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(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 bank shall also file a notice with the OCC once a liquidation plan is definite.

(c) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to a voluntary liquidation. However, if the OCC concludes that the notice 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.

(d) *Standards.* A national bank may liquidate in accordance with the terms of 12 U.S.C. 181 and 182.

(e) *Procedure—(1) Notice of voluntary liquidation.* When the shareholders of a solvent national bank have voted to voluntarily liquidate, the bank shall file a notice with the appropriate district office and publish public notice in accordance with 12 U.S.C. 182.

(2) *Report of condition.* The liquidating bank shall submit reports of the condition of its commercial, trust, and other departments to the appropriate district office by filing the quarterly Consolidated Reports of Condition and Income (Call Reports).

(3) *Report of progress.* The liquidating agent or committee shall submit a “Report of Progress of Liquidation” annually to the appropriate district office until the liquidation is complete.

(f) *Expedited liquidations in connection with acquisitions—(1) General.* When an acquiring depository institution in a business combination purchases all the assets, and assumes all the liabilities, including contingent liabilities, of a target national bank, the acquiring depository institution may dissolve the target national bank immediately after the combination. However, if any liabilities will remain in the target national bank, then the standard liquidation procedures apply.

(2) *Procedure.* After its shareholders have voted to liquidate and the national bank has notified the appropriate district office of its plans, the bank may surrender its charter and dissolve immediately, if:

(i) The acquiring depository institution certifies to the OCC that it has purchased all the assets and assumed all the liabilities, including contingent liabilities, of the national bank in liquidation; and

(ii) The acquiring depository institution and the national bank in liquidation have published notice that the bank will dissolve after the purchase and assumption to the acquiror. This is included in the notice and publication for the purchase and assumption required under the Bank Merger Act, 12 U.S.C. 1828(c).

(g) *National bank as acquiror.* If another national bank plans to acquire a national bank in liquidation through merger or through the purchase of the assets and the assumption of the liabilities of the bank in liquidation, the acquiring bank shall comply with the Bank Merger Act, 12 U.S.C. 1828(c), and § 5.33.

§ 5.50 Change in bank control; reporting of stock loans.

(a) *Authority.* 12 U.S.C. 93a, 1817(j), and 12 U.S.C. 1831aa.

(b) *Licensing requirements.* Any person seeking to acquire control of a national bank shall provide 60 days prior written notice of a change in control to the OCC, except where otherwise provided in this section.

(c) *Scope—(1) General.* This section describes the procedures and standards governing OCC review of notices for a change in control of a national bank and reports of stock loans.

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(2) *Exempt transactions.* The following transactions are not subject to the requirements of this section:

(i) The acquisition of additional shares of a national bank by a person who:

(A) Has, continuously since March 9, 1979, (or since that institution commenced business, if later) held power to vote 25 percent or more of any class of voting securities of that bank; or

(B) Under paragraph (f)(2)(ii) of this section, would be presumed to have controlled that bank continuously since March 9, 1979, if the transaction will not result in that person's direct or indirect ownership or power to vote 25 percent or more of any class of voting securities of the national bank; or, in other cases, where the OCC determines that the person has controlled the bank continuously since March 9, 1979;

(ii) Unless the OCC otherwise provides in writing, the acquisition of additional shares of a national bank by a person who has lawfully acquired and maintained continuous control of the bank under paragraph (f) of this section after complying with the procedures and filing the notice required by this section;

(iii) A transaction subject to approval under section 3 of the Bank Holding Company Act, 12 U.S.C. 1842, section 18 of Federal Deposit Insurance Act, 12 U.S.C. 1828, or section 10 of the Home Owners' Loan Act, 12 U.S.C. 1467a;

(iv) Any transaction described in section 2(a)(5) or 3(a) (A) or (B) of the Bank Holding Company Act, 12 U.S.C. 1841(a)(5) and 1842(a) (A) and (B), by a person described in those provisions;

(v) A customary one-time proxy solicitation or receipt of *pro rata* stock dividends; and

(vi) The acquisition of shares of a foreign bank that has a Federally licensed branch in the United States. This exemption does not extend to the reports and information required under paragraph (h) of this section.

