

requirements are inappropriate for a national bankers' bank and would impede its ability to provide desired services to its market. An applicant must submit a request for a waiver with the application and must support the request with adequate justification and legal analysis. A national bankers' bank that is already in operation may also request a waiver. The OCC cannot waive statutory provisions that specifically apply to national bankers' banks pursuant to 12 U.S.C. 27(b)(1).

(3) *Investments.* A national bank may invest up to ten percent of its capital and surplus in a bankers' bank and may own five percent or less of any class of a bankers' bank's voting securities.

(l) *Special purpose banks.* An applicant for a national bank charter that will limit its activities to fiduciary activities, credit card operations, or another special purpose shall adhere to established charter procedures with modifications appropriate for the circumstances as determined by the OCC. An applicant for a national bank charter that will have a community development focus shall also adhere to established charter procedures with modifications appropriate for the circumstances as determined by the OCC. In addition to the other requirements in this section, a bank limited to fiduciary activities, credit card operations, or another special purpose may not conduct that business until the OCC grants final approval for the bank to commence operations. A national bank that seeks to invest in a bank with a community development focus must comply with applicable requirements of 12 CFR part 24.

§ 5.24 Conversion.

(a) *Authority.* 12 U.S.C. 35, 93a, 214a, 214b, 214c, and 2903.

(b) *Licensing requirements.* A state bank (including a "state bank" as defined in 12 U.S.C. 214(a)) or a Federal savings association shall submit an application and obtain prior OCC approval to convert to a national bank charter. A national bank shall give notice to the OCC before converting to a state bank (including a "state bank" as defined in 12 U.S.C. 214(a)) or Federal savings association.

(c) *Scope.* This section describes procedures and standards governing OCC review and approval of an application by a state bank or Federal savings association to convert to a national bank charter. This section also describes notice procedures for a national bank seeking to convert to a state bank or Federal savings association.

(d) *Conversion of a state bank or Federal savings association to a national bank—(1) Policy.* Consistent with the OCC's chartering policy, it is OCC policy to allow conversion to a national bank charter by another financial institution that can operate safely and soundly as a national bank in compliance with applicable laws, regulations, and policies. The OCC may deny an application by any state bank (including a "state bank" as defined in 12 U.S.C. 214(a)) and any Federal savings association to convert to a national bank charter on the basis of the standards for denial set forth in § 5.13(b), or when conversion would permit the applicant to escape supervisory action by its current regulator.

(2) *Procedures.* (i) Prefiling communications. The applicant should consult with the appropriate district office prior to filing if it anticipates that its application will raise unusual or complex issues. If a prefiling meeting is appropriate, it will normally be held in the district office where the application will be filed, but may be held at another location at the request of the applicant.

(ii) A state bank (including a state bank as defined in 12 U.S.C. 214(a)) or Federal savings association shall submit its application to convert to a national bank to the appropriate district office. The application must:

(A) Be signed by the president or other duly authorized officer;

(B) Identify each branch that the resulting bank expects to operate after conversion;

(C) Include the institution's most recent audited financial statements (if any);

(D) Include the latest report of condition and report of income (the most recent daily statement of condition will suffice if the institution does not file these reports);

(E) Unless otherwise advised by the OCC in a pre-filing communication, include an opinion of counsel that, in the case of a state bank, the conversion is not in contravention of applicable state law, or in the case of a Federal savings association, the conversion is not in contravention of applicable Federal law;

(F) State whether the institution wishes to exercise fiduciary powers after the conversion;

(G) Identify all subsidiaries that will be retained following the conversion, and provide the information and analysis of the subsidiaries' activities that would be required if the converting bank or savings association were a national bank establishing each subsidiary pursuant to § 5.34; and

(H) Identify any nonconforming assets (including nonconforming subsidiaries) and nonconforming activities that the institution engages in, and describe the plans to retain or divest those assets.

(iii) The OCC may permit a national bank to retain such nonconforming assets of a state bank, subject to conditions and an OCC determination of the carrying value of the retained assets, pursuant to 12 U.S.C. 35.

(iv) Approval for an institution to convert to a national bank expires if the conversion has not occurred within six months of the OCC's preliminary approval of the application.

(v) When the OCC determines that the applicant has satisfied all statutory and regulatory requirements, including those set forth in 12 U.S.C. 35, and any other conditions, the OCC issues a charter certificate. The certificate provides that the institution is authorized to begin conducting business as a national bank as of a specified date.

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

(4) *Expedited review.* An application by an eligible depository institution to convert to a national bank charter is deemed approved by the OCC as of the

30th day after the filing is received by the OCC, unless the OCC notifies the applicant prior to that date that the filing is not eligible for expedited review under § 5.13(a)(2).

(e) *Conversion of a national bank to a state bank—(1) Procedure.* A national bank may convert to a state bank, in accordance with 12 U.S.C. 214c, without prior OCC approval. Termination of the national bank's status as a national bank occurs upon the bank's completion of the requirements of 12 U.S.C. 214a, and upon the appropriate district office's receipt of the bank's national bank charter (or copy) in connection with the consummation of the transaction.

(2) *Notice of intent.* A national bank that desires to convert to a state bank shall submit to the appropriate district office a notice of its intent to convert. The national bank shall file this notice when it first submits a request to convert to the appropriate state authorities. The appropriate district office then provides instructions to the national bank for terminating its status as a national bank.

(3) *Exceptions to the rules of general applicability.* Sections 5.5 through 5.8, and 5.10 through 5.13, do not apply to the conversion of a national bank to a state bank.

(f) *Conversion of a national bank to a Federal savings association.* A national bank may convert to a Federal savings association without prior OCC approval. The requirements and procedures set forth in paragraph (e) of this section and 12 U.S.C. 214a and 12 U.S.C. 214c apply to a conversion to a Federal savings association, except as follows:

(1) In paragraph (e) of this section references to "appropriate state authorities" mean "appropriate Federal authorities"; and

(2) References in 12 U.S.C. 214c to the "law of the State in which the national banking association is located" and "any State authority" mean "laws and regulations governing Federal savings associations" and "Office of Thrift Supervision," respectively.

§ 5.26 Fiduciary powers.

(a) *Authority.* 12 U.S.C. 92a.

(b) *Licensing requirements.* A national bank must submit an application and