisory concern with the deviation. At a minimum, the OCC will cite a violation of the Regulatory Condition Imposed in Writing (RCIW) (in other words, the significant deviation condition—12 USC 1818). A violation of an RCIW can provide the basis for the assessment of civil money penalties or other enforcement actions. The OCC communicates all supervisory actions to the bank in writing.

Glossary

Affiliate: This term includes (but is not limited to) any company that controls a bank and any company that is controlled by the same person or company that controls the bank (12 USC 371c as implemented by Regulation W, 12 CFR 223).

Bank holding company (BHC): An entity controlling a national bank must be approved by the Federal Reserve Board as a BHC if the controlled bank is covered by the definition of a bank found in the Bank Holding Company Act (BHCA) (12 USC 1841(c)). Certain limited purpose banks, such as Competitive Equality Banking Act credit card banks and trust banks, are not defined as banks under the BHCA.

Bankers' bank: A bank owned exclusively, except for directors' qualifying shares, by other depository institutions or depository institution holding companies. Bankers' bank activities are limited to providing

- services to or for other depository institutions, their holding companies, or the officers, directors, and employees of such institutions.
- correspondent banking services at the request of other depository institutions or their holding companies.

Body corporate: After filing the articles of association and organization certificate, a national bank becomes a body corporate or legal entity as of the date the organizers sign the organization certificate and adopt the articles of association.

Business continuity plan: A plan addressing all critical services and operations provided by internal departments and external sources. The planning process reviews the various departments, units, or functions and assesses each area's importance for the viability of the organization and provision of customer services. Plans are developed to cover restoring critical areas if they are affected by physical disasters (such as fires or flooding); environmental disasters (such as hurricanes or tornados); or other disasters (such as power or telecommunication failure).

Completed application: An application is completed when the items specified in the charter application checklist are satisfied. The checklist is an internal OCC form used to confirm whether an application contains information responsive to required elements in the filing. Completion of the checklist does not mean the OCC has evaluated the information or made a decision on the application.

Contact person: Also called a spokesperson, the contact person is an organizer and proposed director of a proposed bank who is designated by the organizing group to represent the group in all contacts with the OCC. In certain circumstances (excluding independent charters), the contact person instead may be a representative of

- a holding company sponsor.

- persons currently affiliated with other depository institutions.
- persons who, in the OCC's view, otherwise are collectively experienced in banking and have demonstrated the ability to work together effectively.

Control: Separate definitions of control exist in the Bank Holding Company Act at 12 USC 1841, the Savings and Loan Holding Company Act at 12 USC 1467a, the Change in Bank Control Act at 12 USC 1817(j), and the affiliate transactions provisions of the Federal Reserve Act at 12 USC 371c (and the regulations implementing each of these statutory definitions).

De novo BHC or SLHC: A bank holding company or savings and loan holding company that has been in existence less than three years, including one that is in the process of formation.

Director: A member of the board of directors of a bank. Collectively, the directors have a critical role in the successful operation of the bank. They are ultimately responsible for the conduct of the bank's affairs, and the health of the bank depends on their being strong, independent, and attentive. They also are accountable to the bank's shareholders, depositors, and regulators, and the communities served by the bank. For purposes of determining applicability of and compliance with 12 USC 375b as implemented by Regulation O, the term "director" is defined at 12 CFR 215.2(d) and means any director of the company or bank, whether or not receiving compensation. The term also includes certain advisory directors.

Disaster recovery plan: Part of the business continuity plan. A disaster recovery plan includes measures to protect the bank in the event of physical disasters and other disruptions to operations; backup considerations related to hardware, software, applications, documentation, procedures, data files, and telecommunication; and insurance policies, considering the type of computer equipment and software and the size of the information systems facilities within the organization.

Dormant bank: A bank that is no longer engaged in banking activities other than on a de minimis basis. This definition includes, for example, a bank that has significantly reduced its activities and services or that has contracted out significant portions of its operations to third-party service providers, other than in the ordinary course of the bank's ongoing business.

E-banking: The automated delivery of new and traditional banking products and services directly to consumers through electronic, interactive communication channels. E-banking includes the systems that enable bank customers to access accounts, transact business, or obtain information on financial products and services through a public or private network, including the Internet.

Effective registration statement: A registration statement that meets the requirements set forth in 12 CFR 16.15 for the solicitation of stock to capitalize a new bank, and that has been authorized by the OCC for use in offering for sale and selling stock in the new bank.

