

section and (e)(2) or (e)(3), as appropriate. If the bank is unable to make the representation set forth in paragraph (e)(2) of this section, the bank's application must explain why the activity in which the enterprise engages is a permissible activity for a national bank and why the applicant should be permitted to hold a non-controlling investment in an enterprise engaged in that activity. A bank may not make a non-controlling investment if it is unable to make the representations and certifications specified in paragraphs (e)(1) and (e)(4) through (e)(7) of this section.

(g) *Non-controlling investments in entities holding assets in satisfaction of debts previously contracted.* Certain non-controlling investments may be eligible for expedited treatment where the bank's investment is in an entity holding assets in satisfaction of debts previously contracted or the bank acquires shares of a company in satisfaction of debts previously contracted.

(1) *Notice required.* A national bank that is well capitalized and well managed may acquire a non-controlling investment, directly or through its operating subsidiary, in an enterprise that engages in the activities of holding and managing assets acquired by the parent bank through foreclosure or otherwise in good faith to compromise a doubtful claim, or in the ordinary course of collecting a debt previously contracted, by filing a written notice in accordance with this paragraph (g)(i). The activities of the enterprise must be conducted pursuant to the same terms and conditions as would be applicable if the activity were conducted directly by a national bank. The bank must file the written notice with the appropriate district office no later than 10 days after making the non-controlling investment. This notice must include a complete description of the bank's investment in the enterprise and the activities conducted, a description of how the bank plans to divest the non-controlling investment or the underlying assets within applicable statutory time frames, and a representation and undertaking that the bank will conduct the activities in accordance with OCC policies contained in guidance issued

by the OCC regarding the activities. Any national bank receiving approval under this paragraph (g)(i) is deemed to have agreed that the enterprise will conduct the activity in a manner consistent with published OCC guidance.

(2) *No notice or application required.* A national bank is not required to file a notice or application under this § 5.36 if it acquires a non-controlling investment in shares of a company through foreclosure or otherwise in good faith to compromise a doubtful claim, or in the ordinary course of collecting a debt previously contracted.

(h) *Non-controlling investments by Federal branches.* A Federal branch that satisfies the well capitalized and well managed standards in 12 CFR 4.7(b)(1)(iii) and § 5.34(d)(3)(ii) may make a non-controlling investment in accordance with paragraph (e) of this section in the same manner and subject to the same conditions and requirements as a national bank, and subject to any additional requirements that may apply under 12 CFR 28.10(c).

(i) *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.

[61 FR 60363, Nov. 27, 1996, as amended at 65 FR 12913, Mar. 10, 2000; 65 FR 41560, July 6, 2000; 68 FR 70698, Dec. 19, 2003; 73 FR 22239, Apr. 24, 2008]

### § 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;

## § 5.39

(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 supervisory 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 (CAMELS) 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

## 12 CFR Ch. I (1–1–14 Edition)

after the investment or loan is made. However, the bank shall notify the appropriate supervisory 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 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.

[61 FR 60363, Nov. 27, 1996, as amended at 64 FR 60098, Nov. 4, 1999]

### § 5.39 Financial subsidiaries.

(a) *Authority*. 12 U.S.C. 93a and section 121 of Public Law 106–102, 113 Stat. 1338, 1373.

(b) *Approval requirements*. A national bank must file a notice as prescribed in this section prior to acquiring a financial subsidiary or engaging in activities authorized pursuant to section 5136A(a)(2)(A)(i) of the Revised Statutes (12 U.S.C. 24a) through a financial subsidiary. When a financial subsidiary proposes to conduct a new activity permitted under § 5.34, the bank shall follow the procedures in § 5.34(e)(5) instead of paragraph (i) of this section.

(c) *Scope*. This section sets forth authorized activities, approval procedures, and, where applicable, conditions for national banks engaging in activities through a financial subsidiary.

(d) *Definitions*. For purposes of this § 5.39:

(1) *Affiliate* has the meaning set forth in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), except that the term “affiliate” for purposes of paragraph (h)(5) of this section shall have the meaning set forth in sections 23A or 23B of the Federal Reserve Act (12 U.S.C. 371c and 371c–1), as implemented by Regulation W, 12 CFR part 223, as applicable.

(2) *Appropriate Federal banking agency* has the meaning set forth in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(3) *Company* has the meaning set forth in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841),