(3) *Prior notice exemption.* The following transactions are not subject to the prior notice requirements of this section but are otherwise subject to this section, including filing a notice and paying the appropriate filing fee,

within 90 calendar days after the transaction occurs:

(i) The acquisition of control as a result of acquisition of voting shares of a national bank through testate or intestate succession;

(ii) The acquisition of control as a result of acquisition of voting shares of a national bank as a bona fide gift;

(iii) The acquisition of voting shares of a national bank resulting from a redemption of voting securities;

(iv) The acquisition of control of a national bank as a result of actions by third parties (including the sale of securities) that are not within the control of the acquiror; and

(v) The acquisition of control as a result of the acquisition of voting shares of a national bank in satisfaction of a debt previously contracted in good faith.

(A) "Good faith" means that a person must either make or acquire a loan secured by voting securities of a national bank in advance of any known default. A person who purchases a previously defaulted loan secured by voting securities of a national bank may not rely on this paragraph (c)(3)(v) to foreclose on that loan, seize or purchase the underlying collateral, and acquire control of the national bank without complying with the prior notice requirements of this section.

(B) To ensure compliance with this section, the acquiror of a defaulted loan secured by a controlling amount of a national bank's voting securities shall file a notice prior to the time the loan is acquired unless the acquiror can demonstrate to the satisfaction of the OCC that the voting securities are not the anticipated source of repayment for the loan.

(d) *Definitions.* As used in this section:

(1) *Acquisition* includes a purchase, assignment, transfer, or pledge of voting securities, or an increase in percentage ownership of a national bank resulting from a redemption of voting securities.

(2) *Acting in concert* means:

(i) Knowing participation in a joint activity or parallel action towards a common goal of acquiring control whether or not pursuant to an express agreement; or

(ii) A combination or pooling of voting or other interests in the securities of an issuer for a common purpose pursuant to any contract, understanding, relationship, agreement, or other arrangement, whether written or otherwise.

(3) *Control* means the power, directly or indirectly, to direct the management or policies of a national bank or to vote 25 percent or more of any class of voting securities of a national bank.

(4) *Immediate family* includes a person's spouse, father, mother, stepfather, stepmother, brother, sister, stepbrother, stepsister, children, stepchildren, grandparent, grandchildren, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and the spouse of any of the foregoing.

(5) *Notice* means a filing by a person in accordance with paragraph (f) of this section.

(6) *Person* means an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity, and includes voting trusts and voting agreements and any group of persons acting in concert.

(7) *Voting securities* means:

(i) Shares of common or preferred stock, or similar interests, if the shares or interests, by statute, charter, or in any manner, allow the holder to vote for or select directors (or persons exercising similar functions) of the issuing national bank, or to vote on or to direct the conduct of the operations or other significant policies of the issuing national bank. However, preferred stock or similar interests are not voting securities if:

(A) Any voting rights associated with the shares or interests are limited solely to voting rights customarily provided by statute regarding matters that would significantly affect the rights or preference of the security or other interest. This includes the issuance of additional amounts of classes of senior securities, the modification of the terms of the security or interest, the dissolution of the issuing national bank, or the payment of dividends by the issuing national bank

when preferred dividends are in arrears;

(B) The shares or interests are a passive investment or financing device and do not otherwise provide the holder with control over the issuing national bank; and

(C) The shares or interests do not allow the holder by statute, charter, or in any manner, to select or to vote for the selection of directors (or persons exercising similar functions) of the issuing national bank.

(ii) Securities, other instruments, or similar interests that are immediately convertible, at the option of the owner or holder thereof, into voting securities.

(e) *Policy*—(1) *General*. The OCC seeks to enhance and maintain public confidence in the banking system by preventing a change in control of a national bank that could have serious adverse effects on a bank's financial stability or management resources, the interests of the bank's customers, the Federal deposit insurance fund, or competition.

(2) *Acquisitions subject to the Bank Holding Company Act*. (i) If corporations, partnerships, certain trusts, associations, and similar organizations, that are not already bank holding companies, are not required to secure prior Federal Reserve Board approval to acquire control of a bank under section 3 of the Bank Holding Company Act, 12 U.S.C. 1842, they are subject to the notice requirements of this section.