Eligible bank or eligible savings association: As defined in 12 CFR 5.3(g), a bank that

- has a composite CAMELS (capital, asset quality, management, earnings, liquidity, and sensitivity to market risk) rating of 1 or 2.
- has a consumer compliance rating of 1 or 2.
- has a satisfactory or better Community Reinvestment Act rating. (This factor does not apply to an uninsured bank, an uninsured federal branch, or a special purpose bank covered by 12 CFR 25.11(c)(3).)
- is well capitalized as defined in 12 CFR 6.4(b)(1).
- is not subject to a cease and desist order, consent order, formal written agreement, or prompt corrective action directive; or, if subject to any such order, agreement, or directive, is informed in writing by the OCC that the bank still may be treated as an "eligible bank."

Eligible depository institution: A national bank, FSA, state bank, or state savings association that meets the criteria for an "eligible bank" under 12 CFR 5.3(g) and is FDIC-insured.

Established company: A company that has been operating for more than three years and will become a parent of a national bank or FSA when the bank opens for business, regardless of whether the company will also become a BHC or SLHC.

Executive officer: An executive officer of a bank is a person who participates in or has the authority to participate in (other than in the capacity of a director) major policymaking functions of the bank, whether or not the person has an official title, is designated as an assistant, or serves without compensation. Executive officer positions normally include the chairman of the board, president, every vice president, cashier, secretary, treasurer, chief investment officer, and any other person the OCC identifies as having significant influence over major policymaking decisions.

Existing BHC or SLHC: A company that has received Federal Reserve System approval to become a bank holding company or savings and loan holding company and has been operating as such for at least three years before filing its application to organize a new bank.

Experienced in banking: New banks may be sponsored by strong existing companies or groups of individuals experienced in banking, which provide exceptional backing to a new bank proposal and make the OCC's review of the application more efficient. For a group of individuals to be considered a sponsor of a new bank, the majority of the group's members should be experienced in banking, meaning they have five or more years of recent significant involvement in policymaking as directors or executive officers in the same institution or in affiliated federally insured institutions that the OCC deems to have performed satisfactorily.

Federal savings association (FSA): An FSA or federal savings bank chartered pursuant to section 5 of HOLA (12 USC 1464). An FSA may take one of two ownership forms. The FSA may be a stock FSA, where stock is issued to shareholders. Alternatively, the FSA may have a mutual ownership form, where no stock is issued.

Feasibility analysis: The process of determining the likelihood that a proposal will fulfill specified objectives.

Final approval: The OCC action of issuing a charter certificate and authorizing a national bank or FSA to open for business.

Financial subsidiary: Any company controlled by one or more insured depository institutions as further outlined in 12 USC 24 regarding national banks. It is not a subsidiary that engages solely in activities that a national bank may engage in directly (in other words, an operating subsidiary) or a subsidiary that is specifically authorized by the express terms of a federal statute other than 12 USC 24a, such as a bank service company. A financial subsidiary may engage in specified activities that are financial in nature or incidental to financial activities if the national bank and the subsidiary meet certain requirements and comply with stated safeguards. For purposes of Regulation W (12 CFR 223), a financial subsidiary does not include a company that is only a financial subsidiary solely because it engages in the sale of insurance as agent or broker in a manner that is not permitted for a national bank.

Founders: Individuals who provide funding for organization costs but are not otherwise involved in the organization or ongoing operation of the bank, except as shareholders. Founders may also assist in marketing the bank.

Holding company: Any company that controls or proposes to control a bank regardless of whether the company is a BHC under 12 USC 1841(a)(1) or an SLHC under 12 USC 1467a.

Insider: A proposed organizer, director, principal shareholder, or executive officer of a proposed bank. For purposes of determining applicability of and compliance with 12 USC 375(a) and 375(b) as implemented by Regulation O, the term "insider" is defined at 12 CFR 215.2(h) and means an executive officer, director, or principal shareholder, and includes any related interest of such a person.

Insider contract: Any financial or other business, voting, or ownership agreement, arrangement, or transaction, direct or indirect, oral or written, between any insider and the proposed bank.

Internet banking: A system that enables bank customers to access accounts and general information on bank products and services through a personal computer, mobile telephone, or other electronic device. (Also see **e-banking**.)

Internet service provider: An entity that provides access or service related to the Internet, generally for a fee.

Lead depository institution: The largest depository institution controlled by a BHC or SLHC, based on a comparison of the total assets controlled by each depository institution as reported in its call report required to be filed for the immediately preceding four calendar quarters.

Limited purpose bank: For CRA purposes, a bank that offers only a narrow product line (such as credit card, trust, and cash management services, or a banker's bank) to a regional or broader market and for which a designation as a limited purpose bank is in effect. A bank may request the OCC to designate it as a limited purpose bank for CRA purposes as provided in 12 CFR 25.25(b) or 12 CFR 195.25(b).

