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**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Parts 4, 5, 7, 9, 10, 11, 12, 16, 18, 31, 150, 151, 155, 162, 163, 193, 194, 197**

**Docket ID OCC-2016-0002**

**RIN 1557-AD95**

**Economic Growth and Regulatory Paperwork Reduction Act of 1996 Amendments**

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** As part of its review under the Economic Growth and Regulatory Paperwork Reduction Act of 1996, the Office of the Comptroller of the Currency (OCC) is proposing to revise certain of its rules to remove outdated or otherwise unnecessary provisions. Specifically, the OCC is proposing to: revise certain licensing rules related to chartering applications, business combinations involving Federal mutual savings associations, and notices for changes in permanent capital; clarify national bank director oath requirements; revise certain fiduciary activity requirements for national banks and Federal savings associations, including increasing the asset size limit for mini-funds; remove certain financial disclosure requirements for national banks; remove certain unnecessary regulatory reporting, accounting, and management policy requirements for Federal savings associations; revise the electronic activities provisions for Federal savings associations; integrate and update OCC rules for national banks and Federal savings associations relating to municipal securities dealers, Securities Exchange Act disclosure rules, and securities offering disclosure rules, including providing for the

electronic submission of required filings and applying the less burdensome national bank rule to Federal savings associations; update and revise recordkeeping and confirmation requirements for national banks' and Federal savings associations' securities transactions; integrate and update rules relating to insider and affiliate transactions; and make other technical and clarifying changes.

**DATES:** Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments through the Federal eRulemaking Portal or e-mail, if possible. Please use the title "Economic Growth and Regulatory Paperwork Reduction Act of 1996 Amendments" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- **Federal eRulemaking Portal—"Regulations.gov":** Go to <http://www.regulations.gov/>. Enter "Docket ID OCC-2016-0002" in the Search Box and click "Search". Results can be filtered using the filtering tools on the left side of the screen. Click on "Comment Now" to submit public comments.
- Click on the "Help" tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.
- **E-mail:** [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov).
- **Mail:** Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7<sup>th</sup> Street, SW., suite 3E-218, mail stop 9W-11, Washington, DC 20219.

- **Hand Delivery/Courier:** 400 7<sup>th</sup> Street, SW., suite 3E-218, mail stop 9W-11, Washington, DC 20219.

- **Fax:** (571) 465-4326.

*Instructions:* You must include “OCC” as the agency name and “Docket ID OCC-2016-0002” in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- **Viewing Comments Electronically:** Go to <http://www.regulations.gov/>. Enter “Docket ID OCC-2016-0002” in the Search box and click “Search”. Comments can be filtered by Agency using the filtering tools on the left side of the screen.
- Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

**Viewing Comments Personally:** You may personally inspect and photocopy comments at the OCC, 400 7<sup>th</sup> Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by

calling (202) 649-6700, or, for persons who are deaf or hard of hearing, TTY, (202) 649-5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

- **Docket:** You may also view or request available background documents and project summaries using the methods described above.

**FOR FURTHER INFORMATION CONTACT:** For additional information, contact Heidi Thomas, Special Counsel; or Rima Kundnani, Attorney, Legislative and Regulatory Activities Division, 202-649-5490, for persons who are deaf or hard of hearing, TTY, 202-649-5597, Office of the Comptroller of the Currency, 400 7<sup>th</sup> Street, SW., Washington, DC 20219.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA)<sup>1</sup> requires that, at least once every 10 years, the Federal Financial Institutions Examination Council (FFIEC) and each appropriate Federal banking agency (Agency or, collectively, Agencies) represented on the FFIEC (the OCC, Federal Deposit Insurance Corporation (FDIC), and the Board of Governors of the Federal Reserve System (Federal Reserve Board)) conduct a review of the regulations prescribed by the FFIEC or Agency. The purpose of this review is to identify outdated or otherwise unnecessary regulatory requirements imposed on insured depository institutions.

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<sup>1</sup> 12 U.S.C. 3311.

In conducting this review, EGRPRA requires the Agencies to provide public notice and seek comment on one or more categories of regulations at regular intervals so that all Agency regulations are published for comment within a 10-year cycle. EGRPRA also directs the Agencies to categorize their regulations by type, publish the categories, and invite the public to identify areas of regulations that are “outdated, unnecessary, or unduly burdensome.”<sup>2</sup>

Once the Agencies have published the categories of regulations for comment, EGRPRA requires the Agencies to publish a comment summary and discuss the significant issues raised by the commenters. The statute also directs the Agencies to “eliminate unnecessary regulations to the extent that such action is appropriate.”<sup>3</sup> Finally, EGRPRA requires the FFIEC to submit a report to Congress summarizing significant issues and their relative merits. The report also must analyze whether the Agencies can address these issues through regulatory change or whether legislative action is required.

The Agencies completed the first EGRPRA review in 2006. The current EGRPRA review process runs through December 31, 2016.

As with the first EGRPRA review, the Agencies have elected to conduct this current review jointly. The Agencies have divided their regulations into 12 categories and published four Federal Register notices,<sup>4</sup> each requesting public comment on three of

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<sup>2</sup> Id. at 3311(a).

<sup>3</sup> Id. at 3311(d)(2).

<sup>4</sup> See 79 FR 32172 (June 4, 2014); 80 FR 7980 (Feb. 13, 2015); 80 FR 32046 (June 5, 2015), and 80 FR 79724 (Dec. 23, 2015). More information on the current EGRPRA process, including the Federal Register notices, outreach meetings, and public comments received, is available at <http://egrpra.ffiec.gov/index.html>.

these categories. Additionally, the Agencies held a series of six outreach meetings to provide an opportunity for bankers, consumer and community groups, and other interested parties to present their views on the Agencies' regulations directly to Agency principals, senior Agency management, and Agency staff.<sup>5</sup>

The OCC believes it is unnecessary to wait until the end of the EGRPRA process to act to reduce regulatory burden where possible. We already have incorporated a number of changes commenters proposed in response to the first EGRPRA notice into our recently finalized rule to integrate the OCC's national bank and Federal savings association licensing rules.<sup>6</sup> In addition, the banking agencies, acting through the FFIEC, have sought comment on proposals to eliminate or revise several items on the Consolidated Reports of Condition (Call Report).<sup>7</sup> The Agencies also are considering the feasibility of creating a streamlined version of the Call Report for community institutions. These Call Report initiatives are consistent with the feedback the OCC, FDIC, and Federal Reserve Board have received in this EGRPRA review.

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<sup>5</sup> These public outreach meetings took place in Los Angeles, California on December 2, 2014; Dallas, Texas on February 4, 2015; Boston, Massachusetts on May 4, 2015; Kansas City, Missouri on August 4, 2015 (which focused on rural banking issues), Chicago, Illinois on October 19, 2015; and Washington, DC on December 2, 2015. These meetings were live streamed on the EGRPRA Web site to provide individuals throughout the country with the opportunity to watch and listen to the proceedings at no cost. Additionally, the outreach meetings in Kansas City, Chicago, and Washington, DC provided online viewers an opportunity to participate and provide comments via a real time text-chat feature.

<sup>6</sup> The OCC published this final rule on May 18, 2015, and it was effective on July 1, 2015. 80 FR 28346 (May 18, 2015).

<sup>7</sup> See 80 FR 56539 (Sept. 18, 2015).

The OCC also supports specific legislative proposals that would eliminate regulatory burden. First, as senior OCC staff has testified before Congress,<sup>8</sup> the OCC believes that it is appropriate to increase the number of healthy, well-managed community institutions that qualify for the 18-month examination cycle by raising the statutory threshold. Recently, Congress acted to do so by raising the statutory threshold from under \$500 million in total assets to under \$1 billion in total assets for 1-rated institutions, and by providing the Federal banking agencies with the discretion to raise the threshold for 2-rated institutions.<sup>9</sup> The OCC, together with the FDIC and Federal Reserve, recently issued an interim final rule that exercises this discretion.<sup>10</sup>

Second, the OCC believes that Federal savings associations should have greater flexibility to expand their business model without changing their governance structure.<sup>11</sup> This expanded business model would provide Federal savings associations with the flexibility to adapt to changing economic and business environments to meet the needs of their communities without the costs associated with changing charters. Finally, the OCC supports creating an exclusion from the Volcker Rule for community institutions.<sup>12</sup>

This notice of proposed rulemaking (NPRM) represents another effort by the OCC to revise requirements imposed on national banks and Federal savings associations

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<sup>8</sup> See “Testimony of Toney Bland, OCC Senior Deputy Comptroller for Midsize and Community Bank Supervision, Before the Subcommittee on Financial Institutions and Consumer Credit, House Committee on Financial Services, United States House Of Representatives,” April 23, 2015, <http://www.occ.gov/news-issuances/congressional-testimony/2015/pub-test-2015-59-written.pdf>.

<sup>9</sup> Congress included this proposal in the Fixing America’s Surface Transportation (FAST) Act, Pub. L. 114-94, signed into law by the President on December 4, 2015.

<sup>10</sup> 81 FR 10063 (Feb. 29, 2016).

<sup>11</sup> See *Id.*

<sup>12</sup> See *Id.*

where possible and sensible in light of the EGRPRA mandate to identify outdated or otherwise unnecessary regulatory provisions. It reflects comments the OCC received on its rules published in the first three EGRPRA Federal Register notices and through the six EGRPRA outreach meetings. It also includes amendments to OCC rules derived from the OCC's most recent internal review of its rules to identify outdated or unnecessary provisions beyond those suggested by EGRPRA commenters. The amendments included in this proposed rule remove unnecessary or outdated provisions and streamline and simplify OCC rules, thereby reducing regulatory burden on national banks and Federal savings associations.

We will continue to review the EGRPRA comments and if warranted would issue additional proposed rules to reflect these comments as well as those received on rules included in the fourth EGRPRA Federal Register notice. We note that some of the proposed amendments included in this NPRM would amend rules that are currently out for public comment as part of this fourth Federal Register notice.<sup>13</sup> To ensure that any OCC rule finalizing this NPRM takes into account all comments we receive on these rules, the OCC will consider comments received on both this NPRM and the fourth EGRPRA notice when finalizing this rulemaking.

The proposals included in this rulemaking amend rules issued only by the OCC; they do not reflect comments submitted on rules the OCC has issued jointly with other agencies. We will address any modifications to interagency rules through a separate interagency rulemaking.

## **II. Description of the Proposal**

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<sup>13</sup> These rules are the OCC's securities-related rules (12 CFR parts 10, 11, 12, 16, 151, 163.172, 193, 194, and 197) and insider and affiliate transactions rules (12 CFR part 31 and §§ 163.41 and 163.43).

## Organization and Functions, Availability and Release of Information (12 CFR Part 4)

Twelve CFR part 4 describes the organization and functions of the OCC and sets forth the standards, policies, and procedures that the OCC applies in administering the Freedom of Information Act (FOIA) and requests for non-public OCC information, among other things. The OCC is proposing a number of technical amendments to these provisions.

First, this proposal would update and correct the OCC address in several sections. Second, this proposal would update the title of certain OCC offices and positions. Specifically, the proposal would replace “Licensing Department” with “Licensing Division,” and “Disclosure Officer” with “Freedom of Information Act Officer” in subparts A and B of part 4.

Additionally, the OCC proposes to remove § 4.11(b)(4). This section provides that the OCC’s FOIA rules, 12 CFR part 4, subpart B, do not apply to FOIA requests filed with the former Office of Thrift Supervision (OTS) before July 21, 2011. Instead, the FOIA rules of the former OTS apply to these requests. The OCC adopted this provision when it amended part 4 to reflect the transfer of certain powers, authorities, rights and duties of the OTS to the OCC pursuant to Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).<sup>14</sup> There are no remaining open FOIA requests that had been submitted to the OTS prior to its abolishment. Therefore, this section is no longer necessary.

Further, 12 CFR 4.12(a) requires that OCC records be available to the public, except for the exempt records listed in paragraph (b). Twelve CFR 4.12(b)(10) exempts

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<sup>14</sup> Pub.L. 111-203, 124 Stat. 1376 (2010), codified at 12 U.S.C. 371c.

any OTS information similar to that listed in the exemptions in paragraphs (b)(1) to (b)(9) to the extent the information is in the possession of the OCC. For purposes of clarification, the OCC proposes to include in the general requirement in paragraph (a) that OTS records, in addition to OCC records, shall be made available to the public, and to remove the exemption in paragraph (b)(10).

#### Rules, Policies, and Procedures for Corporate Activities (12 CFR Part 5)

Twelve CFR part 5 sets forth the OCC's rules for corporate activities and filings. These rules were included in the first EGRPRA Federal Register request for comments and, as indicated above, the OCC's final rule integrating the OCC's national bank and Federal savings association licensing rules incorporated changes that reflect some of the comments received in response to that notice. The proposed amendments below reflect further review of these licensing rules by the OCC since the adoption of this final rule.

Change in charter purpose or type (12 CFR 5.20, 5.53). The OCC is proposing to add provisions to §§ 5.20 and 5.53 to clarify what type of application is to be used when an existing national bank or Federal savings association proposes to change the purpose and type of charter under which it operates. The OCC charters national banks and Federal savings associations that are authorized to conduct any activity permitted for a national bank or a Federal savings association, respectively (sometimes called "full-service charters"). The OCC also charters national banks and Federal savings associations whose activities are limited to a special purpose. The most common types of special purpose institutions are (1) those whose operations are limited to those of a trust company and activities related thereto, and (2) those that conduct only a credit card

business. Other special purpose charter types include: bankers' banks, community development banks, and cash management banks.

When the OCC grants approval for a special purpose institution, the approval decision generally includes a condition requiring the institution to conduct only the limited activity. In addition, the institution's governing document – the articles of association in the case of a national bank or the charter in the case of a Federal savings association – limits the institution to the specific approved special purpose. If the institution later desires to expand the scope of its business, it must seek OCC approval. A later expansion to include additional business warrants a new review to determine if the institution has the financial and managerial resources to conduct the expanded business. Similarly, when an institution that has a full-service charter later desires to limit itself to a special purpose and conduct only one business line, the OCC reviews the change to ascertain whether the institution could continue to operate safely and soundly after it narrows its focus and to evaluate the institution's proposed capital, staffing, business plan, and risk management systems.

Previously, these filings to change the purpose of a charter had no established framework and the OCC addressed them on a case-by-case basis when an institution inquired. Recently revised § 5.53<sup>15</sup> now covers transactions that are similar to a change in purpose and type of charter (i.e., transactions that involve substantial changes in an institution's assets, liabilities, or business lines). In fact, the changes to an institution's assets, liabilities, and business lines that would be involved in a change in the purpose of a charter likely already would be subject to a filing under § 5.53. We therefore propose

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<sup>15</sup> The OCC amended § 5.53 in July 2015. See 80 FR 28346 (May 18, 2015).

clarifying § 5.53 to expressly add change in charter type to the transactions that are covered by § 5.53. We also are proposing to add provisions to § 5.20(1), where special purpose charters are discussed, to describe changes in charter purpose, set out the requirement for an application, and direct institutions to § 5.53 for the application to be used.

Business combinations involving Federal mutual savings associations (12 CFR 5.33). Twelve CFR 5.33 sets forth the provisions governing business combinations involving depository institutions within the OCC’s jurisdiction, including Federal mutual savings associations. Paragraph (n)(2)(iii) of this section currently provides that if any combining Federal savings association is a mutual savings association, the resulting institution must be a mutually held savings association, unless the transaction is approved under 12 CFR part 192, which governs mutual to stock conversions, or involves a mutual holding company reorganization under 12 U.S.C. 1467a(o).<sup>16</sup> Consequently, unless one of these two exceptions applies, the resulting institution may not be a mutually held state-chartered savings bank.<sup>17</sup>

However, the merger authority set forth in 12 CFR 5.33(n)(2)(iii) is narrower than the merger authority granted to all Federal savings associations under the Home Owners’ Loan Act (HOLA). Specifically, section 10(s) of the HOLA<sup>18</sup> provides that “[s]ubject to sections 5(d)(3) and 18(c) of the Federal Deposit Insurance Act and all other applicable

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<sup>16</sup> Section 10(o) of the HOLA.

<sup>17</sup> This paragraph is generally consistent with the rule as issued by the former OTS and originally republished by the OCC as 12 CFR 146.2(a)(4). The OCC moved this provision to § 5.33 in its licensing integration rule. See 80 FR 28346 (May 18, 2015).

<sup>18</sup> 12 U.S.C. 1467a(s).

laws, any Federal savings association may acquire or be acquired by any insured depository institution.” The statute, therefore, does not limit the resulting institution in such transactions to a savings association.<sup>19</sup>

Because of § 5.33(n)(2)(iii), Federal mutual savings associations and mutual state-chartered savings banks wishing to combine must undertake a multi-step transaction. For example, a Federal mutual savings association generally may convert to a mutual state-chartered savings association or a mutual state-chartered savings bank pursuant to section 5(i)(3) of the HOLA, and thereafter combine with a mutual state-chartered savings bank. Such a process, while accomplishing the same purpose as a direct merger, is more expensive and time consuming than a direct merger and results in unnecessary regulatory burden for the institutions involved.

Accordingly, the OCC is proposing to amend § 5.33(n)(2)(iii) to permit a mutual depository institution insured by the FDIC, i.e. either a mutual savings association or a mutual savings bank, to be the resulting institution in a combination involving a Federal mutual savings association. This amendment would simplify combinations involving mutual savings banks, thereby reducing regulatory burden and costs associated with such transactions imposed under the current rule. We note that this amendment still would require the resulting institution to have a mutual charter so as not to implicate the mutual-to-stock conversion regulations, 12 CFR part 192.

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<sup>19</sup> Section 5(i) of the HOLA (12 U.S.C. 1464(i)) provides that transactions involving the conversion of a Federal mutual savings association to a stock Federal savings association, and vice versa, must comply with OCC regulations. As indicated above, OCC regulations relating to mutual to stock conversions are set forth at 12 CFR part 192. By limiting the resulting institution to a mutual institution, both the current rule and the proposed amendment ensure that combinations involving Federal mutual savings associations are consistent with the mutual to stock conversion regulations at 12 CFR part 192.

The OCC also is proposing to amend 12 CFR 5.33(n)(2)(iii)(B) to allow a mutual Federal savings association to merge into an FDIC-insured depository institution subsidiary of a state-chartered mutual holding company. Currently, under the exception, a mutual Federal savings association may merge into a subsidiary savings association of a section 10(o) mutual holding company, provided the depositors of the resulting association have membership rights in the mutual holding company.<sup>20</sup> The exception does not allow the merger of a mutual Federal savings association into a state savings bank subsidiary of a mutual holding company that is established under state law.

As a result, in order for the mutual Federal savings association to merge into a state savings bank subsidiary of a mutual holding company organized under state law, it must first convert to a state-chartered savings association or state-chartered savings bank, and then combine with the state-chartered savings bank. We propose to amend § 5.33(n)(2)(iii)(B) so that mergers of mutual Federal savings associations into subsidiaries of section 10(o) and non-section 10(o) mutual holding companies are treated similarly. As with the amendment to § 5.33(n)(2)(iii) described above, the amendment would reduce regulatory burden and costs associated with such transactions imposed under the current rule.

Changes in permanent capital (12 CFR 5.46). Under 12 CFR 5.46, a national bank must submit an application to the OCC and receive prior approval for certain increases or decreases to the bank's permanent capital accounts. In addition, a national bank must submit an after-the-fact notice of all increases or decreases to the bank's permanent capital accounts. Furthermore, pursuant to 12 U.S.C. 57, the OCC must certify all

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<sup>20</sup> This type of transaction is deemed to be one type of mutual holding company reorganization.

increases to a national bank's permanent capital accounts resulting from cash or other assets for the increase to be considered valid. The purpose of these requirements is to inform the OCC whenever the bank's board of directors decides to change the capital structure of the institution, including when accepting additional funds from a parent holding company, issuing new shares or stock, or redeeming an existing issue of preferred stock.