(ii) Certain transactions, including foreclosures by depository institutions and other institutional lenders, fiduciary acquisitions by depository institutions, and increases of majority holdings by bank holding companies, are described in sections 2(a)(5)(D) and 3(a)(A) and (B) of the Bank Holding Company Act, 12 U.S.C. 1841(a)(5)(D) and 12 U.S.C. 1842(a)(A) and (B), but do not require the Federal Reserve Board's prior approval. For purposes of this section, they are considered subject to section 3 of the Bank Holding Company Act, 12 U.S.C. 1842, and do not require either a prior or subsequent notice to the OCC under this section.

(3) *Assessing financial condition*. In assessing the financial condition of the acquiring person, the OCC weighs any

debt servicing requirements in light of the acquiring person's overall financial strength; the institution's earnings performance, asset condition, capital adequacy, and future prospects; and the likelihood of the acquiring party making unreasonable demands on the resources of the institution.

(f) *Procedures*—(1) *Exceptions to rules of general applicability.* Sections 5.8(a), 5.9, 5.10, 5.11, and 5.13(a) through (f) do not apply to filings under this section.

(2) *Who must file.* (i) Any person seeking to acquire the power, directly or indirectly, to direct the management or policies, or to vote 25 percent or more of a class of voting securities of a national bank, shall file a notice with the OCC 60 days prior to the proposed acquisition, unless the acquisition is exempt under paragraph (c)(2) of this section.

(ii) The OCC presumes, unless rebutted, that a person is acting in concert with his or her immediate family.

(iii) The OCC presumes, unless rebutted, that an acquisition or other disposition of voting securities through which any person proposes to acquire ownership of, or the power to vote, ten percent or more of a class of voting securities of a national bank is an acquisition by a person of the power to direct the bank's management or policies if:

(A) The securities to be acquired or voted are subject to the registration requirements of section 12 of the Securities Exchange Act of 1934, 15 U.S.C. 78l; or

(B) Immediately after the transaction no other person will own or have the power to vote a greater proportion of that class of voting securities.

(iv) Other transactions resulting in a person's control of less than 25 percent of a class of voting securities of a national bank are not deemed by the OCC to result in control for purposes of this section.

(v) If two or more persons, not acting in concert, each propose to acquire simultaneously equal percentages of ten percent or more of a class of a national bank's voting securities, and either the acquisitions are of a class of securities subject to the registration requirements of section 12 of the Securities Exchange Act of 1934, 15 U.S.C. 78l, or

immediately after the transaction no other shareholder of the national bank would own or have the power to vote a greater percentage of the class, each of the acquiring persons shall either file a notice or rebut the presumption of control.

(vi) An acquiring person may seek to rebut the presumption established in paragraph (f)(2)(i) and (iii) of this section by presenting relevant information in writing to the appropriate district office. The OCC shall respond in writing to any person that seeks to rebut the presumption of control. No rebuttal filing is effective unless the OCC indicates in writing that the information submitted has been found to be sufficient to rebut the presumption of control.

(3) *Filings.* (i) The OCC does not accept a notice of a change in control unless it is technically complete, i.e., the information provided is responsive to every item listed in the notice form and is accompanied by the appropriate fee.

(A) The notice must contain personal and biographical information, detailed financial information, information regarding the future prospects of the institution, details of the proposed change in control, information on any structural or managerial changes contemplated for the institution, and other relevant information required by the OCC. The OCC may waive any of the informational requirements of the notice if the OCC determines that it is in the public interest.

(B) When the acquiring person is an individual, or group of individuals acting in concert, the requirement to provide personal financial data may be satisfied with a current statement of assets and liabilities and an income summary, together with a statement of any material changes since the date of the statement or summary. However, the OCC may require additional information, if appropriate.

(ii) The OCC has 60 days from the date it declares the notice to be technically complete to review the notice.

(A) When the OCC declares a notice technically complete, the appropriate district office sends a letter of acknowledgment to the applicant indicating the technically complete date.

(B) As set forth in paragraph (g) of this section, the applicant shall publish an announcement within 10 days of filing the notice with the OCC. The publication of the announcement triggers a 20-day public comment period. The OCC may waive or shorten the public comment period if an emergency exists. The OCC also may shorten the comment period for other good cause. The OCC may act on a proposed change in control prior to the expiration of the public comment period if the OCC makes a written determination that an emergency exists.

(C) An applicant shall notify the OCC immediately of any material changes in a notice submitted to the OCC, including changes in financial or other conditions, that may affect the OCC's decision on the filing.

