

conducted and a representation and undertaking that the activity will be conducted in accordance with OCC policies contained in guidance regarding the activity. Approval under this paragraph (f)(3) is subject to the condition that the bank service company conduct the activity in a manner consistent with OCC policies contained in guidance issued by the OCC regarding the activity. The OCC also may impose additional conditions in connection with any approval under this section.

(4) *Investments requiring no approval.* A national bank does not need OCC approval to invest in a bank service company, or to perform a new activity in an existing bank service company, if the bank service company will provide the following services only for depository institutions: check and deposit posting and sorting; computation and posting of interest and other credits and charges; preparation and mailing of checks, statements, notices, and similar items; or any other clerical, bookkeeping, accounting, statistical, or similar function.

(5) *Federal Reserve approval.* A national bank also may, with the approval of the Board of Governors of the Federal Reserve System (Federal Reserve Board), invest in the equity of a bank service company that provides any other service (except deposit taking) that the Federal Reserve Board has determined, by regulation, to be permissible for a bank holding company under 12 U.S.C. 1843(c)(8).

(6) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to a request for approval to invest in a bank service corporation. 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.

(g) *Required information.* A notice required under paragraph (f)(1), of this section must contain the following:

(1) The name and location of the bank service company;

(2) A complete description of the activities the bank service company will conduct;

(3) Information demonstrating that the bank will comply with the invest-

ment limitations of paragraph (h) of this section;

(4) Information demonstrating that the bank service company and all banks investing in the bank service company are located in the same state, unless the Federal Reserve Board has approved an exception to this requirement under the authority of 12 U.S.C. 1864(b); and

(5) Information demonstrating that the bank service company will conduct these activities only at locations in a state where the investing bank could be authorized to perform the activities directly.

(h) *Examination and supervision.* Each bank service company in which a national bank is the principal investor is subject to examination and supervision by the OCC in the same manner and to the same extent as that national bank.

(i) *Investment and other limitations—(1) Investment limitations.* A bank may not invest more than ten percent of its capital and surplus in a bank service company. In addition, the bank's total investments in all bank service companies may not exceed five percent of the bank's total assets.

(2) *Other limitations.* Except as provided in paragraph (f)(5) of this section, a bank service company shall only conduct activities that the national bank could conduct directly. If the bank service company has both national and state bank shareholders or members, the activities conducted must also be permissible for the state bank shareholders or members.

§ 5.36 Other equity investments.

(a) *Authority.* 12 U.S.C. 1 *et seq.*, 24(Seventh), and 93a.

(b) *Scope.* National banks are permitted to make various types of equity investments pursuant to 12 U.S.C. 24(Seventh) and other statutes. These investments are in addition to those subject to §§ 5.34, 5.35, and 5.37. This section describes the procedure governing the filing of the notice that the OCC requires in connection with certain of these investments. Other investments authorized under this section may be reviewed on a case-by-case basis by the OCC.

(c) *Procedure.* (1) A national bank must provide the appropriate district

office with written notice within ten days after making an equity investment in the following:

- (i) An agricultural credit corporation;
 - (ii) A savings association eligible to be acquired under section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823); and
 - (iii) Any other equity investment that may be authorized by statute after February 12, 1990, if not covered by other applicable OCC regulation.
- (2) The written notice required by paragraph (c)(1) of this section must include a description, and the amount, of the bank's investment.
- (3) The OCC reserves the right to require additional information as necessary.
- (d) *Exceptions to rules of general applicability.* Sections 5.8, 5.9, 5.10, and 5.11 of this part do not apply to filings for other equity investments.

§ 5.37 Investment in bank premises.

- (a) *Authority.* 12 U.S.C. 29, 93a, and 371d.
- (b) *Scope.* This section sets forth the procedures governing OCC review and approval of applications by national banks to invest in bank premises or in certain bank premises related investments, loans, or indebtedness, as described in paragraph (d)(1)(i) of this section.
- (c) *Definition—Bank premises* for purposes of this section includes the following:
- (1) Premises that are owned and occupied (or to be occupied, if under construction) by the bank, its branches, or its consolidated subsidiaries;
 - (2) Capitalized leases and leasehold improvements, vaults, and fixed machinery and equipment;
 - (3) Remodeling costs to existing premises;
 - (4) Real estate acquired and intended, in good faith, for use in future expansion; or
 - (5) Parking facilities that are used by customers or employees of the bank, its branches, and its consolidated subsidiaries.
- (d) *Procedure—(1) Application.* (i) A national bank shall submit an application to the appropriate district office to invest in bank premises, or in the

stock, bonds, debentures, or other such obligations of any corporation holding the premises of the bank, or to make loans to or upon the security of the stock of such corporation, if the aggregate of all such investments and loans, together with the indebtedness incurred by any such corporation that is an affiliate of the bank, as defined in 12 U.S.C. 221a, will exceed the amount of the capital stock of the bank.

- (ii) The application must include:
 - (A) A description of the bank's present investment in bank premises;
 - (B) The investment in bank premises that the bank intends to make, and the business reason for making the investment; and
 - (C) The amount by which the bank's aggregate investment will exceed the amount of the bank's capital stock.
- (2) *Approval.* An application for national bank investment in bank premises or in certain bank premises' related investments, loans or indebtedness, as described in paragraph (d)(1)(i) of this section, is deemed approved as of the 30th day after the filing is received by the OCC, unless the OCC notifies the bank prior to that date that the filing presents a significant supervisory, or compliance concern, or raises a significant legal or policy issue. An approval for a specified amount under this section remains valid up to that amount until the OCC notifies the bank otherwise.

(3) *Notice process.* Notwithstanding paragraph (d)(1)(i) of this section, a bank that is rated 1 or 2 under the Uniform Financial Institutions Rating System (CAMEL) may make an aggregate investment in bank premises up to 150 percent of the bank's capital and surplus without the OCC's prior approval, provided that the bank is well capitalized as defined in 12 CFR part 6 and will continue to be well capitalized after the investment or loan is made. However, the bank shall notify the appropriate district office in writing of the investment within 30 days after the investment or loan is made. The written notice must include a description of the bank's investment.

(4) *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