The OCC receives a number of applications and notices for changes to permanent capital that arise solely from applying U.S. generally accepted accounting principles (GAAP). For example, U.S. GAAP may allow a national bank to revalue certain balance sheet accounts, including permanent capital accounts, for a period after the conclusion of a merger or acquisition. As 12 U.S.C. 1831n generally requires all insured depository institutions, including national banks, to apply U.S. GAAP when preparing their financial statements, there is limited value in requiring licensing filings or certifications solely because the bank is complying with that statute by applying GAAP. These accounting adjustments often are not material and typically are reviewed by the bank's internal accounting staff and external auditors. In addition, many of the accounting adjustments relate back to transactions reviewed or approved by the OCC under other rules, such as mergers, acquisitions, or divestitures. Furthermore, these accounting adjustments do not result in increases from cash paid or other assets and therefore do not require certification by the OCC pursuant to 12 U.S.C. 57.

The OCC is proposing to amend § 5.46 to create an exemption for national banks from the prior approval, notification, and certification requirements for all changes to permanent capital that result solely from application of U.S. GAAP, and do not otherwise

involve the receipt of cash or other assets. However, the proposal still would require a notice for material accounting adjustments, which the proposal defines as an increase or decrease greater than 5 percent of the bank's total permanent capital prior to the adjustments in the most recent quarter, or if the national bank is subject to a letter, order, directive, written agreement, or otherwise that is related to changes in permanent capital. The national bank would need to provide the notice within 30 days after the end of the quarter in which the accounting adjustment occurred, and include the amount of the adjustment, a description, and a cite to the applicable U.S. GAAP provision.

The OCC is not proposing a similar change to § 5.45, Increases in permanent capital of a Federal stock savings association. Section 5.45 requires a Federal savings association to submit an application to the OCC and receive prior approval for increases to its permanent capital accounts under the same circumstances that national banks are required to submit an application under section 5.46(g)(1)(ii). However, unlike the national bank rule, § 5.45 requires an after-the-fact notice of the increase only if the savings association was required to obtain prior approval of the increase. In addition, there is no statutory requirement that the OCC certify the increase in capital. For these reasons, an amendment similar to the one proposed for § 5.46 is not needed for § 5.45.

The OCC is proposing, however, a clarifying change to § 5.45(g)(4)(i). The current wording of that section creates confusion as to whether Federal savings associations increasing their permanent capital accounts must file notices for all increases, rather than only in the circumstances in which the savings association is required to obtain prior approval. In adopting this provision, the OCC intended the notice to be filed only in cases in which prior approval was required. Therefore, the proposal

would amend § 5.45(g)(4)(i) to specifically provide that an after-the-fact notice is required only if the capital increase was subject to prior approval by the OCC.

Additional technical changes to 12 CFR part 5. The OCC is proposing additional technical changes to 12 CFR part 5. First, the proposed rule would amend § 5.8, Public notice, to provide that the public notice of a licensing-related filing must include the closing date of the 30-day public comment period only if this information is available at the time of publication. We are proposing this change because the OCC treats the comment period differently in business combinations than in other transactions. For other transactions, the comment period starts when the public notice is published. For business combinations, the comment period starts on the latest of the publication date, the date when the OCC makes the application available in the OCC's FOIA Reading Room, or the date when the OCC publishes the application in the OCC Weekly Bulletin. When the national bank or Federal savings association files the application with the OCC and publishes the notice, it typically would not know when the other two events will occur, and so would not know the comment period closing-date for these transactions at the time the public notice is published. However, in order to assist the public in determining this date, the proposal also would require that the notice include a statement indicating that information about the transaction, including the comment period closing-date, may be found in the OCC's Weekly Bulletin.

For a similar reason, the proposal would make a technical correction to paragraph (i) of 12 CFR 5.33, Business combinations involving a national bank or Federal savings association. In general, paragraph (i) provides that a business reorganization filing or a filing that qualifies for a streamlined application is deemed approved by the OCC on the

latter of the 45<sup>th</sup> day after the OCC receives the application or the 15<sup>th</sup> day after the close of the public comment period. However, because the 30-day public comment period for business combinations starts on the later of the date that the filing is published in the OCC Weekly Bulletin or the date it is available in the OCC's FOIA Reading Room, and because this date will always be after the OCC receives the application, 15 days after the close of the public comment period always will be later than the 45<sup>th</sup> day after the OCC receives the application. Therefore, the reference to the 45-day period in § 5.33(i) is unnecessary and confusing, and the proposal would remove it.

Second, the proposed rule would correct inaccurate cross-references in paragraphs (j)(3) and (4) of § 5.21, Federal mutual savings association charter and bylaws. Specifically, the references to paragraphs (j)(2) would be changed to paragraph (j)(3).

Third, the proposed rule would correct an inaccurate cross-reference in § 5.33(o)(3)(i) by replacing the reference to paragraph (n)(3) to paragraph (o)(3).

Fourth, the proposal would amend § 5.50(f)(2)(ii)(E) by correcting an inaccurate cross-reference to the definition of the term "tax-qualified employee stock benefit plan." Specifically, the proposal would replace "§ 192.2(a)(39)" with "§ 192.25."

Lastly, in § 5.66, Dividends payable in property other than cash, the proposal would provide that a national bank must submit a request for prior approval of a non-cash dividend to the appropriate OCC licensing office. Currently, this section only provides that the OCC must approve a non-cash dividend but does not indicate where a bank must submit the request for approval. The only direction provided in OCC dividend rules as to where a dividend application should be filed is contained in § 5.64(c)(3), which provides that a national bank submit its request for prior approval for cash dividends to the

appropriate OCC supervisory office. Because the OCC reviews non-cash dividends in the appropriate licensing office, and not the appropriate supervisory office, the proposed amendment will remove any confusion as to where a bank must submit non-cash dividend applications.

#### National Bank and Federal Savings Association Director Provisions

The OCC rules relating to national bank and Federal savings association directors, set forth in various provisions of 12 CFR parts 7 and 163, were included in the third EGRPRA Federal Register request for comments. The OCC did not receive any comments on these provisions in response to this notice. However, after further review of these provisions, we are proposing the following amendments.

National Bank Director Oaths (12 CFR 7.2008). Twelve U.S.C. 73 sets forth the requirements for national bank director oaths. Specifically, this statute requires that, when appointed or elected, each national bank director must take an oath that he or she will diligently and honestly administer the affairs of the bank, not knowingly violate or willingly permit to be violated any applicable laws, and is the owner in good faith of the requisite shares of stock and that the stock is not pledged as security for any loan or debt. The statute requires the oath to be notarized and immediately transmitted to the Comptroller and filed in the Comptroller's office for 10 years.

Twelve CFR 7.2008 implements this statutory requirement. Specifically, § 7.2008 provides that: (1) a notary public, including one who is a director but not an officer of the national bank, may administer the oath of directors; (2) each director attending the organization meeting must execute either a joint or individual oath, and a director not attending the organization meeting (the first meeting after the election of the

directors) must execute the individual oath; (3) a director must take another oath upon re-election, notwithstanding uninterrupted service; and (4) the national bank must file the original executed oaths of directors with the OCC and retain a copy in the bank's records in accordance with the Comptroller's Corporate Manual filing and recordkeeping instructions for executed oaths of directors. This provision also notes that appropriate sample oaths are located in the Comptroller's Corporate Manual.

The OCC is proposing to amend § 7.2008 to clarify when the director oath must be taken. As proposed, § 7.2008 would require a director to execute either a joint or individual oath at the first meeting of the board of directors that the director attends after the director is appointed or elected. This amendment more closely follows the statute by referring to the appointment or election of a director. It also would remove the reference to “organizational meeting,” which the OCC believes does not adequately convey when a director must execute the oath in all cases, including when a director is appointed.

The OCC also is proposing to remove obsolete references to the Comptroller’s Corporate Manual and replace it with references to *www.occ.gov*,<sup>21</sup> and to correct a spelling error.

Fidelity Bonds (12 CFR part 7, §§ 163.180, 163.190, and 163.191)

Fidelity bonds. Twelve CFR 7.2013 requires all national bank officers and employees to have adequate fidelity bond coverage. It also states that the bank’s directors may be liable for losses incurred in the absence of such bonds and that directors should not serve as bond sureties. Furthermore, the rule provides that the bank’s

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<sup>21</sup> The OCC’s Web site contains general instructions for filing the oath of directors and a sample individual oath and joint oath at <http://www.occ.gov/publications/publications-by-type/licensing-manuals/index-licensing-manuals.html>.

directors should determine the appropriate amount of bond coverage, premised on consideration of the bank's internal auditing safeguards, number of employees, deposit liabilities, and amount of cash and securities normally held by the bank.

Twelve CFR 163.180(c), 163.190, and 163.191 contain the fidelity bond rules applicable to Federal savings associations. While §§ 163.190 and 7.2013 are similar, the Federal savings association rules are more prescriptive and apply not only to officers and employees, but also to directors and agents. In addition, under § 163.190(b), the Federal savings association's management must determine the amount of coverage, based on the potential risk exposure. Section 163.190(c) also directs the Federal savings association to provide supplemental coverage beyond that provided by the insurance underwriter industry's standard forms if the board determines that additional coverage is warranted. Furthermore, § 163.190(d) requires the Federal savings association's board of directors to approve the association's bond coverage, with this approval documented in the board's minutes, and to review annually the adequacy of coverage. Section 163.191 provides an alternative means of calculating the bond coverage that is appropriate for a Federal savings association agent, in lieu of that provided for in § 163.190. Finally, § 163.180(c) states that a Federal savings association maintaining a bond required by § 163.190 must promptly notify the bond company and file proof of loss for any covered loss that is greater than twice the bond's deductible amount.

Certain of these Federal savings association fidelity bond rules are very detailed and many of the details are more appropriately addressed in guidance or left to the institution's judgment, as is currently the case for national banks. Therefore, the OCC is proposing to reduce unnecessary regulatory burden by removing §§ 163.180(c), 163.190

and 163.191 and applying § 7.2013, as amended and as described below, to Federal savings associations.

As a result of removing § 163.190, Federal savings associations would no longer be required to maintain fidelity bonds for directors who do not also serve as officers or employees. The OCC proposes to remove this requirement because fidelity bond coverage generally is not available for directors unless they also are acting as officers or employees. In addition, the activities in which outside directors engage generally do not expose financial institutions to the types of losses covered by fidelity bonds.

This proposal also would remove the § 163.180(c) requirement that a Federal savings association notify its bond insurance company and file proof of loss for certain claims. The OCC finds this provision to be unnecessary. The terms of a fidelity bond contract itself require such notification, and it is a prudent business practice for a financial institution. Furthermore, the Risk Management and Insurance booklet of the Comptroller's Handbook states that “[a]ll fidelity bonds require that a loss be reported to the bonding company within a specified time after a reportable item comes to the attention of management. Management should diligently report all potential claims . . . because failure to file a timely report may jeopardize coverage for that loss.”

In addition, the proposal would modify the treatment of fidelity bond coverage for certain agents of Federal savings associations. Currently, § 163.191 requires fidelity bond coverage for any agent who has control over or access to cash, securities, or other property of a Federal savings association. There is no comparable requirement for agents of national banks. Instead of a mandatory requirement for agent bonding, the OCC proposes to amend § 7.2013 to provide that the boards of directors of both banks and

savings associations should consider whether agents who have access to assets of a bank or savings association should also have fidelity bond coverage. The OCC recognizes that agents providing financial services, such as cash handling or payment processing, to a financial institution potentially expose that institution to significant risks. The OCC believes these risks and associated risk mitigation strategies, including the scope and size of fidelity bond coverage for agents, are best addressed by the board of directors.

Finally, the OCC proposes to amend § 7.2013(b), which currently provides that a national bank's board of directors should determine the appropriate amount of fidelity bond coverage. This language is in contrast to that in § 163.190, which makes clear that this determination is mandatory. For safety and soundness reasons, the OCC believes that both national bank and Federal savings association boards of directors should be required to determine the appropriate bond coverage and proposes to amend § 7.2013(b) to make clear that this determination is a mandatory requirement. The OCC also proposes to modify this section by allowing a board committee as an alternative to the entire board to assess fidelity bond coverage.

#### Fiduciary Activities (12 CFR parts 9 and 150)

Twelve CFR parts 9 and 150 set forth the standards that apply to the fiduciary activities of national banks and Federal savings associations, respectively. Parts 9 and 150 were included in the first EGRPRA Federal Register notice, and the OCC is proposing to revise these rules to reflect some of the public comments received.

Sections 9.13 and 150.230 require a national bank or Federal savings association, respectively, to place all fiduciary account assets in the joint custody or control of no fewer than two of the fiduciary officers or employees designated by the bank's or savings

association's board of directors or to maintain fiduciary investments off premises, if consistent with applicable law and if the bank maintains adequate safeguards and controls. The proposal would amend § 9.13 and add a new § 150.245 to provide relief for arrangements under which a national bank or Federal savings association is deemed a fiduciary solely because it provides investment advice for a fee concerning the purchase and sale of specific securities. If, under such an arrangement the bank or savings association is a fiduciary merely because it provides such advice and does not have investment discretion, the OCC does not believe that it should be required to have custody of the fiduciary assets. Specifically, the proposal would amend § 9.13(a) to provide that a national bank that is deemed a fiduciary based solely on its provision of investment advice for a fee, as that capacity is defined in 12 CFR 9.101(a), is not required to serve as custodian when offering those fiduciary services. Similarly, new § 150.245 would provide that a Federal savings association that is deemed a fiduciary based solely on its provision of investment advice for a fee, as that capacity is defined in 12 CFR 9.101(a), would not be required to maintain custody or control of fiduciary assets as set forth in § 150.220 or 150.240.

Section 9.14(a) provides that before a national bank may act as a private or court-appointed trustee in a state that requires corporations acting in such capacities to deposit securities with state authorities for the protection of private or court trusts, the bank must make a similar deposit with state authorities. If the state authorities refuse to accept the deposit, the bank must instead deposit the securities with the Federal Reserve Bank of the district in which the national bank is located. Section 150.490 contains a nearly identical requirement for Federal savings associations, except that savings associations must

deposit the securities with state authorities or the applicable Federal Home Loan Bank. The proposal would amend § 9.14(a) to permit national banks to deposit these securities either with the Federal Home Loan Bank of which the bank is a member or with the appropriate Federal Reserve Bank. Because Federal savings associations may not be members of a Federal Reserve Bank, the OCC cannot make a reciprocal amendment to § 150.490.

Section 9.18 permits a national bank, where consistent with applicable law, to invest assets that it holds as fiduciary in specified collective investment funds. Section 150.260 permits Federal savings associations also to invest funds in a fiduciary account in collective investment funds, and provides that in establishing and administering such funds, Federal savings associations must comply with the requirements of § 9.18. Therefore, the amendments to § 9.18 proposed in this rulemaking also would apply to Federal savings associations.

Section 9.18(b)(1) requires a national bank to establish and maintain each collective investment fund in accordance with a written plan approved by a resolution of the bank's board of directors or by a committee authorized by the board. This paragraph also requires the bank to make a copy of the plan available for public inspection at its main office during all banking hours and to provide a copy of the plan to any person who requests it.

Among other things, one EGRPRA commenter requested that the OCC remove the requirement that a copy of the investment plan be available for public inspection at the bank's main office. The OCC finds that it is appropriate to provide the public access to this plan but agrees that requiring a bank to make the plan available for public

inspection at its main office is unnecessarily burdensome and not the most efficient method for public inspection in today's electronic environment. Therefore, the proposal would instead require that the bank make a copy of the plan available to the public either at its main office or on its Web site. We are proposing to maintain the option for access to the plan at a main office for those small banks that may not have a Web site. The proposal also would clarify that a bank may satisfy the requirement to provide a copy of the plan to any person who requests it by providing it in either written or electronic form.

Section 9.18(c)(2) of this section provides that a national bank may collectively invest assets that it holds as fiduciary in a mini-fund. A mini-fund is a fund that is maintained by the bank for the collective investment of cash balances received or held by the bank in its capacity as trustee, executor, administrator, guardian, or custodian under the Uniform Gifts to Minors Act that the bank considers too small to be invested separately in an economically efficient manner. This section further provides that the total assets in a mini-fund must not exceed \$1,000,000 and the number of participating accounts must not exceed 100.

An EGRPRA commenter requested that the OCC periodically adjust the asset limit for mini-funds in § 9.18(c)(2) to account for inflation and economic growth. This commenter also noted that the current limit of \$1 million was last updated in 1996<sup>22</sup> and suggested that the OCC raise the threshold to at least \$1.5 million, which is the inflation-adjusted value of \$1 million in 1996 dollars.

The OCC agrees with this commenter that this threshold is outdated and is proposing to amend § 9.18(c)(2) to increase the threshold to \$1,500,000, with an annual

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<sup>22</sup> See 61 FR 68554 (Dec. 30, 1996).

adjustment for inflation. This change will continue to make mini-funds a feasible investment option for national banks.

Municipal securities dealers (12 CFR part 10)<sup>23</sup>

Part 10 requires that a national bank (or a separately identifiable department or division of a national bank) that acts as a municipal securities dealer, and an associated person that acts as a municipal securities principal or representative, file certain forms with the OCC. Specifically, § 10.2 requires national banks to submit to the OCC Form MSD-4 (Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer) before associating with a municipal securities principal or municipal securities representative. Within 30 days of terminating such person's association with the bank, the bank must file with the OCC Form MSD-5 (Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer). Although there is no equivalent regulation applicable to Federal savings associations, these institutions and associated persons currently file these same forms with the OCC pursuant to Municipal Securities Rulemaking Board (MSRB) rules, as incorporated in an OTS Chief Counsel Opinion.<sup>24</sup> In order to coordinate and harmonize

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<sup>23</sup> As indicated above, the OCC's securities-related rules, including part 10, are included in the fourth EGRPRA Federal Register notice, the comment period for which closes on March 22, 2016. To ensure that any OCC rule finalizing this NPRM takes into account all comments we receive on part 10, the OCC will consider comments received on both this NPRM and the fourth EGRPRA notice when finalizing this rulemaking.

<sup>24</sup> OTS Chief Counsel Opinion (OTS Op. Oct. 29, 2001) (noting that a Federal savings association engaged in municipal securities underwriting and dealing must comply with applicable laws and regulations, financial reporting requirements, and Municipal Securities Rulemaking Board (MSRB) rules). MSRB rules include requirements to file forms with the "appropriate regulatory agency." See, e.g., MSRB Rule G-7. The Exchange Act provides that the OCC is the appropriate regulatory agency with respect to a municipal securities dealer that is a Federal savings association. 15 U.S.C. 78c(a)(34)(A)(i).

the requirements applicable to these practices, the OCC proposes to codify this OTS opinion in OCC regulations by amending part 10 to include Federal savings associations. This proposed change would apply identical regulations to national banks and Federal savings associations without adding to or otherwise changing the requirements applicable to Federal savings associations. Furthermore, by codifying this filing in OCC rules instead of referring to it in an opinion letter, this change would more clearly identify this requirement for Federal savings associations.

In addition, the OCC proposes other minor changes to clarify and update the current rule. First, the proposed rule would update the citation to MSRB Rule G-7(b) in § 10.2(a) to reflect MSRB revisions to this rule. Second, § 10.2(c) states that banks may obtain Forms MSD-4 and MSD-5 “by contacting the OCC at 400 7<sup>th</sup> Street SW., Washington, DC 20219, Attention: Bank Dealer Activities.” We propose amending § 10.2(c) to instead allow national banks to obtain Forms MSD-4 and MSD-5<sup>25</sup> on <http://www.banknet.gov/>.<sup>26</sup> Third, the proposal would replace the street address of the MSRB for where to obtain MSRB rules with the MSRB’s internet address.

Securities Exchange Act rules (12 CFR parts 11, 194).<sup>27</sup>

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<sup>25</sup> We note that Forms MSD-4 and MSD-5 are uniform forms developed by the Federal Reserve Board, FDIC and OCC and that these forms expressly state that they be mailed to the appropriate regulatory agency. Therefore, the OCC cannot amend part 10 to provide for the electronic filing of these forms until the Federal Reserve Board, FDIC, and OCC jointly decide to permit electronic filing.

<sup>26</sup> BankNet is the OCC's secure Web site for communicating with and receiving information from national banks and Federal savings associations. BankNet is only available to OCC-regulated institutions and is not available to the public.

<sup>27</sup> As indicated above, the OCC’s securities-related rules, including parts 11 and 194, are included in the fourth EGRPRA Federal Register notice, the comment period for which closes on March 22, 2016. The OCC will consider comments received on both parts 11 and 194 in response to this NPRM and the fourth EGRPRA notice when finalizing this rulemaking.

