

Charters

Comptroller's Licensing Manual

**Washington, DC
April 2004**

Introduction	1
Charter Policy	1
Insider’s Roles and Responsibilities	2
Organizing Group’s Role and Responsibilities	2
Sponsored Organizations	4
Sponsor’s Role	4
Conflicts of Interest	4
Affiliate Transactions	5
Parallel-Owned Banking Organizations.....	7
Management and Director’s Banking Experience	7
Directors	8
Selection of the CEO	9
Senior Executive Officers	10
Insider Policy	12
Transactions with Insiders	12
Insider Personal and Financial Commitments	12
Insider Compensation	13
Regulatory Review	13
Unacceptable Forms of Compensation.....	14
Excessive Compensation	15
Prohibited Golden Parachute Payments	15
Accounting Considerations and Shareholder Disclosures	16
Organizer’s Business Plan	16
Business Plan Requirements	16
Avoiding Potential Problems	17
OCC Evaluation of Proposal.....	17
Capital Considerations	18
Organizers’ Responsibilities	18
Policy and Legal Issues.....	19
Key Capital Considerations	19
Raising Capital	20
Raising Capital Prior to OCC’s Decision.....	20
Offerings	21
Stock Brokers, Underwriters, or Other Consultants.....	21
Funds Collected by an Organizing Bank	22
Structural Issues	22
Preferred Stock.....	22
Debt-based Capitalization	22
Assessment of Community Credit Needs.....	23
Compliance Issues	23
Application Process.....	23
Exploratory Calls or Meetings.....	23
Prefiling Meeting.....	24
Filing the Application.....	25
Biographical and Financial Reports	25
National Bank Identifying Information.....	26
Publication Requirements and Comment Periods.....	26
Filing Fees.....	26
Types of Filings	26

Standard Review	27
Expedited Review.....	27
Contracts and Other Arrangements	27
Use of Third-Party Service Providers	28
Certification	29
Deposit Insurance and Filing with the FDIC	29
Filings with Other Regulators	30
Additional Information	30
Amendments.....	30
Review of the Application	30
Background Investigations.....	30
Field Investigations.....	31
Decision	31
Standard and Special Requirements	32
Special Conditions	32
Organization Phase	33
Becoming a Corporate Body	33
Establishing a Bank Premises.....	34
Internal and External Audits	34
Fidelity and Other Insurance.....	35
Organization Costs	36
Significant Changes.....	37
Identification.....	37
Ownership and Capital Raising Efforts.....	38
Repayment of Organization Costs to Organizers	38
Preopening Examination	39
Expiration of Revocation of Preliminary Conditional Approval.....	39
Extensions.....	39
Revocation.....	40
Notification.....	40
Final Approval	40
Post Opening Considerations	41
Significant Deviations after Opening.....	41
Expansion or Contraction of Activities.....	42
Change in Control.....	42
OCC Review of Management.....	43
Special Purpose or Narrow Focus Proposals.....	43
Types of Special Purpose Banks	43
Credit Card Banks	43
Trust Banks or Trust Companies	46
Community Development Banks	48
Cash Management Banks	49
Bankers' Banks.....	50
Narrow Focus Proposals	50
Supervisory Risks	50
CRA Policy Issues	51
Capital Considerations	52
Procedures: Prefiling	53
Procedures: Application Process	57
Procedures: Organization Phase.....	63
Appendix A: Parallel-Owned Banking Organizations	76
Appendix B: Directors' Duties and Responsibilities, Qualifications, and Other Issues.....	80

Appendix C: Stock Benefit Plans85
Appendix D: Supervision and Oversight Highlights89
Appendix E: Community Reinvestment Act Highlights95
Appendix F: Compliance Highlights.....97
Appendix G: Significant Deviations after Opening 103
Glossary 106
References 112

Charters

Introduction

Each organizing group must apply to, and obtain approval from, the Office of the Comptroller of the Currency (OCC) before establishing a national bank. New banks may be chartered for full service or special purpose operations, such as trust banks, credit card banks, bankers' banks, community development (CD) banks, and cash management banks.

This booklet of the *Comptroller's Licensing Manual* (manual) provides organizers and sponsors applying for a national bank charter with OCC policies and procedures used in the charter application process, along with detailed guidance and instructions. It discusses the statutory factors that the OCC considers in deciding a proposed bank's application. It describes the application process, including the pre-filing process, filing and review of the application, the decision, and the organization phase. It also provides information about the on-going supervision of a national bank and issues applicable to a special purpose or a narrow focus bank.

A glossary of terms used in the booklet is provided along with a reference section that provides statutory and regulatory cites and other useful materials. Throughout the electronic edition of this booklet at www.occ.treas.gov are hyperlinks to sample documents, such as the Interagency Charter and Federal Deposit Insurance [Application](#) (interagency application), and other information that an applicant may find useful.

Charter Policy

The OCC approves proposals to establish national banks that have a reasonable chance of success, will foster healthy competition, and will be operated in a safe and sound manner. OCC approval does not assure that a proposal to establish a national bank is without risk to the organizers or the investors. In reaching its decision, the OCC considers whether the proposed bank:

- Has organizers who are familiar with national banking laws and regulations.
- Has competent management, including the board of directors, that has ability and experience relevant to the type of products and services to be provided and the size and scope of projected risks.
- Has capitalization, access to liquidity, and risk management systems that are sufficient to support the projected volume and type of business.
- Can reasonably be expected to achieve and maintain profitability.
- Will be operated in a safe and sound manner.

The OCC considers a proposed bank's plans for meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the bank. The OCC also may consider the risk to the Federal Deposit Insurance Fund and whether the proposed bank's corporate powers are consistent with the intent of the Federal Deposit Insurance Act (FDIA) and the National Bank Act.

The OCC encourages each organizing group interested in establishing a national bank to contact the OCC to obtain information about the process and guidance about specific issues that are unique to the group's proposal. The OCC normally requires all of the organizers of a national bank and the proposed chief executive officer (CEO) to attend a pre-filing meeting prior to filing the application.

The organizing group should file an interagency application for deposit insurance with the FDIC when it submits its charter application to the OCC. Each charter application must include accurate statements, fully developed plans, and a determination that the transaction complies with all applicable statutes and regulations.

Questions and issues often arise in the application process. With any application, the OCC may require additional information, which may extend the application review. Requests for additional information are more likely if the organizers propose unusual banking services or corporate arrangements.

The OCC grants approval of charter applications in two steps: preliminary conditional approval (decision) and final approval. Preliminary conditional approval permits the organizers to proceed with organizing the bank. The OCC defines the organization phase as the time period between the decision and the bank opening (see "Organization Phase" discussion in this booklet). During the organization phase, the organizing bank's officers and directors hire management and staff, raise capital, prepare bank premises, and develop policies and procedures that will guide the bank's operations.

The OCC requires the organizers to raise capital within 12 months after its decision date. The bank must open within 18 months after the OCC's decision date. A bank cannot begin the business of banking or engage in fiduciary or other activities until the OCC grants final approval.

Insiders' Roles and Responsibilities

A strong organizing group, board of directors, and CEO are essential to gain the OCC's approval of a charter proposal. The OCC considers proposed organizers, directors, principal shareholders, and executive officers of the proposed national bank as insiders. Together, they must have the experience, competence, willingness, and ability to actively direct the proposed bank's affairs in a safe, sound, and legal manner.

Organizing Group's Role and Responsibilities

A strong organizing group generally includes persons with diverse business and financial interests and community involvement. The business plan and other

information supplied in the application must demonstrate an organizing group's collective ability to establish and operate a successful bank in the economic and competitive conditions of the market the bank will serve. A poor business plan reflects adversely on the organizing group's ability, and the OCC will deny such applications.

The organizing group must be composed of five or more persons. Normally, all of the organizers serve as the bank's initial board of directors.

The organizers are responsible for:

- Ensuring that the group consists of persons with diverse business and financial interests and community involvement and includes persons with some banking experience.
- Having a personal history that reflects responsibility, honesty, and integrity.
- Exhibiting substantial personal and financial commitment to the proposed bank relative to their individual and collective financial strength.
- Selecting a capable CEO and, early in the organization process, other executive officers who will have the necessary experience to successfully implement the proposed business plan and, thus, enhance the proposed bank's likelihood of success.
- Developing a business plan that:
 - Demonstrates the group's collective ability to establish and operate a successful bank in the economic and competitive conditions of the market to be served.
 - Articulates the risks of the proposed operation and the systems and processes that the bank will use to monitor and control those risks.
- Understanding their role in the successful implementation of the business plan.
- Designing senior executive officer and other compensation proposals that are consistent with the OCC's guidelines (see the [Insider Compensation](#) discussion in this booklet).

The OCC requires each group to appoint a contact person or spokesperson (spokesperson) who serves as the primary liaison between the OCC and the organizers. The spokesperson must be a member of the organizing group and a proposed director, unless the proposed bank has a sponsor, such as an existing bank holding company (BHC), in which case a representative of the sponsor may serve in that capacity. The president or CEO of the proposed bank often serves as the spokesperson.

Sponsored Organizations

A new bank may be affiliated with another organization, also called a sponsor, rather than choose to operate independently. A sponsor usually is an existing holding company, regardless of whether it is a BHC. If the new bank will be affiliated with an existing BHC (see Glossary), the OCC will consider the BHC to be the sponsor of the new bank. The OCC will look closely at the proposed relationships between the bank and other organization(s) within the holding company to determine whether to permit the affiliation.

The OCC does not consider as a sponsor a new BHC that is established at the same time as a new national bank. Such a BHC generally does not offer significant financial and managerial resources to support the bank's operations. In addition, a new BHC has few activities separate from those of the bank.

Sponsor's Role

When a new bank proposal has a sponsor, the OCC considers primarily the financial and managerial resources of the sponsor and the sponsor's record of performance, rather than the financial and managerial resources of the organizing group. The OCC will review, for consistency and compatibility with the proposed bank's business plan, a sponsor's record of performance, overall philosophy, capital, management, profitability, and plans, such as its strategic plan.

When the sponsor serves as a substantial source of strength, the OCC may approve an application, even in a market in which economic conditions are marginal or competitive conditions are intense. In such cases, the OCC may require the bank to execute a written agreement with its holding company that provides for capital maintenance and liquidity support from the holding company. (See the Special Conditions discussion.) Conversely, the OCC may deny a sponsored new bank application if the condition of the parent company or any affiliate is subject to supervisory concern or otherwise detracts from the application.

With the OCC's prior approval, a sponsor may eliminate certain information from, or provide abbreviated information with, the charter application. However, to reduce the application burden of a proposal involving an insured bank, the OCC encourages the sponsor to file the same interagency application with both the OCC and the FDIC. A BHC, or a company that would become a BHC because of its ownership of a proposed bank, must obtain Federal Reserve Board (FRB) approval to acquire a newly established bank before the OCC will grant final approval.

Sometimes a company, not qualifying as a BHC under federal law, still could be considered a BHC under state law. State law may prohibit certain holding company activities permitted by federal law. Consequently, each sponsor of a proposed bank must demonstrate that its interagency application meets all standards imposed by both federal and state law.

Conflicts of Interest

Conflicts may arise between a sponsored bank and its sponsoring entity in maintaining sufficient corporate separateness between the organizations. This is especially true with special purpose or narrow focus banks. To enhance the

corporate separateness of the organizations, the sponsor should evaluate the bank's activities and operations closely and address in the charter application, at a minimum, the following issues:

- The need for bank directors to act primarily in the best interest of the bank rather than the bank's sponsor and to exercise objective judgment in carrying out their duties, independent of undue influence from sponsor management and affiliates. This independence is especially critical when the bank directors are considering:
 - Employment of bank management and employees dedicated to support the bank's operations.
 - Maintenance of separate books and records for the bank, the sponsor, and other bank affiliates.
 - Implementation of bank board-approved internal and external audit programs, internal controls and risk management policies, and other policies and procedures necessary to ensure safe, sound, and legal bank operations.
- Evaluation of the extent to which the bank itself needs to retain core operations and staff to conduct the bank's business, as opposed to being essentially a "shell operation" (see [Glossary](#)).
- Adoption of third-party service provider or vendor management policies that may include affiliated entities functioning as service providers for the bank.

Affiliate Transactions

The discussion that follows addresses only a few of the most common issues that may arise in connection with new bank charters. For further detail on affiliate transactions, see the "Related Organizations" booklet of the *Comptroller's Handbook for National Banks*.

A bank that has a sponsor or other affiliate (see Glossary for definition of affiliate) must be aware of the laws governing affiliate transactions. Sections 23A and 23B of the Federal Reserve Act (FRA), 12 USC 371c and 371c-1, respectively, are designed to protect a bank from transactions with its affiliates that are disadvantageous or abusive to the bank. The FRB implemented sections 23A and 23B of the FRA through Regulation W, 12 CFR 223. The regulation, which became effective April 1, 2003, codifies existing FRB interpretations of sections 23A and 23B and prescribes detailed new requirements, such as rules for valuing the amounts of covered transactions. Thus, newly formed banks and their affiliates must comply with the provisions of this rule as well as the statutes.

Generally, most subsidiaries of banks are not considered to be affiliates of the bank for purposes of Sections 23A and 23B as implemented by Regulation W. Subsidiaries that are treated as affiliates include insured depository institutions, financial subsidiaries, and subsidiaries (including uninsured depository institutions) that are also controlled by one or more affiliates of the bank that are not themselves depository institutions. In addition, as noted above, the OCC and the FRB can

determine that an otherwise exempt subsidiary should be treated as an affiliate. (For more information on the treatment of subsidiaries of banks under Regulation W, see the [“Investment in Subsidiaries and Equities”](#) booklet.)

Section 23A, as implemented by Regulation W, controls risk to banks by, among other things:

- Limiting “covered transactions” with any single affiliate to no more than 10 percent of the bank’s capital and surplus, and aggregate transactions with all affiliates to no more than 20 percent of capital and surplus. Covered transactions include:
 - A bank’s extensions of credit to, or guarantees on behalf of, its affiliates or purchases of assets from its affiliates.
 - Investments in securities issued by affiliates.
 - Other specified transactions exposing the bank to risk of abuse by its affiliates.
- Requiring that all transactions between a bank and its affiliates be made on terms consistent with safe and sound banking practices.
- Prohibiting the purchase of low-quality assets from the bank’s affiliates.
- Requiring that all “credit transactions” (including, among other things, guarantees and extensions of credit to an affiliate) be secured by a statutorily defined amount of collateral. A full or partial exemption from these restrictions may be available for certain types of transactions. (For example, see Section 23A(d) and 12 CFR 223.41 and .42.)

Section 23B of the FRA, as implemented by Regulation W, requires a bank to engage in certain transactions with its nonbank and uninsured bank affiliates only on terms and under circumstances that are substantially the same or at least as favorable to the bank as those prevailing at the time for comparable transactions with unaffiliated companies. This requirement generally means that the bank must conduct transactions with these affiliates on an arm’s-length basis. Thus, for example, pricing or transaction valuation must usually reflect fair market value. Section 23B applies this restriction to any covered transaction, as defined by section 23A, and to other specified transactions, such as a bank’s sale of securities or other assets to an affiliate and the payment of money or the furnishing of services to an affiliate. However, section 23B does not prohibit banks from receiving goods or services from affiliates at below market prices. In addition, transactions between a bank and an insured bank affiliate are generally exempt from section 23B. As is the case under section 23A, transactions between a bank and an uninsured bank affiliate are generally not exempt from section 23B.

Regulation W sets forth exemptions from certain restrictions of sections 23A and 23B. Exemptions that may be of importance to sponsors of new banks include the so-called “sister-bank” exemption and the exemption for newly formed banks. The “sister-bank” exemption exempts many “covered transactions” between a bank and an insured bank affiliate from the quantitative limits and collateral requirements of

section 23A. Under Regulation W, however, covered transactions between a bank and an affiliated *uninsured* bank, such as a trust company, are not eligible for the sister-bank exemption.

The exemption for newly formed banks allows such banks to purchase assets from an affiliate without regard to the restrictions of either section 23A or 23B. To qualify for these exemptions, the appropriate federal banking agency (the OCC, for national banks) must approve the asset purchase in writing in connection with its review of the formation of the bank. (See sections 223.42(i) and 223.52(a)(1).) If a sponsor plans to rely on these exemptions, it should provide details of any proposed asset purchases in the business plan.

Parallel-Owned Banking Organizations

In a parallel-owned banking group, at least one United States bank and at least one foreign bank are independently chartered but controlled either directly or indirectly by the same individual, family, or group of individuals who are closely associated in their business dealings or who otherwise act in concert. These persons will be considered members of the establishing party. Processing a charter application that creates a parallel-owned banking organization generally is more complex and time consuming than processing a typical charter application. This processing disparity reflects the OCC's need to understand the following: How the overall strategy and management of the parallel-owned banking organization will affect the national bank; how the activities of the foreign bank are supervised; how home-country supervisors view the condition and operations of foreign affiliates; and how affiliates might affect the national bank. The preceding matters of supervisory interest are in addition to the concerns addressed in the OCC's standard analysis of the background and financial information of the individual(s) filing the charter application.

Concerns for the national bank that arise from a potential parallel-owned banking organization typically result in expanded application requirements. The degree to which the OCC will expand requirements varies, reflecting the specific structure of the proposed transaction and resulting organization. The OCC may request commitments or representations to facilitate the supervision of parallel-owned banking organizations. (See [Appendix A](#), Parallel-Owned Banking Organizations for specific examples.)

For purposes of applying legal restrictions on a bank's transactions with its affiliates within a parallel-owned banking group, the 25 percent control threshold in sections 23A and 23B and Regulation W is relevant. Members of a parallel-owned banking group that are affiliates cannot take advantage of the sister bank exemption because that exemption requires ownership by a holding company.

Because of the complexity of proposals that would establish a parallel-owned banking organization and the case-by-case nature of their processing, potential applicants are strongly encouraged to meet with Licensing staff prior to submitting an application.

Management and Directors' Banking Experience

The OCC requires all organizing groups and senior management teams to demonstrate sufficient banking experience to operate a national bank successfully.

The OCC grants a charter application only to a management team, including both the proposed management and directorate, that it considers strong. Strong management teams are usually characterized by:

- High-caliber senior executive officers that have the relevant experience necessary to implement the proposed business plan and to exercise corrective action in response to changing internal and external factors.
- Successful business and community leaders, including some with prior banking experience, who effectively oversee the management of the bank's activities in their capacity as directors.

Directors

Each organizer and proposed director is responsible for understanding the chartering process and the role of a national bank director. Each organizer and proposed director should review this booklet to become familiar with the chartering process.

The affairs of each national banking association must be managed by directors who, initially, are elected by the shareholders at a meeting held before the association is authorized to commence business and, afterward, at meetings to be held at least annually, on a day specified in the bylaws.

Each member of the proposed bank's board of directors must act in the best interests of the bank and in accordance with his or her fiduciary duties. In addition, each member must exercise objective judgment in carrying out his or her duties, independent of undue influence from management and any controlling companies.

The board of directors of a national bank provides oversight to and direction of the bank's activities. It may delegate the day-to-day routine of conducting the bank's business to the bank's officers and employees, but directors cannot delegate their responsibilities to ensure that the bank's affairs are conducted in a safe and sound manner. The directorate is responsible for safeguarding the interests of the depositors and shareholders through the lawful, informed, efficient, and able administration of the institution.

The board of directors' primary duty is to select and appoint executive officers who are qualified to administer the bank's affairs effectively and soundly. Selection criteria should include integrity, technical competence, character, and experience in the financial services industry. The board also must dispense with services of officers who prove unable to meet reasonable standards of executive performance.

The board's oversight responsibilities include reviewing, approving, and monitoring adherence to major corporate actions and corporate strategies, business plans, risk policies, and risk tolerances. The board also must review appropriate regulatory and audit reports, and take appropriate action on all matters requiring board attention.

Directors must have sufficient experience, competence, willingness, and ability to be active in overseeing the safety and soundness of the bank's affairs. The OCC developed [The National Bank Director's Toolkit](#) as a reference to assist national bank directors in understanding their roles and responsibilities. ([Appendix B](#),

Directors' Duties and Responsibilities, Qualifications, and Other Issues provides a broader discussion of the duties and responsibilities of directors.)

The OCC will expect the organizing group to recommend a stronger team of senior executive officers to compensate for a proposed directorate that has limited banking experience or community involvement. The OCC is likely to consider an organizing group's banking experience to be satisfactory if at least a quarter of the bank's outside directors (directors who are neither officers nor employees of the bank) have recent experience (see Glossary) as directors or executive officers of a well-run financial institution.

If for any reason the OCC is concerned about the recent experience of proposed outside directors, it will consider the following factors in its evaluation of the group's banking experience:

- The proposed board's collective business expertise.
- The group's efforts to obtain directors with recent banking experience.
- Individual bank circumstances, such as a proposed bank with noncomplex operations located in a rural area for which experienced directors are not readily available.
- Commitments or representations by the organizing group to obtain director education.

Director education and orientation are available from a variety of sources, including the proposed bank's management, bank consultants, or seminars or "colleges" for new directors offered by local and national industry associations.

To conclude that a representation or commitment for director education is satisfactory, the OCC requires the following to be present:

- A specific plan with time frames.
- Initial training prior to the bank opening that focuses on the duties and responsibilities of new bank directors. This training should include the importance of an effective, independent risk-monitoring program to assist the board in its oversight of the bank's risk management system.
- Additional training during the first year of the bank's operations tailored to the directors' needs relative to the bank's proposed business plan.
- Ongoing education about new risks, products, and services.

Selection of the CEO

Selection of a qualified CEO is the organizing group's single most important decision affecting the success of the new bank. The proposed CEO should:

- Be involved actively in developing the proposed business plan, since the CEO must implement the proposed plan successfully once the bank opens.

- Have strong leadership skills with successful experience managing a bank or serving as a bank officer in a similar financial institution in areas relevant to the proposed bank's marketing strategy and needs.
- Possess skills that complement those of the directors and other proposed members of the executive officer team, including extensive experience in bank operations or lending.

Selection of a CEO who the OCC finds unqualified for the position, whose prior banking experience is unsatisfactory, or who otherwise is unacceptable, reflects negatively on the organizers and will result in disapproval or revocation of preliminary conditional approval. The OCC does not grant approvals subject to the condition that the organizers propose a more suitable CEO. Decisions about a proposed CEO are based on a person's suitability for that position with a specific new bank and are not intended to determine that person's eligibility for other jobs.

Each organizing group must disclose its proposed CEO to the OCC at the time it files the charter application. If the proposed CEO would like to have his or her name withheld from the public until the OCC grants preliminary conditional approval, the organizers should:

- Include a request for confidential treatment with the materials submitted in the charter application.
- Provide support for their request that disclosure would constitute an unwarranted invasion of personal privacy under exemption 6 of the Freedom of Information Act (FOIA) or result in substantial competitive harm to the organizers or the proposed CEO under exemption 4 of FOIA.
- List in the application the criteria that were used in the selection process.
- Provide a detailed description of the person's background, experience, and qualifications in the public portion of the application that is sufficiently specific to permit matching the application information with the person once his or her identity is disclosed.
- Discuss the proposed terms of employment for the CEO, including compensation and benefits.

The organizing group must submit an Interagency Biographical and Financial Report (see the "[Background Investigations](#)" booklet) for the CEO. In addition, the group must submit documentation of its investigation of the proposed CEO's background and qualifications (see the [Management Review Guidelines](#) in the "[Background Investigations](#)" booklet).

Senior Executive Officers

The organizers are responsible for hiring and retaining senior executive officers with skills and qualifications appropriate to the size of the institution, its corporate structure, and the nature, scope, and risk of its activities. The organizers must evaluate each proposed executive officer.

Senior executive officers will be responsible for managing and supervising the day-to-day activities of the bank. They should be able to identify and manage the material risks associated with the bank's activities and provide appropriate and accurate reports to the board of directors of the bank's condition and risk profile. As such, each proposed executive officer should exhibit strong, relevant experience for the specific position for which he or she is proposed. While the lack of previous experience in a specific position may not disqualify a person for the position, the proposed officer must be able to demonstrate that he or she has the knowledge, skills, and abilities required to execute the duties of the position effectively.

The organizing group should include the following information in its application for each senior executive officer candidate:

- An Interagency Biographical and Financial [Report](#) (see the "[Background Investigations](#)" booklet).
- A job description outlining responsibilities for each officer's position.
- A detailed outline of each candidate's banking or other relevant experience.
- An assessment of each candidate's qualifications for the position and his or her ability to implement the business plan (see the [Management Review Guidelines](#) in the "Background Investigations" booklet).

The organizers should allow the OCC adequate time to complete its review of each officer's qualifications. The organizers must receive a no objection determination on the CEO before soliciting stock subscriptions and on other senior executive officers before opening, unless the organizing group is soliciting stock prior to OCC decision (see "Raising Capital Prior to OCC Decision"). They should make no final commitments of employment to any officer prior to the OCC's review. The OCC will assess the strength of the senior executive officers by considering:

- The extent and quality of the proposed candidate's experience.
- The candidate's skills for the position, including his or her level of knowledge of the businesses and activities that the candidate will manage, the attendant risks, and appropriate risk management functions.
- The complexity of the proposed bank's business plan.
- The use of information technology in the bank's business plan.

If, after appropriate investigation and consideration of a proposed senior executive officer, the OCC objects to that person, he or she cannot assume that position in the bank. Objection to a proposed senior executive officer does not mean that the person may not be suitable for a different position in the same bank or a similar position in another bank. It means only that the OCC does not consider the person acceptable for the particular position for which the organizers have proposed in that new national bank.

After considering the qualifications of all proposed officers, the OCC will determine if the overall organizing group is strong.

Insider Policy

The OCC requires each national bank to adopt a written insider policy addressing its code of conduct and conflicts of interest. This policy must detail business practices the board of directors deems acceptable. The OCC requires this policy in writing for each bank, regardless of its complexity or the degree of sophistication of its systems.

The board of directors must take the lead in protecting the bank from conflicts of interest. One way a board of directors can fulfill that role is by adopting and enforcing clear insider policies to govern conduct and transactions between the bank and its directors and principal shareholders and their related interests and with its officers and employees.

Transactions with Insiders

Bank insiders (directors, executive officers and principal shareholders) have positions of responsibility and leadership in the community and must be careful to avoid even the appearance of conflicts of interest. Insiders can do this by making sure that their transactions with the bank reflect the same terms and conditions offered to other bank customers. Transactions involving insiders must show no compromise of the bank's interests.

Any financial or other business arrangement, direct or indirect, flowing from the bank to the organizing group or other insiders must be made on terms that are at market value or comparable standards. The bank may receive preferential treatment from the insider, but the insider may not charge the bank a higher rate or require more favorable terms than those prevalent in the market. Additional restrictions and requirements apply to loans made to executive officers. Banking statutes and regulations also impose a number of reporting and record keeping requirements. [See the "[Insider Activities](#)" booklet of the *Comptroller's Handbook for National Bank Examiners* (Comptroller's Handbook).]

The bank must comply with the limitations and prohibitions of 12 USC 375a and 375b, as implemented by the FRB's Regulation O (12 CFR 215) and the OCC's Part 31 (12 CFR 31) whenever it makes a loan or extension of credit to its insiders or their related interests. Under those statutes and regulations, a bank (subject to a number of regulatory and statutory exceptions) may not make a loan to an insider in an amount that exceeds the bank's lending limit (15 percent of the bank's capital and surplus for unsecured loans, and an additional 10 percent for loans secured by readily marketable collateral). In addition, a bank cannot extend preferential loans to insiders. Large loans also require the prior approval of the lending bank's board of directors. Insiders must abstain from discussions about and voting on their own loans or those concerning related interests.