(iii) Within the 60-day period, the OCC may inform the applicant that the acquisition has been disapproved, has not been disapproved, or that the OCC will extend the 60-day review period. The applicant may request a hearing by the OCC within 10 days of receipt of a disapproval (see 12 CFR part 19, subpart H, for hearing initiation procedures). Following final agency action under 12 CFR part 19, further review by the courts is available.

(4) *Conditional actions.* The OCC may impose conditions on its action not to disapprove a notice to assure satisfaction of the relevant statutory criteria for non-objection to a notice.

(5) *Disapproval of notice.* The OCC may disapprove a notice if it finds that any of the following factors exist:

(i) The proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States;

(ii) The effect of the proposed acquisition of control in any section of the country may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any other manner be in restraint of trade, and the anti-competitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in

meeting the convenience and needs of the community to be served;

(iii) Either the financial condition of any acquiring person or the future prospects of the institution is such as might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank;

(iv) The competence, experience, or integrity of any acquiring person, or of any of the proposed management personnel, indicates that it would not be in the interest of the depositors of the bank, or in the interest of the public, to permit that person to control the bank;

(v) An acquiring person neglects, fails, or refuses to furnish the OCC all the information it requires; or

(vi) The OCC determines that the proposed transaction would result in an adverse effect on the Bank Insurance Fund or the Savings Association Insurance Fund.

(6) *Disapproval of notice involving credit card banks or trust banks.* (i) *In general.* The OCC shall disapprove a notice if the proposed change in control occurs before July 21, 2013 and would result in the direct or indirect control of a credit card bank or trust bank, as defined in section 2(c)(2)(F) and (D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(F) and (D)), by a commercial firm. For purposes of this paragraph a company is a “commercial firm” if the annual gross revenues derived by the company and all of its affiliates from activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)) and, if applicable, from the ownership or control of one or more insured depository institutions, represent less than 15 percent of the consolidated annual gross revenues of the company.

(ii) *Exception to disapproval.* Paragraph (f)(6)(i) of this section shall not apply to a proposed change in control of a credit card bank or trust bank that:

(A)(1) Is in danger of default, as determined by the OCC;

(2) Results from the merger or whole acquisition of a commercial firm that directly or indirectly controls the credit card bank or trust bank in a bona

fide merger with or acquisition by another commercial firm, as determined by the OCC; or

(3) Results from the acquisition of voting shares of a publicly traded company that controls a credit card bank or trust bank, if, after the acquisition, the acquiring shareholder (or group of shareholders acting in concert) holds less than 25 percent of any class of the voting shares of the company; and

(B) Has obtained all regulatory approvals otherwise required for such change of control under any applicable Federal or state law, including review pursuant to section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)) and 12 CFR 5.50.

(7) *Disapproval notification.* If the OCC disapproves a notice, it mails a written notification to the proposed acquiring person within three days after the decision containing a statement of the basis for disapproval.

(g) *Disclosure*—(1) *Announcement.* The applicant shall publish an announcement in a newspaper of general circulation in the community where the affected national bank is located within ten days of filing. The OCC may authorize a delayed announcement if an immediate announcement would not be in the public interest.

(i) In addition to the information required by § 5.8(b), the announcement must include the name of the national bank named in the notice and the comment period (*i.e.*, 20 days from the date of the announcement). The announcement also must state that the public portion of the notice is available upon request.

(ii) Notwithstanding any other provisions of this paragraph (g), if the OCC determines in writing that an emergency exists and that the announcement requirements of this paragraph (g) would seriously threaten the safety and soundness of the national bank to be acquired, including situations where the OCC must act immediately in order to prevent the probable failure of a national bank, the OCC may waive or shorten the publication requirement.

(2) *Release of information.* (i) Upon the request of any person, the OCC releases the information provided in the public portion of the notice and makes it available for public inspection and

copying as soon as possible after a notice has been filed. In certain circumstances the OCC may determine that the release of the information would not be in the public interest. In addition, the OCC makes a public announcement of a technically complete notice, the disposition of the notice, and the consummation date of the transaction, if applicable, in the OCC's "Weekly Bulletin."

(ii) The OCC handles requests for the non-public portion of the notice as requests under the Freedom of Information Act, 5 U.S.C. 552, and other applicable law.