Twelve CFR parts 11 and 194 set forth the periodic reporting requirements for national banks and Federal savings associations, respectively, with securities registered under the Securities Exchange Act of 1934 (Exchange Act). In light of the similar statutory provisions that apply to national banks and Federal savings associations as implemented by these parts, the OCC proposes to remove part 194 and amend part 11 to include Federal savings associations. The proposed changes would reduce duplication and create efficiencies by establishing a single set of rules for all entities supervised by the OCC with respect to the Exchange Act disclosure rules, while not changing the requirements applicable to national banks or Federal savings associations.

Part 11 generally requires national banks with securities registered under sections 12(b) or 12(g) of the Exchange Act<sup>28</sup> to comply with certain Exchange Act rules. The OCC notes that on April 5, 2012, the Jumpstart Our Business Startups Act (JOBS Act)<sup>29</sup> amended the Exchange Act and directed the Securities and Exchange Commission (SEC) to engage in various rulemakings. The OCC generally intends for part 11 to remain consistent with the Exchange Act and SEC rules. Therefore, the OCC is proposing one change as a result of the JOBS Act, as described in more detail below. In addition, the OCC is proposing to amend the filing instructions in § 11.3 and to make technical, non-substantive edits and clarifications, as also described below.

Authority and OMB control number (§ 11.1). Section 11.1 sets forth the authority of the OCC to issue rules for national banks with respect to the Exchange Act and sets forth the Office of Management and Budget (OMB) control number assigned to part 11

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<sup>28</sup> 15 U.S.C. 781(b), (g).

<sup>29</sup> Pub. L. 112-106, 126 Stat. 306 (2012).

for purposes of the Paperwork Reduction Act. This proposal would amend this section to include the OCC's authority with respect to Federal savings associations. It also would remove the reference to the OMB control number, as it is not required to be included in regulatory text and the OCC has generally not included such numbers in recently published regulations. This removal is technical and does not affect the OCC's responsibilities under the PRA.

Reporting requirements for registered national banks (§ 11.2). The OCC proposes to add a new paragraph (c) to § 11.2 to state explicitly that references to registration requirements under the Securities Act of 1933 (Securities Act) pertain to the registration requirements under 12 CFR part 16. This proposed change clarifies the applicable requirements for national banks and Federal savings associations.

Emerging growth company eligibility (§ 11.2). The JOBS Act amended the Exchange Act to create a new class of issuer known as an emerging growth company.<sup>30</sup> An emerging growth company is defined generally as an issuer that had total annual gross revenues of less than \$1 billion during its most recently completed fiscal year.<sup>31</sup> The JOBS Act provides scaled disclosure provisions for emerging growth companies, including, among other things: (1) an exemption from proxy statement requirements concerning shareholder approval of executive compensation under section 14A of the Exchange Act;<sup>32</sup> (2) an exemption from proxy statement requirements concerning disclosure of executive compensation versus performance under section 14(i) of the

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<sup>30</sup> JOBS Act, section 101(b), 126 Stat. 307.

<sup>31</sup> Exchange Act, section 3(a)(80) (15 U.S.C. 78c(a)(80)).

<sup>32</sup> Exchange Act, section 14A(e) (15 U.S.C. 78n-1(e)).

Exchange Act;<sup>33</sup> (3) a limitation of applicable time periods for disclosures required under Regulation S-K<sup>34</sup> for selected financial data;<sup>35</sup> (4) treatment as a smaller reporting company for purposes of executive compensation disclosures required under Regulation S-K, Item 402;<sup>36</sup> and (5) an exemption from auditor attestation provisions concerning internal financial reporting controls required by the Sarbanes-Oxley Act of 2002.<sup>37</sup>

The JOBS Act and the Exchange Act contain exclusions from emerging growth company eligibility that are based on public offerings that an issuer makes under the Securities Act. First, the JOBS Act provides that an issuer is not eligible for emerging growth company status if it engaged in a public securities offering pursuant to an effective Securities Act registration statement on or before December 8, 2011.<sup>38</sup> Second, the Exchange Act, as amended by the JOBS Act, provides that an issuer may not remain an emerging growth company beyond the close of the fiscal year following the fifth anniversary of the issuer's first securities offering under a Securities Act registration statement.<sup>39</sup> Because national banks and Federal savings associations file registration statements under OCC regulations rather than the Securities Act, these exclusions do not technically apply to banks and savings associations.

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<sup>33</sup> Exchange Act, section 14(i) (15 U.S.C. 78n(i)).

<sup>34</sup> 17 CFR 210.1-01 et seq.

<sup>35</sup> Exchange Act, section 13(a) (15 U.S.C. 78m(a)).

<sup>36</sup> 12 CFR 229.402.

<sup>37</sup> 15 U.S.C. 7262(b).

<sup>38</sup> JOBS Act, section 101(d), 126 Stat. 308.

<sup>39</sup> Exchange Act, section 3(a)(80) (15 U.S.C. 78c(a)(80)).

The OCC proposes to add new paragraph (d) to § 11.2 to clarify national bank and Federal savings association eligibility for emerging growth company treatment for those provisions of the Exchange Act that the OCC administers.<sup>40</sup> The intent of this proposed change is to ensure equivalent treatment of banks and savings associations with non-bank issuers. This proposed provision also would provide that a bank or savings association eligible for emerging growth company status may choose to forgo such exemption and instead comply with the requirements that apply to a bank or savings association that is not an emerging growth company. Furthermore, this proposed provision would provide that: (1) a bank or savings association is not an emerging growth company if it sold common equity securities on or before December 8, 2011, pursuant to a registration statement or offering circular filed under 12 CFR part 16, part 197, or under the former OTS rule at 12 CFR 563g; and (2) emerging growth company status for banks and savings associations terminates no later than the end of the fiscal year following the fifth anniversary of the first sale of its common equity securities pursuant to a registration statement or offering circular under 12 CFR parts 16, 197 or 563g.<sup>41</sup> The OCC believes that this proposed change is consistent with its obligation under section 12(i) of the Exchange Act to issue substantially similar regulations as the SEC for those provisions of the Exchange Act for which it is vested authority with respect to banks and savings associations.

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<sup>40</sup> Exchange Act, section 12(i) (15 U.S.C. 78l(i)).

<sup>41</sup> The JOBS Act and the Exchange Act, as amended by the JOBS Act, contain equivalent restrictions for non-banks. However, these restrictions are based on when an issuer files a registration statement under the Securities Act.

Filing requirements and inspection of documents (§ 11.3). Several EGRPRA comments requested the OCC to permit national banks and Federal savings associations to submit OCC forms and reports electronically. The OCC agrees that electronic filings are more efficient and less costly for national banks and Federal savings associations, are more efficient for the OCC to review, and provide a quicker response time for banks and savings associations. The OCC currently permits the electronic submission of a number of filings, for example, Call Reports, and public welfare investment notifications and proposals. However, a number of OCC securities-related rules do not permit electronic submissions.

Specifically, § 11.3(a) requires national banks to submit by mail, fax, or otherwise four copies of all papers required to be filed with the OCC (pursuant to the Exchange Act or regulations thereunder) to the Securities and Corporate Practices (SCP) Division of the OCC. Through incorporation of SEC Rule 12b-11, part 194 requires Federal savings associations to file three copies of Exchange Act filings with the SCP Division. We propose to amend § 11.3(a)(1) to require instead that national banks and Federal savings associations submit one copy of their filings through electronic mail to the OCC at <http://www.banknet.gov/>.<sup>42</sup>

The proposed amendments to § 11.3 also provide that documents may be signed electronically using the signature provision in SEC Rule 12b-11.<sup>43</sup> This rule provides that required signatures for Exchange Act filings may be signed using typed signatures or

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<sup>42</sup> As described elsewhere in this proposal, the OCC also proposes to amend part 16, Securities offering disclosure rules, to provide for electronic submissions.

<sup>43</sup> 17 CFR 240.12b-11.

duplicated or facsimile versions of manual signatures. Where typed, duplicated, or facsimile signatures are used, each signatory to the filing is required to “manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in the filing.”<sup>44</sup> As provided by Rule 12b-11, the national bank or Federal savings association must retain this document for five years and, upon request, provide a copy to the OCC.

The OCC also proposes to amend § 11.3(a)(1) to establish an exception to the general electronic filing requirement to permit the use of paper filings where unanticipated technical difficulties prevent the use of electronic filings. This exception is modeled on the SEC’s General Rules and Regulations for Electronic Filings, Regulation S-T, Rule 201,<sup>45</sup> which provides a temporary hardship exemption to the SEC’s Electronic Data Gathering, Analysis, and Retrieval system (EDGAR) filing requirements in cases of unanticipated technical difficulties. Similar to Rule 201, the OCC notes that use of this exception should be extremely limited and should be relied upon only when unusual and unexpected circumstances create technical impediments to the use of electronic filings. However, this exception would not be available for statements of beneficial ownership that must be made through the FDICconnect platform, which requires electronic filings.<sup>46</sup>

Current § 11.3(a)(3)(i) provides that the date on which papers are actually received by the OCC shall be the date of filing, if the person or bank filing the papers has complied with all applicable requirements. The proposal updates this provision to

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<sup>44</sup> Id.

<sup>45</sup> 17 CFR 232.201.

<sup>46</sup> See 70 FR 46403 (Aug. 10, 2005). FDICconnect is the secure Internet channel for FDIC-insured institutions to conduct business and exchange information with the FDIC.

conform with the electronic filing requirement. Specifically, proposed § 11.3(a)(3)(i) provides that an electronic filing whose submission is commenced on a nonholiday weekday on or before 5:30 p.m. Eastern Standard or Daylight Savings Time, whichever is currently in effect, would be deemed received by the OCC on the same business day. An electronic filing whose submission is commenced after 5:30 p.m. Eastern Standard or Daylight Savings Time, whichever is currently in effect, or on a Saturday, Sunday, or Federal holiday would be deemed received by the OCC on the next business day. The proposal also would add a new paragraph (a)(3)(iii) to § 11.3 to provide that if an electronic filer in good faith attempts to file a document pursuant to this part in a timely manner but the filing is delayed due to technical difficulties beyond the electronic filer's control, the electronic filer may request that the OCC adjust the filing date. The OCC may grant the request if it appears that such adjustment is appropriate and consistent with the public interest and the protection of investors. These rules for dating an electronic filing, and for providing a waiver for technical difficulties with the filing, are also derived from SEC Regulation S-T.<sup>47</sup>

In addition, the OCC proposes the following technical amendments. First, the proposed rule would rename the paragraph heading of § 11.3(a)(3)(ii), Electronic filings, to Beneficial ownership filings. This provision currently establishes filing dates for statements of beneficial ownership that must be made through the FDICconnect platform.<sup>48</sup> In light of the general electronic filing standard for part 11 filings proposed in this rulemaking, we believe that the heading of this section should be revised because

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<sup>47</sup> 17 CFR 232.

<sup>48</sup> See 70 FR 46403 (Aug. 10, 2005).

electronic filing requirements are applied to all part 11 filings, not just those made under § 11.3(a)(3)(ii).

Second, the OCC proposes to delete paragraph (a)(4) of § 11.3. This paragraph originally provided a mandatory compliance date of January 1, 2004 for 12 CFR part 11. However, as this date has now passed, this mandatory compliance date is no longer needed in the rule text.

Third, the OCC proposes to amend § 11.4(b), which currently provides that filing fees must be paid by check. To reflect the electronic filing of documents and the additional payment options now available, the proposed amendment would revise this section to provide that filing fees may be paid by means acceptable to the OCC, in addition to by check. We note that the OCC is not currently imposing any filing fees for part 11 filings and is not proposing any fees as part of this rulemaking.

As a consequence of proposing to amend part 11 to include Federal savings associations, the OCC proposes to remove part 194 in its entirety. In so doing, the OCC notes that the removal of § 194.3, which provides liability for certain forward-looking statements made by Federal savings associations, does not change the applicability of the requirements of this section for Federal savings associations. Specifically, the text of § 194.3 is substantially similar to the SEC Rule 3b-6,<sup>49</sup> which currently applies to national banks by reference in § 11.2. Therefore, because the proposed part 11 (and its cross-reference to the SEC Rule 3b-6) would apply to Federal savings associations, the requirements imposed by current § 194.3 would continue to apply to Federal savings associations.

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<sup>49</sup> 17 CFR 240.3b-6.

Furthermore, we note that the removal of §§ 194.801 and 194.802, interpretations for Federal savings associations filing statements pursuant to the Exchange Act, is not intended to be a substantive change in how these filings are conducted. The interpretations included in these sections are now widely accepted and no longer need to be included in a rule. Therefore, the removal of these sections would not change how Federal savings associations prepare their reports.

Recordkeeping and Confirmation Requirements for Securities Transactions (12 CFR parts 12, 151)<sup>50</sup>

Twelve CFR parts 12 and 151 establish recordkeeping and confirmation requirements for national banks and Federal savings associations, respectively, that engage in securities transactions for their customers. The OCC has reviewed these rules, and proposes the following amendments to eliminate regulatory burden and remove outdated or obsolete provisions.

Definitions. The OCC is proposing to revise the definition of “municipal security” at §§ 12.2(i)(3) and 151.40 to remove an outdated citation to the Internal Revenue Code.

Recordkeeping. Section 12.3 and subpart A of part 151 establish recordkeeping requirements for securities transactions conducted by national banks and Federal savings associations, respectively. Section 151.60(b) prescribes more detailed procedures for record maintenance and storage for Federal savings associations than prescribed for national banks in § 12.3(b). Specifically, § 12.3(b) provides that the required records

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<sup>50</sup> As indicated above, the OCC’s securities-related rules, including parts 12 and 151, are included in the fourth EGRPRA Federal Register notice, the comment period for which closes on March 22, 2016. The OCC will consider comments received on parts 12 and 151 in response to both this NPRM and the fourth EGRPRA notice when finalizing this rulemaking.

must clearly and accurately reflect the information required and provide an adequate basis for the audit of the information, and that record maintenance may include the use of automated or electronic records provided the records are easily retrievable, readily available for inspection, and capable of being reproduced in a hard copy. In addition to what is required for national banks, § 151.60(b) imposes requirements related to indexing, paper storage, electronic storage, and the provision of records to examiners. The proposed rule would remove § 151.60(b) and revise § 151.60(a) to include the less detailed maintenance and storage procedures found in the national bank rule. The OCC believes that this approach would provide a Federal savings association with more flexibility in making internal business decisions about record storage and maintenance.

Current § 151.60(c), redesignated in this proposal as § 151.60(b), provides that a Federal savings association may use a third-party service provider to provide record storage or maintenance. The national bank rule does not include a similar third-party provision. The proposed rule would amend § 12.3 to clarify that a national bank may use a third-party service provider for record storage and maintenance provided that the bank maintains effective oversight to ensure that the records are easily retrievable, are readily available for inspection, can be reproduced in a hard copy, and follow applicable OCC guidance.<sup>51</sup> Therefore, the proposed rule provides, in both §§ 12.3(b) and redesignated § 151.60(b) that, if using a third-party service provider, the national bank or Federal savings association must maintain effective oversight of the third-party service provider to ensure records meet the requirements of § 12.3 or §§ 151.50 and 151.60, respectively.

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<sup>51</sup> See OCC Bulletin 2013-29, Third-Party Relationships: Risk Management Guidance (Oct. 30, 2013).

Content and time of notification. Sections 12.4 and 151.70, respectively, require national banks and Federal savings associations that effect securities transactions for their customers to provide notifications of the transactions. The national bank or Federal savings association may choose among several types of notification. Pursuant to §§ 12.4(a) and 151.90, a national bank or Federal savings association, respectively, may provide the customer a written notice that includes the information set forth in those sections. Sections 12.5 and 151.100 permit a national bank or Federal savings association, respectively, to fulfill the notification requirement through alternative means that vary by the type of account. For transactions that use a registered broker-dealer, § 151.80(a) allows the Federal savings association to satisfy the requirement of § 151.70 by having the registered broker-dealer send the confirmation statement directly to the customer or by having the Federal savings association send a copy of the broker-dealer's confirmation to the customer. If the broker-dealer has the necessary account level information to send the confirmation directly to the customer, the Federal savings association need not send out an additional written notification of the transaction. In contrast, under § 12.4(b), a national bank may send a copy of the broker-dealer's confirmation but is not expressly permitted to satisfy the requirement by having the broker-dealer send the confirmation directly to the customer.

The OCC believes that most national banks and Federal savings associations, particularly community institutions, effect securities transactions for customers through registered broker-dealers. To avoid duplicative reporting to customers and to reduce burden on institutions, the OCC is proposing to amend § 12.4(b) to follow the approach of § 151.80. With this amendment, both national banks and Federal savings associations

may direct a broker-dealer to mail confirmations to customers without requiring that a duplicate be sent by the bank or savings association, thereby reducing regulatory burden for national banks. This approach also would reduce confusion that may result when a customer receives duplicate confirmations for the same transaction from two different parties.

In addition, the OCC proposes to amend § 151.80 to reduce regulatory burden on Federal savings associations. Currently, § 151.80(b) requires a Federal savings association that receives or will receive remuneration from any source, including the customer, in connection with the transaction to provide the customer a statement of the source and amount of the remuneration in addition to the registered broker-dealer confirmation. The proposed rule would amend this provision to provide that, when such remuneration is determined by a written agreement between the Federal savings association and the customer, the savings association would not need to provide this remuneration statement for each securities transaction. This change would be consistent with § 12.4(b), which does not require a national bank to provide a statement of the source and amount of remuneration in these circumstances.

National bank disclosure of remuneration for mutual fund transactions. The OCC proposes to delete from its regulation the interpretation in § 12.101, national bank disclosure of remuneration for mutual fund transactions. The OCC does not intend to change any existing practices. Instead, the OCC believes that this issue is obsolete because of recent SEC actions.<sup>52</sup>

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<sup>52</sup> For example, the SEC now requires all mutual funds to disclose their fee structures in registration statements. <http://www.sec.gov/about/forms/formn-1a.pdf>.

National bank use of electronic communications as customer notifications.

Section 12.102 allows national banks to comply with many provisions of part 12 by using electronic communications with customers. Federal savings associations have a similar provision at § 151.110. However, the use of electronic communications has become widespread and is provided for in State and Federal law, such as the Electronic Signatures in Global and National Commerce Act,<sup>53</sup> which allows for electronic communications with customers. Therefore, we propose to remove these provisions because they are duplicative of existing law.

Securities offering disclosures (12 CFR parts 16, 197).<sup>54</sup>

Twelve CFR parts 16 and 197 set forth securities offering disclosure rules for national banks and Federal savings associations, respectively. These rules are based on the Securities Act<sup>55</sup> and certain Securities Act rules, to the extent appropriate for banks.<sup>56</sup> In light of the similar provisions that apply to national banks and Federal savings associations, the OCC proposes to amend part 16 to include Federal savings associations and to remove part 197. In addition, the OCC is proposing to incorporate some provisions of part 197 into part 16, and to make technical changes to SEC citations

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<sup>53</sup> 15 U.S.C. 7001 et seq.

<sup>54</sup> As indicated above, the OCC's securities-related rules, including parts 16 and 197, are included in the fourth EGRPRA Federal Register notice, the comment period for which closes on March 22, 2016. The OCC will consider comments received on parts 16 and 197 in response to both this NPRM and the fourth EGRPRA notice when finalizing this rulemaking.

<sup>55</sup> National bank and Federal savings association securities are generally exempt from the Securities Act. Securities Act, sections 3(a)(2) and (5) (15 U.S.C. 77c(a)(2) and (5)).

<sup>56</sup> 59 FR 54798 (Nov. 2, 1994) (“[Part 16] generally requires national bank securities offering documents to conform to the form for registration that the bank would use if it had to register the securities under the Securities Act. Accordingly, the final rule cross-references a number of provisions of the Securities Act and a number of SEC rules.”)

included in part 16. The proposed amendments would reduce duplication and create efficiencies by establishing a single set of rules for all entities supervised by the OCC with respect to securities offerings. Furthermore, integrating savings associations into part 16 would clarify disclosure requirements for these institutions and provide them with additional exemptions, as described below.