Insider Personal and Financial Commitments

The OCC expects all organizers and directors to exhibit substantial personal and financial commitment to a new national bank. Personal commitment includes

contributions of time and expertise to the bank's organization (see [Appendix B](#)).

Personal wealth is not a prerequisite to becoming an organizer or director of a national bank. However, purchases of shares of bank stock, individually and in the aggregate, should reflect a financial commitment to the success of the national bank that is reasonable in relation to the individual and collective financial strength of the organizers. Financial commitment includes contributions of initial funding and stock subscriptions relative to each person's individual financial capacity. Further, organizers should act prudently on all financial and other aspects of the proposal.

Organizers should not bill excessive charges to the bank for professional and consulting services or unduly rely upon these fees as a source of income. Normally, the bank should not compensate organizers for marketing or aiding in stock solicitation. Directors of new banks should not be dependent upon bank dividends, fees, or other bank-related compensation to satisfy financial obligations. Directors are often the primary source of additional capital for a bank that is not affiliated with an established holding company. Accordingly, an organizer who also is proposed as a director should be able to supply capital, or have a realistic plan to enable the bank to obtain capital, if needed.

All insiders, including senior executive officers, should make substantial personal commitments to the organizing bank. Principal shareholders should demonstrate financial commitment through their stock purchases. Directors and principal shareholders also may provide support for the new bank by moving personal and business banking relationships to the bank that will help the bank achieve success. (See the discussion on Transactions with Insiders.)

Insider Compensation

Any national bank insider's compensation can include salaries, bonuses, fees, benefits, or other goods and services. For a proposed bank charter, the organizing group should include in its interagency application a description of all forms of insider compensation, including stock-based compensation plans.

Organizers should establish compensation plans that are in the best interest of the bank and commensurate with the services the organizers propose to offer. A new bank may include a stock benefit or compensation plan (stock benefit plan), including stock options, stock warrants, and similar stock-based compensation, in its overall compensation for organizers, directors, and officers, provided that it structures the plans appropriately.

Regulatory Review

The OCC evaluates each proposed bank's total compensation package, including its stock benefit plan (see [Appendix C](#) for a discussion of stock benefit plans), to determine if it is reasonable considering each person's contribution of time, expertise, and financial commitment. The OCC assesses the amount and basis of any cash or stock payments an organizer may receive as a return for funds placed at risk or for services rendered. In addition, the OCC considers the number and percentage of additional stock warrants or options that the organizers propose relative to the number of shares the bank will issue at the time it opens. The OCC's

conclusions about the acceptability of the proposed insider compensation package have a bearing on the OCC's overall assessment of the charter application.

The OCC also reviews proposed insider compensation plans for each newly organized BHC or non-BHC parent for consistency with the OCC's criteria set forth in this booklet and compliance with applicable laws and regulations. The organizers should provide documentation to support the reasonableness of its compensation package, including the methodology used to value any stock options (such as a stock option pricing model or discounted cash flow analyses and relevant comparable data). The OCC has no preference about which method the organizing group uses for its valuation of stock options.

Generally, a material change to the new bank's overall compensation package after the application is filed is a "significant change," which will require the OCC's prior no objection before the bank may open. In some cases, the organizers develop a stock benefit plan for directors or senior executive officers after filing the application. The OCC also would consider this development a "significant change." (See [Significant Changes](#) discussion.)

An established company may have existing compensation plans in which the proposed national bank's management and board may participate. The OCC will review such plans closely. In limited circumstances, the OCC may allow bank management and board management to participate in an existing plan that otherwise would be inconsistent with the general criteria for new bank stock benefit plans. In such cases, the OCC will consider whether the compensation, in combination with other forms of compensation, is reasonable.

The FDIC reviews compensation plans in its assessment of each deposit insurance application. The OCC and the FDIC apply similar standards to their separate evaluations of compensation plans. If the organizers would like the OCC and the FDIC to review proposals that may not conform to the stock benefit plan guidelines provided in this booklet, they should provide information and justification to support a deviation from established policies.

In some circumstances, the exercise of rights granted by a stock benefit plan trigger a filing to the OCC under the Change in Bank Control Act (CBCA) (12 USC 1817(j)) or the OCC's implementing regulation, 12 CFR 5.50. The OCC's review of stock benefit plans in connection with a charter application does not satisfy the prior notice requirements under the CBCA. If an option holder's exercise of rights would trigger the prior notice requirements, the holder must fulfill the CBCA prior notice requirement before exercising the option.

Unacceptable Forms of Compensation

The OCC considers as unacceptable any new bank compensation proposal that allows insiders to:

- Purchase stock at an original issue price lower than that paid by other investors.
- Purchase or acquire a separate class of bank or BHC stock at a price lower than that offered other subscribers or with greater voting rights.

- Receive a cash payment based on the market value of the bank's stock.
- Remove cash from the bank's capital accounts.
- Obtain more than one option or warrant for each share of stock subscribed for Type 1 and Type 2 plans at the time of the bank's opening (see the Primary Types of Insider Stock Benefit Plans discussion in [Appendix C](#)).
- Receive stock options or warrants issued to a holder other than the name of the bank insider, such as a partnership, corporate entity, spouse, or other family member.
- Exercise "cashless" stock options, such as stock appreciation rights or phantom shares.

These compensation arrangements cause concerns about the bank's ability to raise additional capital, allow control without a proportionate financial investment, and make it difficult for other shareholders to remove directors if they manage the bank in an unsafe or unsound manner.

Excessive Compensation

Each national bank should maintain safeguards to prevent the payment of compensation that is excessive or that could lead to material financial loss to the bank. Excessive compensation is an unsafe and unsound practice and is prohibited by regulatory safety and soundness standards. The commitment to pay, or payment of, unacceptable or excessive compensation also reflects negatively on the organizing group's charter proposal.

The OCC considers compensation excessive when amounts paid are unreasonable or disproportionate to the services performed by any person for a national bank. The OCC may request additional information from the organizing group to support the compensation or may require the organizers to change or eliminate the form or amount of compensation before it will authorize the bank to open for business. If excessive compensation is discovered before the bank opens, the OCC will disallow payment of that compensation from bank funds and may preclude the bank from opening.

After the bank opens, if the OCC determines that compensation has become excessive, the board is responsible for taking corrective action and seeking restitution. The "Interagency Guidelines Establishing Standards for Safety and Soundness" address excessive compensation and list the factors the OCC considers to evaluate compensation packages (refer to 12 CFR 30, Appendix C).

Prohibited Golden Parachute Payments

The ability of insured national banks to enter into contracts to pay and to make golden parachute payments to institution-affiliated parties (IAP) is limited when the bank is in "troubled condition" (see Glossary). This limitation is imposed in 12 CFR 359. A "golden parachute payment" generally is considered to be any payment in the nature of compensation to an IAP that is contingent on, or payable on or after,

the termination of that party's employment and is received when the bank making the payment is troubled. An IAP is broadly defined and includes directors, officers, and employees, among others. The regulation prohibits a troubled bank from entering a contract to pay a golden parachute payment and from making such a payment, subject to exceptions. A procedure also is set forth under which a bank may request permission to enter a contract to pay or to make what would otherwise be a prohibited payment. In light of these restrictions, banks may wish to include in their employment agreements a provision noting that the bank is not contractually obligated to make any payments that are prohibited under 12 CFR 359.

Accounting Considerations and Shareholder Disclosures

Organizers and boards must assure that each component of a bank's compensation package is accounted for properly and that public and periodic regulatory reports (such as Consolidated Reports of Condition and Income (call reports) and securities filings under Part 16) are accurate. In addition, they should refer to the Internal Revenue Code for guidance about shareholder approval and disclosure. Under Part 16, organizers must disclose and describe fully insider compensation, including stock benefit plans, to all prospective stock subscribers in the registration statement or private placement document, regardless of whether shareholder approval is required for the stock benefit plans.

Organizers' Business Plan

Organizers of a proposed national bank must submit a business plan that adequately addresses regulatory and policy considerations presented in this booklet and set forth in 12 CFR 5.20(e) and (f)(2). The plan must reflect sound banking principles. The organizing group's business plan, including its financial projections, analysis of risk, and planned risk management systems and controls, is critical to the OCC's decision of whether to grant approval to the group's charter proposal.

Business Plan Requirements

The interagency application includes [Business Plan Guidelines](#) that list the components of the plan the OCC requires. The business plan should be an integral part of the management and oversight of a national bank and should establish the bank's goals and objectives. The business plan is a written summary of how the bank will organize its resources to meet its goals and how the financial institution will measure progress.

The business plan should be comprehensive and reflect the institution's organizers' and management's in-depth planning. The plan should cover the greater of three years or the time period until the bank is expected to achieve stable profitability. It should provide detailed proposed actions to accomplish the primary functions of the bank. It should realistically forecast market demand, customer base, competition, and economic conditions. The business plan should contain sufficient information to give realistic assessments of risk related to economic and competitive conditions in the market the bank will serve. Assumptions should be consistent with all other information presented in the application.

The organizing group demonstrates in the business plan its management and planning abilities by assuming reasonable risks and by developing a comprehensive

alternative business strategy. The organizers should describe clearly their assessment of risks inherent in the products and services of the bank and the design of related risk management controls and management information systems. (See [Risk Assessments](#) and [Risk Management](#) discussions in Appendix D.)

The group should integrate an alternative business strategy into its business and strategic plans and bank policies. Through the alternative business strategy, the organizing group demonstrates that it can manage potential scenarios prudently, efficiently, and effectively when the asset or deposit mixes, interest rates, operating expenses, marketing costs, or growth rates differ significantly from the original plan. This alternative plan should include realistic plans for how the board would access additional capital should it be needed. (See [Appendix D](#) of this booklet and the "[Bank Supervision Process](#)" booklet of the *Comptroller's Handbook*, which includes a thorough discussion of each type of risk.)

Organizers for a bank that will have a special purpose or narrow focus should tailor the contents of their business plan as appropriate. The OCC also expects these business plans to articulate clearly a comprehensive alternative business strategy should original plans not materialize. (See the Special Purpose and Narrow Focus Proposals section in this booklet.) The organizers should not omit or delete sections of the business plan without prior consultation with OCC staff. In addition to the financial information required by the interagency application and business plan, the OCC requires each application sponsored by a holding company, including a BHC, to provide consolidated financial projections using the interagency format and time periods.

Avoiding Potential Problems

Management and the board should have similar goals for the bank and similar plans about how the goals will be achieved. Management and the board should be committed to the proposed business plan and agree on the amount of risk that the bank is willing to take. They can identify and work out differences of opinion and potential problems before the bank opens through:

- Careful development of policies and procedures for functional areas of the bank, including systems and controls that will be used to manage and control attendant risks.
- Preparation of financial projections.

In addition, organizers should be prepared to handle difficulties in hiring qualified personnel. They also should be able to project and control compensation and overhead expenses and to factor those expenses into their evaluations of capital adequacy.

OCC Evaluation of Proposal

The OCC evaluates the organizing group and its business plan at the same time. The OCC must be able to determine that the bank has a reasonable chance for success, will operate in a safe and sound manner, and will have capital that is adequate to support the proposed risk profile.

An organizing group and its business plan must be stronger in markets where economic conditions are marginal or competition is intense. The OCC's judgment concerning one may affect its evaluation of the other. It may offset deficiencies in one factor by strengths in one or more other factors. However, deficiencies in some factors, such as unrealistic earnings prospects or inadequate risk management systems, will have a negative influence on the OCC's evaluation of other factors, such as capital adequacy. Some deficiencies may be serious enough to result in denial of an application. The OCC considers inadequacies in a business plan to reflect negatively on the organizing group's ability to operate a successful bank.

The OCC assesses how well an organizing group has evaluated each of the nine categories of risks in its preparation of the charter application and how well it integrates risk management into its bank operations. (See [Risk Assessments](#) and [Risk Management](#) discussions in Appendix D.) The OCC considers safety and soundness issues and compliance with applicable laws and regulations in its evaluation of the business plan. The OCC has adopted interagency safety and soundness standards, which are found in the appendices to 12 CFR 30. These standards cover operations, management, compensation, and safeguarding of customer information. Additional guidance on prudent risk management practices can be found in the various booklets of the *Comptroller's Handbook*.

The OCC may conditionally approve an application to ensure that appropriate supervisory safeguards are in place when a bank opens for business. Alternatively, the OCC will deny an application if it is not satisfied that the organizers have met these requirements. The OCC generally will not grant final approval for a bank to open unless and until the organizers have addressed adequately all substantive risk management concerns.

Capital Considerations

The organizing group is responsible for funding the proposed bank's operations until the bank opens for business. The organizers must propose and raise capital for the bank's operations. Throughout the chartering process, the organizers must be aware of capital policy and capital regulatory requirements.

Organizers' Responsibilities

The organizing group is responsible for proposing an appropriate level of capital based upon:

- A thorough assessment of the proposed business plan and the risks inherent in that plan.
- Management's skills, experience, and ability relative to those required to execute the plan successfully.
- The degree of competition in the marketplace.
- Prevailing economic conditions in the proposed market.

The organizers also must demonstrate a clear ability to raise additional capital, if needed.

Policy and Legal Issues

Because charter proposals present varying degrees of complexity, the OCC does not mandate a minimum dollar level of capital for national bank charter applications. Instead, consistent with the OCC's philosophy for supervising all national banks on the basis of risk, the OCC evaluates sufficiency of the proposed capital level in light of the risks present.

The OCC expects projected capital for a new bank to remain at or above the "well capitalized" level as defined in 12 CFR 6.4(b)(1) for the first three years of operations and until the bank is expected to achieve stable profitability. These are "minimum capital standards." The OCC may determine that higher amounts of capital from those the organizers proposed are warranted based on local market conditions or the proposed business plan.

Generally, the OCC will require higher levels of capital to support the operations of more complex bank proposals. A complex charter proposal, for example, might offer a nontraditional or narrow range of products, propose an unproven business strategy resulting in uncertain financial projections, or operate in a highly competitive market. Conversely, a charter application for a community bank that would offer traditional products and services, operate within a small geographic area lacking intense competition, and have a management team implementing a proven business strategy would be noncomplex and, generally, would not require higher capital.

As appropriate, the OCC will focus on the consolidated company risk profile when reviewing a BHC-sponsored charter application. The risk assessment also may include significant affiliated entities when the OCC considers it appropriate.

The FDIC has capital requirements for obtaining federal deposit insurance that are similar to the OCC's requirements. The FDIC requires that initial capital should be sufficient to provide a Tier 1 capital-to-assets leverage ratio of not less than 8 percent throughout the first three years of operations.

Key Capital Considerations

Organizers must address key considerations in supporting the proposed capital level including:

- On-and-off balance-sheet composition, including credit risk, concentration risks, market risks, and risks associated with any nontraditional products, services, or operating characteristics.
- Plans and prospects for growth, including management's past experience in managing growth.
- Stability or volatility of sources of funds.
- Access to capital sources.

- If sponsored by a holding company, the sponsor’s track record when implementing plans and confronting emerging risks or needs.

Raising Capital

The organizing group provides initial funding through personal funds or bank loans to cover the expenses associated with making application for and organizing a national bank. Organizers may not repay those loans until after the capital funds are deposited in the bank, the shareholders authorize repayment, and the OCC authorizes release of escrowed funds. The organizing group must lead the bank’s efforts to raise capital in the marketplace by raising capital that is sufficient to:

- Pay for all organization costs.
- Enable the bank to compete effectively in the market area.
- Support the proposed bank’s business plan until the bank can achieve and sustain profitable operations.
- Address uncertainties in the marketplace.

Prior to soliciting and selling stock, the organizers must:

- Comply with the OCC’s Securities Offering Disclosure Rules (12 CFR 16).
- Receive a declaration from OCC legal staff that the registration statement is “effective” prior to initiating the sale of bank stock, if a registration statement is filed under 12 CFR 16.
- Designate an unrelated insured depository institution as escrow agent of the stock subscription funds.
- Obtain sufficient fidelity insurance coverage (see “Fidelity and Other Insurance” discussion).

All organizing groups must raise capital within 12 months of the OCC’s preliminary conditional approval. Most groups do not solicit bank stock until after the OCC makes that decision. However, groups may solicit stock prior to that time if they adhere to certain criteria.

Raising Capital Prior to OCC’s Decision

A charter applicant may raise capital prior to the OCC’s decision on the application based on the following criteria:

- Organizers submit to the appropriate district Licensing unit or to Headquarters Licensing (HQ LIC) a completed application and filing fee, including a business plan and the appropriate Interagency Biographical and Financial Report on all identified insiders.
- The OCC determines that the application is not materially deficient.

- The organizers adopt and file with the OCC articles of association and an organization certificate. Applicants should follow OCC policies and procedures described in the [“General Policies and Procedures”](#) booklet.

The organizers may file the articles of association, the organization certificate, and the registration statement required under 12 CFR 16 with the application or subsequent to filing the application. The applicant should disclose in the cover letter to the application, or the letter accompanying a subsequent submission of securities and organization documents, that the organizing group plans to raise capital prior to the OCC’s charter decision. During the pre-filing meeting, Licensing staff will communicate this disclosure procedure to the organizers. Even if the group raises all capital prior to the OCC’s decision, the OCC makes no assurances that it will grant preliminary conditional approval to the application. Material changes may occur during the bank’s organization that could require amendments to the bank’s disclosures and rescission offers to stock subscribers.

A charter applicant raising capital prior to decision must follow all other policies and procedures for raising capital, such as designating an escrow agent and adhering to fidelity bond requirements.

Offerings

All organizing banks issuing securities must comply with 12 CFR 16 by filing a registration statement or by relying on a filing exemption. A national bank seeking to sell or offer its securities must comply with both the applicable federal securities laws, including anti-fraud provisions, and OCC regulations. These requirements apply when organizers are capitalizing a newly chartered bank, or when shareholders are raising additional capital to support the bank’s growth.

Organizers should consult with securities counsel in preparing Part 16 filings or refer to guidance and sample forms provided in the regulation. The OCC will not declare the registration statement effective until the organizers have met all requirements. Amended registration statements also must comply with 12 CFR 16.

The sale of holding company stock may require filing documents and registering them with the SEC. Organizers should discuss securities law issues with their legal counsel and appropriate OCC legal staff as part of the application process. De novo BHCs that plan to raise capital prior to filing a charter application with the OCC are expected to designate an unrelated depository institution as escrow agent to hold capital subscriptions, invest funds only in United States government securities, and maintain adequate fidelity bond coverage.

Stock Brokers, Underwriters, or Other Consultants

Some organizing groups rely upon third parties to raise capital. These third parties include brokers, underwriters, consultants, and marketing firms. Engaging third parties may be part of the original business plan or represent a significant change in the original business plan, particularly if the organizing group has trouble raising capital. When banks raise capital through a third party, the market test (see Glossary) may be a less reliable indicator of market acceptance, especially if a significant portion of the stock is subscribed from outside the local market.

If the organizers use a third party, the charter proposal must still demonstrate that the target market will support the proposed bank, particularly if local stock subscriptions are limited. Local stock subscriptions include subscriptions from organizers who reside in, or otherwise have a meaningful presence in, the target market.

Funds Collected by an Organizing Bank

The amount of funds collected under the terms of a registration statement may exceed the amount proposed. To raise additional capital after the initial offering closes, the organizing directors must authorize additional shares and prepare an amendment to the registration statement or rely on an applicable exemption under 12 CFR 16. Furthermore, the organizing board may wish to authorize more shares than it intends to issue initially to facilitate future capital changes, such as stock sales and stock splits, without holding a shareholders' meeting to amend the articles of association. Once opened, the bank must issue shares in accordance with 12 CFR 5.46 (see the "[Capital and Dividends](#)" booklet).

"Capital surplus" generally is created when stock is sold. Capital surplus is required for a bank to pay dividends and may be required for a bank with branches or trust powers. Accordingly, all money invested in the bank must be distributed between the bank's capital and capital surplus accounts consistent with Generally Accepted Accounting Principles (GAAP). Also, consistent with GAAP, direct costs associated with the sale of stock must be deducted from the related proceeds and the net amount recorded in the contributed capital accounts.

Structural Issues

National banks may not create classes of common stock with different or no voting rights. Federal banking law provides that common shareholders are entitled to one vote per share held in all matters except the election of directors, for which they have cumulative voting rights.

A national bank may be organized as a Subchapter S corporation. A Subchapter S corporation generally has no more than 75 shareholders.

Preferred Stock

The OCC has no general prohibition against the inclusion of preferred stock in the initial capital structure of a new national bank, provided that all relevant terms and conditions are set forth in the application. However, the OCC may determine that the inclusion of a significant amount of preferred stock in a bank's capital structure could lead to instability in the bank ownership or otherwise adversely affect the safety and soundness of the institution. Such a determination would justify disapproval of the charter application or revocation of a preliminary conditional approval already issued. To be included as Tier 1 capital, the preferred stock must be perpetual and noncumulative.

Debt-based Capitalization

The OCC generally is opposed to debt-based capitalization of a new bank, especially for an independent bank. If a sponsor or affiliate issues any debt to capitalize the

bank, the organizing group must demonstrate that the sponsor or affiliates can meet debt service requirements without reliance on cash flows from the bank.

Assessment of Community Credit Needs

The organizing group must comply with the Community Reinvestment Act (CRA) by demonstrating in the application its knowledge of and plans for serving the proposed bank's assessment area or areas. The organizing group must evaluate the banking needs of the community, including its consumer, business, nonprofit, and government sectors. (See [Appendix E](#), "Community Reinvestment Act Highlights," for more information about responsibility under CRA, the CRA assessment area, and performance standards. Also, see the "Community Reinvestment Act Examination Procedures" booklet of the *Comptroller's Handbook for Compliance* for an expanded discussion of this topic.)

Compliance Issues

The OCC also considers compliance with laws and regulations in its review of charter applications. Issues often arise about fair lending statutes, Bank Secrecy Act (BSA) and anti-money laundering provisions, privacy, and advertising. (See [Appendix F](#), "Compliance Highlights," and the *Comptroller's Handbook for Compliance* for expanded discussions of these topics.)

Application Process

The OCC encourages organizers to review the OCC's Web site for written guidance about the [application process](#), including relevant charter policies and procedures. The Web site contains decision statements on previous OCC charter decisions and provides information on the policy matters that the OCC considers prior to making a decision on an application. The Web site also contains opinions and legal interpretations addressing a variety of permissible activities and the manner in which the activities may be established and conducted.

Before filing an application, the OCC encourages each organizing or investor group to contact the licensing manager at the appropriate OCC district office to discuss its proposal. Each group should include requests for confidential treatment under the FOIA with each submission of materials for which it seeks confidentiality (see "General Policies and Procedures" booklet for further discussion about confidential treatment).

Exploratory Calls or Meetings

After reviewing this booklet and other related information on the OCC's Web site, the spokesperson may call the Licensing staff at the appropriate [district office](#) to ask for further information or assistance. As the organizing group develops key ideas, the spokesperson may request an exploratory conference call or meeting to ask questions, clarify concerns, and become acquainted with the regulatory environment. The district Licensing staff will coordinate an initial conference meeting or call for the spokesperson and other key people associated with the proposal to discuss issues with appropriate OCC staff. The spokesperson should

submit written briefing materials, if any, early enough for OCC staff to review prior to the conference call or meeting.

Prefiling Meeting

The spokesperson for the organizing group should contact the OCC's Licensing staff in the appropriate district office to schedule a prefiling meeting when the organizing group is almost ready to file its charter application. Prior to this meeting, the organizers must submit briefing materials to the OCC that include:

- A brief description of the proposal.
- Biographical information on each member of the organizing group.
- Identification of the CEO.
- A summary of insider transactions.
- The proposed amount of capital and subscription method.

The OCC rarely waives the prefiling meeting for applications that are accorded [standard review](#). The OCC expects all organizers of the proposed new national bank to attend this meeting. When requested, OCC staff members may conduct the prefiling meeting at an appropriate location proposed by the filer rather than at the OCC office.

At the prefiling meeting, or in informal discussions, the Licensing staff reviews with the organizing group the OCC's chartering policy and procedures. Licensing staff also discusses supervisory perspectives that may affect the proposal and the requirements for filing a charter application and organizing a national bank. The topics discussed include:

- The attributes of a national bank charter.
- The composition of the board of directors and the banking and business experience of its members.
- The management team and its banking experience.
- Submission requirements, including confidentiality requests.
- The business plan with attention to the following items:
 - Alternative business strategy.
 - Planned risk management systems and functions, including audit, compliance, and internal controls.
 - Planned information systems technology architecture.
 - Management of third-party service providers.

- Compliance issues.

FDIC staff also may participate in the prefiling meeting to discuss pertinent procedures and requirements for obtaining deposit insurance. (See the FDIC's deposit insurance policy statement, available from its Communications Office, Public Information Center, 801 17th Street NW, Washington, DC 20434, or from its Web site at <http://www.fdic.gov>.)

Filing the Application

After the prefiling meeting, the organizing group files an [interagency application](#), including a [business plan](#) and the appropriate [Interagency Biographical and Financial Report](#) on all identified insiders. Each applicant must:

- Prepare accurately and completely the charter application submitted to enable the OCC to reach an informed decision.
- Sign a certification stipulating that the charter application and all supporting materials contain no misrepresentations or omissions.
- Determine compliance with all applicable statutes and regulations.
- Seek advice from its own legal counsel, as appropriate.

The OCC will not accept an application for filing unless the organizers identify the CEO. (See the "Selection of the CEO" discussion in this booklet for guidance about requesting confidential treatment.)

The spokesperson should advise the OCC promptly whenever "significant changes" occur from the bank's original plan after the application is filed. (See "[Significant Changes](#)" discussion in this booklet.)

Biographical and Financial Reports

The OCC normally requires each proposed insider to submit the [Interagency Biographical and Financial Report](#). The OCC usually does not require insiders to complete the financial report portion of the report if a holding company will provide the new bank's financial strength (see "Types of Filings" discussion in this booklet).

Sponsors must submit a [Corporate Background and Financial Report](#) and the following or similar financial information:

- Federal Reserve Y-6 filings for the last three years.
- SEC 10K filings for the last three years.
- Annual report for the most recent fiscal period.

In the special case of a bankers' bank, the participating banks and depository institution holding companies are the organizers. Each participating bank must

submit its call reports as of June 30 and December 31 for the last three years and the annual report for the most recent fiscal period. In addition, each depository institution holding company must complete a Corporate Background and Financial Report and submit financial data similar to that required from participating banks.

National Bank Identifying Information

The name of the proposed bank must include the word "national" or "national association." If the exact location is unknown at the time the application is filed, the organizers must provide a "vicinity of" location. The amount of detail needed to identify the location is based on the size of the community. For instance, if the new charter will be located in a heavily populated area, the location should be specific to within 1000 feet. If the desired location is rural, identification of an area within a one-mile radius could be acceptable, if no public confusion would result. If the mailing and street addresses differ, organizers should provide both.

Publication Requirements and Comment Periods

Each organizing group or sponsor must publish a notice of its charter application in a general circulation newspaper in the community in which the proposed bank will be located as close to the date of filing as practicable (see 12 CFR 5.8). If the application is an interstate filing (one that is filed by a BHC located¹ in a different state than the proposed charter), the OCC may extend the 30-day public comment period to allow sufficient time for all interested parties to comment (see the "[Public Notice and Comments](#)" booklet).