(h) *Reporting requirement.* After the consummation of the change in control, the national bank shall notify the OCC in writing of any changes or replacements of its chief executive officer or of any director occurring during the 12-month period beginning on the date of consummation. This notice must be filed within 10 days of such change or replacement and must include a statement of the past and current business and professional affiliations of the new chief executive officers or directors.

(i) *Reporting of stock loans*—(1) *Requirements.* (i) Any foreign bank, or any affiliate thereof, shall file a consolidated report with the appropriate district office of the national bank if the foreign bank or any affiliate thereof, has credit outstanding to any person or group of persons that, in the aggregate, is secured, directly or indirectly, by 25 percent or more of any class of voting securities of the same national bank.

(ii) The foreign bank, or any affiliate thereof, shall also file a copy of the report with its appropriate district office if that office is different from the national bank's appropriate district office. If the foreign bank, or any affiliate thereof, is not supervised by the OCC, it shall file a copy of the report filed with the OCC with its appropriate Federal banking agency.

(iii) Any shares of the national bank held by the foreign bank, or any affiliate thereof, as principal must be included in the calculation of the number of shares in which the foreign bank or any affiliate thereof has a security interest for purposes of paragraph (h)(1)(i) of this section.

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(2) *Definitions.* For purposes of this paragraph (h):

(i) *Foreign bank and affiliate* have the same meanings as in section 1 of the International Banking Act of 1978, 12 U.S.C. 3101.

(ii) *Credit outstanding* includes any loan or extension of credit; the issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit; and any other type of transaction that extends credit or financing to a person or group of persons.

(iii) *Group of persons* includes any number of persons that a foreign bank, or an affiliate thereof, has reason to believe:

(A) Are acting together, in concert, or with one another to acquire or control shares of the same insured national bank, including an acquisition of shares of the same national bank at approximately the same time under substantially the same terms; or

(B) Have made, or propose to make, a joint filing under 15 U.S.C. 78m regarding ownership of the shares of the same depository institution.

(3) *Exceptions.* Compliance with paragraph (h)(1) of this section is not required if:

(i) The person or group of persons referred to in paragraph (h)(1) of this section has disclosed the amount borrowed and the security interest therein to the appropriate district office in connection with a notice filed under this section or any other application filed with the appropriate district office as a substitute for a notice under this section, such as for a national bank charter; or

(ii) The transaction involves a person or group of persons that has been the owner or owners of record of the stock for a period of one year or more or, if the transaction involves stock issued by a newly chartered bank, before the bank's opening.

(4) *Report requirements.* (i) The consolidated report must indicate the number and percentage of shares securing each applicable extension of credit, the identity of the borrower, and the number of shares held as principal by the foreign bank and any affiliate thereof.

(ii) The foreign bank and all affiliates thereof shall file the consolidated report in writing within 30 days of the date on which the foreign bank or affiliate thereof first believes that the security for any outstanding credit consists of 25 percent or more of any class of voting securities of a national bank.

(5) *Other reporting requirements.* A foreign bank or any affiliate thereof, supervised by the OCC and required to report credit outstanding secured by the shares of a depository institution to another Federal banking agency also shall file a copy of the report with its appropriate district office.

[61 FR 60363, Nov. 27, 1996, as amended at 73 FR 22240, Apr. 24, 2008; 76 FR 43564, July 21, 2011]

EFFECTIVE DATE NOTE: At 76 FR 43564, July 21, 2011, §5.50 was amended by removing paragraph (f)(6) and redesignating paragraph (f)(7) as paragraph (f)(6), effective July 21, 2013.

§5.51 Changes in directors and senior executive officers.

(a) *Authority.* 12 U.S.C. 1831i.

(b) *Scope.* This section describes the circumstances when a national bank must notify the OCC of a change in its directors and senior executive officers, and the OCC's authority to disapprove those notices.

(c) *Definitions*—(1) *Director* means a person who serves on the board of directors of a national bank except:

(i) A director of a foreign bank that operates a Federal branch; and

(ii) An advisory director who does not have the authority to vote on matters before the board of directors and provides solely general policy advice to the board of directors.

(2) *National bank*, as defined in §5.3(j), includes a Federal branch for purposes of this section only.

(3) *Senior executive officer* means the chief executive officer, chief operating officer, chief financial officer, chief lending officer, chief investment officer, and any other individual the OCC identifies to the national bank who exercises significant influence over, or participates in, major policy making decisions of the bank without regard to title, salary, or compensation. The