The JOBS Act, addressed above in the discussion of part 11, amended the Securities Act and directed the SEC both to amend existing Securities Act rules and to write new rules to implement certain JOBS Act provisions. Generally, the JOBS Act seeks to ease securities offering disclosure requirements and periodic reporting obligations for certain issuers, including emerging growth companies.<sup>57</sup> It also creates new Securities Act private placement exemptions for crowdfunding<sup>58</sup> and small company capital formation.<sup>59</sup> In addition, the JOBS Act includes provisions that reduce restrictions

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<sup>57</sup> As indicated in the discussion of Part 11, above, an emerging growth company is a new category of issuer created under the JOBS Act. Generally, an emerging growth company is an issuer that had total annual gross revenues of less than \$1 billion during its most recently completed fiscal year. Securities Act section 2(a)(19) (15 U.S.C. 77b(a)(19)). An emerging growth company is eligible to rely on certain scaled disclosure requirements for registration statements filed under the Securities Act. For example, an emerging growth company need not present more than two years of audited financial statements in a registration statement for an initial public offering. Securities Act section 7(a) (15 U.S.C. 77g(a)). C.f. SEC Regulation S-X, Rule 3-02 (17 CFR 210.3-02) (requiring three years of audited financial statements). We note that under 12 CFR 16.15(e), the OCC does not generally require audited financial statements in securities offering documents for national banks in organization. An emerging growth company also is eligible for scaled disclosure requirements in the context of Exchange Act periodic reporting. A detailed discussion of this relief is set forth above in the discussion of part 11.

<sup>58</sup> Securities Act, section 4(a)(6) (15 U.S.C. 77d(a)(6)) (crowdfunding creates a registration exemption for offerings of up to \$1 million, provided that individual investments do not exceed certain thresholds and the issuer satisfies other conditions in the JOBS Act).

<sup>59</sup> Securities Act, section 3(b) (15 U.S.C. 77c(b)) (directing the SEC to create a registration exemption for securities offerings of up to \$50 million).

on certain research and communications concerning emerging growth company securities offerings.<sup>60</sup>

As with part 11, the OCC generally intends for part 16 to remain consistent with the Securities Act, including those provisions amended under the JOBS Act, and SEC rules. Current part 16 incorporates through cross-references various SEC rules that the JOBS Act directs the SEC to amend. Amendments to these SEC rules therefore would be incorporated into part 16 by virtue of these cross-references.<sup>61</sup> However, the SEC has also adopted other rules to implement the JOBS Act.<sup>62</sup> The OCC will review the rules to determine whether corresponding changes to part 16 are necessary. At this time, the OCC is not proposing specific changes to part 16 to incorporate the JOBS Act, with the exception of updated citations where appropriate.

Registration statement: form and content. The OCC is proposing to replace the offering circular required under § 197.2 and the corresponding form and content requirements of § 197.7 with a registration statement and prospectus as currently required by §§ 16.3 and 16.15 for national banks. Requiring the use of the same form by both national banks and Federal savings associations would provide a consistent set of disclosure standards and format for investors. In addition, this change would not impose any undue regulatory burden on Federal savings associations because these forms provide similar information to potential investors.

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<sup>60</sup> Securities Act, sections 2(a)(3) and 5(d) (15 U.S.C. 77b(a)(3) and 77e(d)).

<sup>61</sup> The SEC recently adopted amendments to Regulation A under the Securities Act to implement section 401 of the JOBS Act. 80 FR 21806 (Apr. 20, 2015). The SEC also has adopted amendments to Rule 506 of Regulation D and Rule 144A under the Securities Act to implement section 201(a) of the JOBS Act. 78 FR 44771 (July 24, 2013). Part 16 refers to these rules through cross-references.

<sup>62</sup> See 80 FR 71387 (Nov. 16, 2015).

As discussed in detail above, the JOBS Act provides for certain scaled registration statement disclosure requirements for an issuer that is an emerging growth company.<sup>63</sup> Because the JOBS Act amended the Securities Act to add the emerging growth company definition and because the Securities Act generally does not apply to national bank or Federal savings association securities,<sup>64</sup> the Securities Act emerging growth company definition does not apply to banks and savings associations. Additionally, current part 16 does not cross-reference the Securities Act definition for emerging growth company or otherwise define or incorporate the term.<sup>65</sup>

Communications not deemed an offer. Both §§ 16.4 and 197.2(b) provide that certain communications by national banks or Federal savings associations about their securities are not deemed to be offers. However, § 16.4 more closely follows SEC regulations by additionally exempting summary prospectuses covered by SEC Rule 431,<sup>66</sup> notices of certain proposed unregistered offerings covered by SEC Rule 135c,<sup>67</sup> publications or distributions of research reports by brokers or dealers covered by SEC

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<sup>63</sup> We note that a national bank or Federal savings association that is a smaller reporting company under SEC Regulation S-K may already avail itself of certain scaled disclosure requirements in a registration statement. Generally, a national bank or Federal savings association with a public float of less than \$75 million may qualify as a smaller reporting company. 17 CFR 229.10.

<sup>64</sup> Securities Act, sections 3(a)(2) and (5).

<sup>65</sup> 12 CFR 16.15(a) provides that a registration statement filed under part 16 “must be on the form for registration . . . that the bank would be eligible to use were it required to register the securities under the Securities Act and must meet the requirements of the Commission regulations referred to in the applicable form for registration.” Accordingly, to the extent the SEC updates applicable forms and regulations to implement JOBS Act emerging growth company provisions, a national bank or Federal savings association may utilize emerging growth company provisions. By way of example, part 16 does not define or explicitly cross-reference the SEC’s smaller reporting company definition in Regulation S-K. However, by virtue of 12 CFR 16.15, a national bank may rely on the scaled disclosure provisions for a smaller reporting company, since SEC registration statement forms incorporate the applicable Regulation S-K provisions.

<sup>66</sup> 17 CFR 230.431.

<sup>67</sup> 17 CFR 230.135c.

Rules 138 and 139,<sup>68</sup> and certain communications made after providing a prospectus. Amending part 16 to include Federal savings associations would afford them the additional communication exemptions under the SEC rules pursuant to § 16.4, currently available to national banks.

Exemptions. Section 16.5 provides exemptions to the general registration requirements for national bank securities under § 16.3. These exemptions significantly overlap with the § 197.3 exemptions to the registration requirements for Federal savings associations. However, § 16.5(b) applies SEC Rules 152<sup>69</sup> (private placement exemption) and 152a<sup>70</sup> (exemption for sales of certain fractional interests) to transactions exempt under section 4 of the Securities Act,<sup>71</sup> while § 197.3(b) does not. By amending § 16.5 to include Federal savings associations, the additional exemptions provided by these two SEC rules would apply to transactions by savings associations. This amendment would provide savings associations with additional flexibility when issuing securities, resulting in reduced costs and less regulatory burden for such issuances.

The OCC notes that the JOBS Act amended section 4 of the Securities Act to create a private placement exemption for crowdfunding.<sup>72</sup> The SEC recently has adopted rules to implement the private placement exemption for crowdfunding.<sup>73</sup> National banks

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<sup>68</sup> 17 CFR 230.138 and 230.139.

<sup>69</sup> 17 CFR 230.152.

<sup>70</sup> 17 CFR 230.152a.

<sup>71</sup> 15 U.S.C. 77d.

<sup>72</sup> Securities Act, section 4(a)(6) (15 U.S.C. 77d(a)(6)).

<sup>73</sup> 80 FR 71387 (Nov. 16, 2015).

and Federal savings associations may not rely on the private placement exemption for crowdfunding in Securities Act section 4(a)(6) unless and until the OCC adopts rules implementing this provision for national banks and Federal savings associations or affirmatively adopts SEC rules that implement this provision. At this time, the OCC is not proposing to amend its rules to permit the private placement exemption for crowdfunding.

In addition, § 16.5(f) specifically exempts transactions that satisfy the requirements of SEC Rule 701<sup>74</sup> regarding offers and sales of securities pursuant to certain compensatory benefit plans and contracts relating to compensation. Section 197.3 does not cross-reference SEC Rule 701 but rather provides in § 197.3(g) a narrower exemption for sales only to officers, directors or employees through an employee benefit plan or a dividend or interest reinvestment plan that has been approved by shareholders. In particular, § 197.3(g) does not exempt sales made through compensatory benefit plans for consultants, advisors, and family members, as does SEC Rule 701.

By amending § 16.5 to include Federal savings associations, the proposal would expand the exemption available for savings associations to cover all such sales exempted by SEC Rule 701. Although the OCC has not incorporated the § 197.3(g) requirement regarding shareholder approval of compensation plans, Federal savings associations still must follow all applicable corporate governance requirements under their charter provisions. Additionally, national banks and Federal savings associations that are subject to the Federal proxy rules must comply with SEC rules issued under Exchange Act

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<sup>74</sup> 17 CFR 230.701.

Section 14A<sup>75</sup> concerning shareholder approval of executive compensation and golden parachute payments.

In addition, the OCC notes that under paragraph (e) of § 197.3 certain collateralized securities issued by Federal savings associations are exempt from registration. We understand that Federal savings associations may have relied upon SEC Regulation D<sup>76</sup> in addition to § 197.3(e).<sup>77</sup> Therefore, the OCC has not included § 197.3(e) in the proposal because this exemption is unnecessary in light of the availability of the Regulation D private placement exemption in part 16.

The proposal also would make technical changes to update the citations to SEC rules in § 16.5(b) and (e).

Sales of Nonconvertible Debt. The OCC proposes to apply § 16.6, sales of nonconvertible debt, to Federal savings associations. While Federal savings associations have previously sold nonconvertible debt under similar restrictions through various interpretive letters, a single set of requirements is simpler and more efficient.

Small issues. Section 16.8 provides an exemption for small issues of national bank securities under the SEC's Regulation A.<sup>78</sup> Currently, Federal savings associations do not have a Regulation A exemption for small issuances. In order to provide comparable treatment for Federal savings associations that wish to issue small amounts of securities and remain exempt from filing registration statements and prospectuses, and to

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<sup>75</sup> 15 U.S.C. 78n-1. Section 951 of the Dodd-Frank Act added section 14A to the Exchange Act.

<sup>76</sup> 17 CFR 230.501 et seq.

<sup>77</sup> 12 CFR 197.4(a).

<sup>78</sup> 17 CFR 230.251 et seq.

reduce regulatory burden, the OCC proposes to amend this provision to include savings associations.

Securities offered and sold in holding company dissolution. Section 16.9 provides an exemption for securities offered and sold in a holding company dissolution. Part 197 does not contain a similar provision; however, savings associations have relied on SEC rules for these transactions pursuant to informal OTS staff guidance. The OCC proposes to apply § 16.9 to securities issued by Federal savings associations to provide more certainty as to the applicability of the § 16.9 exemption to these transactions.

Effectiveness. Section 16.16 provides that a registration statement and amendments will become effective in accordance with § 8(a) and (c) of the Securities Act and SEC Regulation C, 17 CFR part 230, which is the 20<sup>th</sup> day after filing or sooner if so determined by the OCC. Section 197.6 contains the same effective date but does not reference Regulation C. The Federal savings association rule also contains other provisions regarding a delay in effectiveness and provides that the OCC may pursue any remedy under section 5(d) of the HOLA if it appears that the offering circular contains any material misstatement or omission. In applying § 16.16 to Federal savings associations, SEC regulation C would apply to Federal savings associations instead of these additional provisions included in § 197.6.

Sales of securities at an office of a savings association. Section 197.17 provides that the sale of securities of a Federal savings association or its affiliates at an office of the savings association may only be made in accordance with the provisions of §

163.76.<sup>79</sup> Section 163.76 generally prohibits the offer or sale of debt or equity securities issued by a Federal savings association or an affiliate at an office of the association, unless the equity securities are issued by the association or the affiliate in connection with the association's conversion from the mutual to stock form of organization and certain conditions are met. The OCC is proposing to amend part 16 by adding a new § 16.10 to maintain this restriction on the sale of a Federal savings association's or affiliate's securities. Furthermore, new § 16.10 cross-references § 163.76.<sup>80</sup>

The OCC specifically requests that commenters opine on whether the OCC should remove the limitations on the offer or sale of debt or equity securities at an office of a Federal savings association in light of amendments to the Exchange Act made by the Gramm-Leach-Bliley Act,<sup>81</sup> rules promulgated by the Financial Industry Regulatory Authority,<sup>82</sup> and the Interagency Statement on Retail Sales of Nondeposit Investment Products, all of which govern securities activities conducted on the premises of OCC-regulated financial institutions<sup>83</sup> In the alternative, should the OCC amend part 16 to prohibit a national bank from offering or selling debt or equity securities issued by the bank or an affiliate at an office of the bank?

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<sup>79</sup> Section 197.17 includes an inaccurate cross-reference to § 197.76. We have provided the correct cross-reference in the discussion above and in the proposed rule. See proposed § 16.10.

<sup>80</sup> The OCC may decide to move the restrictions contained in § 163.76 to part 16 or to another OCC rule in a future rulemaking that integrates all of part 163.

<sup>81</sup> See 15 U.S.C. 78c(a)(4). See also Regulation R, 17 CFR 247.100 et seq.

<sup>82</sup> See FINRA Rule 3160.

<sup>83</sup> See OCC Bulletin 94-13, Non deposit Investment Sales Examination Procedures (Feb. 24, 1994) and OCC Bulletin 95-52, Retail Sales of Nondeposit Investment Products (Sept. 22, 1995).

Filing requirements and inspection of documents. Sections 16.17 and 197.5 require national banks and Federal savings associations, respectively, to submit by mail or otherwise four copies of all registration statements, offering documents, amendments, notices, or other documents to the SCP Division or, if related to a bank in organization or a de novo Federal savings association, to the appropriate district office. Similar to the proposed amendment to § 11.3, the OCC is proposing to amend § 16.17 to require instead that banks and savings associations submit one copy of their filings through electronic mail to the SCP Division or the appropriate district office, as applicable. Pursuant to proposed § 16.17(g), any filing of amendments or revisions to previously filed documents must include two copies, one of which must be marked to indicate clearly and precisely, by underlining or in some other appropriate manner, the changes made. Current § 16.17(e) requires a total of four copies of amendments or revisions.

The amendments to § 16.17 also provide that documents may be signed electronically using the signature provision in SEC Rule 402.<sup>84</sup> This rule provides that required signatures for Securities Act filings may be typed or may be duplicated or facsimile versions of manual signatures. Where typed, duplicated, or facsimile signatures are used, each signatory to the filing is required to “manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in the filing.”<sup>85</sup> As provided by Rule 402, this document must be retained for five years and, upon request, a copy must be provided to the OCC.

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<sup>84</sup> 17 CFR 230.402.

<sup>85</sup> Id.

Current §§ 16.17(d) and 197.1 provide the date on which papers are actually received by the OCC shall be the date of filing, if the person or bank filing the papers has complied with all applicable requirements. As with the proposed amendment to § 11.3(a)(3)(i), the OCC proposes to update § 16.17(d) to conform with the electronic filing requirement. Specifically, the proposed amendment provides that an electronic filing that is commenced on a nonholiday weekday on or before 5:30 p.m. Eastern Standard or Daylight Savings Time, whichever is currently in effect, would be deemed received by the OCC on the same business day. An electronic filing whose submission is commenced after 5:30 p.m. Eastern Standard or Daylight Savings Time, whichever is currently in effect, or on a Saturday, Sunday, or Federal holiday would be deemed received by the OCC on the next business day. We note, however, that paragraph (e) provides that with respect to any registration statement or any post-effective amendment filed pursuant to SEC Rule 462(b) (17 CFR 230.462(b)), the cut-off time would be 10 p.m. to be consistent with corresponding SEC rules.

As with proposed section § 11.3(a)(3)(iii), proposed § 16.17(d) provides that if an electronic filer in good faith attempts to file a document pursuant to this part in a timely manner but the filing is delayed due to technical difficulties beyond the electronic filer's control, the electronic filer may request that the OCC adjust the filing date. The OCC may grant the request if it appears that such adjustment is appropriate and consistent with the public interest and the protection of investors. As indicated above, these rules for dating an electronic filing, and for providing a waiver for technical difficulties with the filing, are derived from SEC Regulation S-T.<sup>86</sup>

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<sup>86</sup> 17 CFR 232.

The OCC also is proposing to add a new § 16.17(f) to establish an exception to the general electronic filing requirements that permits the use of paper filings where unanticipated technical difficulties prevent the use of electronic filings. This exception is modeled on SEC Regulation S-T, Rule 201,<sup>87</sup> which provides a temporary hardship exemption to the SEC's EDGAR filing requirements in cases of unanticipated technical difficulties. Similar to Rule 201, the OCC notes that the use of this exception should be extremely limited and should be relied upon only when unusual and unexpected circumstances create technical impediments to the use of electronic filings.

Finally, the OCC is proposing technical changes to § 16.17(h), currently § 16.17(f), that would update a cross-reference to 12 CFR part 4.

Use of prospectus. Section 16.18 provides that no person may use a prospectus or amendment declared effective by the OCC more than nine months after the effective date unless the information contained in the prospectus or amendment is as of a date not more than 16 months prior to the date of use. Furthermore, this section provides that no person may use a prospectus if an event arises or fact changes after the effective date that causes the prospectus to contain an untrue statement of material fact or to omit a material fact that causes the prospectus to be misleading until an amendment reflecting the event or change has been filed with and declared effective by the OCC. Section 197.8 contains similar provisions for Federal savings associations. Therefore, applying § 16.18 to Federal savings associations would not result in any changes for Federal savings associations.

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<sup>87</sup> 17 CFR 232.201.

Withdrawal or abandonment. In general, § 16.19 provides that a registration statement, amendment, or exhibit may be withdrawn prior to its effective date. Furthermore, this section provides that the OCC may deem abandoned a registration statement or amendment that has been on file with the OCC for nine months and has not become effective. Section 197.11 contains the same provisions for Federal savings associations. Therefore, applying § 16.19 to Federal savings associations would not result in any changes for Federal savings associations.

Request for interpretive advice or no-objection letter. The proposal would amend § 16.30 to update the cross-reference to where the address for filing a request for interpretive advice or a no-objection letter may be found.

Escrow requirement. For national banks, § 16.31 provides the OCC with discretion to require the establishment of an escrow account, while § 197.9 automatically requires an escrow account for Federal savings associations. By amending part 16 to include Federal savings associations and deleting § 197.9, this proposal would remove the mandatory escrow requirement for Federal savings associations.

Fraudulent transactions/unsafe or unsound practices. Section 16.32 prohibits fraudulent transactions in the offer or sale of bank securities and deems such transactions to be an unsafe or unsound practice under 12 U.S.C. 1818. Section 197.10 contains a similar prohibition. However, § 16.32 specifically cross-references the investor protections under section 17 of the Securities Act<sup>88</sup> and references SEC Rule 175<sup>89</sup> on forward-looking statements. Although section 17 by its terms applies to Federal savings

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<sup>88</sup> 15 U.S.C. 77q.

<sup>89</sup> 17 CFR 230.175.

associations regardless of the OCC rule, neither it nor SEC Rule 175 is referenced in § 197.10. The OCC proposes to amend § 16.32 to include Federal savings associations. As a result, part 16 would put Federal savings associations on notice that the Securities Act section 17 investor protections apply. Furthermore, Federal savings associations would have the additional clarifying guidance on the liability of forward-looking statements provided by SEC Rule 175.

Filing fees. Section 16.33 provides that filing fees, as provided for in the Notice of Comptroller of the Currency Fees published pursuant to 12 CFR 8.8, must accompany filings made pursuant to part 16. The OCC proposes to amend § 16.33(a) to provide that the OCC may require filing fees. In addition, the proposal would amend § 16.33(b) to provide that such fees may be paid by means acceptable to the OCC, in addition to by check, to reflect the additional payment options now available. The OCC is not currently imposing any filing fees for part 16 filings and is not proposing any fees as part of this rulemaking.

Waiver and interpretive advice requests. The OCC is not proposing to include in part 16 the blanket waiver provisions contained in §§ 197.14 and 197.15. However, the OCC would continue to provide interpretive advice or no-objection letters under the terms provided in § 16.30. We also note that 12 CFR 100.2 provides that the Comptroller may, for good cause and to the extent permitted by statute, waive the applicability of any provision of 12 CFR parts 1 through 197, with respect to Federal savings associations.

