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Title 12 – Banks and Banking

Chapter I – Comptroller of the Currency, Department of the Treasury

Part 5 – Rules, Policies, and Procedures for Corporate Activities

Subpart C – Expansion of Activities

Authority: 12 U.S.C. 1 *et seq.*, 24a, 35, 93a, 214a, 215, 215a, 215a-1, 215a-2, 215a-3, 215c, 371d, 481, 1462a, 1463, 1464, 1817(j), 1831i, 1831u, 2901 *et seq.*, 3101 *et seq.*, 3907, and 5412(b)(2)(B).

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§ 5.36 Other equity investments by a national bank.

- (a) **Authority.** 12 U.S.C. 1 *et seq.*, 24(Seventh), 93a, and 3101 *et seq.*
- (b) **Scope.** National banks are permitted to make various types of equity investments pursuant to 12 U.S.C. 24(Seventh) and other statutes. These investments are in addition to those subject to §§ 5.34, 5.35, 5.37, and 5.39. This section describes the procedure governing the filing of the application or notice that the OCC requires in connection with certain of these investments. Other permissible equity investments may be reviewed on a case-by-case basis by the OCC.
- (c) **Definitions.** For purposes of this section:
- (1) **Enterprise** means any corporation, limited liability company, partnership, trust, or similar business entity.
 - (2) **Non-controlling investment** means an equity investment made pursuant to 12 U.S.C. 24(Seventh) that is not governed by procedures prescribed by another OCC rule. A *non-controlling investment* does not include a national bank holding interests in a trust formed for the purposes of securitizing assets held by the bank as part of its banking business or for the purposes of holding multiple legal titles of motor vehicles or equipment in conjunction with lease financing transactions.
- (d) **Procedure.**
- (1) A national bank must provide the appropriate OCC licensing office with written notice within ten days after making an equity investment in the following:
 - (i) An agricultural credit corporation;
 - (ii) A savings association eligible to be acquired under section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823); and
 - (iii) Any other equity investment that may be authorized by statute after February 12, 1990, if not covered by other applicable OCC regulation.
 - (2) The written notice required by paragraph (d)(1) of this section must include a description, and the amount, of the bank's investment.
 - (3) The OCC reserves the right to require additional information as necessary.
- (e) **Non-controlling investments; notice procedure.** Except as provided in paragraphs (f), (g), and (h) of this section, a national bank may make a non-controlling investment, directly or through its operating subsidiary, in an enterprise that engages in an activity described in § 5.34(f)(5) or in an activity that is

substantively the same as a previously approved activity by filing a written notice. The bank must file this written notice with the appropriate OCC licensing office no later than 10 days after making the investment. The written notice must:

- (1) Describe the structure of the investment and the activity or activities conducted by the enterprise in which the bank is investing. To the extent the notice relates to the initial affiliation of the bank with a company engaged in insurance activities, the bank should describe the type of insurance activity that the company is engaged in and has present plans to conduct. The bank must also list for each State the lines of business for which the company holds, or will hold, an insurance license, indicating the State where the company holds a resident license or charter, as applicable;
- (2) State:
 - (i) Which paragraphs of § 5.34(f)(5) describe the activity; or
 - (ii) If the activity is substantively the same as a previously approved activity:
 - (A) How the activity is substantively the same as a previously approved activity;
 - (B) The citation to the applicable precedent; and
 - (C) That the activity will be conducted in accordance with the same terms and conditions applicable to the previously approved activity;
- (3) Certify that the bank is well capitalized and well managed at the time of the investment;
- (4) Describe how the bank has the ability to prevent the enterprise from engaging in activities that are not set forth in § 5.34(f)(5) or not contained in published OCC precedent for previously approved activities, or how the bank otherwise has the ability to withdraw its investment;
- (5) Describe how the investment is convenient and useful to the bank in carrying out its business and not a mere passive investment unrelated to the bank's banking business;
- (6) Certify that the bank's loss exposure is limited as a legal matter and that the bank does not have unlimited liability for the obligations of the enterprise; and
- (7) Certify that the enterprise in which the bank is investing agrees to be subject to OCC supervision and examination, subject to the limitations and requirements of section 45 of the Federal Deposit Insurance Act (12 U.S.C. 1831v) and section 115 of the Gramm-Leach-Bliley Act (12 U.S.C. 1820a).

(f) ***Non-controlling investment; application procedure*** –

- (1) ***In general.*** A national bank must file an application and obtain prior approval before making or acquiring, either directly or through an operating subsidiary, a non-controlling investment in an enterprise if the non-controlling investment does not qualify for the notice procedure set forth in paragraph (e) of this section because the bank is unable to make the representation required by paragraph (e)(2) or the certifications required by paragraphs (e)(3) or (e)(7) of this section. The application must include the information required in paragraphs (e)(1) and (e)(4) through (e)(6) of this section and, if possible, the information required by paragraphs (e)(2), (e)(3), and (e)(7) of this section. 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 filer 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)(6) of this section.

(2) **Expedited review.** An application submitted by a national bank is deemed approved by the OCC as of the 10th day after the application is received by the OCC if:

- (i) The national bank makes the representation required by paragraph (e)(2) and the certification required by paragraph (e)(3) of this section;
- (ii) The book value of the national bank's non-controlling investment for which the application is being submitted is no more than 1% of the bank's capital and surplus;
- (iii) No more than 50% of the enterprise is owned or controlled by banks or savings associations subject to examination by an appropriate Federal banking agency or credit unions insured by the National Credit Union Association; and
- (iv) The OCC has not notified the national bank that the application has been removed from expedited review, or the expedited review process is extended, under § 5.13(a)(2).

(g) **Non-controlling investment; no application or notice required.** A national bank may make or acquire, either directly or through an operating subsidiary, a non-controlling investment in an enterprise without an application or notice to the OCC, if the:

- (1) Activities of the enterprise are limited to those activities previously reported by the bank in connection with the making or acquiring of a non-controlling investment;
- (2) Activities of the enterprise continue to be legally permissible for a national bank;
- (3) The bank's non-controlling investment will be made in accordance with any conditions imposed by the OCC in approving any prior non-controlling investment in an enterprise conducting these same activities; and
- (4) The bank is able to make the representations and certifications specified in paragraphs (e)(3) through (e)(7) of this section.

(h) **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 (h)(1). 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 OCC licensing 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 (h)(1) 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.

(i) **Non-controlling investments by Federal branches.** A Federal branch that is well capitalized and well managed 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).

(j) **Exceptions to rules of general applicability.** Sections 5.8, 5.9, 5.10, and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that some or all provisions in §§ 5.8, 5.9, 5.10, and 5.11 apply.

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