Filing Fees

The filing fee, payable by check or other means to the Comptroller of the Currency, should accompany the application. The OCC does not require a corporate filing fee for a proposed new bank to be located in an area that meets the following two requirements:

- The area is a low- or moderate-income area (see Glossary).
- No other depository institution operates a branch or main office in that area.

Refer to the "General Policies and Procedures" booklet for a more detailed discussion of fees.

Types of Filings

The OCC has two types of guidelines for charter filings: standard review and expedited review.

¹ A BHC is located in the state in which the total deposits of all of its banking subsidiaries was the largest on the later of July 1, 1966, or the date on which it became a BHC under the Bank Holding Company Act.

Standard Review

Most organizing groups and many sponsors must file their charter applications using the OCC's standard submission guidelines outlined in the interagency application. These applications are subject to a 30-day comment period. A well-researched and thoughtfully prepared application helps the OCC to make a timely decision. The OCC seeks to make a decision within 120 days after receipt or as soon as possible thereafter. Charter proposals that receive standard review are not approved automatically.

Expedited Review

An application to establish a full-service national bank sponsored by a BHC, whose lead depository institution is an eligible bank or eligible depository institution (see Glossary), is deemed to receive preliminary conditional approval on the 15th day after the close of the public comment period, or the 45th day after receipt of the application, whichever is later, unless:

- The OCC notifies the applicant prior to that date that the filing is not eligible for expedited review or the expedited review process is extended under 12 CFR 5.13(a)(2); or
- The OCC determines that the proposed bank will offer banking services that are materially different than those offered by the lead depository institution.

The applicant must provide identifying information about the lead depository institution for an application to qualify for expedited review. If one or more institutions are approximately the same size, the applicant must furnish additional information to support identification of the selected institution as the lead depository institution. Such information should include:

- Full legal names, locations (city and state of each main office), and OCC charter or FDIC certificate numbers for the institutions.
- Total assets for each institution as reported in the most recent call report (or comparable thrift report) and the date of that report.
- Total assets for each institution as reported in the reports of condition (or comparable thrift financial reports) as of the date one year earlier than the most recent report.

Contracts and Other Arrangements

As part of its application, each organizing group must submit a description of any contract, transaction, professional fees, or any other type of business relationship involving the institution, the holding company, its affiliates, and any insider (see Glossary). The OCC reviews each insider contract to be sure that it is made on nonpreferential terms. If the contract involves an insider, the OCC requires the submission of at least one independent appraisal of the contract or other arrangement (see the "[Investment in Bank Premises](#)" booklet of the manual for guidelines) that includes:

- A description of the assets, property, or service.
- The terms of the contract, including responsibilities, liability, rights for audits and reviews, and termination requirements.
- Evidence showing that the contract is fair, reasonable, and comparable to similar arrangements that could have been made with unrelated parties.

The organizing group also must disclose each insider contract or arrangement to proposed or current shareholders (see the “[Insider Activities](#)” booklet of the *Comptroller’s Handbook*). The organizing group must maintain copies of the disclosures in the bank’s files and provide them to shareholders upon request. Typical contracts or other arrangements include:

- The sale or other transfer of any organizer’s stock in the proposed national bank, including a voting trust or other voting agreement.
- An organizer acting as representative of, or on behalf of, the proposed bank or any person associated with the proposed bank.
- The payment or receipt of any money or item of value as compensation for services rendered or property transferred in organizing the proposed national bank. This may include the purchase or lease of banking premises, furniture, equipment, fixtures, or supplies; consultant or legal fees; preparation of a registration statement or nonpublic offering; or sale of stock.

Regardless of insider involvement, every contract or other arrangement should include provisions addressing obligations of, and options available to, the parties if the OCC (1) experiences delays in processing the application; (2) denies the application; (3) revokes its preliminary conditional approval letter; or (4) objects to a person serving in any proposed capacity. Such contract or arrangement would include real estate or employment commitments.

A proposed national bank may not pay any fee contingent or dependent upon an OCC action or decision. Such action is grounds for denial of the application or revocation of preliminary conditional approval.

Use of Third-Party Service Providers

A bank may rely on third-party service providers for a variety of critical functions, including product delivery, information technology, loan servicing, efficiency improvement, and expertise. Before selecting each third-party service provider, the bank should perform due diligence. It also should have a formal service agreement with each provider that clearly addresses the duties and responsibilities of the parties involved and that meets the needs of the bank’s business and strategic plans. *Organizers should enter into contracts contingent on preliminary conditional approval of their application.*

The organizing group should include in its application details about functions the bank will outsource and those it will perform internally. For those functions that will be outsourced, the organizers should include the name of each service provider under consideration along with related background information, number of years in

business, financial condition (statements), and a copy of any contract. Also, organizers should describe the extent of due diligence conducted for each service provider that assesses the operation, evaluates the total cost pricing, and outlines criteria for ongoing monitoring of the third party and the service level.

For example, many bank customers use the telephone to conduct banking activities. Many banks have a telephone call center that operates 24 hours a day, seven days a week so that customers can conduct banking activities at their convenience. While outsourcing this call center to a service provider may be more efficient and economical, it may increase the bank's transaction, compliance, and reputation risks if customer calls are mishandled.

A bank is responsible for the security of its customer and bank records. When third-party service providers are used, the bank also must ensure that the third party secures those records properly.

The process of subcontracting activities that the bank would otherwise perform triggers the requirements of the Bank Service Company Act, in particular 12 USC 1867(c). Specifically, services performed for the bank, by contract or otherwise, are subject to OCC's regulation and examination. A bank should notify potential service providers or vendors in writing of the OCC's examination and regulatory jurisdiction should they contract with the bank. The OCC requires that all final contracts specify the OCC's examination and regulatory jurisdiction. For additional guidance, see the "[Third-Party Relationships](#)" OCC issuances included in the References section of this booklet.

Before the bank is granted final approval and allowed to open, it must develop a service provider or vendor management program. The OCC will review this program during the preopening examination. (See Preopening Examination discussion.)

Certification

Each proposed organizer must sign and date the OCC certification in the interagency application. Organizers for a bankers' bank may request an exemption from the "natural person" requirement of 12 USC 21. A natural person is a human being and not a trust, corporation, or other organization or unit. If the OCC grants an exemption to a bankers' bank, an authorized representative from each of the participating depository institutions or depository institution holding companies must sign the application. Such authorization must be evidenced by a corporate resolution from the participating institutions or holding companies.

Deposit Insurance and Filing with the FDIC

The OCC generally requires FDIC deposit insurance for all national bank charters, except for national trust bank charters (see "Trust Banks" discussion). The FDIC's Statement of Policy for deposit insurance discusses the criteria the FDIC considers when evaluating deposit insurance applications, which are similar to those of the OCC. The OCC and the FDIC encourage simultaneous submission of the interagency application to each agency to expedite processing.

To the extent possible, the OCC and the FDIC coordinate their application investigations to minimize the burden to the applicant and to eliminate duplicative regulatory efforts. For example, the FDIC may rely upon OCC background investigations and may conduct its field investigation concurrently with OCC staff.

The FDIC may take final action on its deposit insurance application before the OCC decides its application. Likewise, the OCC may make its decision on the charter application prior to actions of other agencies on related applications, such as FDIC action on the deposit insurance application or Federal Reserve action on a BHC proposal.

Filings with Other Regulators

If an organizing group or persons representing the same interest file substantially similar state and national charter applications, the OCC generally will consider the national bank application abandoned. The OCC may consider an exception if the organizing group requests one and unusual circumstances exist.

Additional Information

The OCC may require additional information at any time to reach an informed judgment about the application. The OCC will request clarifications or additional information through the spokesperson. Those requests generally will not reflect negatively on the organizing group. Conversely, the OCC will deny the proposal if the additional information the organizers provide is insufficient to determine the bank's prospects for success.

Amendments

Organizers may file amendments to the application during the review process. However, the OCC may conclude that the submission of numerous or significant amendments during the review period has rendered the original application obsolete. In such cases, the OCC may deem the original application to be withdrawn or deny it. The organizers must then file a new application and submit a filing fee for the OCC to consider this "new" proposal.

Review of the Application

The OCC begins to process each application immediately upon receipt. The OCC reviews and analyzes the proposal, completes background and field investigations, and resolves any unusual or novel issues.

Background Investigations

The OCC conducts background checks to assess each insider's competence, experience, integrity, and financial ability. The OCC will determine independently the accuracy and completeness of information submitted for each person. The OCC must reach a decision to object to each insider serving in the proposed position. The "[Background Investigations](#)" booklet of the manual provides more information about this review process, the authority of the OCC to object to a filer, and actions that it may take if the materials submitted contain a misrepresentation or omission that could be misleading.

Field Investigations

The field investigation is an important component in the review process for any proposed national bank charter. The findings from the field investigation are major factors in the OCC's overall analysis and review of the application. However, it is only one of the components that are evaluated prior to making a decision. The OCC conducts a field investigation for every charter sponsored by an independent group and for most BHC-sponsored charter applications. Generally, the field investigation is intended to develop background information and determine whether:

- The organizing group is capable of successfully implementing the business plan.
- Executive officers are knowledgeable and can execute the proposed business plan in a safe and sound manner.
- The financial projections are realistic for the proposed market.
- The organizers have made any major changes to the business plan that were not reported previously to the OCC.

The OCC tailors the scope of each investigation, depending on the complexity of the application, with input from the supervisory office and other OCC divisions. National bank examiners (examiners) with appropriate expertise conduct the field investigation. The OCC normally schedules a field investigation approximately 45 to 60 days after the application is filed. Whenever possible, the OCC coordinates its investigation with that of FDIC staff to minimize burden on the applicant.

During the investigation, OCC staff members review relevant material, interview insiders and other identified persons, and explore matters related to the proposed bank's operations. The field investigation team typically discusses certain aspects of the proposal with organizers, principal shareholders, and management. Additionally, to assess market needs and support within the community, the team may meet with community groups, local government officials, and financial (bank and thrift) and nonbank competitors.

The examiners will meet with the organizing group and management at the conclusion of the investigation to recap the field investigation and its importance to the charter decision process, discuss any significant issues, and communicate the investigation findings in general terms.

Decision

Following review of the application and the field investigation, the OCC will determine whether the proposed bank charter has a reasonable chance of success and will be operated in a safe and sound manner. It then decides whether to grant preliminary conditional approval or deny the application. The OCC will notify the spokesperson and interested parties (see the "[Public Notice and Comments](#)" booklet) in writing of its decision.

Preliminary conditional approval: (1) indicates the OCC's permission to proceed

with the organization of the bank according to the plan set forth in the application; (2) specifies standard requirements, including minimum policies and procedures; and (3) may identify special requirements unique to the application for the proposed bank. In addition, the OCC requires the organizers to raise capital within 12 months of the OCC's preliminary conditional approval and to open within 18 months from that date.

A preliminary conditional approval decision is not an assurance that the OCC will grant final approval for a new bank charter. The organizing group must satisfy standard and special requirements, as well as certain procedural requirements, before the OCC will grant final approval. In addition, the OCC sometimes imposes special conditions that remain in place after the bank opens.

Standard and Special Requirements

When the OCC grants preliminary conditional approval to a charter proposal, it imposes standard requirements on the proposal. The organizing group must meet most of the standard requirements before opening (see Bank-Filer Samples, [Standard Requirements](#) on the OCC's Web site).

The OCC places special requirements on all new bank charters with certain characteristics, such as special purpose banks. The OCC also imposes requirements tailored to the specific individual proposal. While each organizing group must raise the minimum level of capital, net of organization costs, specified in its application, the OCC may require a group to raise an amount higher than it originally proposed. Other requirements may include:

- Submitting for review and prior approval a complete description of the bank's final information systems and operations architecture and related control plans.
- Implementing a comprehensive written information security program that includes administrative, technical, and physical safeguards appropriate to the size and complexity of the bank and the nature and scope of its activities.

The organizing group generally must satisfy special requirements before the bank opens.

Special Conditions

Unlike standard or special requirements, special conditions are considered "conditions imposed in writing" within the meaning of 12 USC 1818.² The OCC places two types of special conditions on new bank charters. Some apply to all new bank charters, such as obtaining the OCC's nonobjection to any significant change in the business plan. Others are tailored to specific proposals, such as:

- Maintaining a specified minimum capital floor.

² A condition imposed in writing is one that is enforceable under 12 USC 1818. At a minimum, the OCC will cite and include in its examination report a violation of a Regulatory Condition Imposed in Writing (RCIW). A violation of a RCIW can provide the basis for the assessment of civil money penalties or other enforcement actions.

- Maintaining a certain percentage of Tier 1 capital (leverage ratio) for a specified period after the bank opens. For example, the OCC normally expects that a new national bank will maintain no less than an eight (8) percent leverage ratio for the first three years of operations if it will offer a traditional array of products and services.
- Executing a written agreement between the proposed bank and its holding company that provides for capital maintenance, liquidity support, or other assurances to the bank, if and when necessary.
- Developing a contingency business plan agreement between the proposed bank and the OCC setting forth certain actions that the bank will take if the bank does not achieve original business plan results. The agreement could include, but need not be limited to, obtaining additional capital; developing and implementing a corrective action plan or new satisfactory business plan to remedy plan shortfalls or failures; or developing and implementing a contingency plan to sell, merge, or liquidate the bank at no cost to the FDIC.
- Requiring all final third-party relationship contracts to stipulate that the performance of services provided by the vendors to the bank are subject to the OCC's examination and regulatory authority.

In most cases, the OCC requires these conditions to be met by the time the bank opens and to remain in place until removed by the OCC. The OCC includes the following language in each preliminary conditional approval letter:

This preliminary conditional approval and the activities and communications by OCC employees in connection with the filing do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the United States, any agency or entity of the United States, or an officer or employee of the United States, and do not affect the ability of the OCC to exercise its supervisory, regulatory, and examination authorities under applicable law and regulations. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

Organization Phase

The organization phase for a national bank covers the period between the time the OCC grants preliminary conditional approval and the day the bank opens for business. During the organization phase, the organizing group must satisfy the standard requirements, special requirements, and most special conditions imposed before the OCC will grant final charter approval. In addition, the organizers hire the remainder of the bank's management team, establish the bank's premises at the proposed site, raise capital, develop policies and procedures, test the information technology architecture, and establish management information and control systems.

Becoming a Corporate Body

A national bank becomes a corporate body or legal entity on the date the organizers sign the organization certificate and adopt the articles of association. After becoming a legal entity, an organizing group elects a board of directors. As a corporate body,

the organization may enter into contracts and perform all necessary actions to form the bank other than engaging in the business of banking.

Establishing Bank Premises

The organizing group must decide to lease or purchase bank premises consistent with statutory and regulatory requirements (see the [“Investment in Bank Premises”](#) booklet). The organizing group finances the initial construction or acquisition of bank premises. The OCC will review lease or purchase agreements for reasonableness and will disallow any that are not made in the bank’s best interest.

There are statutory limits on investments in bank premises, provided in 12 USC 371d. Unless the OCC has previously approved an exception, proceeds from the sale of stock must be held in escrow and may not be used to finance the construction or acquisition of bank premises. For example, the OCC may approve an exception if an organizer has obtained approval from the OCC to receive stock for premises the bank has purchased from the organizer.

Construction of the bank facility must comply with the minimum security standards in 12 USC 1882 and 12 CFR 21. Once open, the bank’s security officer will file an annual report with the board of directors certifying that the bank complies with the stated security standards (see 12 CFR 21.4).

Internal and External Audits

The OCC requires each national bank to adopt an internal audit system appropriate to its size, nature, and scope of activities. Some new banks may elect to adopt a system that incorporates independent reviews instead of dedicated audit staff (see the [“Internal and External Audits”](#) booklet of the *Comptroller’s Handbook*). An effective audit program will include an evaluation of the quality of internal controls, including the reliability of financial information, safeguarding of assets, and the detection of errors and irregularities.

As a condition of preliminary approval of a newly chartered national bank, the OCC and the FDIC normally require banks to have an annual independent external audit for a period of three years after they open. The external audit must be of sufficient scope to enable the auditor to render an opinion on the financial statements of the bank or consolidated holding company.

The first audit should occur no later than 12 months after the bank opens for business. For example, if a bank becomes a corporate body on April 15, the audit period must begin on April 15 and may end no later than March 31 of the following year. Since most banks adopt a calendar year end, the first audit normally would be performed as of December 31 of the year the organizers form the bank as a corporate body.

The OCC may grant exemptions from this external audit requirement to a new bank subsidiary of a BHC when:

- The new bank’s financial statements are included in the audited consolidated financial statements of the parent BHC.

- The sponsoring BHC is an existing holding company that has operated for three years or more under Federal Reserve Bank supervision and does not have any institutions subject to special supervisory concerns.
- Adequate internal audit coverage will be maintained at the bank level. At a minimum, the internal audit program must evaluate the quality of internal controls, including the reliability of financial information, safeguarding of assets, and the detection of errors and irregularities.

The OCC and the FDIC will coordinate determinations about external audit exemptions consistent with the [“Interagency Policy Statement on External Auditing Programs of Banks and Savings Associations.”](#) This statement focuses on banks holding less than \$500 million in total assets. If the OCC grants an exemption, it will include that determination in its preliminary conditional approval letter. If any of the requirements listed above are not met during the first three years of the bank’s operation, the OCC may withdraw the exemption at its discretion.

Management of new banks should be aware of the general limitations contained in the Sarbanes–Oxley Act of 2002 (Sarbanes–Oxley). Sarbanes–Oxley prohibits an accounting firm from acting as an external auditor of a public company during the same period that the firm provides internal audit outsourcing services. This prohibition applies to companies with securities registered with the Securities and Exchange Commission (SEC) or a federal banking agency. Accordingly, national banks that are subject to the Securities Exchange Act Disclosure Rule requirements of 12 CFR 11 and 16 would be covered by separate audit requirements.

Fidelity and Other Insurance

The bank’s board of directors is responsible for the adequacy of the fidelity bond and other insurance needs. They must research and document in meeting minutes their assessment of the bank’s fidelity insurance and excess coverage needs.

From the effective date of the registration statement until the bank opens for business, the proposed bank must have fidelity insurance coverage in an amount equal to the total amount of capital that the organizers will raise. Alternatively, the proposed bank may address its fidelity coverage needs by relying, to some extent, upon the insurance coverage in effect for the independent escrow agent receiving the proposed bank’s stock subscriptions.

If the bank’s board chooses the alternative approach, the proposed bank still must have fidelity bond coverage in place from the date the registration statement is effective until it opens for business. Fidelity bond coverage must be at least equal to the greater of: (1) the amount of insurance and excess coverage that the bank will otherwise need after it opens for business; or, (2) the maximum amount of funds that all persons (excluding the escrow agent) are authorized to collect, receive, or deposit from stock subscriptions.

After the bank opens for business, it must assess the four factors listed in [12 CFR 7.2013](#) and obtain adequate fidelity bond coverage. They are:

- Internal auditing safeguards employed.

- Number of employees.
- Amount of deposit liabilities.
- Amount of cash and securities normally held by the bank.

The OCC will not grant final approval of the charter until the bank has selected a permanent fidelity insurance carrier. The OCC must receive assurances from the bank that permanent insurance coverage will be in place on or before the bank's proposed opening date.

A bank also may acquire liability insurance to mitigate any loss it might incur for inadequate or faulty systems. Some insurance companies offer specialty policies to businesses that assume the risk of legal liability, including errors and omissions. Errors and omissions policies usually cover lawsuits from negligence and performance failure of a product or service.

Organization Costs

An organizing group funds all organization costs of a national bank (see Glossary). At the first shareholders' meeting, shareholders review documentation for organization costs and commitments, evaluate their reasonableness, and authorize them as appropriate. Normally, the OCC will allow the organizing group to charge expenses incurred in applying for and organizing a bank to the bank's current earnings.

Newly chartered banks must expense the cost of start-up activities, including all organization costs, as incurred. The organizers must document the expenses as incurred during the organization phase and may not charge them to the bank until the shareholders approve them.

Organizers should capitalize the cost of purchasing and leasing bank premises and amortize these costs using the straight-line method over their useful lives (or term of the lease). Organizers can amortize expenses, such as interest costs incurred during the period the bank premises are under construction.

The OCC considers preopening expenses, including allocated internal costs, as the cost of start-up activities. Accordingly, the organizers cannot capitalize these costs and must allocate internal costs, such as management salaries, as preopening expenses. The bank should report preopening expenses incurred from the bank's inception through the date it commences operations on the income statement during the calendar year that the bank begins operating.

Detailed instructions for the definition of start-up activities and the inclusion of these costs in the bank's report of income are included in the "Start-up Activities" section to the call report. This guidance conforms to AICPA Statement of Position 98-5, "Reporting on the Costs of Start-up Activities." (See [OCC Bulletin 98-29](#): Accounting for Computer Software Costs.)

The registration statement and proxy materials must disclose fully all fees and organization costs to prospective shareholders. The organizers must provide

sufficient information to assist the shareholders in evaluating the reasonableness of the expenses.

The OCC reviews all expenses associated with the proposal prior to granting final approval for the bank charter. The existence of undocumented, unnecessary, inappropriate, or excessive organizational costs reflects poorly on the organizing group. The OCC may prohibit the bank from reimbursing the organizers for such costs. In such cases, the organizers personally are responsible for any expenses the OCC disallows. Under certain circumstances, the OCC may require that the organizers raise additional capital to offset unplanned, but legitimate, expenses.

Significant Changes

Proposed changes throughout the chartering process may alter materially the underlying factors upon which the OCC based its decision on the application.

Those changes may have a positive or negative effect on the application. The OCC will evaluate each significant change to the original charter proposal to determine the overall impact on the proposal and decide whether to:

- Allow organization of the bank to continue.
- Impose additional conditions on the approval.
- Revoke preliminary conditional approval.

In some cases, the OCC may consider the change so materially different from the original application that the OCC will consider the application abandoned. In such cases, the OCC requires the organizers to submit a new application.

Identification

Licensing staff will maintain contact with the spokesperson throughout the organization phase and monitor any deviation from the business plan to identify significant changes. Organizers must notify the OCC promptly of significant changes when they occur or are proposed. Matters subject to this notification include, but are not limited to, changes in the:

- Organizing group's cohesiveness or its composition, including the addition or loss of organizers, directors, or principal shareholders.
- CEO or other members of the proposed management team.
- Biographical or financial information of the CEO or organizers different from what they previously disclosed to the OCC.
- Ownership distribution (see the "Ownership and Capital Raising Efforts" discussion that follows).

- Manner in which the organizers raise capital, if different than what is described in the charter application (see the “Ownership and Capital Raising Efforts” discussion that follows).
- Development of, or a change in the terms to, a stock benefit plan.
- Business plan, including changes to proposed products, services, activities, growth plans, marketing plans, risk profile (such as more aggressive underwriting criteria or adding a fiduciary operation to a commercial bank’s operations), or risk management controls.
- Location of the main or branch offices.

Ownership and Capital Raising Efforts

The OCC will review the shareholders’ list prior to, or during, the preopening examination to confirm that the organizers’ and directors’ subscriptions are consistent with their original stock purchase commitments. The OCC also will verify that the organizing group’s effort to raise capital is consistent with the plans described in the application. Failure to raise capital, as described, is an example of a deviation that can occur late in the chartering process. For example, organizers may make last-minute material capital contributions, or a BHC may purchase stock in a bank that originally planned to raise capital in the local community.

Licensing staff will consider if a deviation from described capital-raising efforts has the effect of constituting a sale of the charter because of a material change in ownership. Higher capital contributions by insiders than originally planned may reflect a lack of community support for the proposal. In some cases when the deviation strengthens a proposal without altering other aspects, such as implementation of the business plan, the OCC may decide not to require submission of a new application.

Repayment of Organization Costs to Organizers

Organizers may not be reimbursed for personal loans or advances of funds made to the bank organizing effort until after the capital funds are deposited in the bank, the shareholders authorize repayment, and the OCC authorizes release of the escrowed capital funds. When it opens for business, the bank can repay organizers in cash. Alternatively, the organizing group may request prior OCC approval so that an organizer can receive stock, or a combination of stock and cash. The OCC will review the expenses and approve the request provided that:

- The organizers document and disclose in the proxy materials expenses incurred by shareholders, providing the shareholders with information to evaluate the reasonableness of the expenses.
- The OCC determines that the expenses are reasonable.
- The stock is issued at no less than par value.

Preopening Examination

The preopening examination (POE) is the last major step of the chartering process for national banks. Organizers submit a request to the OCC to schedule this examination at least 60 days before the proposed opening date. An examiner will visit the bank at least 14 days prior to the proposed opening date to determine whether the board of directors and management are prepared to commence operations.

The examination may be broad in scope and include an evaluation of the bank's final plans to identify, measure, monitor, and control all relevant risks. (See [Appendix D](#) for information about the categories of risk and risk assessment.) After the preopening examination, the examiner will meet with the board of directors and management to discuss examination findings.

The OCC may decide on a case-by-case basis to waive or perform an abbreviated POE for an organizing national bank sponsored by an existing BHC or other sponsoring company. The OCC will base its decision primarily upon the OCC's prior knowledge of, and experience with, the sponsor and the sponsor's policies and procedures. At a minimum, each BHC-sponsored organizing national bank that will not receive an on-site review must certify completion of certain organizational procedures and file remaining corporate documents with the OCC.

Expiration or Revocation of Preliminary Conditional Approval

A bank must raise initial capital, net of organizational and preopening expenses, to meet or exceed the amount stated in the preliminary conditional approval letter. If the capital for the new bank is not raised within 12 months of the preliminary conditional approval, the organizing group fails to meet the market test (see Glossary) and preliminary conditional approval expires. The OCC generally will not extend the time for raising capital.

If the organizers meet the market test deadline, they must open the bank no later than 18 months from the date the OCC granted preliminary conditional approval. The OCC's preliminary conditional approval also expires for failure to open the bank within 18 months.

Extensions

The OCC normally does not grant extensions of time for either deadline. Under extenuating circumstances, the organizing group may request an extension of the time following approval from the Licensing staff in the appropriate district office. The organizing group must provide sufficient information with its request to prove that the reason for the delay is beyond its control (for example, unforeseeable environmental cleanup that the organizers must complete before they can build a facility).

Revocation

The OCC will revoke preliminary conditional approval if:

- The OCC discovers material violations of law, misrepresentations, or any fraudulent activity by the organizers, directors, or officers.
- Prior to opening, the OCC learns of any information that gives it sufficient cause to:
 - Change its evaluation of the proposed new national bank’s prospect for success (such as significant changes in proposed senior management, status of ownership or directors, deterioration of an affiliate institution, or a change in capitalization or deposit insurance status).
 - Question that the bank will be operated in a safe and sound manner.

Notification

The OCC will convey reasons in writing why it denied an application or withdrew preliminary conditional approval. The organizing group and directors alone are responsible for all expenses incurred for a withdrawn, expired, or disapproved application. They personally must pay all expenses incurred regarding the proposal.

Final Approval

The OCC determines whether a bank will be authorized to open. A national bank may begin the business of banking or engage in fiduciary activities only when the OCC grants final approval. The OCC may delay opening if:

- During the POE, the examiner identifies deficiencies that the directors must correct prior to opening. Such deficiencies may include systems or bank premises that are not ready to support bank operations.
- The directors have not selected a fidelity insurance carrier, or the fidelity insurance coverage will not be in effect when the bank opens.
- The OCC determines through other means that a significant change has occurred or that the organizing bank is not prepared to open. Significant deviations or changes that the OCC has not approved during the organization phase may be grounds for delaying issuance of the charter or revoking its preliminary conditional approval.
- The OCC determines that the organizers have not adequately addressed any substantive risk management concerns identified in the chartering process or POE.