Current and periodic reports. The OCC has not included in proposed part 16 the filing requirement contained in § 197.18. Specifically, § 197.18 requires a Federal savings association to file certain periodic reports with the OCC after its offering circular

becomes effective, even if the savings association is not otherwise required to register its securities with the OCC under the Exchange Act. This filing requirement applies to Federal savings associations until the securities to which the savings association's offering circular relates are held of record by fewer than 300 persons in any fiscal year other than the fiscal year in which the offering circular becomes effective. The FDIC and the Federal Reserve Board have not imposed a comparable obligation on State banks, and the OCC removed this obligation on national banks in 2008.<sup>90</sup> Instead, a State or national bank is subject to Exchange Act periodic and current reporting requirements if the bank's total assets exceed \$10,000,000 and it has a class of equity security (other than an exempted security) held of record by 2,000 or more persons.<sup>91</sup>

As a result of this proposed amendment, a Federal savings association would be subject to Exchange Act periodic and current reporting requirements if it had total assets exceeding \$10,000,000 and a class of equity security (other than an exempted security) held of record by 2,000 or more persons.<sup>92</sup> This change would make the current and periodic reporting requirements for national banks and Federal savings associations identical. It also would reduce regulatory burden by eliminating such filing requirements for Federal savings associations with fewer than 1,200 holders of record.<sup>93</sup> Financial information about a savings association would continue to be publicly available to

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<sup>90</sup> 73 FR 22216 (Apr. 24, 2008).

<sup>91</sup> Exchange Act, section 12(g) (15 U.S.C. 78l(g)), as amended by section 601(a) of the JOBS Act.

<sup>92</sup> Id.

<sup>93</sup> Id. National banks and Federal savings associations that are currently registered under section 12(g) of the Exchange Act and have 1,200 or more holders of record for a class of securities must continue to comply with current and periodic reporting requirements.

investors through quarterly financial information, including balance sheets and statements of income, which is part of a savings association's Call Reports and is available at <https://cdr.ffiec.gov/public/>.

Periodic sales reports. Under § 197.12, Federal savings associations must file periodic reports on the sales of securities that are registered under § 197.2 or that are otherwise exempt from registration under § 197.4 (non-public offerings, including Regulation D and sales to 35 or more persons). National banks do not have to file similar reports. Furthermore, institutions generally sell securities for the purpose of increasing their capital. The OCC can review any increases to a Federal savings association's capital through the institution's quarterly Call Report, and therefore the periodic sales report provides limited additional value for supervision. Furthermore, § 5.45, as added by the licensing integration rule, published on May 18, 2015, requires Federal savings associations subject to capital plans or other regulatory actions to file reports for increases in permanent capital, so the Securities Sales Report is redundant in cases that present the most supervisory risk.<sup>94</sup> Therefore, the OCC proposes not to include in part 16 the § 197.12 requirement that Federal savings associations file reports on sales of securities.

The OCC also is proposing a technical change throughout part 16. Specifically, the proposal would replace all references to "Commission" with "SEC."

#### Disclosure of Financial and Other Information by National Banks (part 18)

Twelve CFR part 18 sets forth annual financial disclosure requirements for national banks. Specifically, part 18 requires national banks to prepare annual disclosure

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<sup>94</sup> Section § 5.46 requires national banks to file reports for increases in permanent capital.

statements as of December 31 to be made available to bank security holders by March 31 of the following year. The rule specifies the types of information that must be included in the disclosure statements, which includes, at a minimum, certain information from the bank's Call Report. The Comptroller may require the inclusion of other information and the bank may include an optional narrative. Section 18.5 provides alternative ways a bank may meet the disclosure statement requirement. These alternatives include allowing Exchange Act registered banks to use the bank's annual report and allowing banks with audited financial statements to use those statements provided the statements include certain required information.

Part 18 was included in the third EGRPRA Federal Register notice, and we did not receive any comments on this rule in response to this notice.

The OCC is proposing to remove part 18 to reduce unnecessary burden. The information this part requires a national bank to disclose is contained in other publicly available documents, such as the Call Report and the Uniform Bank Performance Report. Part 18 is therefore duplicative and unnecessary. We note that the Federal Reserve Board and the former OTS rescinded similar regulations for state member banks and savings association, respectively. The OTS repealed 12 CFR 562.3 in December 1995 and the Federal Reserve Board eliminated 12 CFR 208.17 in 1998.<sup>95</sup>

Part 31 (§§ 163.41, 163.43): Extensions of Credit to Insiders and Affiliate Transactions<sup>96</sup>

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<sup>95</sup> 60 FR 66866 (December 27, 1995); 63 FR 37630 (July 13, 1998).

<sup>96</sup> Part 31 and §§ 163.41 and 163.43 are included in the fourth EGRPRA Federal Register notice, the comment period for which closes on March 22, 2016. As indicated previously in this preamble, to ensure that any OCC rule finalizing this NPRM takes into account all comments we receive on part 31 and §§ 163.41 and 163.43, the OCC will consider comments received on both this NPRM and the fourth EGRPRA notice when finalizing this rulemaking.

National banks and Federal savings associations must comply with rules of the Federal Reserve Board regarding extensions of credit to insiders (Regulation O)<sup>97</sup> and transactions with affiliates (Regulation W),<sup>98</sup> which implement section 22 and sections 23A and 23B, respectively, of the Federal Reserve Act.<sup>99</sup> Twelve CFR part 31 and 12 CFR 163.41 and 163.43 address these transactions for national banks and Federal savings associations, respectively. Specifically, § 31.2 requires national banks to comply with Regulation O. Appendix A to part 31 provides interpretive guidance on the application of Regulation W to deposits between affiliated banks. Sections 163.41 and 163.43 contain general statements that refer Federal savings associations to applicable regulations of the Federal Reserve Board, specifically, Regulation O and Regulation W.

The OCC proposes to consolidate its rules that address insider lending and affiliate transactions by amending part 31 to state clearly that both national banks and Federal savings associations must comply with Regulation O and Regulation W and by removing §§ 163.41 and 163.43. Specifically, the proposed rule would add “Federal savings associations” to the text of § 31.2 and add a new § 31.3 to require both national banks and Federal savings associations to comply with the affiliate transaction requirements contained in part 223. In addition, new § 31.3(b) clarifies that the OCC administers and enforces affiliate transaction requirements as they apply to national banks and Federal savings associations.

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<sup>97</sup> 12 CFR part 215.

<sup>98</sup> 12 CFR part 223.

<sup>99</sup> 12 U.S.C. 371c, 371c-1, 375a, and 375b. In general, section 11 of the HOLA, 12 U.S.C. 1468, applies the sections 23A and 23B of the Federal Reserve Act to savings associations in the same manner and to the same extent as if the savings association were a member bank. But see 12 U.S.C. 375a(4).

Moreover, the OCC proposes to adopt new § 31.3(c) to implement the statutory standards for authorizing an exemption from section 23A in accordance with section 608 of the Dodd-Frank Act. Section 608, which became effective on July 21, 2012, amends section 23A and section 11 of the HOLA to authorize the OCC to exempt, by order, a transaction of a national bank or Federal savings association, respectively, from the affiliate transaction requirements of section 23A and section 11 of the HOLA if: (1) the OCC and the Federal Reserve Board jointly find the exemption to be in the public interest and consistent with the purposes of section 23A and section 11, as applicable, and (2) within 60 days of receiving notice of such finding, the FDIC does not object in writing to the finding based on a determination that the exemption presents an unacceptable risk to the Deposit Insurance Fund.<sup>100</sup> In addition, in new § 31.3(d), the OCC proposes to adopt procedures that a national bank and Federal savings association must follow for requesting such an exemption. These procedures are modeled after the Federal Reserve Board's existing procedures in Regulation W.

Appendix A to part 31, which is specific to national banks, would remain unchanged. We propose to amend Appendix B, which contains a comparison between selected provisions of Regulation O and the OCC's lending limits rule, 12 CFR part 32, to include Federal savings associations and to make technical changes.

Finally, we propose to amend the authority provision in § 31.1 to reference 12 U.S.C. 1463 and 1468 and to correct a duplicative reference to 12 U.S.C. 1817(k).

It should be noted that the OCC may impose additional restrictions on any transaction between a Federal savings association or national bank and its affiliates that

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<sup>100</sup> See section 608(a)(4)(A)(iv) of the Dodd-Frank Act (exemptive authority for national banks) and section 608(c) of the Dodd-Frank Act (exemptive authority for Federal savings associations).

the OCC determines to be necessary to protect the safety and soundness of the institution.<sup>101</sup> This authority is unaffected by and not addressed in this regulation.

Electronic Operations and Activities of Federal Savings Associations (12 CFR part 155)

Twelve CFR part 155 addresses the use of technology by Federal savings associations to deliver products and services. Specifically, § 155.200 provides that a Federal savings association may use electronic means or facilities to perform any function, or provide any product or service, as part of an otherwise authorized activity. In addition, § 155.200 permits Federal savings associations to use, or participate with others to use, electronic means or facilities to perform any function, or provide any product or service, as part of an authorized activity; and to market and sell, or participate with others to market and sell, electronic capacities and by-products to third parties in order to optimize the use of resources, if the savings association acquired or developed these capacities and by-products in good faith as part of providing financial services. These authorizations are similar to what is provided for national banks in 12 CFR part 7, subpart E.

Section 155.210 requires management of the savings association to take steps to identify, assess and mitigate potential risks, establish prudent internal controls, and implement security measures designed to prevent unauthorized access, prevent fraud, and comply with applicable security device requirements of part 168.

Section 155.300(b) requires a Federal savings association to file a written notice with the OCC prior to establishing a transactional Web site and § 155.310 provides the procedures for filing this notice. Finally, § 155.300(c) requires a Federal savings

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<sup>101</sup> See, e.g., 12 U.S.C. 93a, 371c(f)(2)(B)(i), 481, 1831p-1, and 1468(a)(4).

association to follow any written procedures the OCC imposes with respect to any supervisory or compliance concerns regarding its use of electronic means or facilities.

This proposal would remove §§ 155.300 and 155.310. Part 155 was included in the first EGRPRA Federal Register request for comments. In response to this request, we received comments recommending that the OCC remove the transactional Web site notice requirement in § 155.300(b). The OCC agrees that this notice is no longer necessary and this proposed rule would remove this notice requirement and the procedural details for this notice. Although not carried over in the proposed regulatory text, as stated in current § 155.300(a), Federal savings associations are encouraged to discuss any planned new products or services that will use electronic means or facilities with their assigned OCC supervisory office.

With respect to § 155.300(c), pursuant to the OCC's safety and soundness authority, Federal savings associations are required to comply with any written procedures the OCC imposes for supervisory or compliance reasons. This provision therefore is unnecessary.

Finally, the OCC proposes other non-substantive changes to update the rule and to present the regulatory provisions in a format more consistent with the OCC's other rules. Regulatory Reporting Requirements for Federal Savings Associations (12 CFR part 162 and § 163.180)

Twelve CFR part 162 and § 163.180(a), which set forth regulatory reporting and auditing standards and requirements for Federal savings associations, were included in the first EGRPRA Federal Register request for comments. Although the OCC did not receive any comments on these rules, as part of the EGRPRA review process the OCC is

proposing to revise 12 CFR part 162 and remove § 163.180(a) in order to eliminate duplicative requirements.

Various Federal statutes impose reporting and audit requirements on Federal savings associations and national banks. Specifically, 12 U.S.C. 161(a) provides that national banks must submit reports of condition to the Comptroller in accordance with the requirements of the Federal Deposit Insurance Act (FDI Act). Twelve U.S.C. 1464(v)(1) is the comparable statute for Federal savings associations. In addition, 12 U.S.C. 1831m and FDIC implementing regulations at 12 CFR part 363 require insured depository institutions above a specified asset threshold to have annual independent audits and to submit annual reports and audited financial statements to the FDIC and the appropriate Federal banking agency.<sup>102</sup> These financial statements must be prepared in accordance with GAAP and such other disclosure requirements as the FDIC and the appropriate Federal banking agency may prescribe.<sup>103</sup> The Interagency Policy Statement on External Audit Programs of Banks and Savings Associations (1999 Interagency Policy Statement)<sup>104</sup> provides unified interagency guidance<sup>104</sup> regarding independent external auditing programs of community banks and savings associations that are exempt from 12 CFR part 363 (i.e., institutions with less than \$500 million in total assets) or that are not

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<sup>102</sup> Among other requirements, 12 CFR part 363 requires insured depository institutions with total assets above certain thresholds to assess the effectiveness of internal controls over financial reporting, to establish independent audit committees, and to comply with related reporting requirements.

<sup>103</sup> Other statutes further clarify the use of GAAP by insured depository institutions. See, e.g., 12 U.S.C. 1831n(a)(2)(A) (the accounting principles applicable to reports or statements required to be filed with Federal banking agencies by insured depository institutions shall be uniform and consistent with GAAP) and 12 U.S.C. 1831n(a)(2)(B) (in certain circumstances, the appropriate Federal banking agency or the FDIC may, with respect to such reports or statements, prescribe an accounting principle applicable to such institutions that is no less stringent than GAAP).

<sup>104</sup> See OCC Bulletin 99-37, Interagency Policy Statement on External Auditing Programs (Oct. 7, 1999) and 64 FR 52319 (Sept. 28, 1999).

otherwise subject to audit requirements by order, agreement, statute, or agency regulations. Furthermore, 12 U.S.C. 1463(b)(1) requires the Comptroller, by regulation, to prescribe uniform accounting and disclosure standards for Federal savings associations' compliance with all applicable regulations.

As indicated above, 12 CFR part 162 and § 163.180(a) set forth the regulatory reporting and auditing standards and requirements for savings associations. Specifically, § 162.1 requires Federal savings associations to use forms prescribed by the OCC and to follow such regulatory reporting requirements as the OCC may require. This section also requires Federal savings associations and their affiliates to maintain accurate and complete records of all business transactions that support the regulatory reports submitted to the OCC and any financial reports prepared in accordance with GAAP. These records must be maintained in the United States and must be readily accessible by the OCC for examination and other supervisory purposes within five business days upon request by the OCC, at a location acceptable to the OCC.

Section 162.2 sets forth the minimum requirements to be included in all reports to the OCC, including Call Reports. In general, these reports must incorporate GAAP, as well as additional safety and soundness requirements more stringent than GAAP that the Comptroller prescribes. Section 163.180(a) provides that Federal savings associations and their service corporations must submit periodic and other reports as required by the appropriate Federal banking agency. Both §§ 162.1 and 162.2 implement the 12 U.S.C. 1463(b)(1) requirement, described above, that the OCC issue regulations prescribing uniform accounting and disclosure standards for Federal savings associations' compliance with all applicable regulations.

Section 162.4 sets forth requirements and standards for audits of Federal savings associations. It generally provides that the OCC may require, at any time, an independent audit of a Federal savings association's financial statements when necessary for safety and soundness reasons. It further requires an independent audit if a Federal savings association receives a CAMELS rating of 3, 4, or 5, specifies qualifications for independent public accountants, and states that audit engagement letters provide the OCC with access to and copies of any work papers, policies, and procedures relating to the services performed.

There are no comparable OCC regulations for national banks. However, the OCC applies and enforces the above-referenced statutory requirements, as well as the applicable FDIC reporting and auditing requirements, with respect to both national banks and Federal savings associations.

The OCC proposes to remove the requirements contained in §§ 162.1 and 162.2. The OCC has adequate authority pursuant to its general examination authority to obtain records and reports from Federal savings associations, as well as national banks.<sup>105</sup> Furthermore, the frequently changing nature of accounting standards and disclosures makes it impractical to codify detailed standards in a regulation.

The OCC believes that the audit requirements of § 162.4 and reporting requirements of § 163.180(a) also are unnecessarily repetitive of other requirements and proposes to remove them. The OCC has adequate statutory authority to require reports and 12 CFR 363 already specifies requirements for independent audits and auditors for both Federal savings associations and national banks. In addition, as with national banks,

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<sup>105</sup> See 12 U.S.C. 1464(d)(1)(B) (Federal savings associations) and 12 U.S.C. 481 (national banks). See also 12 U.S.C. 1817.

the agency does not believe that it is necessary to articulate this authority for Federal savings associations in a regulation.<sup>106</sup> Rescission of §§ 162.4 and 163.180(a) would not affect the OCC's ability, pursuant to our safety and soundness authority, to require at any time an independent audit of a Federal savings association or to access work papers and related documents prepared in connection with any audit of a Federal savings association.<sup>107</sup>

The OCC reminds Federal savings associations that rescinding § 162.4 also would not eliminate or affect the requirement that a savings association with \$500 million or more in assets obtain an annual audit pursuant to 12 U.S.C. 1831m and 12 CFR part 363, nor would it minimize the importance of administering an external audit program. Furthermore, the OCC encourages all national banks and Federal savings associations, regardless of size, to have independent external reviews of their operations and financial statements and to establish audit committees made up entirely of outside directors. The form of that review can range from financial statement audits by independent public accountants to agreed-upon procedures (*i.e.*, directors' examinations) performed by other independent and qualified persons. In particular, Federal savings associations should be familiar with 12 CFR part 363 and the 1999 Interagency Policy Statement, which apply to all insured depository institutions.

However, we recognize that 12 U.S.C. 1463(b)(1) requires the Comptroller to prescribe by regulation uniform accounting and disclosure standards for Federal savings

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<sup>106</sup> See, e.g., 12 U.S.C. 1817(a)(3) and 12 CFR part 304 with respect to reports and 12 CFR part 363 and the Interagency Policy Statement on External Audit Programs of Banks and Savings Associations (64 FR 52319, Sept. 28, 1999) with respect to audits.

<sup>107</sup> See 12 U.S.C. 1831p-1.

associations. To satisfy this requirement, the proposal provides that a Federal savings association shall incorporate U.S. GAAP and the disclosure standards included therein when complying with all applicable regulations, unless otherwise specified by statute or regulation or by the OCC. We believe that the guidance provided in proposed § 162.1 satisfies the statutory requirement while being flexible enough to accommodate the evolving nature of the standards and disclosures. We note that we are proposing to reference GAAP as “U.S. GAAP” to clarify that the reference is to GAAP as used in the United States, in light of evolving global accounting standards. With respect to national banks, a similar regulation is not required by statute and would be redundant with other provisions that require compliance with GAAP, such as 12 U.S.C. 1831m and 1831n(a)(2), discussed above.

#### Section 163.161: Management and Financial Policies

Section 163.161(a)(1) of title 12 generally requires each Federal savings association and each service corporation to be well-managed, to operate in a safe and sound manner, and to pursue financial policies that are safe and consistent with economical home financing and the purposes of savings associations. Section 163.161(a)(2) requires each Federal savings association and service corporation to maintain sufficient liquidity to ensure its safe and sound operations. Section 163.161(b) addresses the compensation of Federal savings association and service corporation officers, directors, and employees.

Federal savings associations, and national banks, are subject to many other regulations and guidance that require sound management and financial policies. Part 30 of the OCC’s regulations contain guidelines establishing operational and managerial

standards for safety and soundness applicable to national banks and Federal savings associations. Among other things, these Safety and Soundness Guidelines, which implement the statutory safety and soundness provisions at section 39 of the FDI Act,<sup>108</sup> address executive compensation.<sup>109</sup> In addition, the OCC, together with other Federal financial regulators, is conducting a rulemaking to implement section 956 of the Dodd-Frank Act, which imposes enhanced requirements pertaining to incentive compensation for both national banks and Federal savings associations with over \$1 billion in assets.<sup>110</sup> Finally, the OCC, along with the other Federal banking agencies, issued a joint policy statement in 2010 that provides guidance for the sound management of liquidity risk. This policy statement is both more detailed and more current than the provisions of the regulation and is applicable to both national banks and Federal savings associations.<sup>111</sup>

The OCC has concluded that § 163.161 duplicates these existing provisions applicable to Federal savings associations. Therefore, the OCC proposes to delete § 163.161 in its entirety. We note that § 163.161 was included in the third EGRPRA Federal Register notice and that we did not receive any comments on this section. Financial Derivatives Transactions by Federal Savings Associations (§ 163.172)<sup>112</sup>

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<sup>108</sup> 12 U.S.C. 1831p-1.

