

(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

obtain prior approval from, or in certain circumstances file a notice with, the OCC in order to exercise fiduciary powers. No approval or notice is required in the following circumstances:

(1) Where two or more national banks consolidate or merge, and any of the banks has, prior to the consolidation or merger, received OCC approval to exercise fiduciary powers and that approval is in force at the time of the consolidation or merger, the resulting bank may exercise fiduciary powers in the same manner and to the same extent as the national bank to which approval was originally granted; and

(2) Where a national bank with prior OCC approval to exercise fiduciary powers is the resulting bank in a merger or consolidation with a state bank.

(c) *Scope.* This section sets forth the procedures governing OCC review and approval of an application, and in certain cases the filing of a notice, by a national bank to exercise fiduciary powers. A national bank's fiduciary activities are subject to the provisions of 12 CFR part 9.

(d) *Policy.* The exercise of fiduciary powers is primarily a management decision of the national bank. The OCC generally permits a national bank to exercise fiduciary powers if the bank is operating in a satisfactory manner, the proposed activities comply with applicable statutes and regulations, and the bank retains qualified fiduciary management.

(e) *Procedure*—(1) *General.* The following institutions must obtain approval from the OCC in order to offer fiduciary services to the public:

(i) A national bank without fiduciary powers;

(ii) A national bank without fiduciary powers that desires to exercise fiduciary powers after merging with a state bank or savings association with fiduciary powers; and

(iii) A national bank that results from the conversion of a state bank or a state or Federal savings association that was exercising fiduciary powers prior to the conversion.

(2) *Application.* (i) Except as provided in paragraph (e)(2)(ii) of this section, a national bank that desires to exercise fiduciary powers shall submit to the

OCC an application requesting approval. The application must contain:

(A) A statement requesting full or limited powers (specifying which powers);

(B) An opinion of counsel that the proposed activities do not violate applicable Federal or state law, including citations to applicable law;

(C) A statement that the capital and surplus of the national bank is not less than the capital and surplus required by state law of state banks, trust companies, and other corporations exercising comparable fiduciary powers;

(D) Sufficient biographical information on proposed trust management personnel to enable the OCC to assess their qualifications; and

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

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

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

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

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

(5) *Notice of fiduciary activities.* No further application under this section is required when a national bank with

prior OCC approval to exercise fiduciary powers commences fiduciary activities in a state in addition to the state(s) described in the application for which it received OCC approval to exercise fiduciary powers. Instead, the bank shall provide written notice to the OCC within ten days after commencing fiduciary activities. The written notice must identify the state involved and describe the fiduciary activities to be conducted to the extent that they materially differ from fiduciary activities the bank was previously authorized to conduct.

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

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

Subpart C—Expansion of Activities

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

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

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

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

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

teller machine (ATM) or a remote service unit.

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

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

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

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

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

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

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

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

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

(1) Maintaining a sound banking system;

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