The OCC imposes the following standard condition on each preliminary conditional and final approval:

The bank: (i) shall give the appropriate OCC supervisory office at least 60 days prior written notice of the bank's intent to significantly deviate or change from its business plan or operations,³ and (ii) shall obtain the OCC's written determination of no objection before the bank engages in any significant deviation or change from its business plan or operations. The OCC may impose additional conditions it deems appropriate in a written determination of no objection to a bank's notice. For the first three years of operation, the bank also must provide a copy of such notice to the appropriate FDIC regional supervisory office.

This condition of approval is a condition "imposed in writing by the agency in connection with the granting of any application or other request" within the meaning of 12 USC 1818. As such, this condition is enforceable under 12 USC 1818.

Until final approval is granted, the OCC has the right to alter, suspend, or revoke preliminary conditional approval should the OCC deem that any interim development warrants such action.

Post-Opening Considerations

The OCC continuously supervises national banks through on-site supervisory activity and periodic off-site monitoring. (See the "[Large Banks Supervision](#)" and "[Community Bank Supervision](#)" booklets of the *Comptroller's Handbook*.) Those activities help determine the condition of individual banks and the overall stability of the national banking system. (Also see [Appendix D](#) in this booklet.)

Significant Deviations After Opening

A bank's significant deviations (see Glossary) or changes from its proposed business plan after opening for business may alter materially the underlying factors upon which the decision to approve the charter application was based. Those deviations may have a positive or negative effect on the bank. A new national bank may not change its operations significantly without the OCC's review and nonobjection.

After a bank opens for business, management and the board may discover that the bank is achieving slower or more rapid growth than anticipated. Management and the board also may determine that the bank is not able to generate quality loans or attract a significant volume of deposits. There also may be concerns about poor risk management practices. Management and the board should investigate thoroughly the underlying reason(s) for each item before taking action.

Examiners will evaluate proposed significant deviations to determine if they are prudent. (See [Appendix G](#) for specific guidance on identifying and evaluating significant deviations, communication requirements, and related procedures.)

³ If such deviation is the subject of an application filed with the OCC, no separate notice to the supervisory office is required.

Expansion or Contraction of Activities

Bank management that wishes to expand or contract the bank's primary business may need to revise its articles of association and submit other materials to the OCC for review prior to implementing the proposed change. In addition, an uninsured bank will need to file a deposit insurance application with the FDIC if it plans to begin accepting insured deposits as part of an expansionary plan.

Like the OCC, the FDIC requires, in conjunction with granting deposit insurance, that a bank provide it advance notice of any significant change in operations for the first three years of operations. The FDIC may terminate deposit insurance if the bank stops accepting insured deposits as part of a plan to contract its banking business.

If management of a limited charter bank wants to expand the bank's powers to those of a full service commercial bank, it must amend its articles of association and submit a request to the Licensing staff in the appropriate district office. The request must include a proposed business plan, filing fee, and list of management. Although the OCC does not require a complete application, it may request certain parts of the new bank charter application to evaluate sufficiently the proposed change to full service banking.

If management desires to convert a full-service charter to a limited-service charter (such as a cash management or trust bank), it must amend its articles of association and submit a notice to the Licensing staff in the appropriate district office. The notice should include a proposed business plan, changes in the bank's capital structure, a description of planned changes in bank premises, and a list of proposed management. Although the OCC does not charge a fee for this type of transaction, any resulting reduction in capital requires the bank to file a letter of intent and any appropriate fee (see the "[Capital and Dividends](#)" booklet).

If the bank intends to relocate its head office or any branch in its conversion to a limited-service charter, the bank must submit the appropriate relocation application and filing fee (see the "[Branches and Relocations](#)" booklet). Although the OCC does not require a public notice to convert to a limited-service charter, the bank may need to provide public notice for related applications or notices (such as a purchase and assumption, relocation, or branch closing).

The OCC has a long-standing practice of discouraging a national bank from removing substantially all of the assets and liabilities of the bank, creating a shell charter. The OCC has serious concerns about how the management or the board may use such a shell charter. The transfer of a shell charter raises OCC concerns about the nature of the services and products that might be initiated by an acquiring entity.

Change in Control

Unless a transaction is subject to the Bank Merger Act (12 USC 1828(c)) or other statutory exemptions, the OCC will apply the definitions and standards in the Change in Bank Control Act (CBCA) and the OCC's implementing regulation (12 USC 1817(j) and 12 CFR 5.50, respectively) to determine whether a change in ownership interest constitutes a change in control. This includes transactions that may result in control following the exercise of warrants or options by insiders under stock benefit plans.

If the OCC finds that a change in control would result from a change in ownership, the OCC will require the new owner(s) to file a change in control notice, generally, prior to the proposed transaction. The OCC will then decide whether to disapprove the proposed change. No person (see Glossary) may take any action that would result in a change in control of the bank without prior OCC review, as provided in the CBCA, unless the transaction is subject to approval under certain other statutes (see the [“Change in Bank Control”](#) booklet).

OCC Review of Management

The OCC must review and not object to the hiring of any officer or the appointment or election of any director for two years from the date the bank commences business. During this time period, each person proposed as an officer or director must provide the appropriate OCC supervisory office with the required [Interagency Biographical and Financial Reports](#). The OCC will provide a written decision about each person submitted for review.

Special Purpose or Narrow Focus Proposals

A national bank is authorized by its charter to exercise all express or implied powers of national banks. Special purpose or narrow focus banks offer only a small number of products, target a limited customer base, incorporate nontraditional elements, or have narrowly focused business plans.

Special purpose banks and those with a narrow focus must meet the same statutory and regulatory requirements as other nationally chartered banks, unless applicable laws or regulations provide otherwise. Organizers of such banks must adhere to established charter policies and procedures that are set forth in 12 CFR 5 and this manual. Organizers should tailor the contents of the application to be consistent with the special purpose or narrow focus nature of the proposed charter.

The OCC’s review of a special purpose or narrow focus proposal may exceed traditional processing time frames because of the time needed to evaluate the supervisory risks associated with each application. Special purpose and narrow focus bank charter applications normally must provide the information required by the OCC’s standard review process. The OCC requires each special purpose or narrow focus bank to indicate the nature of its operations in its articles of association.

Types of Special Purpose Banks

Special purpose proposals include those banks whose operations are limited to credit card operations, fiduciary activities, community development, or cash management activities. Bankers’ bank proposals also fall into this category.

Credit Card Banks

National credit card banks take two basic forms. First, a BHC or individual shareholders may own an insured bank that engages exclusively or predominantly in credit card activities. This bank may legally offer additional commercial banking services unless prohibited by its articles of association. The bank may expand its activities by following the [Expansion or Contraction of Activities](#) requirements

previously discussed in this booklet. These banks are “banks” under the Bank Holding Company Act (BHCA), and so a company that owns one is a BHC subject to the activity and geographic limitations of the BHCA.

Second, there are insured national credit card banks that are not “banks” under the BHCA. The Competitive Equality Banking Act of 1987 (CEBA) created the BHCA exemption for these banks (CEBA credit card banks). The company that owns a CEBA credit card bank does not become a BHC solely by virtue of owning the bank, and so the parent company is not subject to the activity and geographic limitations generally applicable to BHCs under the BHCA. Thus, nonbank holding companies, commercial entities, or banks that wish to have a subsidiary credit card bank usually own these banks. However, a BHC that wants to operate a credit card bank in a state in which it is not able to establish a *de novo* BHCA bank also could own a CEBA credit card bank in that state. This type of bank must meet all of the requirements for the credit card bank exemption created by the CEBA amendment to the BHCA (12 USC 1841(c)(2)(F)). The bank:

- Must engage only in credit card activities.
- May not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties.
- May not accept any savings or time deposits of less than \$100,000, unless they are used as collateral for secured credit card loans.
- May maintain only one office that accepts deposits.
- May not engage in the business of making commercial loans.

Those limitations must appear in the bank’s articles of association.

Although commercial entities may have proven experience in managing a credit card operation, the OCC expects a senior management team that can demonstrate sufficient banking experience necessary to operate as a national bank in a regulatory environment. A CEBA credit card proposal will be processed as a narrowly focused charter application. Proposals with any of the following features will be subject to greater scrutiny:

- Issuance of cards with closed-end credit features.
- The absence of a parent organization with an investment grade rating of A or higher by Moody’s or Standard and Poor’s.
- Issuance of cards to low- and moderate-income (LMI) customers with a higher credit risk profile or higher default probabilities, large upfront fees, higher than usual annual percentage rates, or collateral issues (collectively, subprime lending issues).
- Electronic banking and Internet primary operations.

Each applicant should evaluate thoroughly and discuss potential issues with appropriate OCC staff before filing. Third-party relationships or vendor management issues may increase significantly a bank’s risk profile, notably strategic, reputation,

compliance, and transaction risks. (See the “Third-Party Relationships” section in this booklet.) Because those issues are sometimes complex, an applicant also may wish to consult its regulatory counsel.

A credit card bank must maintain its status as an “insured depository institution” within the meaning of 12 USC 1813(c)(2) and apply for membership in the Federal Reserve System. If the FDIC initiates or takes any action to terminate the bank’s status as an “insured depository institution,” the OCC reserves the right to impose additional conditions upon the bank.

A credit card bank also must comply with the CRA. However, it may seek designation as a limited-purpose bank under 12 CFR 25.25 for CRA purposes.

Many credit card bank proposals raise affiliate transactions issues under sections 23A (12 USC 371c) and 23B (12 USC 371c–1) of the Federal Reserve Act and the implementing regulation, Regulation W, 12 CFR 223. The most common issues relate to:

- Initial capitalization of a newly chartered credit card bank.
- Transfers of assets between the credit card bank and its affiliates.
- The possibility that credit extended by a proprietary credit card bank to its cardholders may be treated as a loan to an affiliate, if customers use their credit cards to purchase goods and services from bank affiliates.

Regulation W contains an exemption from the restrictions of sections 23A and 23B that permits a newly formed bank to purchase assets from an affiliate, thus eliminating many of the issues pertaining to providing initial capitalization of any new bank, including a credit card bank.

Under section 23A’s attribution rule, an extension of credit by a member bank to a nonaffiliated entity is treated as an extension of credit to an affiliate if the proceeds are transferred to, or used for the benefit of, an affiliate of the bank. These transactions thus become covered transactions. Accordingly, if a credit cardholder purchases goods or services from an affiliate of the member bank that issued the credit card, then the extension of credit to the cardholder is attributed to the affiliate because the affiliate receives the benefit of the loan proceeds.

Regulation W contains complex rules regarding the treatment of credit cards under the attribution rule. The regulation provides an exemption from the attribution rule if the extension of credit is made through a “general purpose credit card.” This is a credit card issued by a member bank that is widely accepted by merchants that are not affiliates of the bank and that satisfies a test set forth in the regulation. Specifically, the value of goods and services purchased with the card from affiliates of the bank must be less than 25 percent of the total value of all goods and services purchased with the card. Compliance with the test may be demonstrated in several ways. Organizers of a CEBA credit card bank with a sponsoring company should consult the regulation for details. If a card fails this test, all card transactions with affiliates are subject to the attribution rule.

Issuers of credit cards that cannot qualify as general purpose credit cards may still avoid the collateralization and other requirements for covered transactions by

making use of the exemption provided in Regulation W for an intraday extension of credit. This is defined as an extension of credit to an affiliate that the bank expects to be repaid, sold, or terminated, or to qualify for a complete exemption under Regulation W, by the end of the United States business day. CEBA credit card banks commonly qualify for this exemption by selling their receivables to an affiliate or other entity at the end of each business day. Organizers of a CEBA credit card bank with a sponsoring company should consult the regulation concerning requirements to qualify for the intraday exemption.

Trust Banks or Trust Companies

The OCC may grant approval for a national bank that will limit its operations to those of a trust bank and activities related to trust services pursuant to its authority in 12 USC 27 and 92a and the licensing requirements in 12 CFR 5.20 and 5.26. National banks that choose to so limit their services are referred to as national trust banks or national trust companies (trust banks). Most trust banks choose not to apply for deposit insurance; however, FDIC insurance may be available for national trust banks, and the organizers should consider applying for it, if appropriate.

An organizing group or sponsor seeking to charter a trust bank should review this booklet as well as the [“Fiduciary Powers”](#) booklet. The OCC requires that a national trust bank’s articles of association limit the bank to the exercise of fiduciary powers and incidental activities.

A trust bank is not a bank for purposes of the BHCA (12 USC 1841(c)(2)(D)) if it (a) is not insured, (b) does not accept demand deposits, and (c) does not make commercial loans. Accordingly, a company other than a BHC may own a trust bank. A trust bank also is not a bank in the BHCA, and can be owned by any company, if it meets certain conditions. These conditions are:

- The institution must function solely in a trust or fiduciary capacity.
- All or substantially all of the trust bank deposits are in trust funds and are received in a *bona fide* fiduciary capacity.
- No trust bank deposits insured by the FDIC are offered or marketed by or through an affiliate.
- The trust bank does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others, or make commercial loans.
- The trust bank may not obtain payment or payment-related services from any Federal Reserve Bank.
- The trust bank may not exercise Federal Reserve Bank discount or borrowing privileges.

Transactions with uninsured banks are subject to special restrictions under sections 23A and 23B of the FRA, as implemented by Regulation W. For instance, a bank’s transactions with an uninsured trust bank owned directly by the same parent company do not qualify for certain exemptions from sections 23A and 23B that are

available to a bank engaging in the same transactions with an *insured* bank affiliate. Thus, transactions between the bank and its uninsured trust bank affiliate generally must comply with all relevant requirements of sections 23A and 23B.

On the other hand, an uninsured trust bank that is wholly owned by a bank is not treated as an “affiliate” of the parent bank for purposes of sections 23A or 23B. Thus, from the perspective of the parent bank, transactions between the parent bank and the subsidiary uninsured trust bank are exempt from sections 23A and 23B. From the perspective of the uninsured trust bank, sections 23A and 23B apply to covered transactions with the bank parent but the so-called sister bank exemption or another exemption may be available.

Organizers of a trust bank or a bank that will operate a trust department should include the following information in the charter application:

- Detailed pro forma financial reports. Organizers should provide projections for three years or until stable profitability is achieved, whichever period is longer.
- A timetable that demonstrates how and when the trust bank will achieve stable profitability.
- A comprehensive alternative business strategy. This alternative strategy should articulate plans to manage potential scenarios in which revenue, margins, or expenses differ significantly from original plans. In addition, it should include a realistic plan for how the bank would access additional capital, if needed, or ultimately liquidate or exit the national banking system, if necessary.
- If a charter application involves an existing trust operation, copies of the last three years’ annual regulatory reports relating to the trust operations (such as the year-end RC-T schedule from the call report and financial reports filed with state regulators).
- Representations that the trust bank:
 - Shall not make any major acquisition(s) of fiduciary or fiduciary-related assets or services from another bank or company during its first three years of operation without the prior written approval of the appropriate OCC supervisory office.
 - Will consult with the appropriate OCC supervisory office prior to undertaking an aggressive or significant expansion of its trust operations into another state or prior to undertaking any geographic expansion that poses novel or problematic legal issues.
 - Will consult with the appropriate OCC supervisory office prior to offering any service or product, either in its home state or another state, where the bank’s ability to supervise the activity will be limited because of its reliance on nonbank personnel or limited staff or resources to market or administer the bank’s fiduciary or fiduciary-related services.

- Shall file quarterly call reports, prepared by someone with appropriate financial management experience, in accordance with relevant instructions.

Trust banks are required by statute (12 USC 92a) to have capital no less than that required by state law for companies offering similar services in the state in which the bank will be located. In addition, the balance sheet assets of a national trust bank are subject to the minimum leverage and risk-based capital ratios defined in 12 CFR 3. However, these ratios are not optimal measures of capital adequacy for national trust banks because off-balance-sheet asset management activities are not captured in the capital ratio calculations. Accordingly, the OCC expects organizers for national trust bank charters to provide a detailed analysis supporting their proposed capital level. Organizers should use the analysis factors outlined in OCC [Bulletin 2000–26](#) as a guideline for capital adequacy analyses.

Based on the OCC’s assessment of risk, management, and the ability of the bank to raise capital after commencing operations, the OCC may impose as a condition of approval for a national trust bank charter application initial and minimum capital requirements above those required by statute and regulation. In addition, the OCC may impose a separate special condition on a national trust bank charter that would trigger Prompt Corrective Action-type remedies should the bank fail to maintain the specified minimum capital level. Further, if a national trust bank’s assets under management increase significantly, or the national trust bank assumes additional risk, the OCC may require the bank to maintain higher levels of capital. In determining the appropriate capital and other supervisory safeguards, the OCC considers whether or not the proposed trust bank is a subsidiary of a national bank or BHC or otherwise has a financially strong parent that can provide support.

Organizers of a national trust bank should refer to OCC [Bulletin 2000–26](#), for further guidance on OCC expectations of national trust bank directors and management to ensure that adequate capital and liquidity are maintained at national trust banks. In addition, organizers should refer to recent national trust charter approvals available in [Interpretations and Actions](#) on the OCC’s Web site to gain insight into the OCC’s capital expectations for national trust bank charters.

Community Development Bank

A community development (CD) bank is a depository institution with a stated mission to primarily benefit the underserved communities in which it is chartered to conduct business. A CD bank pursues this specialized mission by providing financial services to LMI individuals or communities or benefiting other areas targeted for redevelopment by the local, state, tribal, or the federal government. The bank’s articles of association must indicate the express intent to lend, invest, and provide services primarily to LMI individuals or communities in which it is chartered to conduct business. Typically, this means that the CD bank’s activities will support one or more of the following activities:

- Affordable housing, community services, or permanent jobs for LMI individuals.
- Equity or debt financing for small businesses.

- Area revitalization or stabilization.
- Other activities, services, or facilities that primarily promote the public welfare.

The CD bank charter makes it possible for other banks to invest in the institution pursuant to the investment authority of 12 USC 24 (Eleventh) and 12 CFR 24 in addition to the investments that might be possible under 12 USC 24 (Seventh) and 12 CFR 5.36. For additional guidance regarding 12 CFR 24 or 12 CFR 5.36 requirements for national banks with a CD focus, see the OCC memo to "[Prospective Community Development Bank Organizing Groups](#)."

The OCC provides technical assistance to organizers of each CD bank to assist in addressing unique features associated with each application. OCC staff will respond to the group's questions and communicate options to assist in accomplishing the organizers' objectives.

As part of providing technical assistance, the OCC encourages groups to explore fully unique aspects of their proposals prior to submitting a draft for OCC staff review. The OCC will review **one** draft application for the organizing group. The OCC's technical assistance on the bank's proposal ends when the charter application is filed. OCC technical assistance does **not** include providing instructions and direction to the bank organizers on developing a business plan, creating the group's strategies, or actually preparing the proposal or application.

Cash Management Banks

A cash management national bank normally is affiliated through a BHC structure with other banks that engage in a full array of commercial activities. A cash management bank provides certain financial services to its large corporate customers. In the cash management bank, all accounts are swept into money market mutual funds or repurchase agreements of the cash management bank at the end of each day as each customer clears its accounts daily to zero. Fees for services typically are charged to each customer based on the number of services used and the number of items processed. Cash management banks incur high operational risks.

Some cash management banks are chartered as *de novo* institutions. However, most are created by stripping down the operations of an existing bank to those of a cash management bank following a purchase and assumption transaction. In the latter case, a bank must follow the "Contraction of Activities" requirements provided in the "[General Policies and Procedures](#)" booklet.

A key consideration when a bank alters its operation in this manner is the appropriate level of capital. The BHC may wish to reallocate its capital and reduce capital in the cash management bank (see the "[Capital and Dividends](#)" booklet). Normally, the OCC will expect capital at the cash management bank to be maintained at the "well-capitalized" level as defined in 12 CFR 6.4(b)(1).

The CRA does not apply to a special purpose bank that is engaged only in providing cash management, controlled disbursement services to the public.

Bankers' Banks

A group organizing a bankers' bank (see [Glossary](#)) may request that the OCC waive compliance with certain statutes or regulations based on their operations. Requests for such waivers should accompany the application and must be supported by adequate justification and legal analysis. The OCC will review each waiver request by a national bankers' bank and decide whether it is justified. However, the OCC cannot waive statutory requirements that apply specifically to a bankers' bank.

National banks investing in a bankers' bank may own no more than 5 percent of any class of its voting securities. In addition, a national bank's total investment in the stock of one or more bankers' banks is limited to 10 percent of the investing bank's unimpaired capital and surplus.

Stock in a bankers' bank may be sold only to depository institutions or their holding companies. The CRA does not apply to bankers' banks that do not perform commercial or retail banking services by granting credit to the public in the ordinary course of business, other than as incidental to their specialized operations.

Narrow Focus Proposals

The OCC receives numerous inquiries and proposals from individuals and groups expressing interest in establishing a national bank to conduct new business or transfer existing operations into a new bank. Organizers of banks that will have a narrow focus propose to offer limited services or anticipate serving a narrowly defined market niche. For example, an organizing group may propose a lending portfolio that is heavily concentrated or targets a restricted customer base.

Supervisory Risks

Certain supervisory risks, such as credit risks, will be increased in a narrow focus bank due to its concentration in a single, or a very limited number of, business activities. The OCC may discourage the filing of or deny a charter proposal that would focus primarily or exclusively on activities or services that will carry a high degree of risk or are determined to be predatory in nature.

The OCC requires any proposal for a narrow focus bank to have well-defined business strategies (including contingency plans, sound funding sources, and projected capital commensurate with the risks) and specialized management. The OCC will review each business plan for a narrow focus proposal to ensure that the organizers address adequately the following risks:

- *Concentrations.* Narrow focus banks, by their very nature, are not as diversified as traditional banks, and a bank's business plan should address how the bank will mitigate any concentration risk. Diversified asset and liability portfolios, product selection, funding sources, and target markets help make a bank less vulnerable to a downturn that could significantly affect its income, liquidity, or asset quality.

- *Funding and liquidity.* The organizers should clarify in the business plan how the bank's sources of funding are reasonably diverse, how it intends to maintain adequate liquidity, and how credit-sensitive funding risks will be managed.
- *Access to capital.* The business plan should identify sufficient capital to address uncertainties and provide a clear ability to raise capital, if needed. Initial capital should be sufficient, at a minimum, to support the bank's operations and absorb anticipated losses until profitability is achieved, while maintaining capital at an appropriate level to support safe and sound operations. If the bank fails to achieve its projected levels of profitability, the OCC expects the directors to take steps to restore capital to an adequate level. Depending on the risk profile of a narrow-focused bank's business plan, the OCC may require higher capital levels. This level of initial capital is particularly important if the bank relies on an Internet-only platform for distribution of products and services.
- *Customer authentication and security.* The application of a bank using the Internet as a significant means of product delivery must address authentication and security issues. The bank's method of customer authentication and fraud detection is critical because of the lack of personal contact with bank customers. Internet banking platforms allow bank customers to access information and systems directly, including those that enable funds transfers between banks (such as automated clearing houses, SWIFT, Fed Wire, and CHIPS). Also, pursuant to the Bank Secrecy Act, banks must report and record customer transactions that exceed certain thresholds. In an Internet environment, a bank may need to modify its systems for monitoring customer transactions. (Refer to the FFIEC IT Examination Handbook Series, [E-Banking booklet](#), dated August 2003, for specific information.)
- *Strategic planning.* Narrow focused banks often target a limited customer base and frequently have ill-defined contingency plans for redirecting efforts should the business plan prove unsuccessful. Organizers should define clearly in the business plan their targeted audience (for example, by identifying products and geographic areas) and the strategic alternatives. In developing the strategic plan, the organizers must keep potential conflicts of interest in mind. (See "[Conflicts of Interest](#)" previously discussed.)

CRA Policy Issues

The CRA does not apply to uninsured banks and certain special purpose banks, such as bankers' banks and banks that engage in only the following activities: providing cash management controlled disbursement services or serving as correspondent banks, trust companies, or clearing agents (see 12 CFR 25.11(c)(3)). In those cases, the organizers may omit the CRA plan discussion from the business plan.

Some other banks may seek designation as a limited-purpose or wholesale bank (see 12 CFR 25.12(o) and (w), and 12 CFR 25.25(b)). A limited purpose bank offers only a narrow product line, such as credit card or motor vehicle loans, to a regional or broader market. A wholesale bank is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers.

The organizers must submit a request, in writing, with the charter application to be designated as a limited purpose or wholesale bank. As limited purpose and wholesale banks are subject to evaluation under the community development test, the organizers should submit a targeted discussion of the bank's CRA plan as part of the charter application.

Capital Considerations

The OCC requires proposed banks with higher risk profiles to have higher capital reserves than banks that present lower risk. The OCC normally does not approve tiered capital injections during the first three years of the business plan unless the bank has an established parent company to serve as a source of capital strength. Therefore, the business plan must indicate that all necessary capital for the three-year plan will be available upon opening.

Procedures: Prefiling

Exploratory Inquiry, Conference Call, or Meeting

Licensing Staff

1. Confirms that the organizers have reviewed the information available on the [OCC's Web site](#) concerning the OCC's policies and procedures to establish a national bank. This information includes this booklet and other applicable booklets of the manual. Forwards any requested information about these processes to the contact person or spokesperson (spokesperson) for the organizing group.
2. Contacts Headquarters Licensing (HQ LIC), if necessary, about an inquiry, providing names of the organizers, proposed location (city, state), business lines, and any issues raised.

Organizers

3. Review the written guidance and information about the chartering process and begin to develop the proposal by preparing the bank's [business plan](#).
4. When key ideas are framed, may request an exploratory conference call or meeting through the spokesperson to clarify any questions or concerns. Mail or fax a copy of any written documents that describe the proposal to the district Licensing (LIC) staff for review *prior* to the call or meeting. Allow adequate time for OCC staff to review the material.

Licensing Staff

5. Schedules an exploratory conference call or meeting with proposed organizers along with the appropriate district supervisory, legal, and LIC staff, and, in some cases, OCC headquarters staff. The organizers may choose to include counsel and consultants in discussions and meetings with the OCC.
6. Conducts a conference call or meeting with all appropriate parties.

Organizers

7. Request information about the chartering process from the LIC staff in the appropriate district office if it has not been requested previously. If information was previously requested, skip to step 11.

Licensing Staff

8. Refers the organizing group to applicable booklets of the manual for guidance about the OCC's policies and procedures to charter a national bank, if not previously provided.
9. Forwards information about the chartering process to the organizers.

10. Decides whether to waive a prefiling meeting with the organizing group, if the group requested a waiver.

Organizers

11. Review information about the chartering process.

Prefiling Meeting

Spokesperson

12. When the filing materials are substantially complete, requests that a prefiling meeting be scheduled. This meeting includes all the organizers for a charter, including the spokesperson and chief executive officer (CEO) (collectively, the organizing group). Provide briefing materials about the proposal to the LIC staff allowing for adequate time (at least two weeks) to review the materials.
13. Request that a prefiling meeting be scheduled.

Licensing Staff

14. Schedules a prefiling meeting with the organizing group to review the requirements and procedures for organizing a national bank.
 - Invites the appropriate supervisory office and FDIC staff to participate in the prefiling meeting.
 - Sends a copy of any written material to the appropriate supervisory office, FDIC staff, and, if appropriate, HQ LIC for review prior to the meeting.
15. Conducts the prefiling meeting and discusses the following subjects, as appropriate, with the group:
 - The OCC's role and, as applicable, that of the FDIC and the Federal Reserve.
 - The OCC's licensing and supervisory interactions for filings.
 - The key policies and specific requirements affecting the chartering process, including:
 - The OCC's policies to approve only a proposal with a strong management team and business plan.
 - The OCC's requirement of full disclosure by insiders and advance discussion of background investigation issues that may be problematic.
 - Capital, funding and liquidity, management selection, CRA plan, Internet technology, and vendor selection.