<sup>109</sup> 12 CFR part 30, appendix A. The OCC, FDIC, and Federal Reserve Board also issued joint agency guidance on incentive compensation in 2010. See 75 FR 36395 (June 25, 2010).

<sup>110</sup> See 76 FR 21170 for the joint proposed rule. A final rule has not yet been issued.

<sup>111</sup> Interagency Policy Statement on Funding and Liquidity Risk Management, 75 FR 13656 (Mar. 13, 2010).

<sup>112</sup> Section 163.172 is included in the fourth EGRPRA Federal Register notice, the comment period for which closes on March 22, 2016. As indicated previously in this preamble, the OCC will consider comments received on § 163.172 in response to both this NPRM and the fourth EGRPRA notice when finalizing this rulemaking.

Twelve CFR 163.172 states that a Federal savings association may engage in a transaction involving a financial derivative provided that the association is authorized to invest in the assets underlying the derivative, the transaction is safe and sound, and the association's board of directors and management satisfy certain prudential requirements. It also states that, in general, if a Federal savings association should engage in a financial derivative transaction, it should do so to reduce its risk exposure.

Section 163.172(a) defines "financial derivative" as a financial contract whose value depends on the value of one or more underlying assets, indices, or reference rates. It states that the most common types of financial derivatives are futures, forward commitments, options, and swaps.

The OCC proposes to replace the term "forward commitment" with "forward contract." A "forward commitment" generally refers to an agreement to loan funds in the future and is not a financial derivative. In contrast, a "forward contract" is a well-known type of financial derivative to which this rule should apply. This change would clarify any confusion caused by the wording of the current rule but we would not expect it to have a material effect on Federal savings associations or the securities marketplace.

The OCC proposes other non-substantive changes to clarify the rule further and to present the regulatory provisions in a format more consistent with the OCC's other rules. It should be noted that the OCC does not have a comparable regulation governing national bank derivative transactions, but it has addressed these activities through interpretive letters.

Accounting Requirements (12 CFR part 193)

Twelve U.S.C. 1463(b)(2)(A) requires savings associations to use GAAP in preparing reports to regulators. The Federal Home Loan Bank Board (FHLBB) originally issued part 563c in 1974<sup>113</sup> and the OTS readopted it as the successor agency to the FHLBB in 1989.<sup>114</sup> The OCC republished this rule as 12 CFR part 193, without substantive changes, when it issued former OTS rules as OCC rules in 2011.<sup>115</sup> Part 193 requires Federal savings associations to make disclosures in financial statements filed in conversion applications or under the Securities Exchange Act. These disclosures are in addition to those required under GAAP.

The OCC has determined that the additional financial disclosures required by part 193 are, in most cases, substantially similar to and largely repetitive of otherwise applicable public disclosure requirements that a Federal savings association or its holding company must satisfy under the Securities Act, the Exchange Act, or OCC regulations, as appropriate. Therefore, the OCC proposes to delete part 193. Federal savings associations still will be required to follow GAAP reporting and disclosure requirements.<sup>116</sup>

### **III. Request for Comments**

The OCC encourages comment on any aspect of this proposal and especially on those issues noted in this preamble.

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<sup>113</sup> 39 FR 24223 (July 1, 1974).

<sup>114</sup> 54 FR 49627 (Nov. 30, 1989).

<sup>115</sup> 76 FR 48949 (Aug. 9, 2011).

<sup>116</sup> We note that in response to our interim final rule and request for comments on the republication of former OTS rules, the OCC received a comment letter requesting that it delete the reference to real estate investment trusts from § 193.102. See Docket ID OCC-2011-0016. This comment is moot in light of our proposed removal of part 193 in its entirety.

#### IV. Regulatory Analysis

##### Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA), an agency must prepare a regulatory flexibility analysis for all proposed and final rules that describes the impact of the rule on small entities.<sup>117</sup> Under section 605(b) of the RFA, this analysis is not required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short explanatory statement in the Federal Register along with its rule.

The OCC currently supervises approximately 1,055 small entities.<sup>118</sup> Because some of the proposal's provisions could impact any national bank and other provisions could impact any Federal savings association, the proposal could impact a substantial number of OCC-supervised small entities.

If the proposal is implemented, we believe that substantially all of national banks' and Federal savings associations' direct costs will be associated with reviewing the amendments and, when necessary, modifying policies and procedures to correct any inconsistencies between banks' and savings associations' internal policies and the modified rules. We estimate that the monetized direct cost per national bank/Federal savings association will range from a low of approximately \$1 thousand to a high of

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<sup>117</sup> See 5 U.S.C. 601 et seq.

<sup>118</sup> We base our estimate of the number of small entities on the Small Business Administration's (SBA) size thresholds for commercial banks and savings institutions, and trust companies, which are \$550 million and \$38.5 million, respectively. Consistent with the General Principles of Affiliation 13 CFR 121.103(a), we count the assets of affiliated financial institutions when determining if we should classify a bank we supervise as a small entity. We use December 31, 2014, to determine size because a "financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." See footnote 8 of the SBA's *Table of Size Standards*.

approximately \$8 thousand. Using the upper bound average direct cost per national bank or Federal savings association, we believe the proposal might have a significant economic impact on approximately three OCC-supervised small entities, which is not a substantial number.<sup>119</sup> Therefore, the OCC has concluded that the final rule does not have a significant economic impact on a substantial number of small entities supervised by the OCC.

#### Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year. Under Title II of the UMRA, indirect costs, foregone revenues and opportunity costs are not included when determining if a mandate meets or exceeds UMRA's cost threshold. The UMRA does not apply to regulations that incorporate requirements specifically set forth in law. If a budgetary impact statement is required, section 205 of the UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. Our estimated UMRA cost is less than \$1 million.

#### Paperwork Reduction Act

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<sup>119</sup> The OCC classifies the economic impact of total costs on a national bank or Federal savings association as significant if the total estimated costs in a single year are greater than 5 percent of total salaries and benefits or greater than 2.5 percent of total non-interest expense. We believe three is not a substantial number because it represents less than one percent of OCC-supervised small entities.

Under the Paperwork Reduction Act of 1995,<sup>120</sup> the OCC may not conduct or sponsor, and a person is not required to respond to, an information collection unless the information collection displays a valid OMB control number. The OCC has submitted the information collection requirements imposed by this proposed rule to OMB for review, with the exception of requirements being removed or undergoing a nonmaterial change. Those collections will be submitted to OMB at the final rule stage.

Section 5.20(b) would be amended to codify the requirements now imposed in a scope up/scope down application under § 5.53(v). Section 5.33(g)(4)(i) would be amended to eliminate the need for a prior waiver request for an FDIC-insured mutual depository institution as a resulting institution in a combination involving a Federal mutual savings association. A nonmaterial change will be filed with OMB for these revisions.

Section 9.18(b)(1) would be revised to replace the requirement that a national bank make a copy of any collective investment fund plan available for public inspection at its main office with the requirement that the plan could instead be available to the public on its Web site. A nonmaterial change will be filed with OMB for this revision.

Part 194 would be removed and Federal savings associations would follow part 11. Section 11.3 would be revised to require that fewer copies be filed and to allow electronic signatures. A nonmaterial change will be filed with OMB for these revisions.

Section 12.4(b) would be amended to allow institutions to direct a broker-dealer to mail confirmations to customers without requiring a duplicate or other form of notification specified in § 12.4 or 12.5 to be sent by the institution. Sections 12.101 and

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<sup>120</sup> 44 U.S.C. 3501 et seq.

12.102 would remove the disclosure of remuneration for mutual fund transactions and electronic communications. Sections 151.60(a) and 151.60(b) would be amended to include the less detailed maintenance and storage procedures for customer securities transaction records found in part 12. Section 151.60(b) also would be amended to allow use of a third-party service provider for records storage and maintenance. Section 151.80 would be amended to provide that a Federal savings association that has previously determined compensation in a written agreement with the customer would not need to provide a remuneration statement for each securities transaction. The Recordkeeping Requirements for Securities Transactions information collection covering parts 12 and 151 was submitted to OMB for review:

Title: Recordkeeping Requirements for Securities Transactions.

OMB Control No.: 1557-0142.

Frequency of Response: On occasion.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents:

Current: 399.

Revised: 399.

Estimated Total Annual Burden:

Current: 2,315 hours.

Revised: 1,916 hours.

Part 197 would be removed and Federal savings associations would follow part 16. In addition, § 16.5 would be amended to provide additional exemptions for private placements and sales of certain fractional interests. The filing requirement in § 197.18

for periodic reports on sales of securities would be removed and Federal savings associations with total assets exceeding \$10,000,000 and a class of equity security (other than exempted security) held of record by 2,000 or more persons would be subject to Exchange Act periodic and current reporting requirements. Section 16.17 would reduce from four to one the number of copies that must be submitted of all registration statements, offering documents, amendments, notices, or other documents and from four to two the number of copies of amendments. In addition, documents may be signed electronically using the signature provision in SEC Rule 402. The Securities Offering Disclosure information collection covering parts 16 and 197 has been submitted to OMB for review:

Title: Securities Offering Disclosure Rules.

OMB Control No.: 1557-0120.

Frequency of Response: On occasion.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents:

Current: 61.

Revised: 37.

Estimated Total Burden:

Current: 1,310 hours.

Revised: 814 hours.

Part 18 would be removed and the related information collection, OMB Control No. 1557-0182, would be discontinued.

Section 31.3(d) would be added to provide procedures to be followed when seeking exemption from 23A of the Federal Reserve Act. A request for a new control number for this collection has been submitted to OMB:

Title: Extensions of Credit to Insiders and Transactions with Affiliates.

OMB Control No.: 1557-NEW.

Frequency of Response: On occasion.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 1 respondent.

Estimated Total Annual Burden: 10 hours.

The notice requirement in § 155.310, requiring a Federal savings association to file a written notice with the OCC at least 30 days prior to establishing a transactional Web site, would be removed under the proposed rule. Therefore, OMB Control No. 1557-0301, covering § 155.310, will be discontinued at the final rule stage.

The proposed rule would remove duplicative reporting requirements found in §§ 162.1 and 162.4. The General Reporting and Recordkeeping information collection covering part 162 has been submitted to OMB for review:

Title: General Reporting and Recordkeeping.

OMB Control No.: 1557-0266.

Frequency of Response: On occasion.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents:

Current: 500.

Revised: 500.

Estimated Total Annual Burden:

Current: 68,345 hours.

Revised: 67,845 hours.

Comments are invited on:

(a) Whether the collections of information are necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimates of the burden of the collections of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

**V. Redesignation Tables**

<b>Subject</b>	<b>Current Rule</b>	<b>Proposed Rule</b>
Electronic Notice for Securities Transactions	12 CFR 151.110	Removed
Transactions with Affiliates	163.41	§ 31.3
Loans by savings associations to their executive officers, directors and principal shareholders	163.43	§ 31.2
Management and Financial Policies	163.161	Removed
Periodic Reports	12 CFR 163.180(a)	Removed

Notification of Loss and Reports of Increase in Deductible Amount of Bond	12 CFR 163.180(c)	§ 7.2013
Bonds for Directors, Officers, Employees, and Agents; Form of and Amount of Bonds	12 CFR 163.190	§ 7.2013
Bonds for Agents	12 CFR 163.191	§ 7.2013
Accounting Requirements	12 CFR part 193	Removed
Securities of Federal Savings Associations	12 CFR part 194	12 CFR part 11
Requirements under certain sections of the Securities Exchange Act of 1934	§ 194.1	§ 11.2 § 11.3 § 11.4
Liability for certain statements by Federal savings associations	§ 194.3	----
Form and content of financial statements	§ 194.210	§ 11.2
Application of this subpart	§ 194.801	----
Description of business	§ 194.802	----
Securities Offerings	12 CFR part 197	12 CFR part 16
Definitions	§ 197.1	§ 16.2
Offering circular requirement	§ 197.2(a)	§ 16.3(a)
-In General		
-Communications not deemed an offer	§ 197.2(b)	§ 16.4
-Preliminary offering circular	§ 197.2(c)	§ 16.3(b)
Exemptions	§ 197.3	§ 16.5
Non-public offering	§ 197.4	§ 16.7
Filing and signature requirements	§ 197.5	§ 16.17

Effective date	§ 197.6	§ 16.16
Form, content, and accounting	§ 197.7	§ 16.15
Use of the offering circular	§ 197.8	§ 16.18
Escrow requirement	§ 197.9	§ 16.31
Unsafe or unsound practices	§ 197.10	§ 16.32
Withdrawal or abandonment	§ 197.11	§ 16.19
Securities sale report	§ 197.12	----
Public disclosure and confidential treatment	§ 197.13	§ 16.17(f)
Waiver	§ 197.14	----
Requests for interpretive advice or waiver	§ 197.15	§ 16.30
Delayed or continuous offering and sale of securities	§ 197.16	----
Sales of securities at an office of a savings association	§ 197.17	§ 16.10
Current and periodic reports	§ 197.18	----
Approval of the security	§ 197.19	----
Filing of copies of offering circulars in certain exempt offerings	§ 197.21	----
Form for Securities Sale Report (Appendix A)	§ 197, Appendix A	----

## List of Subjects

### 12 CFR Part 4

Administrative practice and procedure, Freedom of information, Individuals with disabilities, Minority businesses, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Women.

**12 CFR Part 5**

Administrative practice and procedure, Federal savings associations, National banks, Reporting and recordkeeping requirements, Securities.

**12 CFR Part 7**

Computer technology, Credit, Insurance, Investments, Federal savings associations, National banks, Reporting and recordkeeping requirements, Securities, Surety bonds.

**12 CFR Part 9**

Estates, Investments, National banks, Reporting and recordkeeping requirements, Trusts and trustees.

**12 CFR Part 10**

Federal savings associations, National banks, Reporting and recordkeeping requirements, Securities.

**12 CFR Part 11**

Confidential business information, Federal savings associations, National banks, Reporting and recordkeeping requirements, Securities.

**12 CFR Part 12**

National banks, Reporting and recordkeeping requirements, Securities.

**12 CFR Part 16**

Federal savings associations, National banks, Reporting and recordkeeping requirements, Securities.

**12 CFR Part 18**

National banks, Reporting and recordkeeping requirements.

**12 CFR Part 31**

Credit, Federal savings associations, National banks, Reporting and recordkeeping requirements.

**12 CFR Part 150**

Administrative practice and procedure, Reporting and recordkeeping requirements, Federal savings associations, Trusts and trustees.

**12 CFR Part 151**

Reporting and recordkeeping requirements, Federal savings associations, Securities, Trusts and trustees.

**12 CFR Part 155**

Accounting, Consumer protection, Electronic funds transfers, Reporting and recordkeeping requirements, Federal savings associations.

**12 CFR Part 162**

Accounting, Reporting and recordkeeping requirements, Federal savings associations.

**12 CFR Part 163**

Accounting, Administrative practice and procedure, Advertising, Conflict of interests, Crime, Currency, Investments, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

**12 CFR Part 193**

Accounting, Federal savings associations, Securities.

**12 CFR Part 194**

Authority delegations (Government agencies), Reporting and recordkeeping requirements.

## **12 CFR Part 197**

Reporting and recordkeeping requirements, Federal savings associations, Securities.

For the reasons set forth in the preamble, and under the authority of 12 U.S.C. 93a and 5412(b)(2)(B), chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

### **PART 4—ORGANIZATION AND FUNCTIONS, AVAILABILITY AND RELEASE OF INFORMATION, CONTRACTING OUTREACH PROGRAM, POST-EMPLOYMENT RESTRICTIONS FOR SENIOR EXAMINERS**

1. The authority citation for part 4 is revised to read as follows:

**Authority:** 12 U.S.C. 1, 93a, 1820(d), 3301, 5321, 5412, and 5414. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552; E.O. 12600 (3 CFR 1987 Comp., p. 235). Subpart C also issued under 5 U.S.C. 301, 552; 12 U.S.C. 161, 481, 482, 484(a), 1442, 1462a, 1463, 1464 1817(a)(2) and (3), 1818(u) and (v), 1820(d)(6), 1820(k), 1821(c), 1821(o), 1821(t), 1831m, 1831p-1, 1831o, 1867, 1951 *et seq.*, 2601 *et seq.*, 2801 *et seq.*, 2901 *et seq.*, 3101 *et seq.*, 3401 *et seq.*; 15 U.S.C. 77uu(b), 78q(c)(3); 18 U.S.C. 641, 1905, 1906; 29 U.S.C. 1204; 31 U.S.C. 5318(g)(2), 9701; 42 U.S.C. 3601; 44 U.S.C. 3506, 3510. Subpart D also issued under 12 U.S.C. 1833e. Subpart E is also issued under 12 U.S.C. 1820(k).

#### **§ 4.11 [Amended]**

2. Section 4.11 is amended by removing paragraph (b)(4).

**§ 4.12 [Amended]**

3. Section 4.12 is amended by:
  - a. In paragraph (a), removing the phrase “OCC records” and replacing it with the phrase “OCC and Office of Thrift Supervision (OTS) records”;
  - b. In paragraph (b)(8), adding “and” at the end;
  - c. In paragraph (b)(9), removing “; and” at the end and adding in its place a period; and
  - d. Removing paragraph (b)(10).

**§ 4.14 [Amended]**

4. Section 4.14(c) is amended by:
  - a. Removing the phrase “Disclosure Officer”, and adding in its place the phrase “Freedom of Information Act Officer”;
  - b. Removing “Large Bank Supervision” and replacing it with the phrase “the Large Bank Supervision Department”; and
  - c. Removing the phrase “Licensing Department”, and adding in its place the phrase “Licensing Division”.

**§ 4.15 [Amended]**

5. Section 4.15(b) is amended by removing the phrase “Disclosure Officer”, and adding in its place the phrase “Freedom of Information Act Officer”.

**§ 4.17 [Amended]**

6. Section 4.17(c) is amended by removing the phrase “Communications Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219”, and adding in its place the phrase “Financial Management, Accounts

Receivable, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219”.

**§ 4.18 [Amended]**

7. Section 4.18 is amended by:

a. In paragraph (a), removing the word “Department” and replacing it with the word “Division”, wherever it appears; and

b. In paragraph (b), removing the phrase “Disclosure Officer”, and adding in its place the phrase “Freedom of Information Act Officer”.

**PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE  
ACTIVITIES**

8. The authority citation for part 5 continues to read as follows:

**Authority:** 12 U.S.C. 1 et seq., 24a, 93a, 215a-2, 215a-3, 481, 1462a, 1463, 1464, 2901 et seq., 3907, and 5412(b)(2)(B).

**§ 5.8 [Amended]**

9. Section 5.8 is amended in paragraph (b) by:

a. Adding the phrase “(if known at the time of publication of the notice)” after the phrase “the closing date of the public comment period”; and

b. Adding the phrase “that the public may find information about the filing, (including the closing date of the comment period) in the OCC’s Weekly Bulletin available at *www.occ.gov*,” before the phrase “and any other information that the OCC requires”.

10. Section 5.20 is amended by:

a. Adding a sentence at the end of paragraph (b);

- b. Adding a sentence at the end of paragraph (c);
- c. Reesignating the text in paragraph (1) as paragraph (1)(1) and adding a heading;

and

- d. Adding paragraph (1)(2).

The revisions and additions read as follows:

**§ 5.20 Organizing a national bank or Federal savings association**

\* \* \* \* \*

(b) \* \* \* An existing national bank or Federal savings association desiring to change the purpose of its charter shall submit an application and obtain prior OCC approval.

(c) \* \* \* This section also describes the requirements for an existing national bank or Federal savings association to change the purpose of its charter and refers such institutions to § 5.53 for the procedures to follow.

\* \* \* \* \*

(1) Special purpose institutions—(1) In general. \* \* \*

(2) Changes in charter purpose. An existing national bank or Federal savings association whose activities are limited to a special purpose that desires to change to another special purpose, to add another special purpose, or to no longer be limited to a special purpose charter shall submit an application and obtain prior OCC approval under § 5.53. An existing national bank or Federal savings association whose activities are not limited that desires to limit its activities and become a special purpose institution shall submit an application and obtain prior OCC approval under § 5.53.