Low- and moderate-income (LMI) area: A low-income area is one where individual income is less than 50 percent of the area median individual income, or where median family income is less than 50 percent of the area median family income. A moderate-income area is one where individual income is at least 50 percent and less than 80 percent of the area median individual income, or median family income is at least 50 percent and less than 80 percent of the area median family income. An area (or geography) is defined as a census tract delineated by the U.S. Census Bureau in the most recent decennial census.

Market test: A test of an organizing group's ability to raise the required capital stated in its business plan, and in the manner described, within 12 months of preliminary conditional approval.

Narrow focus bank: A bank that offers limited services or anticipates serving a narrowly defined market niche. For example, a narrow focus bank may offer a lending portfolio that targets a restricted customer base; predominately lend to businesses through the Small Business Administration program; focus on credit card products; offer only trust services, etc. Narrow focus banks generally lack diversification in their lines of business.

National bank: An insured or uninsured national banking association chartered by the OCC.

Officer: Executive officers as well as subordinate management officials appointed by the bank's board of directors or through authority properly delegated by the board of directors.

Organization costs: The direct costs incurred to incorporate and charter a bank, these are a subset of start-up costs. Such direct costs include, but are not limited to, professional fees (such as legal, accounting, and consulting), printing costs related directly to the chartering or incorporation process, filing fees paid to chartering authorities, and the cost of economic impact studies. Organization costs incurred by newly chartered banks should not be capitalized.

Organization phase: The period between the time the OCC grants preliminary conditional approval to the application and the day the bank opens for business.

Organizers: The persons who file and sign a charter application. The OCC may approve additional organizers and organizing directors throughout the charter process, subject to review and non-objection. Refer to the "Background Investigations" booklet of the *Comptroller's Licensing Manual*.

Organizing group: Five or more persons acting on their own behalf, or serving as representatives of a sponsoring holding company, who apply to the OCC for a bank charter.

Person: As defined in this booklet, "person" has the same meaning as set forth in the CBCA and the OCC's implementing regulation (12 USC 1817(j) and 12 CFR 5.50, respectively). In the context of affiliate transactions, "person" has the meaning set forth in 12 CFR 223.3(bb) of Regulation W.

Preliminary conditional approval: A decision by the OCC permitting an organizing group to proceed with the organization of a proposed bank. Preliminary conditional approval generally is subject to certain requirements and conditions that an applicant must satisfy before the OCC grants final approval, and is also subject to special conditions that remain in place after the bank opens for business.

Preopening expenses: Expenses, such as salaries, employee benefits, rent, depreciation, supplies, directors' fees, training, travel, postage, and telephone, that are not considered organization costs and should not be capitalized. In addition, allocated internal costs, such as management salaries, should not be capitalized as organization costs.

Principal shareholder: A person or entity, other than an insured bank, who directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than 10 percent of any class of voting securities of the proposed bank, consistent with the definition in 12 USC 375b as implemented by Regulation O (12 CFR 215.2(m)).

Related interest: A related interest of a principal shareholder, executive officer, or director (person) includes (1) a company that is controlled by that person or (2) a political or campaign committee that is controlled by that person or that will benefit that person through funds or services. All of these terms are further defined by 12 CFR 215.2.

Savings and loan holding company (SLHC): A company controlling a savings association, including an FSA, must be approved by the Federal Reserve Board as an SLHC unless an exception is available. The term SLHC does not include a company that controls a savings association that functions solely in a trust or fiduciary capacity (1467a(a)(1)(D)(ii)(II)).

Significant deviation: A material variance from a bank's business plan or operations that occurs after the proposed bank has opened for business.

Spokesperson: See contact person.

Start-up costs: Defined broadly, the costs associated with the one-time activity related to opening a new facility, introducing a new product or service, conducting business in a new territory, conducting business with a new class of customer, or commencing a new operation. Start-up activities related to organizing a new entity, such as a bank, are referred to as organization costs. For a new bank, preopening expenses (such as salaries and employee benefits, rent, depreciation, supplies, director's fees, training, travel, postage, and telephone) are considered start-up costs.

Subsidiary of a holding company: A new bank is a subsidiary of a holding company if 25 percent or more of its voting stock will be owned or controlled by a holding company, or if the Federal Reserve Board (or the OCC, as appropriate) determines that a holding company otherwise has the power to elect a majority of the bank's directors or to control the bank in any other manner.

Troubled condition: When a bank has a composite rating of 4 or 5; or is subject to a cease and desist order, a consent order, or a formal written agreement (unless otherwise informed in writing by the OCC); or is informed in writing by the OCC that as a result of an examination it has been so designated.