- Procedures to raise capital prior to OCC decision.
- Market test.
- The importance of a comprehensive, well-developed business plan, including the markets the proposed bank will serve, the products and services to be offered, and the risk management systems that will be used to identify and control the attendant risks.
- The OCC’s significant change standard requirement that will be applied to the bank prior to opening and the significant deviation condition that will apply to the bank after opening (see [Significant Changes](#) discussion in this booklet and significant deviation discussion in [Appendix G](#)).
- The OCC’s ability to specify certain requirements that must be met before opening and to impose conditions in writing in addition to the significant deviation condition.
- The need to incorporate a multi-scenario alternative business strategy into the business plan. If a BHC or non-BHC parent is organizing, discuss how it will be expected to provide liquidity support and how it should demonstrate that support in the alternative business strategy.
- Whether the application qualifies for expedited versus standard review.
- How to file the charter application and follow the chartering procedures, including the time involved after submission.
- An overview of the organization phase.
- Common problems associated with new banks (see Avoiding Potential Problems discussion).

Organizers

16. Provide information about:
 - How the group came together and the factors that led to the decision to file.
 - The organizers’ qualifications, both individually and collectively.
 - An overview of the proposal, including a discussion of the business plan and the market with particular emphasis on any unique aspects or novel policy or legal issues.

Spokesperson

17. [For bankers’ bank] If necessary, provides a written request and justification for

waiver of certain legal requirements.

Licensing Staff

18. Answers questions posed by those attending the meeting.
19. If any prefiling discussion or meetings reveal significant policy, legal, CRA, compliance, or supervisory issues, contacts HQ LIC to decide:
 - Whether the application should be filed with HQ LIC, if broad issues are involved.
 - Whether specific issues should be carved out for HQ LIC action, while the application continues to be processed in the appropriate district office.
 - When the filing should be forwarded to HQ LIC.
20. Ensures that specific issues are brought to the attention of the appropriate OCC staff if any prefiling discussion or meeting reveals significant policy, legal, compliance, or supervisory issues.
21. Prepares a memo of the meeting and holds it in a pending file.
22. Sends the summary memo to the appropriate supervisory office if no supervisory representative attended the prefiling meeting.

Procedures: Application Process

Filing the Application and Publication

Organizers

1. Submit a complete [application](#), including the Interagency Biographical and Financial Reports, and filing fee to the licensing manager in the appropriate district office or to Headquarters Licensing (HQ LIC).
2. Publish a notice on the date of filing or as soon as practicable before or after the date of filing (see the "[Public Notice and Comments](#)" booklet).

Initial Review

Licensing Staff

3. Initiates and enters appropriate information into the Corporate Activities Information System (CAIS).
4. Establishes the official file to maintain all original documents and initiates background checks, as appropriate (see the "[Background Investigations](#)" booklet for procedures).
5. Forwards the filing fee and the deposit memorandum (Form 6043-01) to the Comptroller of the Currency, Accounts Receivable, 250 E Street, S.W., MS 4-8, Washington, DC 20219. Retains a copy of the memorandum. Contacts the applicant if the filing fee is not received or is inaccurate.
6. If the application is submitted by a sponsor, determines if the sponsor's lead depository institution meets the necessary criteria and is eligible for expedited review of the application; and
 - If the lead depository institution is not an eligible bank, prepares and sends a letter to the contact person or spokesperson (spokesperson) providing notice of standard review within five business days of receipt.
 - (If appropriate) If the lead depository institution is an eligible bank, acknowledges (refer to [Acknowledgment of Receipt](#) in the "General Policies and Procedures" booklet's OCC samples) filing within five business days of receipt.
7. Reviews the application, relevant information about proposed affiliates and ownership, and biographical and financial information (see the "Background Investigations" booklet) filed to determine if the filing contains all information necessary to reach a decision. If not, requests information from the spokesperson to be provided by a specific due date.

8. Within five business days of receipt, after reviewing the filing, notifies the appropriate supervisory office and supervisory analyst of receipt and requests that a field investigation tentatively be planned in 45 to 60 days. At the same time, forwards a copy of the filing to appropriate OCC staff, including the appropriate supervisory office and OCC expert staff (such as Credit Risk and Treasury and Market Risk), along with a brief summary of the application, business plan, and the main organizers. Solicits preliminary comments from OCC staff within 15 days of receipt by staff.
9. If the filing does not contain all information needed by the OCC, including the appropriate supervisory office and OCC expert staff, to reach a decision, requests necessary information in writing and establishes a specific due date to provide the information. Sends a copy of the request for additional information to the appropriate supervisory office, supervisory analyst, and other appropriate OCC staff.
10. Contacts HQ LIC if the proposal will affect significantly the quality of the environment or affect any district, site, building, or structure listed in, or eligible for listing in, the *National Register of Historic Places* (see the [“General Policies and Procedures”](#) booklet).
11. For bankers’ banks, routes request(s) for exemptions or waivers from statutes or regulations to the Law Department.

Field Investigation

(Generally not applicable for an application accorded expedited review. Skip to step 21.)

12. Decides to conduct a field investigation, particularly if one or more of the following circumstances exist:
 - The organizers are an independent group.
 - There is insufficient information available to the district office about the organizing group, the chief executive officer, or the accuracy and quality of the research and analysis comprising the business plan.
 - It is necessary to verify the accuracy and quality of the information contained in the business plan or to meet with members of the organizing group, its spokesperson, the proposed chief executive officer, or interested members of the public.
13. Requests a field investigation from the appropriate supervisory office and solicits its input to determine the scope of the investigation.
14. Provides the national bank examiner (examiner) documents to assist him or her in conducting the field investigation and outlines the tailored scope of the investigation.

National Bank Examiner

15. Contacts the spokesperson to arrange for the investigation.
16. Coordinates the investigation with the FDIC when possible.
17. Reviews documents, interviews insiders and other identified persons, and explores matters related to the proposed bank's operations consistent with the scope tailored for the proposed bank by Licensing (LIC) staff with input from other OCC staff.
18. Meets with the organizing group and proposed management to summarize the field investigation and its importance, discusses any significant issues, and communicates the investigation findings without offering a preliminary opinion about the likely decision on the charter application.
19. Prepares investigation findings, submits report for supervisory office approval, and forwards the completed report to LIC staff.

Licensing Staff

20. Receives and reviews the field investigation report. Circulates copies to appropriate OCC staff.

Public Comments and Hearings

21. If the public or interested persons request copies of the application, follows the Information Request Procedures in the "[General Policies and Procedures](#)" booklet.
22. If public comments are filed or a hearing is requested, refers to the "Public Notice and Comments" booklet for guidance and procedures.
23. Determines whether the comments are material.

Review and Decision

24. **[For applications accorded expedited treatment only]** After the close of the public comment period, determines whether the filing should be disqualified from expedited review, and if:
 - No, continues processing.
 - Yes, contacts the spokesperson immediately and notifies him or her that the proposal no longer qualifies for expedited review and identifies the specific reason.
25. Requests the appropriate supervisory office to sign off on supervisory office comments, including any examination and investigation reports. Copies the supervisory office analyst on all such requests.

Supervisory Office

26. **[For established BHC applications only.]** Consults with the portfolio manager or EIC of the BHC or affiliated banks.

Licensing Staff

27. Consults with HQ LIC if significant or novel policy, legal, supervision, or compliance issues have been identified.
28. Prepares confidential memorandum and decision letter recommending a decision to the delegated official.
29. Sends a copy of the confidential memo and draft decision letter to the appropriate supervisory office and the supervisory analyst, if appropriate. Solicits final comments.

Supervisory Office

30. Communicates with the portfolio manager or EIC of the bank. Responds to Licensing staff within five (5) business days.

Licensing Staff

31. Solicits concurrence with the supervisory office comments and signoff from appropriate deputy comptroller, unless the filing meets expedited processing criteria. Provides a copy of the confidential memo, draft decision letter, and supervisory office comments, if desired by the deputy comptroller.

Licensing Manager

32. Takes one of the following actions:

Decides application under delegated authority if it is eligible for expedited processing or the licensing manager and deputy comptroller concur on the outcome.

Forwards the official file to HQ LIC if the licensing manager and deputy comptroller's recommendations differ or if the decision is not delegated to the licensing manager. If forwarded to HQ LIC, skip to step 39.

Licensing Staff

33. Notifies spokesperson, interested parties, and appropriate supervisory office of decision, if appropriate.
34. Sends the spokesperson a decision letter.
35. Makes appropriate CAIS entries.

36. Informs spokesperson that the bank will not be allowed to open unless and until all substantive matters, including risk management concerns, have been addressed.
37. Completes applicable sections of the New Bank Handoff Checklist and forwards copies of the following documents to the supervisory office: the confidential memorandum, preliminary conditional approval letter (including enclosures), updated CAIS comments, and additional material highlighting any supervisory or licensing concerns.
38. Makes entry for all conditions imposed in writing under 12 USC 1818 (including the significant deviation condition) in the "Enforcement Actions" section of the OCC's electronic information system as Type "Regulatory Condition in Writing."
39. Forwards a copy with signature and an electronic copy of the preliminary conditional approval letter to the secretary to the Director, Licensing Activities.

HQ LIC

40. Makes appropriate CAIS entries.
41. Reviews the file and all relevant information; solicits comments from other OCC divisions, as appropriate. If applicable, resolves differing recommendations between the deputy comptroller and the licensing manager. Makes a recommendation and forwards the official file to the appropriate official for decision.
42. Notifies the spokesperson, interested parties, the appropriate supervisory office, and licensing manager of the decision. If there were differing recommendations between the deputy comptroller and the licensing manager, notifies the senior deputy comptroller and documents the final resolution of the differences in the official file.
43. Sends the spokesperson a decision letter.
44. Forwards a copy of the confidential memorandum, decision document, and transmittal letter to the Director, Licensing Activities if a special condition is imposed. Forwards a copy with signature and an electronic copy of the preliminary conditional approval or denial letter to the secretary to the Director, Licensing Activities.
45. Makes appropriate CAIS entries.
46. Completes applicable sections of the New Bank Handoff Checklist, forwarding electronic copies of the following documents, at a minimum, to the supervisory office: the confidential memorandum, preliminary conditional approval letter (including enclosures), updated CAIS comments, and additional material highlighting any supervisory or licensing concerns.

47. Makes entry for all conditions imposed in writing (including the significant deviation condition) in the "Enforcement Actions" section of the OCC's electronic information system as Type "Regulatory Condition in Writing."
48. For conditionally approved filings, returns the official file to the licensing manager in the appropriate district office for additional processing during the organization phase.
49. If denied, skip to step 50.

Organizers

50. Proceed to organize the bank (see the Organization Phase Procedures in this booklet).

Close Out

HQ LIC

51. For denied applications only, reviews the file for completeness and forwards it to Central Records.
52. Makes appropriate CAIS entries.

Procedures: Organization Phase

Organizing the Bank

Organizers

1. Within 30 days after receiving preliminary conditional approval:
 - Establish process for maintaining minutes of all meetings of the organizers and organizing board at the bank's corporate headquarters.
 - At the [First Meeting of Organizers](#) or by unanimous written consent:
 - Execute [Articles of Association](#) and [Organization Certificate](#) and submit an original of each to the appropriate district office for processing by Licensing (LIC) staff.
 - Fix the number of organizing directors to serve until the first meeting of the shareholders.
 - Elect as organizing directors the persons who have been cleared by the OCC, including the chief executive officer (CEO).
 - Review and document in the minutes the OCC's preliminary conditional approval letter and all other correspondence from the OCC.
 - Designate the organizing chairperson, secretary, or CEO as the person to initiate and receive all future correspondence from the OCC. If different than the spokesperson during the pre-decision phase of the application, advise the OCC of the new designee.
 - Forward to the OCC a copy of any filing, including registration statements or nonpublic offering statements, with the Federal Reserve or the SEC.
2. Advise the LIC staff at any time during the organization phase of significant changes.

Licensing Staff

3. Makes necessary Corporate Activities Information System (CAIS) entries throughout the organization of the bank.
4. Reviews for conformance to the business plan and other components of the charter application any filing with other agencies, such as registration statements or nonpublic offering statements with the Federal Reserve or the SEC.
5. Reviews [Articles of Association](#) and [Organization Certificate](#) for compliance with legal and policy requirements, and:

- If any deficiencies are found, contacts the spokesperson and requests corrections.
 - When all requirements have been met, sends [Acceptance of Articles of Association and Organization Certificate Letter](#) and a copy of each accepted document to the spokesperson.
 - Places accepted originals of the Articles of Association and the Organization Certificate in the OCC's charter application file.
6. Monitors organizing efforts including:
- Capital raising efforts.
 - Budget to actual organization expenses.
 - Significant changes in management, the business plan, or organization activities.
7. Evaluates or identifies any potential significant change at any time during the organization phase, and:
- Notifies Headquarters Licensing (HQ LIC) about any significant changes made during the organization phase.
 - Allows organization to continue if the Licensing staff, in cooperation with other OCC staff, determines that the change is not significant, does not affect the proposal negatively, or otherwise does not warrant a change in the conditions imposed in the preliminary conditional approval letter.
 - Allows the group to alter or withdraw the proposed change if the Licensing staff determines that it is significant and would adversely affect the proposal.
 - Prepares a recommendation and forwards it to HQ LIC for final evaluation of the significant change if the Licensing staff determines that the proposed change is significant, has occurred already, affects the proposal adversely, and such a change would require additional conditions or revocation of the preliminary conditional approval.

HQ LIC

8. Takes one of the following actions on any significant change:
- Allows the organization to continue after review and nonobjection.
 - Revises the preliminary conditional approval letter to impose additional conditions and communicates conditions to the organizing group.

- Revokes preliminary conditional approval and advises Licensing staff to have escrow agent return funds to subscribers if capital has been, or is in the process of being, subscribed. Then skip to step 56.
9. Notifies the Licensing staff and the organizing group of the decision and makes appropriate CAIS entries.

Organizing Directors

10. Hold the organizing board's first meeting. Make appropriate notations in the minutes of each of the following items of business:
- Execute [Joint Oath and List of Organizing Directors](#). (See [Instructions](#).) Execute an individual [Oath of the Bank Director](#) later, if necessary.
 - Authorize, at a minimum, the organizing chairperson and the organizing secretary to the board to sign checks and other documents.
 - Adopt a corporate seal.
 - Adopt a stock certificate form containing all information required by 12 USC 52. The par value of the stock should **not** appear on the face of the certificate, since par value is subject to change throughout the life of the bank.
 - Adopt [bylaws](#).
 - [Generally not applicable for established holding companies.] Discuss stock solicitation issues, including, as appropriate, some or all of the following items and:
 - Designate an unrelated insured depository institution as escrow agent of stock subscription funds according to 12 CFR 16.31. Send a copy of the depository agreement to the OCC.
 - Advise the escrow agent that the funds may be invested **only** in United States government securities, including a mutual fund consisting exclusively of such securities.
 - Authorize the solicitation of stock subscriptions, including setting the price at which stock will be sold.
 - Authorize the preparation and filing of a registration statement with the appropriate district office (see 12 CFR 16.15 for required information).
 - Authorize the purchase of adequate insurance, including fidelity bond insurance.
 - Approve the specific location of the bank's office(s) and advise the OCC of any change in location from the one(s) identified in the charter

application. The OCC may construe a change in location as a “significant change” and, if the organization is permitted to proceed, may necessitate republication and changes in the proposed bank’s business plan.

- Approve organization costs consistent with the OCC’s organization costs policy. Attach to the minutes a copy of approved organization costs.
- Review 12 USC 1972 on the use of interbank deposits as compensating balances for loans to persons connected with the depositing bank.
- Adopt a written insider policy that conforms to the guidelines in the [“Insider Activities”](#) booklet of the *Comptroller’s Handbook*.
- Adopt appropriate written policies pertaining to other areas of bank operations (see [Minimum Policies and Procedures](#)).
- Establish an internal control system to ensure ongoing compliance with the currency reporting and record keeping requirements of the Bank Secrecy Act. Refer to [Appendix F](#) and the [“Bank Secrecy Act”](#) booklet of the *Comptroller’s Handbook for Compliance* for details. [Not applicable to bankers’ banks.]
- Apprise directors of legal requirements that affect purchases from and sales to directors (12 USC 375); loans to executive officers, directors, and principal shareholders of member banks (12 USC 375a, 375b, and 12 CFR 215); and correspondent accounts (12 USC 1972).

Establishing Management and Site

Steps 11 through 18 normally are not applicable for established BHCs that are accorded expedited review.

11. Meet at least monthly as a group with the CEO and others, as needed, to oversee the organization of the bank.
12. Select remaining management officials and other insiders, including but not limited to a cashier or chief financial officer, a compliance officer, and a security officer. Submit to the OCC materials on each proposed management official, including the [Interagency Biographical and Financial Reports](#) and the director’s investigative findings. Also submit appropriate biographical and financial information on newly identified directors and principal shareholders (see the [“Background Investigations”](#) booklet), sending appropriate documentation to Licensing staff for prior review.
13. Thoroughly investigate background and qualifications of each proposed executive officer, using criteria no less stringent than those detailed in the Management Review Guidelines of [“Background Investigations.”](#)

Spokesperson

14. Submits to the OCC materials on proposed management officials, including the [Interagency Biographical and Financial Report](#) from the "Background Investigations" booklet and the organizing group's investigative findings on each. Also submits appropriate biographical and financial information on newly identified directors and principal shareholders.
15. [For bankers' banks only] Submits to the OCC financial reports on newly identified banks that would like to participate in the bankers' bank that are consistent with those submitted by the organizing banks.

Licensing Staff

16. Provides the supervisory office with a copy of materials on any newly proposed management officials, identified directors, and principal shareholders (insiders). Requests their reviews and recommendations as part of the review process.
17. Within 30 days after receipt of materials for each proposed management official, director, or principal shareholder, notifies the organizing group by telephone and by letter through the spokesperson whether the OCC:
 - Has no objection to the proposed insider.
 - Needs more time to perform its background investigation of the proposed insider.
 - Desires to conduct a personal interview with the proposed insider.
 - If a personal interview is conducted, includes the supervisory office in the interview process and documents the meeting for the file.
 - Identifies initial concerns with the proposed insider.
18. If the OCC identifies concerns with the proposed insider, performs the following steps, otherwise, skips to step 19:

For adverse information considered minor in nature, notifies the person of the reason for the OCC's initial concerns and allows the person to respond to the concerns prior to the OCC making a decision.

- For adverse information considered substantive in nature, notifies the person by registered or certified mail of the basis for the OCC's concerns and allows the person to complete, correct, or challenge the adverse information prior to the OCC making a decision.
- Depending on the nature of the adverse information, notifies the organizers (through the spokesperson) of the basis for the OCC's concerns and may invite submission of additional information from the organizing directors.

- After considering any response from the person or organizers, the OCC may request by registered or certified mail additional information to follow up a response prior to making a decision.
- At its discretion, the OCC may interview the person or other persons to gather additional information.

After appropriate due process, prepares and forwards a recommendation and a draft objection letter to HQ LIC for decision.

19. Decides the recommendation for the management official and, for objections, sends an [Objection Letter](#) to the person and the organizing directors through the spokesperson. The OCC will omit any confidential or sensitive information about the person in its letter to the spokesperson.

Organizing Directors

20. Review and document in the minutes of the board:
 - Any transactions with insiders. Include the following information for each transaction:
 - Name and address of owner of property or provider of service.
 - Relationship to the bank.
 - Asset or service to be acquired.
 - Date the current owner acquired the property, if applicable.
 - Cost of property to current owner or estimate of the cost of services, if applicable.
 - An independent appraisal of any property acquired or an independent evaluation of lease terms.
 - Any other relevant information that demonstrates the proposed transaction is fair, reasonable, and comparable with similar arrangements that could have been made with unrelated parties.
 - A board resolution approving the specific details in advance of the transaction.
 - If the site of the bank's building will have an adverse effect on a historical property as identified by the State's Historic Preservation Office, pursue receipt of a letter from the state that eliminates or resolves the concern. (See the National Historic Preservation Act discussion in the "[General Policies and Procedures](#)" booklet.)
 - The lease or purchase agreement for all bank premises.

Capitalizing the Bank

Organizing Directors

21. Take appropriate action to capitalize the bank and comply with the requirements of 12 CFR 16. If necessary, submit a registration statement to the Licensing staff. Skip to step 35 if an established BHC will provide the capital.

Licensing Staff

22. Reviews the registration statement for conformance to the business plan and other components of the charter application. Forwards a copy of the registration statement to OCC Legal Staff for review if required under 12 CFR 16.

OCC Legal Staff

23. Reviews the registration statement, identifies and attempts to resolve any issues or concerns; declares if the submission is effective, and notifies the spokesperson for the organizing directors.

Organizing Directors

24. Before soliciting stock, verify that:
 - The OCC has reviewed the registration statement and declared the submission effective.
 - The OCC has reviewed and not objected to a proposed president, if different from the CEO, and that the president has been employed.
 - Adequate fidelity bond insurance is in effect.
25. Solicit stock by providing each prospective shareholder with the approved registration statement, Subscription Offer, and any other information required under 12 CFR 16.
26. Instruct each prospective subscriber, verbally and through the registration statement, to send subscription funds directly to the escrow agent identified in the subscription letter. On an isolated basis, deposit funds inadvertently collected by the organizing bank with the escrow agent. (The escrow agent must have no association with the organizers or organizing directors.)

Escrow Agent

27. Invests escrow funds received from subscribers directly in United States government securities, such as bills, bonds, and notes or in a mutual fund consisting solely of those securities. (Repurchase agreements are not considered direct deposits and cannot be used as escrow funds.)

Organizing Directors

28. If the stock is fully subscribed during the offering period, go to step 36.
29. If the period for offering the registration statement expires prior to the sale of all shares of stock, cease soliciting stock and request an extension from the Licensing staff. The organizing directors may request an extension before the statement expires if it appears likely to expire before the stock will be subscribed fully.
30. If the original offering documents are revised, submit an amended registration statement to the Licensing staff.

Licensing Staff

31. Reviews request for an extension of the registration statement, makes a decision, and notifies the spokesperson.

Organizing Directors

32. Prepare an addendum to the registration statement for OCC legal staff review prior to the continuation of sales to any party.

OCC Legal Staff

33. Reviews revised offering documents, identifies and attempts to resolve any issues or concerns; declares if the submission is effective, and notifies the spokesperson.

Organizing Directors

34. If the extension is approved, add an addendum to the registration statement prior to the continuation of sales to any parties who may choose to increase their subscriptions, including insiders and other subscribers.
35. Continue with subscription efforts.
36. [Applicable only for an established BHC that will capitalize the organizing bank.] Separately account for the funds to capitalize the new bank. It is not necessary to establish an escrow account with another institution or to invest the funds in government securities.
37. Prepare and retain at the bank a shareholders' list that conforms to the requirements of 12 USC 62.

Meeting of Shareholders and Directors

38. Mail the [Notice of First Shareholders' Meeting](#) and Proxy Statement to shareholders at least 10 days before the scheduled shareholders' meeting. Submit a copy of each document to the Licensing staff.

Shareholders

39. Conduct business that properly may arise and document those activities, including the following actions, in the Minutes of the First Shareholders' Meeting:
 - Fix the number of directors.
 - Elect to the board of directors those persons approved by the OCC and identified in the registration statement.
 - Approve an itemized list of organization costs that should be attached to the minutes, and additional expenses, accrued but not paid, that will be paid or reimbursed from capital funds.
 - Ratify the Articles of Association, Organization Certificate, and all official acts of the organizers, organizing directors, and officers since the organization of the association.

Directors

40. Hold the organization meeting. Document the following accomplishments, at a minimum, in the Minutes of the First Meeting of Directors:
 - Complete a Waiver of Notice of the First Board Meeting.
 - Execute the Oath or Joint Oath and List of National Bank Directors.
 - Elect the chairman, secretary, and other officers of the board and appoint the president, CEO, cashier, and other executives.
 - Ratify the Bylaws.
 - Elect standing committees as set out in the Bylaws.
 - Select a depository bank.
 - Authorize the CEO (or another person) to maintain contact with the FDIC about the status of the bank's deposit insurance application, if the bank will be insured.

Organizing Bank Operations

CEO

41. Orders the forms and establishes the operating, risk management, and control systems needed to conduct banking business.
42. Advises the OCC if there has been a change in location (for example, a specific location for a "vicinity of" location), since the OCC granted preliminary conditional approval to the application.

Licensing Staff

43. Determines whether a change in location constitutes a significant change.

Preopening Examination (POE)

CEO

44. At least 60 days before the proposed opening date, submits an [Organization Completion](#) letter to Licensing staff and requests the POE, indicating readiness for opening.

Licensing Staff

45. Upon receipt of the Organization Completion letter, requests a national bank examiner to conduct the POE at least 14 days prior to the proposed bank opening date. LIC determines the scope of the POE with input from the appropriate supervisory office.
46. Places oaths in the bank's charter file and retains for 10 years consistent with the requirement in 12 USC 73.

Examiner

47. Contacts the CEO to arrange for the POE.
48. Coordinates with other units and the FDIC, if needed.
49. Conducts the POE. Determines whether all substantive issues, including risk management concerns, have been addressed adequately.
50. Meets with management and the board of directors at the conclusion of the visit to inform them of the POE findings, but does not convey a recommendation about the final approval for the bank's opening.
51. Prepares the POE report.

Licensing Staff

52. Reviews the POE report and takes one of the following actions:
 - Notifies the bank that it may not open, until certain specific outstanding matters, including any remaining risk management and other concerns, have been resolved.
 - Prepares a memorandum to discuss issues that the OCC should impose as additional conditions to the preliminary conditional approval.

- Prepares a memorandum to discuss significant adverse factors and recommends to HQ LIC that the bank's preliminary conditional approval be revoked.
- Notifies the bank that it may open subject to completion of step 56.

HQ LIC

53. If LIC staff recommends revocation or additional conditions, takes one of the following actions:
- Imposes additional conditions to the preliminary conditional approval of the charter and allows bank to open subject to completion of step 55.
 - Revokes preliminary conditional approval and advises Licensing staff to have escrow agent return funds to subscribers.
 - Directs Licensing staff to permit the bank to open subject to completion of step 55.

Continuing to Organize Bank Operations

CEO

54. Requests from the Federal Reserve application forms for membership.
55. Submits application forms for membership to the appropriate Federal Reserve Bank governing the bank at least two weeks prior to the projected opening date.

Chartering and Commencing Business

CEO

56. Takes the following actions, as needed:
- Resolves outstanding matters and advises Licensing staff members.
 - Continues with opening preparations, including:
 - Confirms receipt of final deposit insurance approval from the FDIC, if the bank will be insured.
 - Confirms receipt of bank membership in the Federal Reserve System.
 - Notifies the OCC and other federal regulators of any opening date delay, if appropriate.

Spokesperson

57. Confirms the bank's opening date with the OCC one business day prior to opening.

Licensing Staff

58. Notifies the bank that it may open and sends final approval.
59. Notifies the escrow agent to release funds.

Escrow Agent

60. After receiving authorization from the OCC to disburse the funds, takes one of the following actions:
 - Returns funds to subscribers, if preliminary conditional approval has been revoked.
 - Releases funds to the bank (approximately two to three days before the scheduled opening date).