**§ 5.21 [Amended]**

11. Section 5.21 is amended by:

a. In paragraph (j)(3)(i)(B), removing the phrase “paragraph (j)(2)” and replacing it with the phrase “paragraph (j)(3)”;

b. In paragraphs (j)(3)(ii) and (iii), removing the phrase “paragraph (j)(2)(i)(A)” wherever it appears and replacing it with the phrase “paragraph (j)(3)(i)(A)”;

c. In paragraph (j)(4), removing the phrase “paragraph (j)(2)(i)” and replacing it with the phrase “paragraph (j)(3)(i)”;

d. In paragraph (j)(4), removing the phrase “paragraph (j)(2)(ii)” and replacing it with the phrase “paragraph (j)(3)(ii)”.

**§ 5.33 [Amended]**

12. Section 5.33 is amended by:

a. In paragraph (i), removing the phrase “the 45<sup>th</sup> day after the application is received by the OCC, or the 15<sup>th</sup> day after the close of the comment period, whichever is later,” and adding in its place the phrase “the 15<sup>th</sup> day after the close of the comment period,”;

b. In paragraph (n)(2)(iii), removing the phrase “mutually held savings association,” and adding in its place the phrase “mutually held depository institution that is insured by the FDIC,”;

c. In paragraph (n)(2)(iii)(B), adding the phrase “or a similar transaction under state law” at the end of the sentence; and

d. In paragraph (o)(3)(i), removing the phrase “paragraph (n)(3)” and adding in its place the phrase “paragraph (o)(3)”.

**§ 5.45 [Amended]**

13. Section 5.45 is amended in paragraph (g)(4)(i) introductory text by removing the word “After” and adding in its place the phrase “If prior approval is required pursuant to § 5.45(g), after”.

14. Section 5.46 is amended by adding paragraph (i)(6) to read as follows:

**§ 5.46 Changes in permanent capital**

\* \* \* \* \*

(i) \* \* \*

(6) Exception for accounting adjustments. (i) Changes to the permanent capital accounts that result solely from application of U.S. generally accepted accounting principles are not subject to the prior approval or notice requirements in paragraphs (i)(1), (i)(3), or (i)(4) of this section, as applicable.

(ii) Within 30 days after the end of the quarter in which the adjustment occurred, a bank must notify the OCC if the accounting adjustment resulted in an increase or decrease to permanent capital in an amount greater than 5% of the bank’s total permanent capital prior to the adjustments; or, if the bank is subject to a letter, order, directive, written agreement, or otherwise related to changes in permanent capital. The notification must include the amount and description of the adjustment, including the applicable provision of U.S. GAAP.

\* \* \* \* \*

**§ 5.50 [Amended]**

15. Section 5.50 is amended in paragraph (f)(2)(ii)(E) by removing “§ 192.2(a)(39)” and adding in its place “§ 192.25”.

16. Section 5.53 is amended by:

- a. Removing the word “or” at the end of paragraph (c)(1)(iii);
- b. Removing the period at the end of paragraph (c)(1)(iv) and adding in its place “; or”; and
- c. Adding a paragraph (c)(1)(v); and
- d. Revising paragraph (d)(3)(ii).

The addition and revision read as follows:

**§ 5.53 Substantial asset change by a national bank or Federal savings association.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(v) Any change in the purpose of the charter of the national bank or Federal savings association as described in § 5.20(1)(2).

(d) \* \* \*

(3) \* \* \*

(ii) Additional factors. The OCC's review of any substantial asset change that involves the purchase or other acquisition or other expansions of the bank’s or savings association’s operations or that involves a change in the purpose of the bank’s or association’s charter, as described in § 5.20(1)(2), will include, in addition to the foregoing factors, the factors governing the organization of a bank or savings association under § 5.20.

\* \* \* \* \*

17. Section 5.66 is amended by adding a sentence between the first and second sentences to read as follows:

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

\* \* \* A national bank shall submit a request for prior approval of a noncash dividend to the appropriate OCC licensing office. \* \* \*

**PART 7—ACTIVITIES AND OPERATIONS**

18. The authority citation for part 7 is revised to read as follows:

**Authority:** 12 U.S.C. 1 et seq., 25b, 71, 71a, 92, 92a, 93, 93a, 95(b)(1), 481, 484, 1462a, 1463, 1464, 1465, 1818 and 5412(b)(2)(B).

19. Section 7.2008 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 7.2008 Oath of directors.**

\* \* \* \* \*

(b) Execution of the oath. Each director shall execute either a joint or individual oath at the first meeting of the board of directors that the director attends after the director is appointed or elected. A director shall take another oath upon re-election, notwithstanding uninterrupted service. Appropriate sample oaths may be found in the Charter Booklet of the Comptroller’s Licensing Manual available at [www.occ.gov](http://www.occ.gov).

(c) Filing and recordkeeping. A national bank must file the original executed oaths of directors with the appropriate OCC licensing office, as defined in 12 CFR 5.3(c), and retain a copy in the bank's records.

20. Section 7.2013 is amended by:

a. Revising paragraph (a) and paragraph (b) introductory text; and

b. In paragraph (b)(4), by adding the phrase “or savings association” after the word “bank”.

The revisions read as follows:

**§ 7.2013 Fidelity bonds covering officers and employees.**

(a) Adequate coverage. All officers and employees of a national bank or Federal savings association must have adequate fidelity bond coverage. The failure of directors to require bonds with adequate sureties and in sufficient amount may make the directors liable for any losses that the bank or savings association sustains because of the absence of such bonds. Directors should not serve as sureties on such bonds. Directors should consider whether agents who have access to assets of the bank or savings association should also have fidelity bond coverage.

(b) Factors. The board of directors of the national bank or Federal savings association, or a committee thereof, must determine the amount of such coverage, premised upon a consideration of factors, including:

\* \* \* \* \*

**PART 9—FIDUCIARY ACTIVITIES OF NATIONAL BANKS**

21. The authority citation for part 9 continues to read as follows:

**Authority:** 12 U.S.C. 24 (Seventh), 92a, and 93a; 15 U.S.C. 78q, 78q-1, and 78w.

22. Section 9.13 is amended by adding a sentence at the end of paragraph (a) to read as follows:

**§ 9.13 Custody of fiduciary assets.**

(a) \* \* \* A bank that is deemed a fiduciary based solely on its provision of investment advice for a fee, as that capacity is defined in § 9.101(a), is not required to serve as custodian when offering those fiduciary services.

\* \* \* \* \*

**§ 9.14 [Amended]**

23. Section 9.14 is amended in paragraph (a) by adding the phrase “or Federal Home Loan Bank” after the phrase “with the Federal Reserve Bank”.

24. Section 9.18 is amended:

a. In paragraph (b)(1) by revising the second sentence; and

b. In paragraph (c)(2) by:

i. Removing “\$1,000,000” and adding in its place “\$1,500,000”; and

ii Adding a sentence at the end.

The revision and addition reads as follows:

**§ 9.18 Collective investment funds.**

(b) \* \* \*

(1) \* \* \* The bank shall make a copy of the Plan available either for public inspection at its main office during all banking hours or on its Web site and shall provide a written or electronic copy of the Plan to any person who requests it. \* \* \*

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \* The OCC shall adjust this \$1,500,000 threshold amount on January 1 of every year by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) that was in effect on the preceding June 1, rounded to the nearest \$100 increment, and make this adjusted amount available to the public.

\* \* \* \* \*

## **PART 10—MUNICIPAL SECURITIES DEALERS**

25. The authority citation for part 10 is revised to read as follows:

**Authority:** 12 U.S.C. 93a, 481, 1462a, 1464(c), 1818, and 5412(b)(2)(B); 15 U.S.C. 78o–4(c)(5) and 78q–78w.

26. Amend § 10.1 by:

- a. Adding the phrase “or Federal savings association” after the word “bank”, wherever it appears;
- b. In paragraph (b), removing the phrase “to be” and replacing it with the phrase “will be”;
- c. In paragraph (b), removing footnote 1; and
- d. Adding a sentence at the end of paragraph (b).

The addition reads as follows.

### **§ 10.1 Scope.**

\* \* \* \* \*

(b) \* \* \* MSRB rules may be obtained at *www.msrb.org*.

### **§ 10.2 [Amended]**

27. Amend § 10.2 by:

- a. In paragraph (a):
  - i. Adding “or Federal savings association” after the phrase “national bank”, wherever it appears; and
  - ii. Removing the phrase “Rule G-7(b)(i)-(x)” and replacing it with the phrase “Rule G-7(b)”;
- b. In paragraph (b):

- i. Removing the word “must” and replacing it with the phrase “or Federal savings association shall”; and
- ii. Removing the phrase “the bank as a municipal” and replacing it with the phrase “the national bank or Federal savings association as a municipal”; and
- c. In paragraph (c), removing the phrase “by contacting the OCC at 400 7<sup>th</sup> Street, SW., Washington, DC 20219, Attention: Bank Dealer Activities” and adding in its place “at <http://www.banknet.gov>”.

## **PART 11—SECURITIES EXCHANGE ACT DISCLOSURE RULES**

28. The authority citation for part 11 is revised to read as follows:

**Authority:** 12 U.S.C. 93a, 1462a, 1463, 1464 and 5412(b)(2)(B); 15 U.S.C. 78j-1(m), 78m, 78n, 78p, 78w, 78l, 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265.

29. Section 11.1, including the section heading, is revised to read as follows:

### **§ 11.1 Authority.**

The Office of the Comptroller of the Currency (OCC) is vested with the powers, functions, and duties otherwise vested in the Securities and Exchange Commission (SEC) to administer and enforce the provisions of sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Securities Exchange Act of 1934, as amended (Exchange Act) (15 U.S.C. 78j-1(m), 78l, 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78p), and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley Act), as amended (15 U.S.C. 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265), for national banks and Federal savings associations with one or more classes of securities subject to the registration provisions of sections 12(b) and (g) of the Exchange Act (registered national banks or registered Federal savings associations). Further, the

OCC has general rulemaking authority under 12 U.S.C. 93a, 1462a, 1463, and 1464, to promulgate rules and regulations concerning the activities of national banks and Federal savings associations.

30. Section 11.2, including the section heading, is revised to read as follows:

**§ 11.2 Reporting requirements for registered national banks and Federal savings associations.**

(a) Filing, disclosure and other requirements.—(1) General. Except as otherwise provided in this section, a national bank or Federal savings association whose securities are subject to registration pursuant to section 12(b) or section 12(g) of the Exchange Act (15 U.S.C. 78l(b) and (g)) shall comply with the rules, regulations, and forms adopted by the SEC pursuant to:

(i) Sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act (15 U.S.C. 78j-1(m), 78l, 78m, 78n(a), (c), (d) and (f), and 78p); and

(ii) Sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act (codified at 15 U.S.C. 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265).

(2) [Reserved]

(b) References to the Securities Exchange Commission, SEC, or Commission.

Any references to the “Securities and Exchange Commission,” the “SEC,” or the “Commission” in the rules, regulations and forms described in paragraph (a)(1) of this section with respect to securities issued by registered national banks or registered Federal savings associations shall be deemed to refer to the OCC unless the context otherwise requires.

(c) References to registration requirements. For national banks and Federal savings associations, any references to registration requirements under the Securities Act of 1933 and its accompanying rules in the rules, regulations, and forms described in paragraph (a)(1) of this section mean the registration requirements in 12 CFR part 16.

(d) Emerging growth company eligibility—(1) General. A national bank or Federal savings association that meets the criteria to qualify as an emerging growth company under section 3(a)(80) of the Exchange Act (15 U.S.C. 78c(a)(80)) shall be eligible for treatment as an emerging growth company for purposes of any rule, regulation or form described in paragraph (a)(1) of this section, except as provided in paragraph (d)(3) of this section.

(2) Opt-in right. With respect to an exemption provided to a national bank or Federal savings association that is an emerging growth company under this part, the bank or savings association may choose to forgo such exemption and instead comply with the requirements that apply to a bank or savings association that is not an emerging growth company.

(3) Exclusions. A national bank or Federal savings association that otherwise meets the definition of emerging growth company in section 3(a)(80) of the Exchange Act (15 U.S.C. 78c(a)(80)) shall not be considered an emerging growth company for purposes of this part if:

(i) The first sale of its common equity securities pursuant to an effective registration statement or offering circular occurred on or before December 8, 2011; or

(ii) It has reached the last day of its fiscal year following the fifth anniversary of the date of the first sale of its common equity securities pursuant to an effective registration statement or offering circular..

31. Section 11.3 is amended by:

a. Revising paragraphs (a)(1) and (a)(3)(i) and the heading to paragraph (a)(3)(ii);

b. Adding a paragraph (a)(3)(iii);

c. Removing paragraph (a)(4); and

d. Removing the phrase “, at the address listed in paragraph (a) of this section” in paragraph (b) and adding in its place the phrase “, at the address listed on *www.occ.gov*.”.

The revisions read as follows:

### **§ 11.3 Filing requirements and inspection of documents.**

(a) Filing requirements —(1)(i) In general. Except as otherwise provided in this section, all papers required to be filed with the OCC pursuant to the Exchange Act or regulations thereunder shall be submitted to the Securities and Corporate Practices Division of the OCC electronically at <http://www.banknet.gov/>. Documents may be signed electronically using the signature provision in SEC Rule 12b-11 (17 CFR 240.12b-11).

(ii) Electronic filing exception. If a national bank or Federal savings association experiences unanticipated technical difficulties preventing the timely preparation and submission of an electronic filing, other than the filings described in paragraph (a)(3)(ii) of this section, the bank may, upon notice to the OCC’s Securities and Corporate Practices Division, file the subject filing in paper format no later than one business day after the date on which the filing was to be made. Paper filings should be submitted to

the Securities and Corporate Practices Division, Office of the Comptroller of the Currency at the address provided at *www.occ.gov*.

\* \* \* \* \*

(3) Date of filing—(i) General. The date of filing is the date the OCC receives the filing, provided the person, bank, or savings association submitting the filing has complied with all applicable requirements. An electronic filing that is submitted on a business day by direct transmission commencing on or before 5:30 p.m. Eastern Standard or Daylight Savings Time, whichever is currently in effect, would be deemed received by the OCC on the same business day. An electronic filing that is submitted by direct transmission commencing after 5:30 p.m. Eastern Standard or Daylight Savings Time, whichever is currently in effect, or on a Saturday, Sunday, or Federal holiday, would be deemed received by the OCC on the next business day.

(ii) Beneficial ownership filings. \* \* \*

(iii) Adjustment of filing date. If an electronic filer in good faith attempts to file a document pursuant to this part in a timely manner but the filing is delayed due to technical difficulties beyond the electronic filer's control, the electronic filer may request that the OCC adjust the filing date of such document. The OCC may grant the request if it appears that such adjustment is appropriate and consistent with the public interest and the protection of investors.

\* \* \* \* \*

32. Section 11.4 is amended by revising paragraph (b) to read as follows:

**§ 11.4 Filing fees.**

\* \* \* \* \*

(b) Fees must be paid by check payable to the Comptroller of the Currency or by other means acceptable to the OCC.

**PART 12—RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR SECURITIES TRANSACTIONS**

33. The authority citation for part 12 continues to read as follows:

**Authority:** 12 U.S.C. 24, 92a, and 93a.

**§ 12.1 [Amended]**

34. Section 12.1 is amended:

a. In paragraph (c)(1) by removing the phrase “Securities and Exchange Commission” and adding in its place the phrase “Securities and Exchange Commission (SEC)”; and

b. By removing the phrase “Securities and Exchange Commission” in paragraph (c)(2)(iii) and the phrase “Securities and Exchange Commission (SEC)” in paragraph (c)(2)(v), and adding “SEC” in their place.

35. Sections 12.2 is amended by:

a. In paragraph (g)(3) by removing the phrase “Securities and Exchange Commission” and adding in its place “SEC”; and

b. Revising paragraphs (i)(3) to read as follows.

**§ 12.2 Definitions.**

\* \* \* \* \*

(i) \* \* \*

(3) A security that is an industrial development bond.

\* \* \* \* \*

36. Section 12.3 is amended by adding a third sentence at the end of paragraph (b), to read as follows:

**§ 12.3 Recordkeeping.**

\* \* \* \* \*

(b) \* \* \* A national bank may contract with a third-party service provider to maintain the records, provided that the bank maintains effective oversight of the third-party service provider to ensure the records meet the requirements of this section.

37. Section 12.4 is amended by revising paragraph (b) to read as follows:

**§ 12.4 Content and time of notification.**

\* \* \* \* \*

(b) Copy of the registered broker/dealer's confirmation. A copy of the confirmation of a registered broker/dealer relating to the securities transaction, which the bank may direct the registered broker/dealer to send directly to the customer; and, if the customer or any other source will provide remuneration to the bank in connection with the transaction and a written agreement between the bank and the customer does not determine the remuneration, a statement of the source and amount of any remuneration that the customer or any other source is to provide the bank.

**§ 12.7 [Amended]**

38. Section 12.7(d) is amended by removing the phrase “Securities and Exchange Commission (SEC)” adding in its place “SEC”.

**§ 12.9 [Amended]**

39. Section 12.9(b)(2) is amended by removing the phrase “Securities and Exchange Commission (SEC)” and adding in their place “SEC”.

**Interpretations [Removed]**

**§§ 12.101 through 12.102 [Removed]**

40. The undesignated center heading “Interpretations” and §§ 12.101 and 12.102 are removed.

**PART 16—SECURITIES OFFERING DISCLOSURE RULES**

41. The authority citation for part 16 is revised to read as follows:

**Authority:** 12 U.S.C. 1 et seq., 93a, 1462a, 1463, 1464, and 5412(b)(2)(B).

42. Section 16.1 is amended by:

a. Revising paragraph (a); and

b. In paragraphs (b) and (c), removing the word “bank” wherever it appears and replacing it with the phrase “national bank or Federal savings association”.

The revision reads as follows:

**§ 16.1 Authority, purpose, and scope.**

(a) Authority. This part is issued under the rulemaking authority of the Comptroller of the Currency (OCC) for national banks in 12 U.S.C. 1 et seq., and 93a, and for Federal savings associations in 12 U.S.C. 1462a, 1463, 1464, and 5412(b)(2)(B).

\* \* \* \* \*

43. Section 16.2 is amended by:

a. In paragraph (a), removing the phrase “Commission Rule” and adding in its place “SEC Rule”;

b. Removing paragraphs (b), (c), and (j) and redesignating paragraphs (d) through (f) as paragraphs (b) through (d), respectively; redesignating paragraphs (g) and (h) as

paragraphs (f) and (g), respectively; and redesignating paragraphs (k) through (n) as paragraphs (j) through (m), respectively;

c. In newly designated paragraph (b), remove “2(12)” and “77b(12))” and add “2(a)(12)” and “77b(a)(12))”, respectively, in their places;

d. In newly redesignated paragraph (c), remove “78a through 78jj” and add “78a et seq.” in its place;

e. Adding new paragraphs (e), (h), and (n);

f. In newly redesignated paragraph (g) and paragraph (i), removing the word “bank” and replacing it with the phrase “national bank or Federal savings association”;

g. In newly redesignated (j);

i. Removing “2(2)” and “77b(2))” and adding “2(a)(2)” and “77b(a)(2))”, respectively, in their places; and

ii Removing the word “bank” and replacing it with the phrase “national bank and a Federal savings association”;

h. In newly redesignated (m), removing “2(3)” and “77b(3))” and adding “2(a)(3)” and “77b(a)(3))”, respectively, in their places;

i. In paragraph (o), removing “through 77aa” and adding “et seq.” in its place;

j. In paragraph (p), removing “2(1)” and “77b(1))” and adding “2(a)(1)” and “77b(a)(1))”, respectively, in their places; and

k. In paragraph (q);

i. Removing “2(11)”, “77b(11))”, and “2(11)”, and adding “2(a)(11)”, “77b(a)(11))”, and “2(a)(11)”, respectively, in their places; and

ii. Removing the phrase “Commission Rules” and adding in its place “SEC Rules”.

The additions read as follows:

**§ 16.2 Definitions.**

\* \* \* \* \*

(e) Federal savings association means an existing Federal savings association chartered under section 5 of the Home Owners’ Loan Act (HOLA) (12 U.S.C. 1464 et seq.) or a Federal savings association in organization.

\* \* \* \* \*

(h) National bank means an existing national bank, a national bank in organization, or a Federal branch or agency of a foreign bank.