Wholesale bank: For CRA purposes, a bank that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers, and for which designation as a wholesale bank is in effect. A bank may request the OCC to designate it as a wholesale bank for CRA purposes as provided in 12 CFR 25.25(b) or 195.25(b).

References

In this section, "NB" denotes that the referenced law, regulation, or issuance applies to national banks, and "FSA" denotes that the reference applies to federal savings associations.

Advertising

Law	12 USC 371c-1 (NB and FSA)
	12 USC 1468(a) (FSA)
Regulation	12 CFR 163.27 (FSA)
	12 CFR 213, 226, 1013, 1026, 1030 (NB and FSA)

Affiliates, Transactions with

Law	12 USC 371c, 371c-1 (NB and FSA)
	12 USC 1467(d), 1468 (FSA)
Regulation	12 CFR 163.41 (FSA)
	12 CFR 223 (NB and FSA)

Articles of Association and Charter

Law	12 USC 21, 21a (NB)
	12 USC 1464 (FSA)
Regulation	12 CFR 5.21, 5.22 (FSA)
Lost stock certificates	
Regulation	12 CFR 5.22 (FSA)
	12 CFR 7.2018 (NB)
Preemptive rights	
Regulation	12 CFR 5.22 (FSA)
	12 CFR 7.2021 (NB)
Shareholder or member meetings	
Law	12 USC 71, 75 (NB)
	12 USC 1464 (FSA)
Regulation	12 CFR 5.21, 5.22 (FSA)
	12 CFR 7.2001, 7.2003 (NB)
Vacancies in board	
Law	2 USC 74 (NB)
Regulation	12 CFR 5.21, 5.22 (FSA)
	12 CFR 7.2007 (NB)

Audit, Internal and External

Law	12 USC 1463 (FSA)
	12 USC 1831m, 15 USC 78j-1 (NB and FSA)
Regulation	12 CFR 11 (NB and FSA)
	12 CFR 162 (FSA)
	12 CFR 30, 363, 17 CFR 210 (NB and FSA)

OCC Bulletin 2003-12, "Interagency Policy Statement on Internal Audit and Internal Audit Outsourcing" (March 17, 2003) (NB and FSA)
Comptroller's Handbook, "Internal and External Audits" (NB and FSA)

Authorization to Commence Business

Law	12 USC 26, 27 (NB)
	12 USC 1464 (FSA)
Regulation	12 CFR 5.20 (NB and FSA)

Background Investigations

Regulation	12 CFR 5.7, 28 CFR 16.34, 50.12 (NB and FSA)

Bank Holding Company Act

Law	12 USC 1841-1850
Regulation	12 CFR 225

Bank Premises, Investment in

Law	12 USC 29, 371d (NB)
	12 USC 1464 (FSA)
Regulation	12 CFR 5.37 (NB and FSA)
	12 CFR 7.100 (NB)

Bank Protection Act

Law	12 USC 1882, 1884 (NB and FSA)
Regulation	12 CFR 21.1-4 (NB)
	12 CFR 168 (FSA)

Bank Secrecy Act

Law	31 USC 5311-5328 (NB and FSA)
Regulation	12 CFR 21.21 (NB and FSA)
	12 CFR 163.180 (FSA)
	31 CFR 1010, 1020 (NB and FSA)

Bank Service Company Act and FSA Subsidiary Organizations and Pass-Through Investments

Law	12 USC 1464 (FSA)
	12 USC 1861-1867 (NB and FSA)
Regulation	12 CFR 5.34, 5.36, 5.39 (NB)
	12 CFR 5.38, 5.58, 5.59 (FSA)
	12 CFR 5.35 (NB and FSA)

Bank Stock Loans

Law	12 USC 83 (NB)
	12 USC 1464 (FSA)
	12 USC 1828(v) (NB and FSA)
Regulation	12 CFR 7.2019 (NB)
	12 CFR 160 (FSA)

Bankers' Bank

Law	12 USC 24(7), 27(b) (NB)
	12 USC 1464(c)(4)(E) (FSA)
Regulation	12 CFR 5.20 (NB and FSA)

Branches

Law	12 USC 36 (NB)
	12 USC 1464(m), 1464(r) (FSA)
Regulation	12 CFR 5.30, 12 CFR 7.1003-7.1005, 7.4003-7.4005 (NB)
	12 CFR 5.31 (FSA)

