

provides that the OCC will review the financial and managerial resources and future prospects of the national bank when considering a section 1204 reorganization.

Proposed § 5.32(e) provides dissenters' rights protections for section 1204 reorganizations. As provided in the Merger Act, this subsection permits any shareholder who has voted against the reorganization at a meeting or given notice in writing at or prior to the meeting to receive the value of his or her shares by providing a written request to the bank within 30 days after the consummation of the reorganization.

Section 5.32(f) of the proposal states that § 5.32 does not affect the applicability of the Bank Holding Company Act of 1956 (BHCA) to a transaction covered under § 5.32(b); applicants must indicate in their § 5.32 applications the status of any BHCA application they are required to file with the Board of Governors of the Federal Reserve System.

The OCC's approval of a § 5.32 application will expire if a national bank has not completed the reorganization within one year of the date of such approval. This is stated in proposed paragraph (g) of § 5.32.

Finally, proposed paragraph (h)(1) states that applicants shall inform shareholders of all material aspects of a reorganization and comply with applicable requirements in the Federal securities laws and the OCC's securities regulations in 12 CFR part 11. Proposed paragraph (h)(2) states that applicants that are not subject to registration requirements under the Securities Exchange Act of 1934 shall submit proxy materials or information statements used in connection with a reorganization to the appropriate OCC district office no later than when such materials are sent to shareholders.

2. Section 1206 Mergers—Proposed § 5.33 (Revised)

Section 1206 of the AHEOA provides new authority for a national bank to merge with one or more of its nonbank affiliates, subject to the OCC's approval. Current § 5.33 sets forth application and notice procedures for national banks entering into business combinations, such as mergers and consolidations with other national banks or state-chartered banks, as well as OCC review and approval standards for such transactions. The proposal amends § 5.33 to include Section 1206 Mergers within its scope.

The proposal adds new application and prior OCC approval requirements for Section 1206 Mergers at the end of redesignated § 5.33(c). These

requirements are similar to those for mergers of a national bank or state bank into a national bank under 12 U.S.C. 215a.

A number of new definitions are added to § 5.33(d) in order to implement section 1206. Current § 5.33(d) defines only the terms "business combination," "business reorganization," "home state," and "interim bank." The proposal amends the definition of "business combination" to include Section 1206 Mergers, but leaves the definitions of the other three terms unchanged.

Proposed § 5.33(d)(1) adds a definition of "bank" and defines it as any national bank or state bank. This definition is added because the term is used in the definition for "nonbank affiliate."

Proposed § 5.33(d)(4) defines the term "company" to mean a corporation, limited liability company, partnership, business trust, association, or similar organization. This term is proposed to be added because it is used in the definition of "nonbank affiliate" and "control."

Proposed § 5.33(d)(5) defines "control," which is used in the definition of "nonbank affiliate." Under the proposal, for business combinations under §§ 5.33(g)(4) and (5), a company or shareholder will be deemed to control another company if (1) the company or shareholder, directly or indirectly, or acting through one or more other persons owns, controls, or has power to vote 25 per cent or more of any class of voting securities of the other company, or (2) the company or shareholder controls in any manner the election of a majority of the directors or trustees of the other company.

Because section 1206 provides merger authority for entities previously not included within the scope of § 5.33, the proposal adds the definition of "nonbank affiliate" to describe the entities that are covered by section 1206. Proposed § 5.33(d)(8) defines "nonbank affiliate" of a national bank as any company that controls, is controlled by, or is under common control with the national bank. However, banks and Federal savings associations are not included as "affiliates" because mergers with such entities are governed by statutes other than section 1206. Nonbank subsidiaries are considered to be nonbank affiliates for purposes of § 5.33.

Section 5.33(e)(3)(ii) currently requires that, if as a result of a business combination, a national bank obtains control of a new subsidiary, the bank must provide the same information regarding the new subsidiary's activities

that would be required if the applicant were establishing a new subsidiary under either 12 CFR 5.34 (which addresses operating subsidiaries) or 12 CFR 5.39 (which addresses financial subsidiaries). The current rule contains an exception if the subsidiary was a subsidiary of a national bank. The proposal modifies this provision to take into account the fact that the bank may now merge with a nonbank affiliate that has a subsidiary.

Section 5.33(f) sets forth exceptions to the rules that generally govern the OCC's application procedures, such as requirements for the publication of notice or for hearings. Pursuant to § 5.33(f)(1), a national bank applicant that is subject to specific statutory notice requirements for business combinations is not subject to §§ 5.8(a), (b), or (c), which require, and prescribe the timing and contents of, public notice. Instead, a national bank applicant must follow the notice requirements in the applicable statute.

A national bank applicant in a Section 1206 Merger *resulting in a national bank* would be required to follow the notice requirements of 12 U.S.C. 215a. A national bank applicant in a Section 1206 Merger *resulting in a nonbank affiliate* would be required to follow the notice requirements of 12 U.S.C. 214a. We propose to amend § 5.33(f)(1) by adding references to the special procedures to be followed in Section 1206 Mergers.

In addition, we propose to state in § 5.33(f)(1) that §§ 5.10 (regarding public comments) and 5.11 (regarding requests for hearings) are not applicable as a general rule to Section 1206 Mergers. However, we also reserve the discretion to determine that some or all of the provisions in § 5.10 and § 5.11 apply in a Section 1206 Merger if an application presents significant and novel policy, supervisory, or legal issues.

Finally, we propose to make two technical changes to paragraph (f)(1). The reference to paragraph (g) for mergers or consolidations with a Federal savings association would be amended to refer more specifically to paragraph (g)(2) and the reference to a resulting state bank in the parenthetical following this reference would be corrected to refer to a national bank.

The proposal also adds a new § 5.33(g)(4) to address Section 1206 Mergers of national banks with their nonbank affiliates when the resulting entity is a national bank. Section 5.33(g)(4)(i) states that a national bank may enter into this type of Section 1206 Merger when the law of the state or other jurisdiction under which the nonbank affiliate is organized allows the