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12 CFR Ch. I (1–1–23 Edition)

(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 or Federal savings association, including an acquisition of shares of the same national bank or Federal savings association 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 (i)(1) of this section is not required if:

(i) The person or group of persons referred to in paragraph (i)(1) of this section has disclosed the amount borrowed and the security interest therein to the appropriate OCC licensing office in connection with a notice filed under this section or any other application filed with the appropriate OCC licensing office as a substitute for a notice under this section, such as for a national bank or Federal savings association 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 or Federal savings association, before the bank's or Federal savings association'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 must 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 or Federal savings association.

(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 must file a copy of the report with its appropriate OCC supervisory office.

[80 FR 28456, May 18, 2015, as amended at 82 FR 8104, Jan. 23, 2017; 85 FR 80465, Dec. 11, 2020]

§ 5.51 Changes in directors and senior executive officers of a national bank or Federal savings association.

(a) *Authority.* 12 U.S.C. 1831i, 3102(b), and 5412(b)(2)(B).

(b) *Scope.* This section describes the circumstances when a national bank or a Federal savings association 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 an individual who serves on the board of directors of a national bank or a Federal savings association, 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 or any committee of the board of directors and provides solely general policy advice to the board of directors or any committee.

(2) *Federal savings association* means a Federal savings association or Federal savings bank chartered under 12 U.S.C. 1464.

(3) *National bank* includes a Federal branch for purposes of this section only.

(4) *Senior executive officer* means the president, chief executive officer, chief operating officer, chief financial officer, chief lending officer, chief investment officer, chief risk officer, and any other individual the OCC identifies in writing to the national bank or Federal

savings association who exercises significant influence over, or participates in, major policy making decisions of the national bank or Federal savings association without regard to title, salary, or compensation. The term also includes employees of entities retained by a national bank or Federal savings association to perform such functions in lieu of directly hiring the individuals, and, with respect to a Federal branch operated by a foreign bank, the individual functioning as the chief managing official of the Federal branch.

(5) *Technically complete notice* means a notice that provides all the information requested in paragraph (e)(2) of this section, including complete explanations where material issues arise regarding the competence, experience, character, or integrity of proposed directors or senior executive officers, and any additional information that the OCC may request following a determination that the notice was not technically complete.

(6) *Technically complete notice date* means the date on which the OCC has received a technically complete notice.

(7) *Troubled condition* means a national bank or Federal savings association that

(i) Has a composite rating of 4 or 5 under the Uniform Financial Institutions Rating System (CAMELS);

(ii) Is subject to a cease and desist order, a consent order, or a formal written agreement, that requires action to improve the financial condition of the national bank or Federal savings association unless otherwise informed in writing by the OCC; or

(iii) Is informed in writing by the OCC that, based on information pertaining to such national bank or Federal savings association, it has been designated in "troubled condition" for purposes of this section.

(d) *Prior notice.* A national bank or Federal savings association must provide written notice to the OCC at least 90 calendar days before adding or replacing any member of its board of directors, employing any individual as a senior executive officer of the national bank or Federal savings association, or changing the responsibilities of any senior executive officer so that the in-

dividual would assume a different senior executive officer position, if:

(1) The national bank or Federal savings association is not in compliance with minimum capital requirements, as prescribed in 12 CFR part 3 or is otherwise in troubled condition; or

(2) The OCC determines, in writing, in connection with the review by the agency of the plan required under section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o), or otherwise, that such prior notice is appropriate.

(e) *Procedures*—(1) *Filing notice.* A national bank or Federal savings association must file a notice with its appropriate supervisory office. When a national bank or Federal savings association files a notice, the individual to whom the filing pertains must attest to the validity of the information pertaining to that individual. The 90-day review period begins on the technically complete notice date.

(2) *Content of notice.* (i) The notice must include:

(A) The information required under 12 U.S.C. 1817(j)(6)(A), and the information prescribed in the Interagency Notice of Change in Director or Senior Executive Officer, the biographical and certification portions of the Interagency Biographical and Financial Report ("IBFR"), and unless otherwise determined by the OCC in writing, the financial portion of the IBFR. These forms are available from the OCC;

(B) Legible fingerprints of the individual, except that fingerprints are not required for any individual who, within the three years immediately preceding the initial submission date of the notice currently under review, has been the subject of a notice filed with the OCC or the OTS pursuant to 12 U.S.C. 1831i, or this section, and has previously submitted fingerprints; and

(C) Such other information required by the OCC.

(ii) *Modification of content requirements.* The OCC may require or accept other information in place of the content requirements in paragraph (e)(2)(i) of this section.

(3) *Requests for additional information.*

(i) Following receipt of a technically complete notice, the OCC may request additional information. Such request must be in writing, must explain why

the information is needed, and must specify a time period during which the information must be provided.

(ii) If the national bank or Federal savings association cannot provide the information requested by the OCC within the time specified in paragraph (e)(3)(i) of this section, the national bank or Federal savings association may request in writing that the OCC suspend processing of the notice. The OCC will advise the national bank or Federal savings association in writing whether the suspension request is granted and, if granted, the length of the suspension.