Bylaws

Law	12 USC 24(6) (NB)
Regulation	12 CFR 5.21, 5.22 (FSA)
	12 CFR 7.2000 (NB)
Cashier	
Regulation	12 CFR 7.2015 (NB)
Lost stock certificates	
Regulation	12 CFR 5.22 (FSA)
	12 CFR 7.2018 (NB)
Quorum of directors	
Regulation	12 CFR 5.21, 5.22 (FSA)
	12 CFR 7.2009 (NB)
Shareholder meetings	
Law	12 USC 71, 75 (NB)
Regulation	12 CFR 5.22 (FSA)
	12 CFR 7.2001, 7.2003 (NB)
Stock certificate signatures	
Law	12 USC 52 (NB)
Regulation	12 CFR 5.22 (FSA)
	12 CFR 7.2017 (NB)

Capital Requirements

Law	12 USC 51c (NB)
	12 USC 1464 (FSA)
	12 USC 3907 (NB and FSA)
Regulation	12 CFR 3, 6 (NB and FSA)

OCC Bulletin 2007-21, "Supervision of National Trust Banks: Revised Guidance: Capital and Liquidity" (June 26, 2007) (NB and FSA)

Capital Stock

Law	12 USC 51a, 51b, 51c, 52, 55 (NB)
Regulation	12 CFR 5.22 (FSA)
	12 CFR 7.2016, 7.2017, 7.2018, 7.2023 (NB)

Capital Stock and Capital Required to Commence Business

Law	12 USC 53 (NB)
Regulation	12 CFR 5.20 (NB and FSA)
	12 CFR 5.21, 5.22 (FSA)

Capital Structure Change or Substantial Asset Change

Law	12 USC 56, 57, 59 (NB)
Regulation	12 CFR 5.45, 5.55 (FSA)
	12 CFR 5.46, 12 CFR 7.2020 (NB)
	12 CFR 5.53 (NB and FSA)

CEBA Credit Card Bank

Law	12 USC 1841(c)(2)(F) (NB)

Certificate and Authority to Commence Business

Law	12 USC 22, 23, 26, 27 (NB)
	12 USC 1464 (FSA)
Regulation	12 CFR 5.20 (NB and FSA)
Filing and preservation	
Law	12 USC 23 (NB)

Change in Control

Law	12 USC 1817(j) (NB and FSA)
Regulation	12 CFR 5.50 (NB and FSA)

Change in Directors and Senior Executive Officers

Law	12 USC 1831i (NB and FSA)
Regulation	12 CFR 5.51 (NB and FSA)

Chartering Banks

Law	12 USC 21, 22, 23, 26, 27, 92a, 222 (NB)
	12 USC 1464 (FSA)
	12 USC 1815, 1816, and 2903 (NB and FSA)
Regulation	12 CFR 5.20 (NB and FSA)
	12 CFR 5.21, 5.22 (FSA)

Community and Economic Development Entities, Community Development Projects, and Other Public Welfare Investments

Law	12 USC 24(11) (NB)
	12 USC 1464 (FSA)
Regulation	12 CFR 24 (NB)
	12 CFR 5.59 (FSA)
	12 CFR 160.36 (FSA)

Community Reinvestment Act

Law	12 USC 2901-2908 (NB and FSA)
Regulation	12 CFR 25 (NB)
	12 CFR 195 (FSA)

Compensation Plans

Law	12 USC 1828(k) (NB and FSA)
Regulation	12 CFR 7.2011 (NB)
	12 CFR 160.130 (FSA)
	12 CFR 30, 359 (NB and FSA)

Consumer Credit Protection Act

Law	15 USC 1601-1693r (NB and FSA)

Convicted Individuals

Law	12 USC 1829 (NB and FSA)

Corporate Governance Procedures

Law	15 USC 78j-1, 78m (k) (NB and FSA)
Regulation	12 CFR 5.21, 5.22 (FSA)
	12 CFR 7.2000-7.2024 (NB)

OCC Bulletin 2003-12, "Interagency Policy Statement on Internal Audit and Internal Audit Outsourcing" (March 17, 2003) (NB and FSA)

Corporate Powers and Investment Securities

Law	12 USC 24 (NB)
	12 USC 1464 (FSA)
Regulation	12 CFR 1 (NB)
	12 CFR 160 (FSA)

Cumulative Voting

Law	12 USC 61 (NB)
Regulation	12 CFR 5.22 (FSA)
	12 CFR 7.2006 (NB)

Depository Institution Management Interlocks

Law	12 USC 3201-3208, 12 USC 5364 (NB and FSA)
Regulation	12 CFR 26 (NB and FSA)

