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Executive Order 13132

Executive Order 13132 requires Federal agencies, including the OCC, to certify their compliance with that Order when they transmit to the Office of Management and Budget any draft final regulation that has Federalism implications. Under the Order, a regulation has Federalism implications if it has "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." In the case of a regulation that has Federalism implications and that preempts state law, the Order imposes certain consultation requirements with state and local officials; requires publication in the preamble of a Federalism summary impact statement; and requires the OCC to make available to the Director of the Office of Management and Budget any written communications submitted by state and local officials. By the terms of the Order, these requirements apply to the extent that they are practicable and permitted by law and, to that extent, must be satisfied before the OCC promulgates a final regulation.

This proposal may have Federalism implications, as that term is used in the Order. Therefore, before promulgating a final regulation based on this proposal, the OCC will, to the extent practicable and permitted by law, seek consultation with state and local officials, include a Federalism summary impact statement in the preamble to the final rule, and make available to the Director of OMB any written communications we receive from state or local officials.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 5

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

12 CFR Part 6

National banks.

12 CFR Part 7

Credit, Insurance, Investments, National banks, Reporting and recordkeeping requirements, Securities, Surety bonds.

12 CFR Part 9

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

12 CFR Part 28

Foreign banking, National banks, Reporting and recordkeeping requirements.

12 CFR Part 34

Mortgages, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, parts 3, 5, 6, 7, 9, 28, and 34 of chapter I of title 12 of the Code of Federal Regulations are proposed to be amended as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

Appendix A to Part 3—[Amended]

2. In appendix A to part 3:

A. In section 3, amend paragraph (a)(2)(ix) by removing "12 CFR 1.3(g)" and adding in its place "12 CFR 1.2(b)"; and

B. In section 4, amend paragraph (a)(11)(ii) by removing, "section(4)(a)(8)(i) and (ii)" and adding in its place "section (4)(a)(9)(i) and (ii)".

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

3. The authority citation for part 5 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 93a; 215a-2; 215a-3; and section 5136A of the Revised Statutes (12 U.S.C. 24a).

Subpart B—Initial Activities

4. In § 5.20, a new second sentence is added to paragraph (e)(1) to read as follows:

§ 5.20 Organizing a Bank.

* * * * *

(e) *Statutory requirements*—(1) *General.* * * * The bank may be a special purpose bank that limits its

activities to fiduciary activities or to any other activities within the business of banking. * * *

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Subpart C—Expansion of Activities

5. A new § 5.32 is added to read as follows:

§ 5.32 Expedited procedures for certain reorganizations.

(a) *Authority.* 12 U.S.C. 93a and 215a-2.

(b) *Scope.* This section prescribes the procedures for OCC review and approval of a national bank's reorganization to become a subsidiary of a bank holding company or a company that will, upon consummation of such reorganization, become a bank holding company.

(c) *Licensing requirements.* A national bank shall submit an application to, and obtain approval from, the OCC prior to participating in a reorganization described in paragraph (b) of this section.

(d) *Procedures*—(1) *General.* An application filed in accordance with this section shall be deemed approved on the 30th day after the OCC receives the application, unless the OCC notifies the bank otherwise. Approval is subject to the condition that the bank provide the OCC with 60 days' prior notice of any material change in the bank's business plan or any material change from the proposed changes to the bank's business plan described in the bank's plan of reorganization.

(2) *Reorganization plan.* The application must include a reorganization plan that:

(i) Specifies the manner in which the reorganization shall be carried out;

(ii) Is approved by a majority of the entire board of directors of the national bank;

(iii) Specifies:

(A) The amount and type of consideration that the bank holding company will provide to the shareholders of the reorganizing bank for their shares of stock of the bank;

(B) The date as of which the rights of each shareholder to participate in that exchange will be determined; and

(C) The manner in which the exchange will be carried out;

(iv) Is submitted to the shareholders of the reorganizing bank at a meeting to be held at the call of the directors in accordance with the procedures prescribed in connection with a merger of a national bank under section 3 of the National Bank Consolidation and Merger Act, 12 U.S.C. 215a(a)(2); and