(iii) If the national bank or Federal savings association fails to provide the requested information within the time specified in paragraphs (e)(3)(i) or (ii) of this section, the OCC may deem the filing abandoned under §5.13(c) or may review the notice based on the information provided.

(4) *Notice of disapproval.* The OCC may disapprove an individual proposed as a member of the board of directors or as a senior executive officer if the OCC determines on the basis of the individual's competence, experience, character, or integrity that it would not be in the best interests of the depositors of the national bank or Federal savings association or the public to permit the individual to be employed by, or associated with, the national bank or Federal savings association. The OCC must send a written notice of disapproval to both the national bank or Federal savings association and the individual stating the basis for disapproval.

(5) *Notice of intent not to disapprove.* An individual proposed as a member of the board of directors or as a senior executive officer may begin service before the expiration of the review period if the OCC notifies the individual and the national bank or Federal savings association in writing that the OCC does not disapprove the proposed director or senior executive officer and all other applicable legal requirements are satisfied.

(6) *Waiver of prior notice—(i) Waiver request.* (A) A national bank or Federal savings association may send a letter to the appropriate supervisory office requesting a waiver of the prior notice requirement.

(B) The OCC may grant the waiver if it issues a written finding that:

(1) Delay could adversely affect the safety and soundness of the national bank or Federal savings association;

(2) Delay would not be in the public interest; or

(3) Other extraordinary circumstances justify waiver of prior notice.

(C) The OCC will determine the length of the waiver on a case-by-case basis. All waivers that the OCC grants under this paragraph (e)(6) are subject to the condition that the national bank or Federal savings association must file a technically complete notice under this section within the time period specified by the OCC.

(D) Subject to paragraph (e)(6)(i)(C) of this section, the proposed individual may assume the position on an interim basis until the earliest of the following events:

(1) The individual and the national bank or the Federal savings association receive a notice of intent not to disapprove, at which time the individual may assume the position on a permanent basis, provided all other applicable legal requirements are satisfied;

(2) The individual and the national bank or the Federal savings association receive a notice of disapproval within 90 calendar days after the submission of a technically complete notice. In this event the individual must immediately resign from the position upon receipt of the notice of disapproval and may assume the position on a permanent basis only if the notice of disapproval is reversed on appeal and all other applicable legal requirements are satisfied; or

(3) The OCC does not act within 90 calendar days after the submission of a technically complete notice. In this event, the individual may assume the position on a permanent basis 91 calendar days after the submission of a technically complete notice.

(E) If the technically complete notice is not filed within the time period specified in the waiver, the proposed individual must immediately resign their position. Thereafter, the individual may assume the position only after a technically complete notice has been

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filed, all other applicable requirements are satisfied, and:

(1) The national bank or the Federal savings association receives a notice of intent not to disapprove;

(2) The review period expires; or

(3) A notice of disapproval has been overturned on appeal as set forth in paragraph (f) of this section.

(F) Notwithstanding the grant of a waiver, the OCC has authority to issue a notice of disapproval within 30 days of the expiration of such waiver.

(ii) *Automatic waiver.* An individual who has been elected to the board of directors of a national bank or Federal savings association may serve as a director on an interim basis before a notice has been filed under this section, provided the individual was not nominated by management, and the national bank or Federal savings association submits a notice under this section not later than seven days after the individual has been notified of the election. The individual may serve on an interim basis until the occurrence of the earliest of the events described in paragraphs (e)(6)(i)(D)(I), (2), or (3) of this section.

(7) *Commencement of service.* An individual proposed as a member of the board of directors or as a senior executive officer who satisfies all other applicable legal requirements may assume the office on a permanent basis:

(i) Prior to the expiration of the review period, only if the OCC notifies the national bank or Federal savings association in writing that the OCC does not disapprove the proposed director or senior executive officer pursuant to paragraph (e)(5) of this section; or

(ii) Following the expiration of the review period, unless:

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

(B) The national bank or Federal savings association 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, 5.9, 5.10, 5.11, and 5.13(a) through (f) do not apply to a notice for a change in directors and sen-

ior executive officers, except that § 5.13(c) will apply to the extent provided for in paragraphs (e)(3)(iii) and (e)(7) of this section.

(f) *Appeal.* (1) If the national bank or Federal savings association, 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 Federal savings association or the individual may appeal on the grounds that the reasons for disapproval are contrary to fact or insufficient to justify disapproval. The appellant must 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 submitted 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 will 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 will notify the appellant in writing of the decision. If the original decision is reversed, the individual may assume the position in the national bank or Federal savings association for which he or she was proposed.

[80 FR 28460, May 18, 2015, as amended at 85 FR 80466, Dec. 11, 2020]

§ 5.52 Change of address of a national bank or Federal savings association.

(a) *Authority.* 12 U.S.C. 93a, 161, 481, 1462a, 1463, 1464 and 5412(b)(2)(B).