Directors

Board composition	
Regulation	12 CFR 163.33 (FSA)
Citizenship requirement	
Law	12 USC 72 (NB)
Convicted of a crime	
Law	12 USC 1829 (NB and FSA)
Delegation of duties	
Regulation	12 CFR 5.21, 5.22 (FSA)
	12 CFR 7.2010 (NB)
Election	
Law	12 USC 61, 71, 75 (NB)
Regulation	12 CFR 5.21, 5.22 (FSA)
	12 CFR 7.2003, 7.2006 (NB)
Extensions of credit to	
Law	12 USC 375b, 15 USC 78m(k) (NB and FSA)
	12 USC 1468(b) (FSA)
Regulation	12 CFR 31 (NB)
	12 CFR 215 (NB and FSA)
Honorary	
Regulation	12 CFR 7.2004 (NB)
Liability	
Law	12 USC 93, 503 (NB)
	12 USC 1818 (NB and FSA)
Number of	
Law	12 USC 71, 71a (NB)
Regulation	12 CFR 5.21, 5.22 (FSA)
Oath of	
Law	12 USC 73 (NB)
Regulation	12 CFR 7.2008 (NB)
Payment of interest to	
Law	12 USC 376 (NB)
President, as	
Law	12 USC 76 (NB)
Regulation	7.2012 (NB)
Proxy, as	
Regulation	12 CFR 7.2002 (NB)
	12 CFR 169.3 (FSA)
Purchases from and sales by	
Law	12 USC 1828(z) (NB and FSA)
Qualifications of	
Law	12 USC 72 (NB)

Regulation 12 CFR 163.22 (FSA)
12 CFR 7.2005 (NB)
12 CFR 5.20 (NB and FSA)

Quorum of
Regulation 12 CFR 5.21, 5.22 (FSA)
12 CFR 7.2009 (NB)

Residency
Law 12 USC 72 (NB)

Responsibilities
Regulation 12 CFR 5.21, 5.22 (FSA)
12 CFR 7.2010 (NB)

Vacancy in
Law 12 USC 74 (NB)
Regulation 12 CFR 5.21, 5.22 (FSA)
12 CFR 7.2007 (NB)

Electronic Banking
Regulation 12 CFR 7.5000- 7.5010 (NB)
12 CFR 155 (FSA)
FFIEC IT Examination Handbook (NB and FSA)

Electronic Fund Transfer Act
Law 15 USC 1693-1693r (NB and FSA)
Regulation 12 CFR 205 (NB and FSA)

Comptroller's Handbook, "Electronic Fund Transfer Act" (NB and FSA)

Employee Retirement Income Security Act of 1974
Law 29 USC 1001 et seq. (NB and FSA)

Employment Contracts for FSAs
Regulation 12 CFR 163.39 (FSA)

Examination of National Banks and FSAs
Law 12 USC 481, 484 (NB)
12 USC 1463, 1464(d), 1467, 1468b (FSA)
Regulation 12 CFR 7.4000 (NB)
12 CFR 163.170 (FSA)

Executive Officers

Cashier
Law 12 USC 24 (5), 26, 51a, 52, 57, 62, 92a(g), 161 (NB)
Regulation 12 CFR 7.2015 (NB)

Extensions of credit to
Law 12 USC 375a, 375b, 15 USC 78m(k) (NB and FSA)
12 USC 1468(b) (FSA)

Regulation	12 CFR 31 (NB) 12 CFR 215 (NB and FSA)
Liability	
Law	12 USC 93, 504 (NB) 12 USC 1818 (NB and FSA)
Payment of interest to	
Law	12 USC 376 (NB)

Fair Credit Reporting Act

Law	15 USC 1681-1681x (NB and FSA)

OCC Advisory Letter 99-3, "Fair Credit Reporting Act" (March 29, 1999) (NB and FSA)
Comptroller's Handbook, "Fair Credit Reporting" (NB and FSA)

Fair Housing Act

Law	42 USC 3601 et seq. (NB and FSA)
Regulation	24 CFR 100-110 (NB and FSA)

Comptroller's Handbook, "Fair Lending" (NB and FSA)

FDIC Insurance

Law	12 USC 1815, 1816 (NB and FSA)
Regulation	12 CFR 303.20-25, 327, 328 (NB and FSA)

FDIC Statement of Policy on Applications for Deposit Insurance
FDIC Financial Institutions Letter FIL-56-2014, "Guidance Related to the FDIC's Statement of Policy" (NB and FSA)

Federal Reserve System Membership

Law	12 USC 222, 282, 466, 501a (NB)
Regulation	12 CFR 209 (NB)

Federal Trade Commission Act

Law	15 USC 45 (NB and FSA)

