

OCC within 30 days of its receipt, unless the OCC notifies the applicant otherwise, including a statement of the reason for the delay.

(h) *Decreases in permanent capital.* A national bank shall submit an application and obtain prior approval under paragraph (i)(1) or (i)(2) of this section for any reduction of its permanent capital.

(i) *Procedures—(1) Prior approval.* A national bank proposing to make a change in its permanent capital that requires prior OCC approval under paragraphs (g) or (h) of this section shall submit an application to the appropriate district office. The application must:

(i) Describe the type and amount of the proposed change in permanent capital and explain the reason for the change;

(ii) In the case of a reduction in capital, provide a schedule detailing the present and proposed capital structure;

(iii) In the case of a material noncash contribution to capital, provide a description of the method of valuing the contribution; and

(iv) State if the bank is subject to a capital plan with the OCC and how the proposed change would conform to a capital plan or if a capital plan is otherwise required in connection with the proposed change in permanent capital.

(2) *Expedited review.* An eligible bank's application is deemed approved by the OCC 30 days after the date the OCC receives the application described in paragraph (i)(1) of this section, unless the OCC notifies the bank prior to that date that the application is not eligible for expedited review under § 5.13(a)(2). A bank seeking to decrease its capital may request OCC approval for up to four consecutive quarters. An eligible bank may decrease its capital pursuant to such a plan only if the bank maintains its eligible bank status before and after each decrease in its capital.

(3) *Letter of notification.* After a bank completes an increase in capital it shall submit a letter of notification to the appropriate district office in order to obtain a certification from the OCC. The proposed change is deemed approved by the OCC and certified seven days after the date on which the OCC

receives the letter of notification. The letter of notification must be acknowledged before a notary public by the bank's president, vice president, or cashier and contain:

(i) A description of the transaction, unless already provided pursuant to paragraph (i)(1) of this section;

(ii) The amount, including the par value of the stock, and effective date of the increase;

(iii) A certification that the funds have been paid in, if applicable;

(iv) A certified copy of the amendment to the articles of association, if required; and

(v) A statement that the bank has complied with all laws, regulations and conditions imposed by the OCC.

(4) *Notice process.* A national bank that decreases its capital in accordance with paragraphs (i)(1) or (i)(2) of this section shall notify the appropriate district office following the completion of the transaction.

(5) *Expiration of approval.* Approval expires if a national bank has not completed its change in permanent capital within one year of the date of approval.

(j) *Offers and sales of stock.* A national bank shall comply with the Securities Offering Disclosure Rules in 12 CFR part 16 for offers and sales of common and preferred stock.

(k) *Shareholder approval.* A national bank shall obtain the necessary shareholder approval required by statute for any change in its permanent capital.

#### § 5.47 Subordinated debt as capital.

(a) *Authority.* 12 U.S.C. 93a.

(b) *Licensing requirements.* A national bank does not need prior OCC approval to issue subordinated debt, or to prepay subordinated debt (including payment pursuant to an acceleration clause or redemption prior to maturity) provided the bank remains an eligible bank after the transaction, unless the OCC has previously notified the bank that prior approval is required, or unless prior approval is required by law. No prior approval is required for the bank to count the subordinated debt as Tier 2 or Tier 3 capital. However, a bank issuing subordinated debt shall notify the OCC after issuance if the debt is to be counted as Tier 2 or Tier 3 capital.

(c) *Scope.* This section sets forth the procedures for OCC review and approval of an application to issue or prepay subordinated debt.

(d) *Definitions*—(1) *Capital plan* means a plan describing the means and schedule by which a national bank will attain specified capital levels or ratios, including a plan to achieve minimum capital ratios filed with the appropriate district office under 12 CFR 3.7 and a capital restoration plan filed with the OCC under 12 U.S.C. 1831o and 12 CFR 6.5.

(2) *Tier 2 capital* has the same meaning as set forth in 12 CFR 3.2(d).

(3) *Tier 3 capital* has the same meaning as set forth in 12 CFR part 3, appendix B, section 2(d).

(e) *Qualification as regulatory capital.* (1) A national bank's subordinated debt qualifies as Tier 2 capital if the subordinated debt meets the requirements in 12 CFR part 3, appendix A, section 2(b)(4), and complies with the "OCC Guidelines for Subordinated Debt" in the Manual.

(2) A national bank's subordinated debt qualifies as Tier 3 capital if the subordinated debt meets the requirements in 12 CFR part 3, section 2(d) of Appendix B.

(3) If the OCC notifies a national bank that it must obtain OCC approval before issuing subordinated debt, the subordinated debt will not qualify as Tier 2 or Tier 3 capital until the bank obtains OCC approval for its inclusion in capital.

(f) *Prior approval procedure*—(1) *Application.* A national bank required to obtain OCC approval before issuing or prepaying subordinated debt shall submit an application to the appropriate district office. The application must include:

(i) A description of the terms and amount of the proposed issuance or prepayment;

(ii) A statement of whether the bank is subject to a capital plan or required to file a capital plan with the OCC and, if so, how the proposed change conforms to the capital plan;

(iii) A copy of the proposed subordinated note format and note agreement; and

(iv) A statement of whether the subordinated debt issue complies with all

laws, regulations, and the "OCC Guidelines for Subordinated Debt" in the Manual.

(2) *Approval*—(i) *General.* The application is deemed approved by the OCC 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.

(ii) *Tier 2 and Tier 3 capital.* When the OCC notifies the bank that the OCC approves the bank's application to issue or prepay the subordinated debt, it also notifies the bank whether the subordinated debt qualifies as Tier 2 or Tier 3 capital.

(iii) *Expiration of approval.* Approval expires if a national bank does not complete the sale of the subordinated debt within one year of approval.

(g) *Notice procedure.* If a national bank is not required to obtain approval before issuing subordinated debt, the bank shall notify the appropriate district office in writing within ten days after issuing subordinated debt that is to be counted as Tier 2 or Tier 3 capital. The notice must include:

(1) The terms of the issuance;

(2) The amount and date of receipt of funds;

(3) A copy of the final subordinated note format and note agreement; and

(4) A statement that the issue complies with all laws, regulations, and the "OCC Guidelines for Subordinated Debt Instruments" in the Manual.

(h) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to the issuance of subordinated debt.

(i) *Issuance of subordinated debt.* A national bank shall comply with the Securities Offering Disclosure Rules in 12 CFR part 16 when issuing subordinated debt even if the bank is not required to obtain prior approval to issue subordinated debt.

#### § 5.48 Voluntary liquidation.

(a) *Authority.* 12 U.S.C. 93a, 181, and 182.

(b) *Licensing requirements.* A national bank considering going into voluntary liquidation shall notify the OCC. The