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## SUPPLEMENTARY INFORMATION:

### I. Introduction

This notice of proposed rulemaking invites comment on changes to our regulations that fall into the following categories:

- Changes to our rules that implement the AHEOA (discussed in Section II of the **SUPPLEMENTARY INFORMATION**);
- Clarifications to our visitorial powers regulations (Section III);
- Amendments to part 5 concerning limited-purpose banks, factors to be considered in business combinations, and operating subsidiary activities eligible for after-the-fact notice requirements; to part 7 concerning national banks' ability to provide tax advice; to part 9 concerning the valuation of collective investment funds; and to part 34 to update regulatory text to conform to a statutory change (Section IV); and
- Various technical changes to correct citations or footnote numbering (Section V).

## II. Amendments Implementing the AHEOA

### A. Background

The National Bank Consolidation and Merger Act (12 U.S.C. 215 *et seq.*) (Merger Act) permits consolidations and mergers involving national banks. Pursuant to 12 U.S.C. 215 and 215a, national banks or state banks<sup>1</sup> may, with OCC approval, merge or consolidate with a national bank located in the same state, resulting in a national bank. National banks also may merge or consolidate with Federal thrifts under 12 U.S.C. 215c, resulting in either a national bank or Federal thrift. Pursuant to 12 U.S.C. 215a-1, an insured national bank may merge or consolidate with an insured bank located in a different state.

Prior to the enactment of the AHEOA on December 27, 2000,<sup>2</sup> the Merger Act did not address mergers or consolidations involving a national bank and its nonbank affiliates. However, section 1206<sup>3</sup> of the AHEOA amended the Merger Act to permit national banks to merge with one or more of their nonbank affiliates with the approval of the OCC (Section 1206 Merger).

Other provisions of the AHEOA liberalize statutory reorganization and corporate governance requirements for national banks. Section 1204<sup>4</sup> amends the Merger Act to expedite the procedures that a national bank may use when it reorganizes to become a subsidiary of a holding company. Section 1205<sup>5</sup> of the AHEOA liberalizes the requirements governing the number and length of service of national bank directors.

This rulemaking contains proposed amendments to parts 5 and 7 to implement these changes made by the AHEOA.

### B. Description of the Proposal

#### 1. Reorganization Into a Holding Company Subsidiary—Proposed § 5.32 (New)

Pursuant to section 1204, a national bank, with the OCC's approval and the affirmative vote of shareholders holding at least two-thirds of the bank's

outstanding capital stock, may reorganize to become a subsidiary of a bank holding company or a company that will become a bank holding company through the reorganization.

The proposal implements this provision in proposed new § 5.32. Paragraph (a) states the authority for engaging in section 1204 transactions. Paragraph (b) repeats the scope of the statute and provides that § 5.32 applies to a reorganization of a national bank into a subsidiary of a bank holding company or of a company that will become a bank holding company through the reorganization.

Pursuant to proposed § 5.32(c), a national bank must submit an application to, and obtain approval from, the OCC prior to participating in a reorganization under paragraph (b).

In accordance with proposed § 5.32(d)(1), the application will be deemed approved by the OCC as of the 30th day after the OCC receives it, unless the OCC otherwise notifies the applicant national bank. Approval of applications under § 5.32 is subject to the condition that the bank give the OCC 60 days' prior notice of any material change in its business plan or any material change from the proposed changes described in the bank's plan of reorganization. Paragraph (d)(2) of proposed § 5.32 implements the statutory requirements that apply to the content of the reorganization plan. The plan must: (1) Specify how the reorganization is to be carried out; (2) be approved by a majority of the national bank's board of directors; (3) specify the amount and type of consideration that the bank holding company will provide for the stock of the bank, the date on which the shareholders' rights to participate in the exchange are to be determined, and the procedure for carrying out the exchange; (4) be submitted to the shareholders of the reorganizing bank at a meeting called in accordance with the procedures outlined in section 3 of the Merger Act;<sup>6</sup> and (5) where applicable, describe any changes to the bank's business plan resulting from the reorganization. Consistent with section 3 of the Merger Act, the proposal also requires that at least two-thirds of the bank's shareholders approve a reorganization. Paragraph (d)(3) of proposed § 5.32

<sup>1</sup> The term "state bank" is defined to include state-chartered banks, banking associations, trust companies, savings banks (other than mutual savings banks), and other banking institutions engaged in the business of receiving deposits. 12 U.S.C. 215b. This section also contains other definitions.

<sup>2</sup> Pub. L. 106-569, 114 Stat. 2944.

<sup>3</sup> Pub. L. 106-569, sec. 1206, 114 Stat. 2944, 3034 (codified at 12 U.S.C. 215a-3).

<sup>4</sup> Pub. L. 106-569, sec. 1204, 114 Stat. 2944, 3033 (codified at 12 U.S.C. 215a-2).

<sup>5</sup> Pub. L. 106-569, sec. 1205, 114 Stat. 2944, 3033-3034 (amending 12 U.S.C. 71 and 71a).

<sup>6</sup> Section 3 of the Merger Act, 12 U.S.C. 215a(a)(2), provides generally that a shareholders' meeting will be called by the bank's directors after publishing notice of the time, place, and object of the meeting for four consecutive weeks in a newspaper of general circulation where the bank is located and after sending notice to each shareholder of record by certified or registered mail at least 10 days prior to the meeting.