OCC Advisory Letter 2002-3, "Guidance on Unfair or Deceptive Acts or Practices" (March 22, 2002) (NB and FSA)
OCC Bulletin 2014-42, "Interagency Guidance Regarding Unfair or Deceptive Credit Practices" (August 22, 2014) (NB and FSA)

Fees

Regulation	12 CFR 8.8 (NB and FSA)

Fidelity Insurance

Law	12 USC 1828(e) (NB and FSA)

Regulation	12 CFR 7.2013 (NB)

Fiduciary Activities

Law	12 USC 92a (NB)
	12 USC 1464 (FSA)
Regulation	12 CFR 9 (NB)
	12 CFR 150 (FSA)

Fraudulent Statements

Law	18 USC 1001 (NB and FSA)

Golden Parachute Payments

Law	12 USC 1828(k) (NB and FSA)
Regulation	12 CFR 359 (NB and FSA)

Gramm–Leach–Bliley Act

Law	12 USC 24a (NB)
	15 USC 6801 et seq. (NB and FSA)
Regulation	12 CFR 5.39 (NB)
	12 CFR 30 App. B, 12 CFR 1016 (NB and FSA)

Holidays

Law	12 USC 95 (NB)
Regulation	12 CFR 7.3000 (NB)

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Indemnification of Directors, Officers, and Employees

Law	12 USC 1828(k) (NB and FSA)
Regulation	12 CFR 7.2014 (NB)
	12 CFR 145.121 (FSA)
	12 CFR 359 (NB and FSA)

Information Security

Law	15 USC 6801, 6805(b) (NB and FSA)
Regulation	12 CFR 30 (NB and FSA)
	12 CFR 155 (FSA)

OCC Alert 2012-16, "Information Security: Distributed Denial of Service Attacks and Customer Account Fraud" (December 21, 2012) (NB and FSA)
OCC Bulletin 1998-31, "Guidance on Electronic Financial Services and Consumer Compliance: FFIEC Guidance" (July 30, 1998) (NB and FSA)
OCC Bulletin 2000-14, "Infrastructure Threats–Intrusion Risks: Message to Bankers and Examiners" (May 15, 2000) (NB)
FFIEC IT Examination Handbook (NB and FSA)

Insider Activities

Law	12 USC 375b, 1828(z) (NB and FSA)
	12 USC 376 (NB)
	12 USC 1468(b) (FSA)
Regulation	12 CFR 31(NB)
	12 CFR 163.200, 163.201 (FSA)
	12 CFR 215 (NB and FSA)

Comptroller's Handbook, "Insider Activities" (NB and FSA)

Insurance, Sale of

Law	12 USC 92 (NB)
	12 USC 1831x (NB and FSA)
Regulation	12 CFR 14 (NB and FSA)

Interbank Deposits

Law	12 USC 463 (NB)
	12 USC 1972 (NB and FSA)

Interest

	Receiving
Law	12 USC 85, 86 (NB)
Regulation	12 CFR 7.4001 (NB)

Lending Limits

Law	12 USC 84 (NB)
	12 USC 1464 (FSA)
Regulation	12 CFR 32 (NB and FSA)

OCC Bulletin 2013-17, "Lending Limits: Final Rule" (August 15, 2013) (NB and FSA)

Location, Change of Main Office

Law	12 USC 30 (NB)
Regulation	12 CFR 5.21, 5.22 (FSA)
	12 CFR 5.40 (NB and FSA)

Lotteries

Law	12 USC 25a (NB)
	12 USC 1463 (FSA)

Minority-Owned Banks

OCC Policy Statement on Minority National Banks and Federal Savings Associations (June 7, 2013) (NB and FSA)

Mutual Holding Companies

Law	12 USC 1467a (FSA)

Regulation	12 CFR 239 (FSA)

Organization Costs

Regulation	12 CFR 5.20 (NB and FSA)

"Instructions to the Consolidated Reports of Condition and Income" (Glossary) (NB and FSA)

Organization of National Banks and FSAs

Law	12 USC 21-23 (NB)
	12 USC 1464 (FSA)
Regulation	12 CFR 5.20 (NB and FSA)

Place of Business

Law	12 USC 22, 81 (NB)

Privacy

Law	15 USC 6801 et seq. (NB and FSA)
Regulation	12 CFR 1016 (NB and FSA)

OCC Bulletin 2000-25, "Privacy Laws and Regulations: Summary of Requirements" (September 8, 2000) (NB and FSA)

Public Welfare Investments

Law	12 USC 24(11) (NB)
	12 USC 1464 (FSA)
Regulation	12 CFR 5.59 (FSA)
	12 CFR 24 (NB)