CEO

61. Pays organizing expenses approved by the organizing board of directors, shareholders, and board of directors.
62. On the opening day:
 - Notifies Licensing staff members that the bank has opened.
 - Issues stock certificates to the stockholders.
 - Pays or capitalizes organizing expenses, including bank premises, that are approved by the shareholders, consistent with GAAP accounting treatment, and not objected to by the OCC.

Close Out

Licensing Staff

63. Makes CAIS entries.
64. Completes the New Bank Handoff Checklist and, as appropriate, provides copies to the supervisory office of the remaining information listed in the New Bank Handoff Package and other pertinent facts.
65. Forwards the Charter Certificate to the bank. Files two copies of the bank's Charter Certificate in the OCC's charter file.

66. Forwards all original documents to Central Records after reviewing the files for completeness.
67. Updates the OCC's electronic information system with the effective date for all conditions imposed in writing under 12 USC 1818 (including the significant deviation condition) in the "Enforcement Actions" section of the OCC's electronic information system as Type "Regulatory Condition in Writing."

Appendix A: Parallel-Owned Banking Organizations

Possible Representations or Commitments for Charter Applications Resulting in a Parallel-Owned Banking Organization

Concerns for the national bank that arise from a parallel-owned banking organization typically result in expanded assurances regarding the bank's operations (see previous discussion in Parallel-owned Banking Organizations section). The following are examples that the OCC may require to facilitate the supervision of parallel-owned banking organizations:

1. Establishing party agrees to provide all information, without regard to whether such information is located within or outside the United States, when requested, relating to:
 - (a) Enforcement or possible enforcement of, or any proceeding under, any United States law;
 - (b) The direct or indirect ownership or control of the bank [bank holding company, if appropriate]; and
 - (c) The operations or activities of the bank [bank holding company (BHC), if appropriate], or any institution-affiliated parties (IAP) regarding each thereof under United States law, including any unsafe or unsound practice or breach of fiduciary duty by the bank [BHC, if appropriate], or by any IAP with respect to each thereof.
2. Establishing party agrees to provide the OCC and its staff access to, to permit the OCC and its staff to examine, and to provide the OCC and its staff with copies of, all books and records; access to electronic records that accurately reflect the information in the books and records; and any other information, of or concerning the bank, as requested by the OCC or its staff, without regard to whether such books and records or other information are located within or outside the United States.
3. Based on the opinions of counsels in the foreign jurisdictions where each establishing party is a citizen, and where each party resides, each party understands and represents that there are no statutory or regulatory requirements of, or judicial interpretations in, these jurisdictions that would preclude or limit examination in such jurisdictions, or use in the United States, of the books and records of applicant by the OCC and its staff. In addition, based on these opinions of counsels, each establishing party understands and represents that there are no statutory or regulatory requirements of, or judicial interpretations in, these jurisdictions that otherwise would limit the ability of the parties to comply fully with commitments and representations 1 and 2 above, except to the extent that waivers of confidentiality by establishing persons would be necessary to permit such examination or use of establishing persons' books and records, which waivers persons hereby grant and agree to grant on a continuing basis. Each establishing person understands and represents that there are no statutory or regulatory requirements of any jurisdiction that preclude, limit, or

make ineffective, in whole or in part, any waiver of confidentiality as described in this commitment or representation.

4. Each establishing person consents and submits to the personal jurisdiction of any United States federal court of competent jurisdiction and of any federal banking authority for purposes of any investigation or possible investigation, action, subpoena, examination, or proceeding by any federal banking authority, the United States Department of Justice, or the United States Department of the Treasury, relating to the administration or enforcement of any United States law or pursuant to any United States law, including, in particular, section 8 of the Federal Deposit Insurance Act. For purposes of this commitment or representation, each establishing person shall, at all times, maintain in the United States a designated agent, acceptable to the OCC, to accept service on the acquiring person's behalf, including service of any process, notice, order, or subpoena. Each establishing person, as of the date hereof, designates [name of agent], located at [address, city, and state], as his or her agent to accept such service. An establishing person will not change this designation without notice to, and consent of, the OCC or its staff.
5. Each establishing person agrees to submit the following documents to the OCC prior to the OCC's consideration of the proposal in connection with which these commitments or representations are submitted:
 - (a) A notarized and authenticated or certified document, designating the agent(s) specified in commitment or representation (No. 4 above) to accept service on behalf of each establishing person;
 - (b) An opinion of independent counsel in the jurisdiction where applicant is a citizen and, if different, where applicant resides: (i) that each of the commitments or representations is enforceable under the laws of the relevant jurisdiction, and (ii) that there are no statutory or regulatory requirements of, or judicial interpretations in, the relevant jurisdiction that would limit the ability of the applicant to comply fully with commitments or representations 1 and 2 above, subject to the need for a waiver of confidentiality as provided in commitment or representation (No. 3 above), or that would preclude, limit, or make ineffective, in whole or in part, any such waiver of confidentiality that is granted; and
 - (c) Properly executed written documentation to effect a full waiver of confidentiality under the law of the relevant jurisdiction, as provided in commitment or representation (No. 3 above).
6. No later than the time of consummation of the transaction, each establishing person will provide to the bank a list of his or her "related interests" (as defined in section 215.2 of Regulation O, 12 CFR 215.2) and a list of the bank's affiliates (as defined in 12 USC 371c(b)(1) and Regulation W, 12 CFR 223.2) to be maintained by the bank. Each establishing person will update these lists annually or more frequently as changes occur in "related interests" or affiliates. Each establishing party and each company that from time to time is controlled directly or indirectly by any establishing party, acting alone or in concert with one or more other persons, will be deemed to be "insiders" of the bank in all dealings with the bank for purposes of Regulation O (12 CFR

215).

7. [NOTE: The OCC will require one of the following commitments or representations or a similar commitment or representation after considering such factors as the adequacy of foreign supervision, the ability and willingness of the foreign supervisors to cooperate and share information cross-border, and the condition of the bank and foreign bank.]
 - (a) There will be no transactions between the Bank and foreign affiliates.
 - (b) There will be no covered transactions under 12 USC 371c or 371c-1, or Regulation W, 12 CFR 223, between Bank and foreign affiliates.
 - (c) Each establishing person commits or represents that dealings between the bank and any company that is an "affiliate" of the bank, which may include certain companies in which applicant holds an interest, will be subject to the restrictions in 12 USC 371c and 371c-1, as implemented by Regulation W. For purposes of this commitment or representation, an extension of credit also includes a deposit by the bank with an affiliate.
8. Each establishing person and the bank commit or represent that they will notify the OCC if the bank engages in the following types of affiliate transactions: (1) transactions that will materially affect the bank's capital, (2) transactions that will materially affect the affiliate's financial position, and (3) any back-to-back loan transactions between the bank and any person (including affiliates) that benefit members of the organizing group.
9. Each establishing person or the bank will notify the OCC of any loan or deposit made by the bank to an affiliate that has deposited or loaned funds to the bank, provided the funding for the loan or deposit by the bank is directly or indirectly linked to the affiliate's funds on loan or deposit with the bank.
10. Each establishing person or the bank will notify the OCC of any increase in permanent capital when the capital funds invested were received from any person who has obtained a loan or a deposit from a bank or any affiliate, provided the funds for the increase in capital are directly or indirectly linked to the funds from the loan or deposit from the bank.
11. Each establishing person will notify the OCC of any loan received by a member of the organizing group from any person who has obtained a loan or a deposit from the bank, provided the funding for the organizing group loan is directly or indirectly linked to the funds from the loan or deposit from the bank.
12. While a charter application is pending, the establishing parties will promptly notify the OCC of any changes or pending changes in affiliation.
13. Each establishing person and the bank commit or represent that the bank will not engage directly in the international transfer, remittance, or payment of customer or bank funds except through an unaffiliated correspondent bank. Approval of the OCC will be obtained before the bank begins to engage directly in the international transfer of funds.

Alternatively:

Each establishing person and the bank agree that the bank will not engage in the international transfer, remittance, or payment of customer or bank funds except in compliance with safe and sound formally adopted internal control procedures and operational safeguards, which shall include, in all cases, written documentation of all relevant information concerning each such transfer, remittance and payment, as adopted as a policy of the bank and in compliance with all laws, regulations, orders, and directives applicable to the bank and its officers, directors, and affiliates.

14. Each establishing person represents that the funds being used to establish the bank are not derived directly or indirectly from the foreign bank or its affiliates, except to the extent that these funds are derived from usual profits and dividends from the foreign bank or its affiliates obtained over the years.
15. Neither an establishing person nor the bank will incur any additional debt (other than small amounts incurred in the ordinary course of business) to any third party without the prior approval of the OCC.
16. None of the capital stock or debt of the bank will be transferred or pledged to any third party without the prior approval of the OCC.
17. Each establishing person commits that the bank will maintain total risk-based capital ratios so that the bank is, at all times, considered well-capitalized under 12 CFR 6.

Appendix B: Directors' Duties and Responsibilities, Qualifications, and Other Issues

The Comptroller of the Currency expects each director to be familiar with the statutory responsibilities associated with that position. The board of directors of a national bank may not delegate responsibility for its duties, but may entrust the day-to-day bank operation to bank management. Directors can refer to OCC publications specifically addressing director responsibilities (refer to [The National Bank Director's Toolkit](#) and the "Duties and Responsibilities of Directors" booklet of the *Comptroller's Handbook*).

Duties and Responsibilities of Directors

A national bank, as other corporate organizations, has shareholders who elect a board of directors. A bank's board of directors oversees the management of the bank's activities. Directors must exercise reasonable care when guiding the bank's affairs.

Bank directors face unique challenges because banks differ from other corporations. Although banks, like other corporations, use their capital to support their activities, most of the funds banks put at risk belong to others, primarily depositors. Banks lend and invest customers' deposits to earn a profit and a reasonable return to shareholders and to meet the credit needs of the community. Properly managing risk to serve those interests is a critical challenge faced by the board and bank management.

As corporate board members, bank directors have duties to the banking corporations they serve. Those duties are known as the duties of diligence and loyalty.

The duty of diligence means that directors must devote the time and attention necessary to enhance safe, sound, and legal operations of the bank. Directors must attend directors' meetings, review meeting materials, and ask questions and seek explanations to understand the issues completely. They must use independent judgment and be objective when overseeing the bank's affairs. A director's decision-making process should involve careful consideration of reasonably available and relevant information. A director should abstain from discussing or voting on any transaction that the bank may consider undertaking with the director or any company or other related interest of that director as defined in Regulation O.

The duty of loyalty means that directors must never put their own or other competing interests above those of the bank they serve. The duty of loyalty requires directors to administer the affairs of the bank with candor, personal honesty, and integrity. Relationships with the bank must always be at arms-length. In addition, directors may not take business opportunities away from the bank inappropriately.

National banks and their directors are accountable, not only to their shareholders and depositors, but also to their regulators. The risks inherent in banking, the safety net provided by deposit insurance, and the importance of a safe and sound banking system to the nation's economy make this oversight appropriate.

Although a board of directors does not guarantee the bank's success, it must oversee bank operations to ensure that the bank conducts business in a safe and sound manner. The board must keep informed about the bank's operating environment; hire and retain competent management; and ensure that the bank has a risk management structure and process suitable for the bank's size and activities. The board also must oversee the bank's business performance and ensure that the bank serves the community's credit needs. Problems arising from failures in any of those areas represent the board's failure to exercise properly its oversight responsibilities and can result in individual liability if a director has not acted as a reasonably prudent director would act in similar circumstances.

To strengthen corporate governance, financial disclosures, and auditor independence, Congress passed the Sarbanes-Oxley Act of 2002 (Act). While many of the provisions of this Act will not be applicable to a newly chartered bank, directors and bank management should be familiar with the requirements of the Act. They should implement similar standards when appropriate based on the size, complexity, and risk tolerance of the bank.

Management works for the board of directors; the board of directors does not work for management. The long-term health of a bank depends on a strong, independent, and attentive board. A board should evaluate its effectiveness periodically and determine whether it is taking steps necessary to fulfill its responsibilities. The board also should consider orientation programs for new directors. Ongoing education programs that describe emerging industry developments, opportunities, and risks also are often helpful.

When searching for new bank directors, banks should seek persons who will exercise independent judgment and actively participate in decision making. The principal qualities of an effective bank director include strength of character, an inquiring and independent mind, practical wisdom, and sound judgment.

In summary, the qualifications of a candidate seeking to become a member of the board of directors of a national bank include:

- Basic knowledge of the banking industry, the financial regulatory system, and the laws and regulations that govern the operation of an institution.
- A willingness to put the interests of the bank ahead of personal interests.
- A willingness to avoid conflicts of interest.
- Knowledge of the communities served by the bank.
- Background, knowledge, and experience in business or other disciplines.
- A willingness and ability to commit the time necessary to prepare for and regularly attend board and committee meetings.

The primary responsibilities of the board of directors of a national bank include:

- *Being aware of the bank's operating environment.* Directors should understand generally both the bank's business environment and the legal and regulatory framework within which the bank's activities operate.
- *Hiring and retaining competent management.* A profitable and sound bank usually is the result of talented and capable management.
- *Maintaining an appropriate board structure.* The board should establish appropriate committees that have the responsibility of overseeing significant functions or activities within the bank, including the audit function, a loan review program, and a compliance review function.
- *Monitoring operations.* Although the board may depend on management's expertise to run the bank's daily operations, the board remains ultimately responsible for monitoring the operations of the bank.
- *Remaining independent.* The board must remain independent of undue influence of management and controlling owners.
- *Overseeing business performance.* Sound business performance is one of the board's primary objectives and responsibilities as well as a key indicator of management's success.
- *Serving community credit needs.* Every insured national bank is required to fulfill its responsibilities under the Community Reinvestment Act (CRA).

More information about the role of a bank director is available in *The Director's Book: The Role of the National Bank Director (The Director's Book)* and *Internal Controls, A Guide for Directors* (refer to [The National Bank Director's Toolkit](#)).

Director Qualifications

Each national bank director must meet the qualification requirements found in 12 USC 72, unless a residency or citizenship waiver request is submitted to and approved by the OCC (see the "[Director Waivers](#)" booklet of the *Comptroller's Licensing Manual*). Specifically, each director must:

- Hold a minimum \$1,000 par value or fair market value of stock in his or her own right in the bank or an equivalent interest in the parent company that controls the national bank.
- Be a citizen of the United States throughout his or her term of service, except that the OCC may waive this requirement for a minority of the total number of directors.

At least a majority of the directors must have resided in the state, territory, or district in which the bank is located, or within 100 miles of the bank's location, for at least one year immediately preceding election as directors, unless the OCC grants a

residency waiver. The directors must continue to meet this requirement unless the OCC grants a residency waiver.

Election of Directors

The bank's shareholders elect the directors at their annual meeting. National banks must have at least five directors and ordinarily no more than 25, but the OCC may waive the 25-member limit. Once directors meet the 12 USC 72 qualification requirements, they take the oath of office before a notary or other official authorized by state law. Under 12 USC 71, directors shall hold office for a period of not more than three years and until their successors have been elected and qualified. Directors may serve staggered terms if authorized by the bank's bylaws.

Vacancies on the Board

Directors remaining on the board appoint a replacement if a vacancy occurs. The replacement must meet the director qualification requirements previously discussed. The newly appointed director serves until the next annual election of directors by the bank's shareholders.

Depository Institution Management Interlocks Act

The Depository Institution Management Interlocks Act (Interlocks Act) generally prohibits a bank or BHC management official from simultaneously serving as a management official of an unaffiliated depository institution or depository institution holding company.

There are certain exemptions from these interlock prohibitions. Some management interlocks are exempted by statute and some qualify for exemption under the OCC's regulation without filing an application. Other interlocks may be exempted if the OCC approves a specific application. The OCC may exempt a prohibited management interlock if it determines that dual service would not result in a monopoly or substantial lessening of competition and would not present safety and soundness concerns.

OCC regulations provide for two broad categories of permissible exemptions: the Small Market Share Exemption and the General Exemption. The Small Market Share Exemption applies to depository organizations with limited control of an area's deposits. This exemption does not require an application or prior OCC approval. Under the General Exemption, the OCC may, through the application process, exempt a management official's service that the Interlocks Act otherwise would prohibit.

The OCC's regulations provide that in certain instances in which a general exemption is sought, the agency will apply a rebuttable presumption that an interlock will not result in a monopoly or substantial lessening of competition. Under the OCC's regulation governing the General Exemption, 12 CFR 26.6(b), these instances include a depository institution seeking to add a management official when it:

- Serves primarily low- or moderate-income areas.

- Is controlled or managed by members of a minority group or women.
- Has been chartered for less than two years.
- Is deemed to be in “troubled condition” by the OCC.

Organizers interested in establishing a management interlock should review the OCC’s Management Official Interlocks regulation before submitting a request for an interlock exemption. Organizers should include their request with their charter application. See the “[Management Interlocks](#)” booklet for more complete information.

Potential Liability

Directors, officers, and employees may face personal liability in the performance of their duties and responsibilities as prescribed by banking laws and other regulations. A director can obtain some protection against large financial losses through indemnification agreements and liability insurance.

The bank may make or agree to make indemnification payments to an institution-affiliated party, as defined at 12 USC 1813(u), for damages and expenses, including the advancement of expenses and legal fees. This may occur in cases involving an administrative proceeding or civil action initiated by a federal banking agency **only** if such payments are reasonable and in accordance with 12 USC 1828(k) and the OCC’s and FDIC’s implementing regulations, 12 CFR 7.2014 and 12 CFR 359, respectively. For administrative proceedings or civil actions not initiated by a federal banking agency, such payments must be made in accordance with:

- The law of the state in which the main office of the bank is located.
- The law of the state in which the bank’s holding company is incorporated.
- The relevant provisions of the Model Business Corporation Act (1984, as amended 1994, and as amended thereafter), or Delaware General Corporation Law, Del. Code Ann. tit. 8 (1991, as amended 1994, and as amended thereafter).

Payments also must be consistent with safe and sound banking practices.

The OCC may review any indemnification payments made by the bank to evaluate whether they are consistent with safe and sound banking practices, standards adopted by the bank in its bylaws, and applicable laws and regulations.

Appendix C: Stock Benefit Plans

Bank organizers should structure any proposed stock benefit plan to encourage the participants' continued involvement in the bank. The plan also should serve as an incentive for the successful, long-term operation of the bank.

Stock benefit plans should contain **no** feature that would:

- Encourage speculative or high-risk activities.
- Serve as an obstacle or otherwise impede the sale of additional stock to the general public.
- Be structured to convey control of a national bank or otherwise provide preferential treatment to the bank's insiders.

Primary Types

In general, two primary types of stock benefit plan exist:

- Type 1 plans grant options or warrants to directors and active senior executive officers to reward future performance.
- Type 2 plans grant options or warrants to organizers as compensation for:
 - Financial risk borne to fund the formation or organization of a bank (seed money).
 - Noncash contribution of assets (such as land for a banking facility) (see the ["Capital and Dividends"](#) booklet of the manual).
 - The guarantee of a loan to finance a bank's organization.
 - Professional services (for example, legal, accounting, or underwriting services) rendered to facilitate the establishment of the bank.

Type 1 Plans

Banks typically use Type 1 plans to reward senior executive officers and directors for future performance. Accordingly, their continuing involvement to support successful operations of the bank after it opens is **required** for participation in Type 1 plans. The plan need not grant stock options to all senior executive officers or directors of the new bank, but the organizing group should provide support for the number of options made available to each plan participant.

In some new banks, CEOs and other key officers may receive stock options at the bank opening similar to "signing bonuses," which are intended to compensate them for financial risks they assume in joining a new bank's management team. Financial risks to senior executive officers can be twofold. First, they often leave positions in established institutions that they may have held for extended periods. Second, these

officers may find themselves subsequently unemployed for an extended period of time or need to take a lesser position in another institution if the new positions do not work out and they leave after a relatively short tenure. The OCC requires the terms of these stock option plans to conform to OCC policy guidelines. In addition, the OCC considers this form of compensation in its evaluation of overall compensation.

Type 2 Plans

Organizers may participate in Type 2 plans. Type 2 plans provide vehicles for organizing groups to reimburse organizers for financial risk borne during the organization phase, such as providing seed money, contributing organization funds or noncash assets, or guaranteeing a loan. An organizer could elect to receive as compensation either cash or stock or any combination of the two.

The number of shares received is determined by dividing the amount to be reimbursed by the value of each share. Organizers may not receive stock options for additional stock subscribed that would exceed the amount for which they are being reimbursed. If stock options or warrants are received in exchange for an organizer's guarantee of a loan, each person's options or warrants should not exceed his or her pro rata amount of the loan guarantee or the amount drawn, if less than the guaranteed amount of the loan.

Professional services normally are paid for in cash. Professional service providers, however, may participate in Type 2 plans if the service provider lowers the cash payment for the service rendered to the organization as a result of plan participation.

If an organizer, who is also a service provider, is fully reimbursed in cash for all professional services, he or she can participate in a Type 2 plan only if stock compensation is elected for reimbursement of seed money, organization funds, contributions of noncash assets, or loan guarantee.

Type 1 and Type 2 Plan Requirements

Type 1 and 2 stock benefit plans must include:

- A limited duration of rights (maximum of 10 years).
- An exercise, or strike, price of stock rights, which shall be no less than the fair market value of the stock at the time that the rights are granted.
- A clause that allows the OCC to direct the bank to require plan participants to "exercise or forfeit" their stock rights if one of the following occurs:
 - Capital falls below regulatory minimums as set forth in 12 CFR 3, or a higher requirement as the OCC may determine.
 - The existence of outstanding warrants impairs the bank's ability to raise capital.

Additional Type 1 Requirements

Type 1 stock benefit plans also must include the following requirements:

- A maximum of one option or warrant for each share subscribed (in other words, a “one for one” stock option or warrant plan).
- Vesting requirements that encourage the participant to remain involved in the bank’s operations (for example, vesting approximately equal percentages each year over the initial three years of operations).
- Restrictions on the transferability of the options or warrants, except transfer to a holder’s estate in the event of death or permanent disability.
- Rights upon termination of relationship with the bank.

Acceleration and Vesting of Unearned Options or Warrants

The OCC permits acceleration and vesting of earned and unearned options or warrants if:

- The stock benefit plan required a three-year minimum vesting period, and
- The three-year period has elapsed.

The OCC permits immediate acceleration and vesting without regard to the previous criteria if a senior executive officer or director becomes permanently disabled or dies. The OCC requires a senior executive officer or director to forfeit unvested options or warrants under all other circumstances.

Rights of Termination

A senior executive officer or director who ceases to be an active participant in the bank’s operations must exercise or forfeit options or warrants within 90 days after separation from or termination by the bank. In the event of permanent disability or death, the stock option holder or the person’s estate should exercise options or warrants within 12 months or else forfeit the options.

Additional Type 2 Requirements

Type 2 stock benefit plans, unlike Type 1 plans, do not require vesting, transferability restrictions, or continued association with the national bank. Type 2 stock compensation plans must meet the following additional plan requirements:

- A maximum of one option or warrant per share subscribed for the contribution of organization funds, noncash assets, or guaranty of a loan for the new bank.
- A maximum of one option or warrant per share subscribed for the payment of professional services.

Management and Employee Stock Benefit Plans

In addition to Type 1 and Type 2 plans, the bank's board of directors may authorize a prospective management stock benefit plan (also called a stock incentive plan) for its senior executive officers or an employee stock option plan for its employees. In this context, the definition of senior executive officer is not confined to that included in Regulation O. Any insider who participates in a management stock incentive plan also would be considered a senior executive officer. Directors may participate in the plan as a method of payment for their services to the bank. In many cases, participation may be tied to specific individual or bank performance criteria.

Management and employee stock benefit plans should encourage the continued involvement of the participants and serve as an incentive for the successful, long-term operation of the bank. In addition, such plans should:

- Be viewed as part of a person's total compensation.
- Be reasonable, relative to the service provided.
- Include compliance with appropriate other laws, including applicable federal and state tax laws.

The bank should conform the terms of these plans to the requirements of Type 1 plans. Management and employee stock benefit plans, like other stock benefit plans, should not encourage speculative or high-risk activities or serve as an obstacle to, or otherwise impede, the sale of additional stock to the general public.

The exercise of rights granted by a stock benefit plan may trigger a filing to the OCC under the Change in Bank Control Act (CBCA) (12 USC 1817(j)) or the OCC's implementing regulation, 12 CFR 5.50. If an option holder's exercise of rights would trigger the prior notice requirements, the holder must fulfill the CBCA prior notice requirement before exercising the option.

Appendix D: Supervision and Oversight Highlights

The Comptroller of the Currency (OCC) strives to deliver to all national banks the highest possible quality of bank supervision. Supervisory efforts are directed toward identifying material problems, or emerging problems, in individual banks or the banking system, and toward ensuring that such problems are corrected appropriately. Because banking is essentially a business of managing risk, supervision is centered on the accurate evaluation and management of risks. The OCC applies that philosophy in all supervision activities it conducts, which include safety and soundness, consumer compliance, information technology (IT), and asset management activities.

Clear and meaningful communication between the OCC and the banks it supervises is a vital component of high-quality supervision. To that end, the OCC publishes on its Web site examination procedures and guidance about evolving issues so that bankers are apprised of OCC examination and supervision activities. Further, the OCC believes that bankers, and not regulators, should manage their banks; as a result, it expects banks to establish and follow appropriate risk management practices.

The Evaluation Process

The OCC determines the frequency of its onsite examinations (the supervisory cycle) based on the bank's size, complexity, risk profile, and condition. Full-scope onsite examinations normally are conducted either annually or up to every 18 months (12 CFR 4.6), but examination activities may be spread throughout the supervisory cycle.

Examiners meet with bank management and the bank's board of directors throughout the supervisory cycle to obtain information or discuss issues. At the completion of the cycle, the examiners prepare a report and conduct a meeting with the bank's board of directors to discuss the results. Those meetings allow participants to discuss the objectives of the OCC's supervision; strategic issues that may be confronting the bank; any major concerns, risks, or issues that may need to be addressed; and other matters of mutual interest. Directors review and sign the report of examination.

An environment in which examiners and board members openly and honestly communicate benefits a bank. OCC examiners and professional staff have experience with a broad range of banking activities and can provide independent, objective information on safe and sound banking principles and compliance with laws and regulations.

Risk Assessments

The OCC recognizes that banking is a business of taking risk in order to earn profits. Risk levels, however, must be appropriately managed and controlled. Banking risks also must be evaluated in terms of their significance. These assessments should be ongoing.

The OCC's primary supervisory objective is to assess each bank's ability to identify, measure, monitor, and control risks through its risk management systems. The OCC

does this through its risk assessment systems, one tailored to community banks and another to large banks. The OCC has defined nine categories of risk for bank supervisory purposes. Those risks are credit, interest rate, liquidity, price, foreign currency translation, transaction, compliance, strategic, and reputation. The organizers must become familiar with these nine risk categories as they apply to the their charter proposal. They are discussed thoroughly in the “Bank Supervision Process” booklet of the *Comptroller’s Handbook*.

From a supervisory perspective, risk is the potential that events, expected or unanticipated, may have an adverse impact on the bank’s earnings and capital. The simple existence of risk is not necessarily reason for concern. To put risks in perspective, the OCC determines whether the risks a bank plans to undertake are warranted. Generally, risks are warranted when they are understandable, measurable, controllable, and within the bank’s capacity to readily withstand adverse performance.