\* \* \* \* \*

(n) SEC means the Securities and Exchange Commission. When used in the rules, regulations, or forms of the SEC referred to in this part, the term “SEC” shall be deemed to refer to the OCC.

\* \* \* \* \*

**§ 16.3 [Amended]**

44. Section 16.3 is amended by:

a. In paragraphs (a) introductory text and (b) introductory text, by removing the word “bank” and replacing it with the phrase “national bank or Federal savings association”; and

b. In paragraph (c):

i. By removing “Commission Rule” and replacing it with “SEC Rule”;

- ii. By removing the citation “section 4(3)” and replacing it with the citation “section 4(a)(3)”; and
- iii. By removing the word “bank” and replacing it with the phrase “national bank and Federal savings association”..

#### **§ 16.4 [Amended]**

45. Section 16.4 is amended by removing the phrase “Commission Rule” and replacing it with the phrase “SEC Rule” wherever it occurs.

46. Section 16.5 is amended by:

- a. Revising the introductory text and paragraphs (a), (b), and (e);
- b. In paragraph (f), removing the phrase “Commission Rule” and replacing it with the phrase “SEC Rule”; and
- c. In paragraph (g), removing the phrase “Commission Regulation” and replacing it with the phrase “SEC Regulation”.

The revisions read as follows.

#### **§ 16.5 Exemptions.**

The registration statement and prospectus requirements of § 16.3 of this part do not apply to an offer or sale of national bank or Federal savings association securities:

- (a) If the securities are exempt from registration under section 3 of the Securities Act (15 U.S.C. 77c), but only by reason of an exemption other than section 3(a)(2) (exemption for bank securities), section 3(a)(5) (exemption for savings association securities), section 3(a)(11) (exemption for intrastate offerings), and section 3(a)(12) (exemption for bank holding company formation) of the Securities Act.

(b) In a transaction exempt from registration under section 4 of the Securities Act (15 U.S.C. 77d). SEC Rules 152 and 152a (17 CFR 230.152 and 230.152a) (which apply to sections 4(a)(2) and 4(a)(1) of the Securities Act) apply to this part;

\* \* \* \* \*

(e) In a transaction that satisfies the requirements of SEC Rule 144, 144A, or 236 (17 CFR 230.144, 230.144A, or 230.236);

\* \* \* \* \*

47. Section 16.6 is amended by:

a. In paragraph (a) introductory text removing the word “bank” and replacing it with the phrase “national bank or Federal savings association”;

b. Revising paragraphs (a)(1) and (5);

c. In paragraph (a)(3), removing the word “bank” and replacing it with the phrase “national bank or Federal savings association”; and

d. In paragraph (b), removing the phrase “Commission Rule” and replacing it with the phrase “SEC Rule” wherever it occurs.

The revisions read as follows:

**§ 16.6 Sales of nonconvertible debt.**

(a) \* \* \*

(1) The national bank or Federal savings association issuing the debt has securities registered under the Exchange Act or is a subsidiary of a holding company that has securities registered under the Exchange Act;

\* \* \* \* \*

(5) Prior to or simultaneously with the sale of the debt, each purchaser receives an offering document that contains a description of the terms of the debt, the use of proceeds, and method of distribution, and incorporates the national bank's or Federal savings association's latest Consolidated Reports of Condition and Income (Call Report) and the national bank's, Federal savings association's, or the holding company's Forms 10-K, 10-Q, and 8-K (17 CFR part 249) filed under the Exchange Act; and

\* \* \* \* \*

**§ 16.7 [Amended]**

48. Section 16.7 is amended by:

a. Removing the phrase “Commission Regulation” and replacing it with the phrase “SEC Regulation”, wherever it appears;

b. In paragraphs (a) introductory text and (b), by removing the word “bank” and replacing it with the phrase “national bank or Federal savings association”;

c. In paragraph (b), removing the phrase “Commission Rule” and replacing it with the phrase “SEC Rule”; and

d. In paragraph (c), by removing the word “bank” and replacing it with the phrase “national bank or Federal savings association”.

**§ 16.8 [Amended]**

49. Section 16.8 is amended:

a. By removing the phrase “Commission Regulation” and replacing it with the phrase “SEC Regulation”, wherever it appears;

b. In paragraph (a), by removing the word “bank” and replacing it with the phrase “national bank or Federal savings association”; and

c. In paragraph (b), by removing the word “Commission’s” and replacing it with the word “SEC’s”.

50. Section 16.9 is amended by:

a. Revising paragraph (a); and

b. In the introductory text and paragraphs (b) through (d), by removing the word “bank” and replacing it with the phrase “national bank or Federal savings association”, wherever it appears.

The revision reads as follows:

**§ 16.9 Securities offered and sold in holding company dissolution.**

\* \* \* \* \*

(a) The offer and sale of national bank or Federal savings association issued securities occurs solely as part of a dissolution in which the security holders exchange their shares of stock in a holding company that had no significant assets other than securities of the bank or savings association, for bank or savings association stock;

\* \* \* \* \*

51. Section 16.10 is added to read as follows:

**§ 16.10 Sales of securities at an office of a Federal savings association.**

Sales of securities of a Federal savings association or its affiliates at an office of a Federal savings association may be made only in accordance with the provisions of 12 CFR 163.76. For the purpose of this section, “affiliate” has the same meaning as in 12 CFR 161.4.

**§ 16.15 [Amended]**

52. Section 16.15 is amended by:

a. In paragraph (a):

i. Removing the word “Commission’s” and replacing it with the word “SEC’s”;

and;

ii Removing the phrase “Commission regulations” and replacing it with the phrase “SEC regulations”;

b. In paragraph (b), by removing the phrase “Commission Regulation” and replacing it with the phrase “SEC Regulation”;

c. In paragraphs (a) and (d), by removing the word “bank” and replacing it with the phrase “national bank or Federal savings association”; and

d. In paragraph (e), by adding the phrase “or Federal savings association” after the word “bank”, wherever it appears.

**§ 16.16 [Amended]**

53. Section 16.16 is amended in paragraph (a) by removing the phrase “Commission Regulation” and replacing it with the phrase “SEC Regulation”.

54. Section 16.17 is revised to read as follows:

**§ 16.17 Filing requirements and inspection of documents.**

(a) Except as otherwise provided in this section, all registration statements, offering documents, amendments, notices, or other documents must be filed with the OCC’s Securities and Corporate Practices Division electronically at

<http://www.banknet.gov/>. Documents may be signed electronically using the signature provision in SEC Rule 402 (17 CFR 230.402).

(b) All registration statements, offering documents, amendments, notices, or other documents relating to a national bank or Federal savings association in organization must be filed with the appropriate district office of the OCC at <http://www.banknet.gov/>.

(c) Where this part refers to a section of the Securities Act or the Exchange Act or an SEC rule that requires the filing of a notice or other document with the SEC, that notice or other document must be filed with the OCC.

(d) Provided the person filing the document has complied with all requirements regarding the filing, including the submission of any fee required under § 16.33, the date of filing of the document is the date the OCC receives the filing. An electronic filing that is submitted on a business day by direct transmission commencing on or before 5:30 p.m. Eastern Standard or Daylight Savings Time, whichever is currently in effect, would be deemed received by the OCC on the same business day. An electronic filing that is submitted by direct transmission commencing after 5:30 p.m. Eastern Standard or Daylight Savings Time, whichever is currently in effect, or on a Saturday, Sunday, or Federal holiday, would be deemed received by the OCC on the next business day. If an electronic filer in good faith attempts to file a document with the OCC in a timely manner but the filing is delayed due to technical difficulties beyond the electronic filer's control, the electronic filer may request that the OCC adjust the filing date of such document. The OCC may grant the request if it appears that such adjustment is appropriate and consistent with the public interest and the protection of investors.

(e) Notwithstanding paragraph (d) of this section, any registration statement or any post-effective amendment thereto filed pursuant to SEC Rule 462(b) (17 CFR 230.462(b)) shall be deemed received by the OCC on the same business day if its submission commenced on or before 10 p.m. Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect, and on the next business day if its submission commenced after 10 p.m. Eastern Standard or Daylight Savings Time, whichever is currently in effect, or any time on a Saturday, Sunday, or Federal holiday.

(f) Electronic filing exception. If a national bank or Federal savings association experiences unanticipated technical difficulties preventing the timely preparation and submission of an electronic filing, the bank or savings association may, upon notice to the OCC's Securities and Corporate Practices Division or district office, as appropriate, file the subject filing in paper format no later than one business day after the date on which the filing was to be made. Paper filings should be submitted to the OCC's Securities and Corporate Practices Division or appropriate district office, at the address provided at [www.occ.gov](http://www.occ.gov).

(g) Any filing of amendments or revisions must include two copies, one of which must be marked to indicate clearly and precisely, by underlining or in some other appropriate manner, the changes made.

(h) The OCC will make available for public inspection copies of the registration statements, offering documents, amendments, exhibits, notices or reports filed pursuant to this part at the address identified in § 4.14 of this chapter.

55. Section 16.30 is amended by revising paragraph (a) to read as follows:

**§ 16.30 Request for interpretive advice or no-objection letter.**

\* \* \* \* \*

(a) File a copy of the request, including any supporting attachments, with the OCC's Securities and Corporate Practices Division at the address provided at *www.occ.gov*;

\* \* \* \* \*

56. Section 16.32 is amended:

a. By revising the title; and

b. In paragraph (a) introductory text and paragraph (a)(3) by removing the word "bank" and replacing it with the phrase "national bank or Federal savings association"; and

c. In paragraph (d), removing the phrase "Commission Rule" and replacing it with the phrase "SEC Rule".

The revision reads as follows.

**§ 16.32 Fraudulent transactions and unsafe or unsound practices.**

\* \* \* \* \*

57. Section 16.33 is revised to read as follows:

**§ 16.33 Filing fees.**

(a) The OCC may require filing fees to accompany certain filings made under this part before it will accept those filings. The OCC provides an applicable fee schedule in the Notice of Comptroller of the Currency Fees published pursuant to § 8.8 of this chapter.

(b) Filing fees must be paid by check payable to the Comptroller of the Currency or by other means acceptable to the OCC.

## **PART 18 [REMOVED]**

58. Remove part 18.

## **PART 31—EXTENSIONS OF CREDIT TO INSIDERS AND TRANSACTIONS WITH AFFILIATES**

59. The authority citation for part 31 is revised to read as follows:

**Authority:** 12 U.S.C. 93a, 375a(4), 375b(3), 1463, 1467a(d), 1468, 1817(k), and 5412(b)(2)(B).

60. Section 31.1 is revised to read as follows:

### **§ 31.1 Authority.**

This part is issued pursuant to 12 U.S.C. 93a, 375a(4), 375b(3), 1463, 1467a(d), 1468, 1817(k), and 5412(b)(2)(B), as amended.

### **§ 31.2 [Amended]**

61. Section 31.2 is amended by:

a. In paragraph (a):

- i. Removing the phrase “A national bank and its”, and adding in its place the phrase “National banks, Federal savings associations, and their”; and
- ii. Adding “(Regulation O)” to the end of the sentence; and

b. In paragraph (b), adding “, Federal savings associations,” after the word “banks”.

62. Add § 31.3 to read as follows:

### **§ 31.3 Affiliate transactions requirements.**

(a) General rule. National banks and Federal savings associations shall comply with the provisions contained in 12 CFR part 223 (Regulation W).

(b) Enforcement. The Comptroller of the Currency administers and enforces affiliate transactions requirements as they apply to national banks and Federal savings associations.

(c) Standard for exemptions. The OCC may, by order, exempt transactions or relationships of a national bank or Federal savings association from the requirements of section 23A and section 11 of the Home Owners' Loan Act (HOLA), as applicable, and 12 CFR part 223 if:

(1) The OCC, jointly with the Federal Reserve Board, finds the exemption to be in the public interest and consistent with the purposes of section 23A or section 11 of the HOLA, as applicable; and

(2) The FDIC, within 60 days of receiving notice of such joint finding, does not object in writing to the finding based on a determination that the exemption presents an unacceptable risk to the Deposit Insurance Fund.

(d) Procedures for exemptions. A national bank or Federal savings association may request an exemption from the requirements of section 23A or section 11 of the HOLA, as applicable, and 12 CFR part 223 for a national bank or Federal savings association by submitting a written request to the Deputy Comptroller for Licensing with a copy to the appropriate Federal Reserve Bank. Such a request must:

(1) Describe in detail the transaction or relationship for which the national bank or Federal savings association seeks exemption;

(2) Explain why the OCC should exempt the transaction or relationship;

(3) Explain how the exemption would be in the public interest and consistent with the purposes of section 23A or section 11 of the HOLA, as applicable; and

(4) Explain why the exemption does not present an unacceptable risk to the Deposit Insurance Fund.

63. Appendix B to part 31 is amended by:

a. Revising the title;

b. Revising the introductory note;

c. Removing the references “part 31”, “Part 31”, and “Parts 31 and 32” and adding in their place the references “part 215”, “Part 215”, and “Parts 32 and 215”, respectively, wherever they appear;

d. Under the heading “Definition of ‘Loan or Extension of Credit’”, in the first sentence under “Renewals”, removing the phrase “will be applied in the same manner” and adding in its place the phrase “are equivalent”; and

e. Under the heading “Combination/Attribution Rules” in the fourth sentence, under “Loans to corporate groups”, removing the word “until” and adding in its place the word “unless”.

The revisions read as follows:

**Appendix B to Part 31 -- Comparison of Selected Provisions of Parts 32 and 215**

NOTE: This appendix compares certain provisions of 12 CFR part 32 with those of 12 CFR part 215. As used in this appendix, the term “bank” refers to both national banks and Federal savings associations.

\* \* \* \* \*

**PART 150—FIDUCIARY POWERS OF FEDERAL SAVINGS ASSOCIATIONS**

64. The authority citation for part 150 continues to read as follows:

**Authority:** 12 U.S.C. 1462a, 1463, 1464, 5412(b)(2)(B).

65. Section 150.245 is added to read as follows:

**§ 150.245 When is a fiduciary not required to maintain custody or control of fiduciary assets?**

If you are deemed a fiduciary based solely on your provision of investment advice for a fee, as that capacity is defined in 12 CFR 9.101(a), you are not required to maintain custody or control of fiduciary assets as set forth in § 150.220 or 150.240.

**PART 151—RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR SECURITIES TRANSACTIONS**

66. The authority citation for part 151 continues to read as follows:

**Authority:** 12 U.S.C. 1462a, 1463, 1464, 5412(b)(2)(B).

67. Paragraph (3) in the definition of Municipal security in § 151.40 is revised to read as follows:

**§ 151.40 What definitions apply to this part?**

\* \* \* \* \*

*Municipal security* means:

\* \* \* \* \*

(3) A security that is an industrial development bond.

\* \* \* \* \*

68. Section 151.60 is revised to read as follows:

**§ 151.60 How must I maintain my records?**

(a) In general. The records required by § 151.50 must clearly and accurately reflect the information required and provide an adequate basis for the audit of the

information. Record maintenance may include the use of automated or electronic records provided the records are easily retrievable, readily available for inspection, and capable of being reproduced in a hard copy.

(b) Use of third party. You may contract with third-party service providers to maintain the records required by this section, provided that you maintain effective oversight of the third-party vendor to ensure records meet the requirements of § 150.50 and this section.

69. Revise § 151.80(b) to read as follows:

**§ 151.80 How do I provide a registered broker-dealer confirmation?**

\* \* \* \* \*

(b) Unless you have determined remuneration in a written agreement with the customer, if you have received or will receive remuneration from any source, including the customer, in connection with the transaction, you must provide a statement of the source and amount of the remuneration in addition to the registered broker-dealer confirmation described in paragraph (a) of this section.

**§ 151.110 [Removed]**

70. Section 151.110 is removed.

71. Part 155 is revised to read as follows:

**PART 155—ELECTRONIC OPERATIONS**

Sec.

155.100 Scope.

155.200 Use of electronic means and facilities.

155.210 Requirements for using electronic means and facilities.

**Authority:** 12 U.S.C. 1462a, 1463, 1464, 5412(b)(2)(B).

**§ 155.100 Electronic activities of Federal savings associations.**

This part describes how a Federal savings association may provide products and services through electronic means and facilities.

**§ 155.200 Use of electronic means and facilities.**

(a) General. A Federal savings association may use, or participate with others to use, electronic means or facilities to perform any function, or provide any product or service, as part of an authorized activity. Electronic means or facilities include, but are not limited to, automated teller machines, automated loan machines, personal computers, the Internet, telephones, and other similar electronic devices.

(b) Other. To optimize the use of resources, a Federal savings association may market and sell, or participate with others to market and sell, electronic capacities and by-products to third-parties, if the savings association acquired or developed these capacities and by-products in good faith as part of providing financial services.

**155.210 Requirements for using electronic means and facilities.**

To use electronic means and facilities under this subpart, a Federal savings association's management must:

(a) Identify, assess, and mitigate potential risks and establish prudent internal controls; and

(b) Implement security measures designed to ensure secure operations. Such measures must be adequate to:

(1) Prevent unauthorized access to the savings association's records and its customers' records;

(2) Prevent financial fraud through the use of electronic means or facilities; and

(3) Comply with applicable security devices requirements of part 168 of this chapter.

72. Part 162 is revised to read as follows:

**PART 162—ACCOUNTING AND DISCLOSURE STANDARDS**

Sec.

162.1 Accounting and disclosure standards.

**Authority:** 12 U.S.C. 1463, 5412(b)(2)(B).

**§ 162.1 Accounting and disclosure standards.**

A Federal savings association shall follow U.S. generally accepted accounting principles (GAAP) and the disclosure standards included therein when complying with all applicable regulations, unless otherwise required by statute, regulation, or the OCC.

**PART 163—SAVINGS ASSOCIATIONS – OPERATIONS**

73. The authority citation for part 163 continues to read as follows:

**Authority:** 12 U.S.C. 1462a, 1463, 1464, 1467a, 1817, 1820, 1828, 1831o, 3806, 5101 et seq., 5412(b)(2)(B); 31 U.S.C. 5318; 42 U.S.C. 4106.

**§ 163.41 [Removed]**

74. Remove § 163.41.

**§ 163.43 [Removed]**

75. Remove § 163.43.

**§ 163.161 [Removed and reserved]**

76. Remove and reserve § 163.161.

77. Section 163.172 is amended by:

a. In paragraph (a), revising the paragraph heading and removing the word “commitments” and adding the word “contracts” in its place;

- b. Revising paragraph (b), the heading to paragraph (c) and paragraph (c)(1);
- c. In paragraph (c)(2), removing the word “you” and adding in its place the phrase “a savings association”;
- d. In paragraphs (c)(2) through (4) removing the word “Your”, wherever it appears, and adding in its place the word “The”;
- e. In paragraph (c)(3)(ii), removing the word “your” and adding in its place the phrase “the savings association’s”;
- f. Revising the heading to paragraph (d);
- g. In paragraph (d)(1), removing the word “Management” and adding in its place the phrase “The management of a Federal savings association”; and
- h. Revising paragraph (e).

The revisions read as follows.

**§ 163.172 Financial derivatives.**

(a) Definition. \* \* \*

(b) Permissible financial derivatives transactions. A Federal savings association may engage in a transaction involving a financial derivative if the savings association is authorized to invest in the assets underlying the financial derivative, the transaction is safe and sound, and the requirements in paragraphs (c) through (e) of this section are met. In general, a savings association that engages in a transaction involving a financial derivative should do so to reduce its risk exposure.

(c) Board of directors’ responsibilities. (1) A Federal savings association’s board of directors is responsible for effective oversight of financial derivatives activities.

\* \* \* \* \*

(d) Management responsibilities. \* \* \*

(e) Recordkeeping requirement. A Federal savings association must maintain records adequate to demonstrate compliance with this section and with its board of directors' policies and procedures on financial derivatives.

**§ 163.180 [Amended]**

78. Section 163.180 is amended by removing and reserving paragraphs (a) and (c).

**§ 163.190 [Removed]**

79. Remove § 163.190.

**§ 163.191 [Removed]**

80. Remove § 163.191.

**PART 193 [REMOVED]**

81. Remove part 193.

**PART 194—[REMOVED]**

82. Remove part 194.

**PART 197 [REMOVED]**

83. Remove part 197.

Dated: March 2, 2016.

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Thomas J. Curry

Comptroller of the Currency

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