

Subject: Receiverships for Uninsured National Banks
Date: September 13, 2016

To: Chief Executive Officers of National Banks and Federal Savings Associations, All Department and Division Heads, All Examining Personnel, and Other Interested Parties

Description: Notice of Proposed Rulemaking

Outdated-See OCC 2016-46

Summary

The Office of the Comptroller of the Currency (OCC) is requesting comment on a proposed rule to implement the basic legal framework for receiverships set forth in the National Bank Act (NBA). The proposed rule would apply to receiverships for any national bank that is not insured by the Federal Deposit Insurance Corporation (FDIC) (uninsured banks) and for which the FDIC is not required to be appointed as receiver, such as an uninsured trust bank. This proposed rule would not apply to federal savings associations, all of which are insured.

The comment period for the proposed rule ends on November 14, 2016.

Note for Community Banks

The proposed rule would apply to all uninsured national banks.

Highlights

The proposed rule sets out a framework for the conduct of receiverships of uninsured banks. The following are the key points from the proposal:

- *Appointment of receiver and notice to the public.* Receivers for uninsured banks would generally be appointed under the same grounds that apply to the appointment of the FDIC as receiver for an insured national bank. The OCC would provide the public with the statutorily-required three-month notice of the appointment of a receiver, as well as instructions for submitting claims against the receivership.
- *Submission of claims.* Persons with claims against the receivership could submit claims to the OCC for a determination or submit their claims to a court for adjudication in addition to, or as an alternative to, filing a claim with the OCC.
- *Order of priorities.* The order of priorities for payment of administrative expenses of the receiver and claims against the uninsured bank in receivership would be as follows: (1) administrative expenses of the receiver; (2) unsecured creditors, including secured creditors to the extent their claim exceeds their valid and enforceable security interest; (3) creditors of the uninsured bank, if any, whose claims are subordinated to general creditor claims; and (4) shareholders of the uninsured bank. All administrative expenses of the receivership would be paid out of the assets of the bank in receivership.
- *Powers and duties of the receiver.* The powers and duties of the receiver would include taking possession of the books and records of the uninsured bank, collecting on debts and claims owed to the bank, selling or compromising bad or doubtful debts (with court approval), and selling the uninsured bank's real and personal property (also with court approval). The receiver would have

additional powers from caselaw on receiverships, such as the authority to: (1) repudiate certain contracts; (2) recover fraudulent transfers; and (3) enforce collection of notes from debtors and collateral, regardless of the existence of side arrangements that would otherwise defeat the collectability of such notes.

- *Payments on claims.* After administrative expenses of the receivership have been paid, the OCC would make payments on proved claims from available receivership funds, applying the priority of claims in the rule. The OCC would make payments, if any, periodically, as the receiver liquidates the assets of the uninsured bank.
- *Source of funds for payment of claims.* Dividend payments to creditors and other claimants of an uninsured bank would be made solely from receivership funds, if any, paid to the OCC by the receiver after payment of the expenses of the receiver.
- *Status of fiduciary and custodial assets and accounts.* Assets held by an uninsured bank in a fiduciary or custodial capacity, as designated on the uninsured bank's books and records, would not be part of the uninsured bank's general assets and liabilities held in connection with its other business, and would not be considered a source for payment of unrelated claims of creditors and other claimants.

Background

From the OCC's establishment in 1863 until the creation of the FDIC in 1933, receiverships for national banks were conducted by the Comptroller and by a receiver appointed by the Comptroller who worked under his direction. The Comptroller and receiver had the powers and responsibilities set out in the receivership provisions of the NBA. In 1933, Congress designated the FDIC as the receiver for national banks, thereby displacing the OCC from its receivership function. From 1933 through 1989, the Comptroller was required to appoint the FDIC as receiver for national banks, both insured and uninsured. Congress scaled back this requirement through amendments to the Federal Deposit Insurance Act and the NBA in 1989, 1991, and 1992. Under these amendments, which are in effect today, the FDIC is the required receiver only for an insured national (or state) bank or savings association.

As is explained in the preamble to the proposed rule, the OCC believes it would be beneficial to financial market participants and the broader community of regulators if the OCC clarifies the receivership framework for uninsured banks. The proposal is not intended to suggest that the OCC anticipates a need to resort in the near future to receiverships for the uninsured banks it supervises. The OCC has not appointed a receiver for an uninsured bank in many years. In cases in which an uninsured bank has been in a weakened condition, the OCC has successfully rehabilitated or resolved such institutions without the need to appoint a receiver. As a general matter, the OCC anticipates continuing to follow that approach.

Further Information

Please contact Mitchell Plave, Special Counsel, Legislative and Regulatory Activities Division, (202) 649-5490; or Richard Cleva, Senior Counsel, Bank Activities and Structure Division, (202) 649-5500.

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Related Link

- ["Notice of Proposed Rulemaking: Receiverships for Uninsured National Banks" \(PDF\)](#)