Risk Management

Because market conditions and company structures vary, no single risk management system works for all banks. Each institution should develop its own risk management program tailored to its needs and circumstances. The sophistication of the risk management system will increase with the size, complexity, and geographic diversity of each bank. All sound risk management systems, however, have several common fundamentals. For example, bank staff responsible for implementing sound risk management systems performs those duties independent of the bank’s risk-taking activities. Regardless of the risk management program’s design, each program should include:

- *Risk identification.* Proper risk identification focuses on recognizing and understanding existing risks or risks that may arise from new business initiatives. Risk identification should be a continuous process and occur at both the transaction and portfolio level.
- *Risk measurement.* Accurate and timely measurement of risks is a critical component of effective risk management. A bank that does not have a risk measurement system has limited ability to control or monitor risk levels. Further, the sophistication of the bank’s risk measurement tools should reflect the complexity and levels of risks it has assumed. The bank should verify periodically the integrity of the measurement tools it uses. Good risk measurement systems assess both the individual transactions and portfolios.
- *Risk control.* The bank should establish and communicate limits through policies, standards, and procedures that define responsibility and authority. These control limits should be meaningful management tools that can be adjusted if conditions or risk tolerances change. The bank should have a process to authorize exceptions or changes to risk limits when they are warranted.
- *Risk monitoring.* Banks should monitor risk levels to ensure timely review of risk positions and exceptions. Monitoring reports should be frequent, timely, accurate, and informative, and should be distributed to appropriate people to ensure action when needed.

Effective risk management requires an informed board of directors. The board must guide the bank's strategic direction. A key component of strategic direction is endorsing the bank's risk tolerance by approving policies that set standards, either orally or in writing. Well-designed monitoring systems allow the board to hold management accountable for operating within established tolerance levels.

Capable management and appropriate staffing also are critical to effective risk management. Bank management is responsible for the implementation, integrity, and maintenance of risk management systems. Management also must keep the directors adequately informed. Management must:

- Implement the bank's strategic direction.
- Develop policies that define the institution's risk tolerance that are compatible with the bank's strategic goals.
- Oversee the development and maintenance of management information systems to ensure they are timely, accurate, and informative.
- Ensure that strategic direction and risk tolerances are communicated effectively and adhered to through the bank's organization structure.

When the OCC evaluates risk management systems, it considers policies, processes, personnel, and control systems. A significant deficiency in one or more of these components constitutes a deficiency in risk management. All of those systems are important, but the sophistication of each will vary depending upon the complexity of the bank. Noncomplex community banks normally have less formalized policies, processes, and control systems in place than do large banks. Those systems are defined as:

- *Policies* are written statements of the bank's commitment to pursue certain results. Policies often set standards (on risk tolerances, for example) and recommend courses of action. Policies should express a bank's underlying mission, values, and principles. A policy review should always be triggered when a bank's activities or risk tolerances change.
- *Processes* are the procedures, programs, and practices that impose order on the bank's pursuit of its objectives. Processes define how daily activities are carried out. Effective processes are consistent with the underlying policies, efficient, and governed by appropriate checks and balances (such as internal controls).
- *Personnel* are the staff and managers who execute or oversee processes. Good staff and managers are qualified, competent, and perform as expected. They understand the bank's mission, values, policies, and processes. Banks should design compensation programs to attract, develop, and retain qualified personnel.
- *Control systems* are tools and information systems (for example, internal and external audit programs) that bank managers use to measure performance, make decisions about risk, and assess the effectiveness of processes.

Feedback should be timely, accurate, and pertinent (in other words, appropriate to the level and complexity of risk taking).

Risk Assessments and Ratings

After each bank opens for business, examiners assess the quantity of risk and the quality of risk management. They then assign each risk an aggregate assessment (low, moderate, or high) and determine whether that risk is expected to decrease, increase, or remain stable over the next 12 months.

Additionally, all financial institutions are evaluated and rated under the Federal Financial Institutions Examination Council's (FFIEC) Uniform Financial Institutions Rating System. This system assesses six components of a bank's performance: Capital adequacy, Asset quality, Management administration, Earnings, Liquidity, and Sensitivity to market risk. This is referred to as the CAMELS rating. Each component is rated on a scale of 1 to 5, with 1 being the most favorable rating.

A composite or overall rating ranging from 1 to 5 also is assigned under the CAMELS rating system. A rating of "1" indicates the strongest performance and risk management practices relative to the institution's size, complexity, and risk profile. Those institutions present the least level of supervisory concern. Conversely, a 5-rated institution demonstrates critically deficient performance, inadequate risk management practices, and the highest level of supervisory concern.

Specialized Area Supervision

The OCC also reviews and assigns ratings to specialized functions and areas not specifically addressed in the CAMELS ratings, including consumer compliance, information technology (see OCC Bulletins 2001-17 and 99-3), and asset management (see OCC Bulletin 98-46). These supervisory programs are risk-based and generally integrated into the CAMELS reviews. Examiners with greater knowledge of the specialized area typically conduct the reviews of areas and activities that are deemed high-risk.

Assessment of Consumer Compliance

Under the uniform rating system, the OCC assigns each bank a consumer compliance rating based on an evaluation of its present compliance with consumer protection and civil rights statutes and regulations and the adequacy of its operating systems designed to ensure continuing compliance. Ratings are given on a scale of 1 through 5 in increasing order of supervisory concern. Thus, 1 represents the highest rating and consequently the lowest level of supervisory concern; while 5 represents the lowest, most critically deficient level of performance and, therefore, the highest degree of supervisory concern.

OCC Assessment of CRA

The CRA requires the OCC and other federal regulators to provide written public evaluations of banks' records of performance under the law. The four ratings that may be assigned for a CRA evaluation are: "outstanding," "satisfactory," "needs to improve," and "substantial noncompliance." The OCC assigns those ratings, which

are included in the public evaluation, on the basis of the bank's performance under its applicable assessment method.

CRA evaluations ordinarily are performed on a three-, four-, or five-year cycle, depending on size and overall CRA rating. However, the first CRA examination of a de novo bank will be conducted about 24-36 months after opening.

Assessment of Information Technology Operations

The OCC and the other FFIEC regulatory agencies use the Uniform Rating System for Information Technology (URSIT) to uniformly assess financial institution and service provider risks introduced by information technology. URSIT consists of a composite rating and four component ratings:

- The composite rating is a 1-5 scale reflecting the significance of technology-related risks. The higher the composite rating, the greater the risk. The OCC assigns the URSIT composite rating to all national banks.
- The component ratings, using a 1-5 scale, correspond to the functional activities and related areas of risk that support information technology services and processes. The functional components include the adequacy of the organization's overall IT audit program (Audit); the abilities of the board and management as they apply to all aspects of IT acquisition, development, and operations (Management); an organization's ability to identify, acquire, install, and maintain appropriate information technology solutions (Development and Acquisition); and an organization's ability to provide technology services in a secure environment (Support and Delivery). Full URSIT ratings, component and composite, are assigned only during OCC examinations of entities that provide technology services to national banks.

Assessment of Asset Management Activities

The core assessment for onsite asset management examinations is structured according to the Uniform Interagency Trust Rating System (UITRS). Each bank is assigned a component rating based on an evaluation and rating of five essential components of an institution's fiduciary activities. Those components are: the capability of management; the adequacy of operations, controls, and audits; the quality and level of earnings; compliance with governing instruments, applicable law (including self-dealing and conflicts of interest laws and regulations); sound fiduciary principles; and the management of fiduciary assets.

Composite and component ratings are assigned based on a 1 to 5 numerical scale. As with other examination areas, a 1 is the highest rating and indicates the strongest performance and risk management practices and the least degree of supervisory concern. A 5 is the lowest rating and indicates the weakest performance and risk management practices and, therefore, the highest degree of supervisory concern. Evaluation of the composite and components considers the size and sophistication, the nature and complexity, and the risk profile of the institution's fiduciary activities.

Enforcement Actions

The OCC can respond in several ways to violations of laws, rules, regulations, or unsafe or unsound practices or conditions. It will take corrective and remedial action upon discovery of serious safety and soundness or compliance problems. The “report of examination” identifies and communicates clearly the OCC’s assessment of a bank’s condition and describes its problems, areas of concern or weaknesses, and the primary cause of each. Bank senior management and the board of directors will be expected to take appropriate corrective measures once the OCC has communicated those problems to them. Those actions will be important in determining whether and what enforcement action the OCC should take.

The OCC may take enforcement actions against the bank or against parties affiliated with banks. The OCC’s enforcement actions are brought most commonly against banks and their officers and directors. Actions against shareholders are rare, unless the shareholders are involved directly in bank management or in an illegal, unsafe, or unsound activity with the bank. Enforcement actions may be informal or formal. (See *The [Director’s Book](#)* for a more complete discussion of enforcement actions available to the OCC.)

Appendix E: Community Reinvestment Act Highlights

Responsibility under the Community Reinvestment Act (CRA)

Each national bank has a responsibility under the CRA to help meet the credit needs of its entire community, consistent with the safe and sound operations of such institution. The application should demonstrate how the proposed bank would respond to those needs. The Comptroller of the Currency's (OCC) CRA regulation (12 CFR 25) establishes the framework and criteria by which the OCC assesses a bank's record of helping to meet the credit needs of its community.

CRA Assessment Area

The CRA regulation requires each bank to delineate at least one assessment area. A retail bank's assessment area or areas generally must consist of one or more metropolitan statistical area or areas (MSAs) or one or more contiguous political subdivisions, such as counties, cities, or towns. It must include the geographies⁴ in which the bank has its main office, branches, and deposit-taking ATMs, if any, as well as the surrounding geographies in which the bank has originated or purchased a substantial portion of its loans.⁵ A bank may adjust the boundaries of its assessment area⁶ to include only the portion of a political subdivision that it reasonably can be expected to serve.

Each bank's assessment area(s):

- Must consist only of whole geographies.
- May not reflect illegal discrimination or redlining.
- May not arbitrarily exclude low- or moderate-income geographies, taking into account the bank's size and financial condition.
- May not extend substantially beyond a consolidated metropolitan statistical area boundary or beyond a state boundary unless the assessment area is located in a multistate metropolitan statistical area.⁷

Performance Standards

The CRA regulation provides four evaluation methods for national banks. A description of each follows.

- **Small banks** are evaluated under the small bank test. A small bank has total assets of less than \$250 million as of December 31 of either of the prior two calendar years and is (1) independent or (2) affiliated with a holding company

⁴"Geography" is defined in the CRA regulation to mean a census tract or block numbering area delineated by the United States Bureau of the Census in the most recent decennial census. 12 CFR 25.12(l).

⁵12 CFR 25.41(c).

⁶12 CFR 25.41(d).

⁷12 CFR 25.41(e).

that had total bank and thrift assets of less than \$1 billion as of December 31 of either of the prior two calendar years. This test focuses primarily on lending and lending-related activities in the bank's assessment area. In addition, small banks may elect to be evaluated under the lending, investment, and service tests (as described under the following bullet), provided the bank collects, maintains, and reports the data required by the CRA regulations.

- **Large banks** (those that do not meet the definition of a small bank) typically are evaluated under the lending, investment, and service tests. As their names imply, these tests focus on the banks' performance in lending (home mortgage, small business, and small farm, and generally, at the bank's option, consumer lending), as well as community development (CD) lending, with a primary focus on the bank's assessment area; making investments (qualified investments that benefit the bank's assessment area or a broader statewide or regional area that includes the assessment area); and providing services (retail banking services, alternative delivery systems, and CD services).
- The **community development test (CD test)** is available to banks that the OCC has designated as limited-purpose or wholesale banks (see Glossary). This test evaluates the bank's CD lending, qualified investments, and CD services — first in the bank's assessment areas or the broader statewide or regional area that includes its assessment areas, and, if the bank has adequately addressed credit needs in that area, nationwide.
- The **strategic plan** evaluation method is available to all banks without regard to size or business strategy. A bank electing this evaluation method seeks informal and formal public comment during the development of its plan. The plan, which is submitted to the OCC for approval, may have a term of up to five years. It must include annual interim measurable goals for helping to meet the credit needs of the bank's assessment area through various lending, investment, and service activities. Although a plan must address all three types of activities, emphasis may be placed on one or more of the activities, depending on the bank's capacity and constraints, product offerings, and business strategy. If a bank meets the goals specified in the plan for satisfactory performance, the bank will be rated satisfactory. (The bank also may include goals that represent outstanding performance.) The strategic plan option provides a more flexible alternative to a bank that is concerned that the requirements of the other tests are too rigid for the nature of its operations. Some banks open under the small bank test or the lending, investment, and service tests, but plan to develop a strategic plan after a period of transactional history.

Appendix F: Compliance Highlights

This Appendix highlights some of the concerns that the Comptroller of the Currency frequently identifies about fair lending statutes, the Bank Secrecy Act (BSA), and anti-money laundering provisions, privacy, and advertising. More detailed information about compliance with these and other consumer compliance issues is available in pertinent booklets in the *Comptroller's Handbook*.

Fair Lending Statutes

The federal fair lending statutes are the Equal Credit Opportunity Act (ECOA) and the Fair Housing Act (FH Act). The ECOA prohibits discrimination in any part of a credit transaction. The ECOA applies to any extension of credit, including extensions of credit to persons, small businesses, corporations, partnerships, and trusts. The FH Act applies to residential real estate related transactions. Both of these acts prohibit discrimination based on race, color, religion, sex, or national origin. The ECOA also prohibits discrimination based on age, marital status, receipt of public assistance, or the exercise of a right under the Consumer Credit Protection Act. The FH Act also prohibits discrimination based on handicap or familial status. Generally, discrimination in a credit transaction against persons because they are (or are not) members of a group previously categorized violates the ECOA and, if the transaction is related to residential real estate, violates the FH Act.

Bank Secrecy Act and Anti-Money Laundering Provisions

The Bank Secrecy Act (BSA) and its implementing regulations require financial institutions to file certain currency and monetary instrument reports and to maintain certain records for possible use in criminal, tax, and regulatory proceedings (31 USC 5311, 31 CFR 103, 12 CFR 21.21). Congress enacted the BSA to attempt to prevent financial institutions from being used as intermediaries for the movement of criminally derived funds to conceal the true source, ownership, or use of the funds, that is, money laundering. Although attempts to launder money through a legitimate financial institution can emanate from many different sources, certain kinds of businesses, transactions, or geographic locations may lend themselves more readily to potential criminal activity than others.

All banks must establish and maintain procedures reasonably designed to ensure and monitor their compliance with the BSA and its implementing regulations. This requires national banks to establish a compliance program that includes, at a minimum, adequate BSA policies and procedures, designation of a compliance officer, and BSA training and audits. In addition, national banks should be aware of various criminal statutes prohibiting money laundering and structuring of deposits to evade the BSA reporting requirements. (See 18 USC 1956, 1957 and 31 USC 5324.)

Banks must ensure that they have reasonable policies and procedures to verify the identity of people seeking to open an account at the bank and to detect suspicious activity. Each bank must file a Suspicious Activity Report (SAR) whenever it identifies:

- A known or suspected violation of law.

- A suspicious transaction that:
 - Has no business or apparent lawful purpose.
 - Is not the sort of transaction in which a particular customer normally would be expected to engage.
 - Has no reasonable explanation.
- A suspicious transaction for more than \$5,000 involving potential money laundering.
- A suspicious transaction that is an apparent attempt to evade the provisions of the BSA.

The SAR reporting requirements are provided in 12 CFR 21.11.

The USA PATRIOT Act of 2001 (Patriot Act) amended the BSA by providing strong measures to prevent, detect, and prosecute terrorism and international money laundering. The Patriot Act establishes new rules and responsibilities affecting United States banking organizations, other financial institutions, and nonfinancial commercial businesses. The Patriot Act:

- Provides the Secretary of the Treasury with the authority to impose special measures on jurisdictions, institutions, or transactions that are of “primary money-laundering concern.”
- Requires financial institutions to increase their due diligence standards when dealing with foreign private banking and correspondent accounts.
- Prohibits correspondent accounts with foreign “shell” banks.
- Expands the ability of the public and private sectors to share information related to terrorism and money laundering investigations.
- Facilitates records access and requires banks to respond to regulatory requests for information within 120 hours.
- Establishes minimum standards for customer identification at account opening and requires checks against government-provided lists of known or suspected terrorists.
- Extends an anti-money laundering program requirement to all financial institutions.
- Increases the civil and criminal penalties for money laundering.

Safeguarding Customer Information

Information is one of the bank's most important assets. As mandated by Section 501 of Gramm-Leach-Bliley Act of 1999 (GLBA), a bank must establish appropriate processes to safeguard customer information. Such safeguards must:

- Ensure the security and confidentiality of customer records and information.
- Protect against any anticipated threats or hazards to the security or integrity of such records.
- Protect against unauthorized access to or use of such records or information that could result in substantial harm or inconvenience to any customer.

The bank must implement a comprehensive written information security program that includes administrative, technical, and physical safeguards appropriate to the size and complexity of the bank and the nature and scope of its activities. (Refer to OCC [Bulletin 2001-35](#) and OCC [Bulletin 2001-8](#) for the specific guidelines for safeguarding customer information. Also see the FFIEC IT Examination Handbook Series, [Information Security booklet](#).)

Verification

Each bank must implement effective processes to verify the identity of new customers at account opening and to authenticate existing customers when they initiate transactions. A bank offering deposit-related products and services must ensure that it adequately verifies the identity of its customer. Deposit-related products and services include noninterest-bearing demand deposits, interest checking, money market accounts, certificates of deposit, and electronic bill payment.

The OCC expects banks to exercise appropriate caution and due diligence when opening accounts. Customer verification is the process that a bank uses for new accounts to corroborate the identity of new customers. A new account process involves requesting a variety of customer information items, including name, address, phone number, social security number, and driver's license information, among other things. The bank independently verifies the accuracy of this information.

Internal systems and controls should include appropriate procedures to verify customer information as part of the account opening process and to monitor for fraud and suspicious activity after an account has been opened. A bank should monitor the verification and account authorization procedures continually to ensure a rigorous process for identifying, measuring, and managing the risk exposures. This process should include a regular audit function to test the controls and ensure they continue to meet the defined control objectives.

These procedures for access control also are essential for preventing fraud, money laundering, and other abuses. To limit the risk of money laundering, some banks restrict the type of business they will accept. For example, some banks do not accept, or they place additional controls over, accounts from foreign government officials, certain money service businesses, military equipment sales companies, and

political or gambling organizations. Banks also may restrict account activity by prohibiting cash or monetary instrument deposits.

Privacy

National banks are subject to a number of federal statutes and regulations that govern the disclosure of consumer information. The most comprehensive of these provisions is Title V of the GLBA that requires banks and other financial institutions to provide consumers of their financial products or services with privacy notices and an opportunity to opt out of certain information sharing with nonaffiliated third parties. Banks also are subject to the Fair Credit Reporting Act (FCRA), which governs the use and disclosure of consumer reporting information. Additionally, banks should be aware of the Electronic Fund Transfer Act, the Right to Financial Privacy Act, the Children's Online Privacy Protection Act, and the Federal Trade Commission Act.

GLBA Privacy Provisions

The GLBA enacted privacy-related provisions applicable to financial institutions. The federal banking regulatory agencies promulgated final rules (see 12 CFR 40) to implement these provisions.

In general, the regulations require banks to provide their customers with notices that accurately describe their privacy policies and practices, including their policies for the disclosure of nonpublic personal information⁸ to their affiliates and to nonaffiliated third parties. The notices must be provided at the time the customer relationship is established and annually thereafter. Notices must be clear and conspicuous and provided so that each intended recipient reasonably could be expected to receive actual notice. The notices must be in writing or may be delivered electronically if the consumer agrees.

Subject to specified exceptions that permit banks to share information in the ordinary course of business, banks may not disclose nonpublic personal information about consumers to any nonaffiliated third party, unless consumers are given a reasonable opportunity to direct that their information not be shared (opt out). Thus, before a bank may disclose nonpublic personal information about a consumer (even if not a "customer") to a nonaffiliated third party, the bank must provide the consumer with an initial privacy notice and an opt-out notice (which may be included in the privacy notice).

The GLBA regulations also provide that a bank generally may not disclose an account number or similar form of access number or code for a credit card account, deposit account, or transaction account of a consumer to any nonaffiliated third party for use in marketing. A bank may, however, disclose its customer account numbers to third-party agents or servicers to market the bank's own products or services,

⁸Generally this means any information that is provided by a consumer to a bank to obtain a financial product or service, that results from a transaction between a bank and a consumer involving a financial product or service, or that is otherwise obtained by a bank in connection with providing a financial product or service to a consumer. If a bank obtains information about its consumers from a publicly available source, that information will not be protected (that is, subject to notice and opt out) unless the information is disclosed as part of a list, description, or other grouping of a bank's consumers.

provided the bank does not authorize the third party to initiate charges to customer accounts. The regulations also limit the redisclosure and reuse of nonpublic personal information obtained from other nonaffiliated financial institutions.

FCRA Information Sharing Provisions

The FCRA sets standards for the collection, communication, and use of information bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living. The communication of this type of information may be a "consumer report" subject to the FCRA's requirements. However, the FCRA specifically excepts from the definition of consumer report: (1) the disclosure of a bank's own transaction and experience information to any third party; and, (2) the disclosure of consumer reporting information to a bank's affiliates if the bank first notifies its consumers that it intends to share such information and allows them to opt out of this information sharing (affiliate information sharing) (12 CFR 40).

As a general matter, a bank will not be subject to the FCRA's requirements that apply to consumer reporting agencies⁹ if the bank communicates information only in a manner consistent with the two exceptions described previously. However, a bank may be subject to other FCRA requirements, for example, as a user of credit reports.

Banks' information disclosures may be subject to both the GLBA and the FCRA. Therefore, banks must understand the differences between the GLBA and the FCRA provisions to reduce compliance risks in this area. The statutes differ in the scope of their coverage and their requirements for a bank's treatment of consumer information. As a result, what may be a permissible disclosure under one statute may be prohibited or subject to different conditions under the other statute. Because compliance with one statute will not entail compliance with the other, banks are strongly advised to evaluate the requirements of both laws in connection with their disclosures of consumer information. (For a more detailed discussion, see OCC Bulletin 2000-25, Privacy Laws and Regulations.)

Other Privacy Provisions

Banks and their subsidiaries should be aware of the following federal laws that may affect their consumer financial information practices:

- The Electronic Fund Transfer Act and Regulation E require that banks make certain disclosures when a consumer contracts for an electronic transfer service or before the first electronic fund transfer is made involving the consumer's account.
- The Right to Financial Privacy Act prohibits a bank from disclosing a customer's financial record to the federal government, except in limited circumstances, such as pursuant to the customer's authorization, an administrative subpoena or summons, a search warrant, a judicial subpoena,

⁹These requirements relate to furnishing consumer reports only for permissible purposes, maintaining high standards for ensuring the accuracy of information in consumer reports, resolving consumer disputes, and other matters.

or a formal written request for a legitimate law enforcement inquiry, or to a supervisory agency for its supervisory, regulatory, or monetary functions.

- The Children’s Online Privacy Protection Act (COPPA) establishes requirements applicable to the collection, use, or disclosure of personal information about children that is collected through the Internet or another online service. Banks are subject to COPPA if they operate a Web site or online service (or portion thereof) directed to children, or have actual knowledge that they are collecting or maintaining personal information from a child online.
- The Federal Trade Commission Act (FTC Act) prohibits unfair or deceptive acts or practices in or affecting commerce, and provides a basis for government enforcement actions against deception resulting from misleading statements concerning a company’s privacy practices or policies, or failures to abide by a stated policy.

Advertising

Advertisements on Web sites must meet the advertising requirements of Regulation B (Equal Credit Opportunity Act), Regulation M (Consumer Leasing), Regulation Z (Truth in Lending), Regulation DD (Truth in Savings), and the FTC Act.¹⁰ Interim final rules, published March 30 and April 4, 2001,¹¹ establish uniform standards for using electronic communications under Regulations B, E, M, Z, and DD. Although compliance with the interim rules is not mandatory, they provide effective guidance that banks should consider when developing electronic disclosures.

Banks must be aware of the regulatory requirements for the prominence of certain disclosures in their advertisements. Banks also must consider the requirements of Regulations M and Z that permit creditors and lessors to provide required advertising disclosures on more than one page, if certain conditions are met. Banks should monitor carefully amendments to these regulations to ensure compliance with multipage advertising in the context of electronic advertisements. Banks must comply with the triggering term requirements of Regulations M, Z, and DD ensuring that the terms are disclosed appropriately and are set forth clearly and conspicuously.

¹⁰There are no FTC Act regulations addressing electronic advertisements. However, electronic advertisements, such as print advertisements, may not be unfair or deceptive.

¹¹66 Fed. Reg. 17779 (April 4, 2001) (Regulation B). 66 Fed. Reg. 17786 (April 4, 2001) (Regulation E). 66 Fed. Reg. 17322 (March 30, 2001) (Regulation M). 66 Fed. Reg. 17329 (March 30, 2001) (Regulation Z). 66 Fed. Reg. 17795 (April 4, 2001) (Regulation DD).

Appendix G: Significant Deviations After Opening

The Comptroller of the Currency (OCC) requires each national bank to provide prior notice and obtain a no objection letter from the appropriate OCC supervisory office before making a significant deviation from the business plan submitted with its charter application. This is a condition imposed in writing within the meaning of 12 USC 1818.

Purpose

Generally, the OCC uses this significant deviation condition to address heightened supervisory risk that exists during the first several years of a new bank charter's operations, or that exists in unusual cases after a conversion, merger, or other filing. This condition is a standard condition required for all new bank charter approvals.

New banks are particularly vulnerable to internal and external risks until they achieve a certain level of stability and profitability, clearly justifying the imposition of the significant deviation condition. The condition provides the OCC with the opportunity to evaluate any enhanced risks presented before the bank initiates a significant change to its business plan or operations.

Identification

A significant deviation or change for the purposes of this condition is defined as "a material variance from the bank's business plan or operations that occurs after the proposed bank has opened for business." Significant deviations may include, but are not limited to, deviations in the bank's:

- Projected growth, such as planned significant growth in a product or service.
- Strategy or philosophy, such as significantly reducing the emphasis on its targeted niche (for example, small business lending) in favor of significantly expanding another area (for example, funding large commercial real estate projects).
- Lines of business, such as initiating a new program for subprime lending.
- Funding sources, such as shifting from core deposits to brokered deposits.
- Scope of activities, such as establishing transactional Internet banking or entering new, untested markets.
- Stock benefit plans for de novo banks, including the introduction of plans that were not previously reviewed during the chartering process with "no objection" by the OCC.
- Relationships with a parent company or affiliate, such as a shift to significant reliance on a parent or affiliate as a funding source or provider of back-office support.

Changes in bank control or management are not considered significant deviations for purposes of this condition because existing law and regulation¹² provide other means for prior notification and an opportunity for OCC objection.

Deviations in financial performance alone are not significant deviations under this condition. However, the OCC still may consider the underlying reason(s) for a deviation in financial performance a significant deviation. For example, a bank could deviate from its pro forma balance sheet or budget because of significant growth caused by a new product that was not disclosed in the business plan or initial plan of operations. This is an example of a significant deviation that requires prior written notification to, and a written determination of no objection from, the supervisory office. On the other hand, if the bank's strategies are consistent with the business plan, but the bank simply experiences significantly more growth than planned, that growth, by itself, does not qualify as a significant deviation for this condition.

Nevertheless, examiners will evaluate the supervisory risk that deviations from projected financial performance may pose to the bank, and what, if any, supervisory response is appropriate under the circumstances. For example, an examiner could determine that the bank's risk management systems are no longer adequate given the magnitude of the unplanned growth, and that deficient systems are a Matter Requiring Attention.