Publication of Application

Regulation	12 CFR 5.8, 5.10 (NB and FSA)

Real Estate Lending

Law	12 USC 371 (NB)
	1464(c) (FSA)
Regulation	12 CFR 34 (NB and FSA)
	12 CFR 30, App A (NB and FSA)
	12 CFR 160 (FSA)

OCC Bulletin 2015-51, "Interagency Statement on Prudent Risk Management for Commercial Real Estate Lending" (December 18, 2015) (NB and FSA)
OCC Bulletin 2006-46, "Interagency Guidance on Commercial Real Estate Concentration Risk Management" (December 6, 2006) (NB and FSA)
OCC Bulletin 2005-32, "Frequently Asked Questions: Residential Tract Development Lending" (September 8, 2005) (NB and FSA)

Comptroller's Handbook, "Commercial Real Estate Lending" (NB and FSA)
Comptroller's Handbook, "Residential Real Estate Lending" (NB and FSA)
Comptroller's Handbook, "Installment Lending" (NB and FSA)
Comptroller's Handbook, "Mortgage Banking" (NB and FSA)

Record Keeping and Confirmation Requirements for Securities Transactions

Law	12 USC 24, 92a, 93a (NB)
Regulation	12 CFR 12 (NB)

Reserve Requirements

Law	12 USC 461, 464, 465, 466 (NB)
Regulation	12 CFR 204 (NB and FSA)

S Corporation

Law	26 USC 1361 (NB and FSA)

Safety and Soundness Standards

Law	12 USC 1831p-1 (NB and FSA)
Regulation	12 CFR 30 (NB and FSA)

Sarbanes–Oxley Act of 2002

Law	15 USC 78m(k) (NB and FSA)

OCC Bulletin 2003-12, "Interagency Policy Statement on Internal Audit and Internal Audit Outsourcing" (March 17, 2003) (NB and FSA)

Savings and Loan Holding Companies

Law	12 USC 1467a (FSA)
Regulation	12 CFR 238 (FSA)

Securities Offering Disclosure Rules and Offers of and Sales of Securities at an Office of an FSA

Law	12 USC 1, 93 (NB)
	12 USC 1463, 1464 (FSA)
Regulation	12 CFR 16 (NB)
	12 CFR 163.76 (FSA)

Security Devices and Procedures

Law	12 USC 1882, 1884 (NB and FSA)
Regulation	12 CFR 21 (NB)
	12 CFR 168 (FSA)

Shareholders' List

Law	12 USC 62 (NB)
Regulation	12 CFR 5.22 (FSA)

Shareholders' Meetings

Regulation	12 CFR 5.22 (FSA)
	12 CFR 7.2001 (NB)

Suspicious Activity Reports

Law	31 USC 5318(g) (NB and FSA)
Regulation	12 CFR 21.11 (NB)
	12 CFR 163.180 (FSA)

Theft, Embezzlement, or Misapplication

Law	18 USC 656 (NB and FSA)
Regulation	12 CFR 21 (NB)
	12 CFR 168 (FSA)

Third-Party Relationships

Law	12 USC 1831g, 1867(c) (NB and FSA)
	12 USC 1464 (FSA)

OCC Bulletin 2013-29, "Third-Party Relationships: Risk Management Guidance" (October 30, 2014) (NB and FSA)
OCC Bulletin 2002–16, "Bank Use of Foreign-Based Third-Party Service Providers: Risk Management Guidance" (May 15, 2002) (NB and FSA)
FFIEC IT Examination Handbook, "Outsourcing Technology Services" (June 2004) (NB and FSA)

Title

Law	12 USC 22, 30, 35 (NB)
	12 USC 1464 (FSA)
Regulation	12 CFR 5.20, 5.42 (NB and FSA)
	12 CFR 5.21, 5.22 (FSA)

Trust Banks and FSAs with Fiduciary Powers

Law	12 USC 27, 92a, 1841(c)(2)(D) (NB)
	12 USC 1464, 1467a(a)(1)(D) (FSA)
Regulation	12 CFR 5.26, 223 (NB and FSA)
	12 CFR 9 (NB)
	12 CFR 150 (FSA)

Vendors

See Third-Party Relationships

Voting Trusts

Regulation	12 CFR 5.50 (NB and FSA)
	12 CFR 7.2022 (NB)

Table of Updates Since Publication

Date of Last Publication: September 2016	
Reason	**Affected pages**
Updated or clarified references to guidelines and instructions.	2, 42, 45, 58, 73, 93, 95, 96, 98, 101
Removed references to the National Historic Preservation Act and the National Environmental Policy Act.	5, 75, 125