

## Comptroller of the Currency, Treasury

## § 5.60

disapproval within 30 days of the expiration of such waiver.

(ii) In the case of the election at a meeting of the shareholders of a new director not proposed by management, a waiver is granted automatically and the elected individual may begin service as a director. However, under these circumstances, the national bank shall file the required notice with the appropriate supervisory office as soon as practical, but not later than seven days from the date the individual is notified of the election. The individual's continued service is subject to the conditions specified in paragraph (e)(6)(i) of this section.

(7) *Commencement of service.* An individual proposed as a member of the board of directors or as a senior executive officer may assume the office following the end of the review period, which begins on the technically complete notice date, unless:

(i) The OCC issues a notice of disapproval during the review period; or

(ii) The national bank does not provide additional information within the time period required by the OCC pursuant to paragraph (e)(3) of this section and the OCC deems the notice to be abandoned pursuant to § 5.13(c).

(8) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, 5.11, and 5.13 (a) through (f) do not apply to a notice for a change in directors and senior executive officers.

(f) *Appeal*—(1) If the national bank, the proposed individual, or both, disagree with a disapproval, they may seek review by appealing the disapproval to the Comptroller, or an authorized delegate, within 15 days of the receipt of the notice of disapproval. The national bank or the individual may appeal on the grounds that the reasons for disapproval are contrary to fact or insufficient to justify disapproval. The appellant shall submit all documents and written arguments that the appellant wishes to be considered in support of the appeal.

(2) The Comptroller, or an authorized delegate, may designate an appellate official who was not previously involved in the decision leading to the appeal at issue. The Comptroller, an authorized delegate, or the appellate official considers all information sub-

mitted with the original notice, the material before the OCC official who made the initial decision, and any information submitted by the appellant at the time of the appeal.

(3) The Comptroller, an authorized delegate, or the appellate official shall independently determine whether the reasons given for the disapproval are contrary to fact or insufficient to justify the disapproval. If either is determined to be the case, the Comptroller, an authorized delegate, or the appellate official may reverse the disapproval.

(4) Upon completion of the review, the Comptroller, an authorized delegate, or the appellate official shall notify the appellant in writing of the decision. If the original decision is reversed, the individual may assume the position in the bank for which he or she was proposed.

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

### § 5.52 Change of address.

(a) *Authority.* 12 U.S.C. 93a, 161, and 481.

(b) *Scope.* This section describes the obligation of a national bank to notify the OCC of any change in its address. However, no notice is required if the change in address results from a transaction approved under this part.

(c) *Notice process.* Any national bank with a change in the address of its main office or in its post office box shall send a written notice to the appropriate district office.

(d) *Exceptions to rules of general applicability.* Sections 5.8, 5.9, 5.10, 5.11, and 5.13 do not apply to changes in a national bank's address.

## Subpart E—Payment of Dividends

### § 5.60 Authority, scope, and exceptions to rules of general applicability.

(a) *Authority.* 12 U.S.C. 56, 60, and 93a.

(b) *Scope.* Except as otherwise provided, the restrictions in this subpart apply to the declaration and payment of all dividends by a national bank, including dividends paid in property. However, the provisions contained in § 5.64 do not apply to dividends paid in stock of the bank.

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(c) *Exceptions to the rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to this subpart.

### § 5.61 Definitions.

For the purposes of subpart E, the following definitions apply:

(a) *Capital stock, capital surplus, and permanent capital* have the same meaning as set forth in § 5.46.

(b) *Retained net income* means the net income of a specified period less the total amount of all dividends declared in that period.

### § 5.62 Date of declaration of dividend.

A national bank shall use the date a dividend is declared for the purposes of determining compliance with this subpart.

### § 5.63 Capital limitation under 12 U.S.C. 56.

(a) *General limitation.* Except as provided by 12 U.S.C. 59 and § 5.46, a national bank may not withdraw, or permit to be withdrawn, either in the form of a dividend or otherwise, any portion of its permanent capital. Further, a national bank may not declare a dividend in excess of undivided profits.

(b) *Preferred stock.* The provisions of 12 U.S.C. 56 do not apply to dividends on preferred stock. However, if the undivided profits of the national bank are not sufficient to cover a proposed dividend on preferred stock, the proposed dividend constitutes a reduction in capital subject to 12 U.S.C. 59 and § 5.46.

### § 5.64 Earnings limitation under 12 U.S.C. 60.

(a) *Transfers to capital surplus.* Subject to the restrictions in 12 U.S.C. 56 and this subpart, the directors of a national bank may declare and pay dividends as frequently and of such amount of undivided profits as they judge prudent. However, a national bank may not declare a dividend unless capital surplus equals or exceeds the capital stock of the bank, except:

(1) In the case of an annual dividend, the bank may declare a dividend if the bank transfers 10 percent of its net income for the preceding four quarters to capital surplus; or

(2) In the case of a quarterly or semi-annual dividend, or any other special

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dividend, the bank may declare a dividend if the bank transfers 10 percent of its net income for the preceding two quarters to capital surplus.

(b) *Earnings limitation.* For purposes of 12 U.S.C. 60, a national bank may not declare a dividend if the total amount of all dividends (common and preferred), including the proposed dividend, declared by the national bank in any calendar year exceeds the total of the national bank's retained net income of that year to date, combined with its retained net income of the preceding two years, unless the dividend is approved by the OCC. A national bank shall submit a request for OCC approval of a dividend under 12 U.S.C. 60 to the appropriate supervisory office.

(c) *Surplus surplus.* Any amount in capital surplus in excess of capital stock required by 12 U.S.C. 60(a) (referred to as "surplus surplus") may be transferred to undivided profits and available as dividends, provided:

(1) The bank can demonstrate that the surplus came from earnings of prior periods, excluding the effect of any stock dividend; and

(2) The board of directors of the bank approves the transfer of the surplus from capital surplus to undivided profits.

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

### § 5.65 Restrictions on undercapitalized institutions.

Notwithstanding any other provision in this subpart, a national bank may not declare or pay any dividend if, after making the dividend, the national bank would be "undercapitalized" as defined in 12 CFR part 6.

### § 5.66 Dividends payable in property other than cash.

In addition to cash dividends, directors of a national bank may declare dividends payable in property, with the approval of the OCC. Even though the property distributed has been previously charged down or written off entirely, the dividend is equivalent to a cash dividend in an amount equal to the actual current value of the property. Before the dividend is declared, the bank should show the excess of the actual value over book value on the