Evaluation

Upon receipt of a prior notice, the supervisory office will evaluate the proposed deviation. The evaluation should determine whether the deviation significantly elevates the bank's risk profile. The OCC assesses risk by its potential impact on a bank's earnings and capital. The OCC recognizes that some deviations are necessary or prudent. For example, a deviation from the business plan may be necessary to meet changes in local market conditions.

Examiners will determine whether the risks that a bank undertakes, or proposes to undertake, are properly managed. Generally, risks are warranted if they are identified, understood, measured, monitored, controlled, and within the bank's capacity to withstand any financially adverse results. If examiners determine that risks are unwarranted, they will communicate to the bank's management and directors that a need exists to mitigate or eliminate the excessive risks. Appropriate actions may include reducing exposures, increasing capital, or strengthening risk management processes. (See the "[Bank Supervision Process](#)" booklet of the *Comptroller's Handbook* for more detailed discussions of risks and risk management systems.)

Examiners, bank management, and directors may find it beneficial to consult their district's Licensing staff when reviewing adherence to, or evaluating significant deviations from, a bank's business plan.

¹² The Change in Bank Control Act in 12 USC 1817(j) and the OCC's implementing regulation in 12 CFR 5.50 generally require prior notification of a change in bank control. As a condition of the charter approval, the OCC retains the right to object to and preclude the hiring of any officer, or the appointment or election of any director, for a two-year period from the date the bank commences business (12 CFR 5.20(g)(2)).

Supervisory Actions and Communications

If the evaluation of a proposed significant deviation results in little or no supervisory concern, the supervisory office should send a “no objection” letter to the bank. To mitigate concerns, the supervisory office may determine that it is prudent to condition its no objection. In these cases, the no objection letter will identify the conditions as conditions “imposed in writing by the agency in connection with the granting of any application or other request.” The OCC is required to publish documents containing enforceable conditions. Accordingly, the supervisory office must submit a copy of all conditional no objection letters to headquarters Licensing for publication in *Interpretations and Actions*.

If the evaluation discloses supervisory concerns with a proposed deviation, the supervisory office sends an “objection” letter detailing the reasons for this determination. If, despite the issuance of an objection letter, a bank subsequently engages in actions that reflect a significant deviation to, or change from, its business plan, additional supervisory or enforcement action will be considered, consistent with the OCC’s Enforcement Policy (PPM 5310-3 Revised).

If a significant deviation from the bank’s business plan is disclosed during a supervisory activity (examination or periodic monitoring), and the bank has failed to obtain prior written determination of no objection, the resulting supervisory action will reflect the degree of supervisory concern with the deviation. At a minimum, a national bank examiner will cite a violation of the Regulatory Condition Imposed in Writing (RCIW) (in other words, the significant deviation condition – 12 USC 1818). A violation of an RCIW can provide the basis for the assessment of civil money penalties or other enforcement actions. The OCC will communicate all supervisory actions to the bank in writing.

Glossary

The term **affiliate** includes, among other things, any “company” that controls a bank and any company that is controlled by the same person or company as controls the bank (12 USC 371c as implemented by Regulation W, 12 CFR 223).

An entity controlling a bank must register with the Federal Reserve Board as a **bank holding company** (BHC), if the controlled bank is covered by the definition of a bank found in the Bank Holding Company Act (BHCA) (12 USC 1841(c)). Certain limited purpose banks, such as Competitive Equality Banking Act of 1987 (CEBA) credit card banks and trust banks, are not defined as banks under the BHCA.

A **bankers’ bank** is a national bank owned exclusively, except for directors’ qualifying shares, by other depository institutions or depository institution holding companies. Bankers’ bank activities are limited to providing:

- Services to or for other depository institutions, their holding companies, or the officers, directors, and employees of such institutions.
- Correspondent banking services at the request of other depository institutions or their holding companies.

A **Business Continuity Plan** addresses all critical services and operations that are provided by internal departments and external sources. The planning process reviews the various departments, units, or functions and assesses each area’s importance for the viability of the organization and provision of customer services. Plans are developed to cover restoring critical areas should they be affected by physical disasters, such as fires or flooding; environmental disasters (such as hurricanes or tornados); or other disasters (such as power or telecommunication failure).

A **central city**, as defined in 12 CFR 5.3(e), means the city or cities identified in the complete title of the Metropolitan Statistical Area (MSA) in which the relocating office is located.¹³

Contact person is a term sometimes used for a spokesperson (see definition of “spokesperson”).

Control has the same meaning as used in the BHCA (12 USC 1841(a)(2)), except when the term is used in connection with affiliated transactions, in which case, “control” has the meaning set forth at 12 CFR 223.3(g).

¹³The Office of Management and Budget’s (OMB) lists of MSAs and Central Cities can be found on the Internet at <http://www.census.gov>. At the “Subjects A-Z” menu, click on “M,” then on Metropolitan Areas, then on Metropolitan Area Definitions, then on Central Cities of Metropolitan Areas. Copies of the OMB list may also be obtained by requesting the most recent “List of Metropolitan Area Definitions” (accession no. PB96-180575) from National Technical Information Services (NTIS), Document Sales, 5205 Port Royal Road, Springfield, VA 22161, (703) 487-4650.

A **de novo BHC** is one that has been in existence less than three years, including one that is in the process of formation.

The **decision date** for a new bank charter is the date that the OCC grants preliminary conditional approval.

A **director** is a member of the board of directors of a bank. Collectively, the directors have a critical role in the successful operation of the bank. They are ultimately responsible for the conduct of a bank's affairs, and the health of the bank depends upon their being strong, independent, and attentive. They also are accountable to the bank's shareholders and the bank's depositors, regulators, and the communities served by the bank. For purposes of determining applicability of, and compliance with, 12 USC 375b as implemented by Regulation O, the term "director" is defined at 12 CFR 215.2(d) and means any director of the company or bank, whether or not receiving compensation, and includes certain advisory directors.

A **Disaster Recovery Plan** is a part of the business resumption plan. It includes protection against physical disasters and other disruptions to operations; backup considerations related to hardware, software, applications, documentation, procedures, data files, and telecommunication; and insurance policies regardless of the type of computer equipment and software, and size of the information systems facilities within the organization.

An **eligible bank** is a national bank that:

- Has a composite CAMELS rating of 1 or 2.
- Has a satisfactory or better CRA rating. (This factor does not apply to an uninsured bank, an uninsured federal branch, or a special purpose bank covered by 12 CFR 25.11(c)(3).)
- Is well capitalized as defined in 12 CFR 6.4(b)(1).
- Is not subject to a cease and desist order, consent order, formal written agreement, or prompt corrective action directive; or, if subject to any such order, agreement or directive, is informed in writing by the Comptroller of the Currency (OCC) that the bank still may be treated as an "eligible bank."

An **eligible depository institution** means a state bank or a federal or state savings association that meets the criteria for an "eligible bank" under 12 CFR 5.3(g) and is FDIC-insured.

An **established company** is one that has been operating for more than three years and will become a parent of a national bank when the bank opens for business, regardless of whether it will also become a BHC.

An **executive officer** of a company or bank means a person who participates or has the authority to participate (other than in the capacity of a director) in major policymaking functions of the company or bank, whether or not the officer has an official title, the title designates the officer as an assistant, or the officer is serving without compensation. Executive officer positions normally include the chairman of the board, the president, every vice president, the cashier, the secretary, and the

treasurer, consistent with the definition in 12 USC 375b, as implemented by Regulation O at 12 CFR 215.2(e)(1).

An **existing BHC** is one that received Federal Reserve System approval to become a BHC and has been operating as a BHC for at least three years prior to filing its application to organize a new bank.

To be **experienced in banking**, the majority of an organizing group's members must have five or more years of recent significant involvement in policy making as directors or executive officers in the same institution or affiliated federally insured institutions that the OCC finds have performed satisfactorily. (See **recent experience**.)

Feasibility analysis is the process of determining the likelihood that a proposal will fulfill specified objectives.

Final approval means the OCC action of issuing a charter certificate and authorizing a national bank to open for business.

A **financial subsidiary** is any company controlled by one or more insured depository institutions. It is not a subsidiary that engages solely in activities that a national bank may engage in directly (in other words, an operating subsidiary) or a subsidiary that is specifically authorized by the express terms of a federal statute other than 12 USC 24a, such as a bank service company. A financial subsidiary may engage in specified activities that are financial in nature or incidental to financial activities if the bank and the subsidiary meet certain requirements and comply with stated safeguards. For purposes of Regulation W (12 CFR 223), a financial subsidiary does not include a company that is only a financial subsidiary solely because it engages in the sale of insurance as agent or broker in a manner that is not permitted for a national bank.

Holding company means any company that controls or proposes to control a national bank regardless of whether it is a BHC under 12 USC 1841(a)(1).

An **insider** is a proposed organizer, director, principal shareholder, or executive officer of the proposed national bank. For purposes of determining applicability of, and compliance with, 12 USC 375a and 375b as implemented by Regulation O, the term "insider" is defined at 12 CFR 215.2(h) and means an executive officer, director, or principal shareholder, and includes any related interest of such a person.

An **insider contract** is any financial or other business, voting, or ownership agreement, arrangement, or transaction, direct or indirect, oral or written, between any insider and the proposed bank.

Internet banking is a system that enables bank customers to access accounts and general information on bank products and services through a personal computer (PC) or other electronic device.

Internet service provider is an entity that provides access or service related to the Internet, generally for a fee.

Lead depository institution means the largest depository institution controlled by a BHC, based on a comparison of the total assets controlled by each depository

institution as reported in its Consolidated Report of Condition and Income (call report) required to be filed for the immediately preceding four calendar quarters.

Limited purpose bank means a bank that offers only a narrow product line (such as credit card or motor vehicle loans) to a regional or broader market and for which a designation as a limited purpose bank is in effect. A bank may request the OCC to designate it as a limited purpose bank for CRA purposes as provided in 12 CFR 25.25(b).

A **low- or moderate-income area**, as provided in 12 USC 1831r-1, means a census tract for which the median family income is: (1) less than 80 percent of the median family income for the MSA in which the census tract is located; or, (2) in the case of a census tract that is not located in an MSA, less than 80 percent of the median family income for the state in which the census tract is located, as determined without considering family income in MSAs in such state.

The **market test** reflects an organizing group's ability to raise the required capital stated in its business plan, and in the manner described, within 12 months of preliminary conditional approval.

A **narrow focus bank** is one that offers limited services or anticipates serving a narrowly defined market niche. For example, a narrow focus bank would include one that proposes to offer a lending portfolio that is heavily concentrated or targets a restricted customer base.

A **national bank** means an insured or uninsured national banking association.

A **newly organized BHC or non-BHC parent** is one that has been operational for less than three years.

The **organization phase** for a national bank covers the period between the time the OCC grants preliminary conditional approval to the application and the day the national bank opens for business.

Organization costs are the direct costs incurred to incorporate and charter a bank. Such direct costs include, but are not limited to, professional fees (such as legal, accounting, and consulting) and printing costs related directly to the chartering or incorporation process, filing fees paid to chartering authorities, and the cost of economic impact studies. Organization costs incurred by newly chartered banks should be capitalized.

Organizers are the persons who filed and signed the charter application. The OCC may approve additional organizers and organizing directors throughout the charter process subject to review and no objection (see "Background Investigations" booklet).

Organizing group means five or more persons acting on their own behalf, or serving as representatives of a sponsoring holding company, who apply to the OCC for a national bank charter.

Person, as defined in this booklet, has the same meaning as set forth in the Change in Bank Control Act (CBCA) and the OCC's implementing regulation (12 USC

1817(j) and 12 CFR 5.50, respectively). In the context of affiliate transactions, “person” has the meaning set forth in 12 CFR 223.3(bb) of Regulation W.

Preliminary conditional approval means a decision by the OCC permitting an organizing group to proceed with the organization of a proposed national bank. A preliminary conditional approval generally is subject to certain requirements and conditions that an applicant must satisfy before the OCC will grant final approval, and it is also subject to special conditions that will remain in place after the bank opens for business.

Preopening expenses, such as salaries, employee benefits, rent, depreciation, supplies, directors’ fees, training, travel, postage, and telephone, are not considered organization costs and should not be capitalized. In addition, allocated internal costs, such as management salaries, shall not be capitalized as organization costs.

A **principal shareholder** is a person, other than an insured bank, that directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than 10 percent of any class of voting securities of the proposed bank consistent with the definition in 12 USC 375b, as implemented by Regulation O, 12 CFR 215.2(m).

Recent experience means service as a director or executive officer of a well-run financial institution for a minimum of two consecutive years, with at least part of this service within the five years immediately preceding filing of the charter application.

A **related interest** of a principal shareholder, executive officer or director means a company that is controlled by that shareholder, officer, or director, consistent with the definition in 12 USC 375b, as implemented by Regulation O, 12 CFR 215.2(m).

A **shell operation** occurs when a bank significantly reduces its activities and services or when a bank contracts out significant portions of its operations to third-party service providers. Such a bank is referred to sometimes as a **shell bank**.

A **significant deviation** is a material variance from the bank’s business plan or operations that occurs after the proposed bank has opened for business.

The **spokesperson** (also **contact person**) is an organizer and proposed director of a proposed bank, who is designated by the organizing group to represent it in all contacts with the OCC. In certain circumstances (excluding independent charters), the spokesperson instead may be a representative of:

- A holding company sponsor.
- People currently affiliated with other depository institutions.
- People who, in the OCC’s view, otherwise are collectively experienced in banking and have demonstrated the ability to work together effectively.

A new bank is a **subsidiary of a holding company** if 25 percent or more of its voting stock will be owned or controlled by a holding company or if the FRB (or the OCC, as appropriate) determines that a holding company otherwise has the power to elect a majority of the directors or to control the bank in any other manner.

Troubled condition means a bank that has a composite rating of 4 or 5; or is subject to a cease and desist order, a consent order or a formal written agreement (unless otherwise informed in writing by the OCC); or is informed in writing by the OCC that as a result of an examination it has been so designated.

Wholesale bank means a bank that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers, and for which designation as a wholesale bank is in effect. A bank may request the OCC to designate it as a wholesale bank for CRA purposes as provided in 12 CFR 25.25(b).

References

Advertising	
Law	12 USC 371c-1
Regulations	12 CFR 213, 226, 230
Affiliates, Transactions with	
Laws	12 USC 371c, 371c-1
Regulation	12 CFR 223
Articles of Association	
Laws	12 USC 21, 21a
<i>Cumulative Voting</i>	
Regulation	12 CFR 7.2006
<i>Indemnification</i>	
Law	12 USC 1828(k)
Regulations	12 CFR 7.2014, 359
<i>Lost Stock Certificates</i>	
Regulation	12 CFR 7.2018
<i>Preemptive Rights</i>	
Regulation	12 CFR 7.2021
<i>Quorum</i>	
Regulation	12 CFR 7.2009
<i>Shareholder Meetings</i>	
Laws	12 USC 71, 75
Regulations	12 CFR 7.2001, 7.2003
<i>Vacancies in Board</i>	
Law	12 USC 74
Regulation	12 CFR 7.2007
Audit, Internal and External	
Laws	15 USC 78j-1, 1831m
Regulations	12 CFR 30, 363
Issuance	OCC Bulletin 2003-12 (March 17, 2003, Interagency Policy Statement on Internal Audit and Internal Audit Outsourcing) <i>Comptroller's Handbook, "Internal And External Audits"</i>
Authorization to Commence Banking Business	
Laws	12 USC 26, 27

Background Investigations	
Regulations	12 CFR 5.7, 28 CFR 16.34, 50.12
Bank Holding Company Act	
Laws	12 USC 1841-1850
Regulation	12 CFR 225
Bank Service Company Act	
Laws	12 USC 1861-1867
Regulation	12 CFR 5.35
Bank Premises, Investment in	
Law	12 USC 371d
Regulation	12 CFR 5.37
Bank Protection Act	
Laws	12 USC 1882, 1884
Regulation	12 CFR 21
Bank Secrecy Act	
Laws	31 USC 5311-5328
Regulations	12 CFR 21.21, 31 CFR 103
Bank Stock Loans	
Laws	12 USC 83, 1828(v)
Regulation	12 CFR 7.2019
Bankers' Bank	
Laws	12 USC 24(7), 27(b)
Regulation	12 CFR 5.20
Branches	
Law	12 USC 36
Regulations	12 CFR 5.30, 7.1003- 7.1005, 7.4003-7.4005
Bylaws	
Law	12 USC 24(6)
Regulation	12 CFR 7.2000
<i>Cashier</i>	
Regulation	12 CFR 7.2015
<i>Lost Stock Certificates</i>	
Regulation	12 CFR 7.2018
<i>Quorum of Directors</i>	
Regulation	12 CFR 7.2009

<i>Shareholder Meetings</i>	
Laws	12 USC 71, 75
Regulations	12 CFR 7.2001, 7.2003
<i>Stock Certificate Signatures</i>	
Law	12 USC 52
Regulation	12 CFR 7.2017
Capital Requirements	
Laws	12 USC 51c, 3907
Regulations	12 CFR 3, 6
Issuance	OCC Bulletin 2000-26 (September 29, 2000, Supervision of National Trust Banks - Capital and Liquidity)
Capital Stock	
Laws	12 USC 51a, 51b, 51c, 52, 55
Regulations	12 CFR 7.2016, 7.2017, 7.2018 7.2023
Capital Stock Required to Commence Business	
Law	12 USC 53
Capital Structure Change	
Laws	12 USC 56, 57, 59
Regulations	12 CFR 5.46, 7.2020
CEBA Credit Card Bank	
Law	12 USC 1841(c)(2)(F)
Regulations	12 CFR 5.20, 223
Certificate	
Laws	12 USC 22, 27
<i>Filing and Preservation</i>	
Law	12 USC 23
Change in Control	
Laws	12 USC 1817(j)
Regulation	12 CFR 5.50
Change in Directors and Senior Executive Officers	
Law	12 USC 1831i
Regulation	12 CFR 5.51

Charters	
Laws	12 USC 21, 22, 23, 26, 27, 92a, 222, 1815, 1816, and 2903
Regulation	12 CFR 5.20
Civil Money Penalties	
Laws	12 USC 93, 504, 1818(i)
Issuance	PPM-5000-7 (Rev.) (June 16, 1993, Civil Money Penalties)
Community Development Corporation and Project Investments	
Law	12 USC 24(11)
Regulation	12 CFR 24
Community Development Financial Institutions	
Laws	12 USC 4701-4750
Community Development Investments	
Law	12 USC 24(11)
Regulation	12 CFR 24
Community Reinvestment Act	
Laws	12 USC 2901-2908
Regulation	12 CFR 25
Compensation Plans	
Law	12 USC 1828(k)
Regulations	12 CFR 7.2011, 30, 359
Consumer Credit Protection Act	
Laws	15 USC 1601-1693r
Convicted Individuals	
Law	12 USC 1829
Corporate Governance Procedures	
Laws	15 USC 78j-1, 78m (k)
Regulations	12 CFR 7.2000-7.2023
Issuance	OCC Bulletin 2003-12 (March 17, 2003, Interagency Policy Statement on Internal Audit and Internal Audit Outsourcing)

Corporate Powers and Investment Securities

Law 12 USC 24
Regulation 12 CFR 1

Covered Transactions

Laws 12 USC 371c, 371c-1
Regulation 12 CFR 223

Cumulative Voting

Law 12 USC 61
Regulation 12 CFR 7.2006

Depository Institution Management Interlocks Act

Laws 12 USC 3201-3208
Regulation 12 CFR 26

Directors

Citizenship Requirement

Law 12 USC 72

Convicted of a Crime

Law 12 USC 1829

Delegation of Duties

Regulation 12 CFR 7.2010

Election

Laws 12 USC 61, 71, 75
Regulations 12 CFR 7.2003, 7.2006

Extensions of Credit to

Laws 12 USC 375b, 15 USC 78m(k)
Regulations 12 CFR 31, 215

Honorary

Regulation 12 CFR 7.2004

Indemnification of

Law 12 USC 1828(k)
Regulations 12 CFR 7.2014, 359

Liability

Laws 12 USC 93, 503, 1818

Number of

Laws 12 USC 71, 71a

Oath of

Law 12 USC 73
Regulation 12 CFR 7.2008

Payment of Interest to

Law 12 USC 376

President, as

Law 12 USC 76
Regulation 12 CFR 7.2012

Proxy, as

Regulation 12 CFR 7.2002

<i>Purchases from and Sales by</i>	
Law	12 USC 375
<i>Qualifications of</i>	
Law	12 USC 72
Regulation	12 CFR 7.2005
<i>Quorum of</i>	
Regulation	12 CFR 7.2009
<i>Residency</i>	
Law	12 USC 72
<i>Responsibilities</i>	
Regulation	12 CFR 7.2010
Publications	<i>The Director's Book: The Role of a National Bank Director and Internal Controls, A Guide for Directors</i>
<i>Vacancy in</i>	
Law	12 USC 74
Regulation	12 CFR 7.2007
Electronic Banking	
Regulations	12 CFR 7.5000-7.5010
Publications	FFIEC IT Examination Handbook Series
Electronic Fund Transfer Act	
Laws	15 USC 1693-1693r
Regulation	12 CFR 205
Employee Retirement Income Security Act (ERISA) of 1974	
Laws	29 USC 1001 et seq.
Examination of National Banks	
Laws	12 USC 481, 484
Regulation	12 CFR 7.4000
Executive Officers	
<i>Cashier</i>	
Laws	12 USC 24 (5), 26, 51a, 52, 57, 62, 92a(g), 161
Regulation	12 CFR 7.2015
<i>Extensions of Credit to</i>	
Laws	12 USC 375a, 375b, 15 USC 78m(k)
Regulations	12 CFR 31, 215
<i>Liability</i>	
Laws	12 USC 93, 504, 1818
<i>Payment of Interest to</i>	
Law	12 USC 376

Fair Credit Reporting Act

Laws
Issuance

Publication

15 USC 1681-1681u
AL 99-3 (March 29,
1999, Fair Credit
Reporting Act
*Comptroller's
Handbook for
Compliance, "Fair
Credit Reporting Act"*

Fair Housing Act

Laws
Regulation
Publication

42 USC 3601 et seq.
24 CFR 100
*Comptroller's
Handbook for
Compliance, "Fair
Lending"*

FDIC Insurance

Laws
Regulations
Issuance

12 USC 1815, 1816
12 CFR 303, 327, 328
Deposit Insurance
Policy Statement (63
Fed. Reg. 44756

Federal Reserve Membership

Laws

Regulation

12 USC 222, 282, 466,
501a
12 CFR 209

Federal Trade Commission Act

Law
Issuance

15 USC 45
AL 2002-3 (March 22,
2002, Guidance on
Unfair or Deceptive
Acts or Practices)

Fidelity Insurance

Law
Regulation

12 USC 1828(e)
12 CFR 7.2013

Fiduciary Activities

Law
Regulation

12 USC 92a
12 CFR 9

Filing Fees	
Regulation	12 CFR 5.5
Issuance	OCC Bulletin 2003-45 (December 1, 2003, "Notice of Comptroller of the Currency Fees for Year 2004")
Fraudulent Statements	
Law	18 USC 1001
Golden Parachute Payments	
Regulation	12 CFR 359
Gramm-Leach-Bliley Act	
Laws	12 USC 24a, 15 USC 6801
Regulations	12 CFR 5.39, 40
Holidays	
Law	12 USC 95
Regulation	12 CFR 7.3000
Indemnification of Directors, Officers, and Employees	
Law	12 USC 1828(k)
Regulations	12 CFR 7.2014, 359
Independent External Audit	
Laws	12 USC 1831m, 15 USC 78j-1
Regulations	12 CFR 11, 363 and 17 CFR 210
Issuance	OCC Bulletin 2003-12 (March 17, 2003, Interagency Policy Statement on Internal Audit and Internal Audit Outsourcing)
Insider Activities	
Laws	12 USC 375, 375a, 375b, 376
Regulations	12 CFR 31, 215
Publication	<i>Comptroller's Handbook, "Insider Activities"</i>
Insurance, Sale of	
Laws	12 USC 92, 1831x
Regulation	12 CFR 14

Interbank Deposits	
Laws	12 USC 463, 1972
Interest	
Paying of	
Laws	12 USC 371a, 376
Regulation	12 CFR 217
Receiving	
Laws	12 USC 85, 86
Regulation	12 CFR 7.4001
Interlocking Directors and Officers	
Laws	12 USC 3201-3208, 15 USC 19
Regulation	12 CFR 26
Lending Limits	
Law	12 USC 84
Regulation	12 CFR 32
Location, Change of Main Office	
Law	12 USC 30
Regulation	12 CFR 5.40
Minority Banks	
Issuance	March 28, 2001 Policy Stmt on Minority- Owned National Banks
Name	
Laws	12 USC 22, 30, 35
Regulation	12 CFR 5.42
National Environmental Policy Act	
Laws	42 USC 4321-4347
Regulation	40 CFR 1500 et seq.
National Historic Preservation Act	
Laws	16 USC 470-470x-6
Regulation	36 CFR 800
Organization Certificate	
Laws	12 USC 22, 23
Organization Costs	
Regulation	12 CFR 5.20
Issuance	Glossary Instructions to the Consolidated Reports of Condition and Income

Organization of National Bank	
Laws	12 USC 21-23
Regulation	12 CFR 5.20
Place of Business	
Laws	12 USC 22, 81
Lotteries	
Law	12 USC 25a
Privacy	
Laws	15 USC 6801 et seq.
Regulation	12 CFR 40
Issuance	OCC Bulletin 2000-25 (September 8, 2000, Privacy Laws and Regulations)
Publication of Application	
Regulation	12 CFR 5.8
Real Estate Lending	
Law	12 USC 371
Regulation	12 CFR 34
Record Keeping and Confirmation Requirements for Securities Transactions	
Regulation	12 CFR 12
Reserve Requirements	
Laws	12 USC 461, 464, 465, 466
Regulation	12 CFR 204
Safety and Soundness Standards	
Law	12 USC 1831p-1
Regulation	12 CFR 30
Sale of Insurance	
Law	12 USC 92, 1813x
Regulation	12 CFR 14
Sarbanes-Oxley Act of 2002	
Law	15 USC 78m(k)
Issuance	OCC Bulletin 2003-12 (March 17, 2003, Inter- agency Stmt on Internal Audit and Internal Audit Outsourcing)

Securities Offering Disclosure Rules	
Regulation	12 CFR 16
Security Devices and Procedures	
Laws	12 USC 1882, 1884
Regulation	12 CFR 21
Shareholders' List	
Law	12 USC 62
Theft, Embezzlement, or Misapplication	
Law	18 USC 656
Regulation	12 CFR 21
Third-Party Relationships	
Law	12 USC 1831g, 1867(c)
Issuances	AL 2000-12 (November 28, 2000, Risk Mgmt of Out- sourcing Technology); Alert 2000-9 (August 29, 2000, Third-Party Risk); OCC Bulletin 2001-47 (November 1, 2001, Third-Party Relationships: Risk Mgmt Principles); OCC Bulletin 2002-16 (May 15, 2002, Bank Use of Foreign-Based Third- Party Service Providers)
Title	
Laws	12 USC 22, 30, 35
Regulation	12 CFR 5.42
Trust Bank	
Laws	12 USC 27, 92a, 1841(c)(2)(D)
Regulations	12 CFR 5.26, 9, 223
Vendors	
See Third-Party Relationships	
Voting Trusts	
Regulations	12 CFR 5.50, 7.2022