

proposed change is to clarify that a limited purpose national bank may exist with respect to activities other than fiduciary activities, provided the activities in question are within the business of banking.

Section 5.33(e) of our regulations contains a listing of factors the OCC considers in evaluating applications for business combinations. These factors are based upon the factors set forth in the Bank Merger Act, 12 U.S.C. 1828(c), and the Community Reinvestment Act, 12 U.S.C. 2903. As part of the USA PATRIOT Act,²⁷ Congress amended the Bank Merger Act by adding an additional factor to be considered in evaluating merger transactions. This factor requires the responsible agencies to consider the effectiveness of any insured depository institution involved in a proposed merger in combating money laundering activities.²⁸ The proposal conforms our regulations with the statute by adding the factor at § 5.33(e)(1)(v).

Current § 5.34(e)(5)(iv) permits certain national banks to acquire or establish an operating subsidiary or perform a new activity in an existing operating subsidiary by providing after-the-fact notice to the OCC if the operating subsidiary conducts certain activities listed in § 5.34(e)(5)(v). That list currently includes the underwriting of credit-related insurance consistent with section 302 of the Gramm-Leach-Bliley Act. However, in Corporate Decision 2001–10 (April 23, 2001) and Corporate Decision 2000–16 (August 29, 2000), the OCC found that credit-related reinsurance products satisfy GLBA section 302's statutory requirements and are "authorized products." The proposal therefore amends 12 CFR 5.34(e)(5)(v)(L) to add reinsuring of credit-related insurance to the list of activities eligible for after-the-fact notice requirements.

B. Part 7 Amendment

As corporate transactions have become more sophisticated, an integral part of financial and transactional advice with respect to mergers and other corporate restructurings inevitably involves providing advice on the tax implications of those transactions. Recently amended § 5.34(e)(5)(v)(J) and (K) permit national banks to provide tax planning services and to provide financial and transactional advice on

structuring, arranging, and executing financial transactions, including mergers, acquisitions, and divestitures. Providing tax planning services encompasses tax consulting in order for a bank to be able to offer comprehensive services in this area. Accordingly, the proposal deletes as outdated the prohibition against serving as an expert tax consultant that currently appears at § 7.1008.²⁹

C. Part 9 Amendment

Currently, 12 CFR 9.18(b)(4)(i) requires valuation of collective investment funds at least every three months. However, certain funds are only required to be valued once a year. Those funds must be (a)(2) funds that are primarily invested in real estate or other assets that are not readily marketable. A growing number of collective investment funds, including (a)(1) funds, however, are comprised of a mix of assets that are readily marketable and assets that are not readily marketable. Those funds do not qualify for the one-year valuation because they are not (a)(2) funds primarily invested in real estate or other assets that are not readily marketable. However, a one-year valuation may be appropriate for assets in those funds that are not readily marketable. Thus, we propose to amend the regulation to require quarterly valuation of readily marketable assets in all collective investment funds, including (a)(1) funds. Assets that are not readily marketable will be valued at least once a year regardless of whether the assets are in (a)(1) or (a)(2) funds or whether the funds' assets are primarily invested in real estate or other assets that are not readily marketable. For purposes of an admission or withdrawal date, this provision does not negate the need to provide a current value at the time of such admission or withdrawal.

D. Part 34 Amendment

Section 34.3 restates the comprehensive authority vested in the OCC by 12 U.S.C. 371 to regulate real estate lending by national banks. Section 371 authorizes national banks to engage in real estate lending, making that authority subject only to 12 U.S.C. 1828(o) (real estate lending safety and soundness standards) and "such restrictions and requirements as the Comptroller of the Currency may

prescribe by regulation or order." The text of the regulation was not revised to reflect a statutory amendment to section 371 referring to 12 U.S.C. 1828(o) and thus the proposal updates the regulation to reflect that change to the underlying statute. Other portions of the regulation remain unchanged, as are the implementing provisions of section 34.4, which set out by regulation certain types of state laws that are specifically preempted (section 34.4(a)), and provide that the OCC will apply recognized principles of Federal preemption in considering whether other types of state laws apply to real estate lending by national banks for purposes of issuing orders pursuant to section 371 (section 34.4(b)).

V. Technical Amendments

The proposal contains the following technical amendments:

- 12 CFR part 3, appendix A, section 3(a)(2)(ix) currently cross-references a definition of "General obligation of a State or political subdivision" but contains the wrong regulatory citation for that definition. The definition in question has been moved from 12 CFR 1.3(g) to 12 CFR 1.2(b). The proposed revision will correct the citation. Also in part 3 appendix A, section 4(a)(11)(ii) the references to sections (4)(a)(8)(i) and (ii) are corrected to refer to sections (4)(a)(9)(i) and (ii), respectively.
- The citations to FDIC regulations in current 12 CFR 6.4(c)(1)(i) and (ii) are incorrect. The proposal amends the citations to correct them.
- Current 12 CFR 7.1016(a) contains a footnote reference and accompanying footnote text. The footnote reference number is 30, but should be 1. The proposal makes this change.
- Current 12 CFR 9.20(b) contains a reference to SEC rules 17 CFR 240.17Ad–1 through 240.17Ad–16. A new rule, 240.17Ad–17, has been added, so the proposal changes the reference to 240.17Ad–16 to reflect the addition.
- Current 12 CFR 28.16(e), dealing with uninsured deposit notices, makes a reference to an FDIC regulation, 12 CFR 346.7, which was removed in 1998. The proposal would correct this citation to refer to the current rule for uninsured deposit notices which can now be found at 12 CFR 347.207.

Request for Comments

The OCC invites comment on all aspects of the proposed regulation.

Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Pub. L. 106–102, sec. 722, 113 Stat. 1338, 1471 (Nov. 12, 1999),

²⁷ Pub. L. 107–56 (Oct. 26, 2001).

²⁸ The FDIC recently updated its Statement of Policy on Bank Merger Transactions to include this new factor at 67 FR 48178 (July 23, 2002). This update only provides the new provision. The complete Policy Statement as it existed before this update may be found at 63 FR 44761 (August 20, 1998).

²⁹ National banks engaged in providing the services permitted by 12 CFR 5.34(e)(5)(v)(J) and (K) must comply with applicable regulations of the Internal Revenue Service (IRS) governing the provision of such services. Information about the IRS regulations may be obtained at www.irs.treas.gov.