

**DEPARTMENT OF THE TREASURY****Office of the Comptroller of the Currency****12 CFR Parts 3, 5, 6, 7, 9, 28, and 34****[Docket No. 03–24]****RIN 1557–AB97****Rules, Policies, and Procedures for Corporate Activities; Bank Activities and Operations; Real Estate Lending and Appraisals****AGENCY:** Office of the Comptroller of the Currency, Treasury.**ACTION:** Final rule.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is publishing a final rule implementing authority provided to national banks by sections 1204, 1205, and 1206 of the American Homeownership and Economic Opportunity Act of 2000 (AHEOA). Section 1204 permits national banks to reorganize directly to be controlled by a holding company. Section 1205 increases the maximum term of service for national bank directors, permits the OCC to adopt regulations allowing for staggered terms for directors, and permits national banks to apply for permission to have more than 25 directors. Section 1206 permits national banks to merge with one or more of their nonbank affiliates, subject to OCC approval. In addition, the rule amends parts 5, 7, 9, and 34, for other purposes and makes several technical corrections.

**EFFECTIVE DATE:** January 16, 2004.

**FOR FURTHER INFORMATION CONTACT:** For questions concerning 12 CFR 5.20, contact Richard Cleva, Senior Counsel, Bank Activities and Structure Division, (202) 874–5300; or Andra Shuster, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090. For questions concerning 12 CFR 5.32, contact Mark Ginsberg, Senior Licensing Analyst, Licensing Policy and Systems Division, (202) 874–5060; or Andra Shuster, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090. For questions concerning 12 CFR 5.33, contact Crystal Maddox, Senior Licensing Analyst, Licensing Policy and Systems Division, (202) 874–5060; Richard Cleva, Senior Counsel, Bank Activities and Structure Division, (202) 874–5300; or Andra Shuster, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090. For questions concerning 12 CFR 7.2024, contact Andra Shuster, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090. For questions concerning 12 CFR 34.3, contact Mark

Tenhundfeld, Assistant Director, or Andra Shuster, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090. For questions concerning 12 CFR 9.18, contact Beth Kirby, Special Counsel, Securities and Corporate Practices Division, (202) 874–5210.

**SUPPLEMENTARY INFORMATION:** On February 7, 2003, the OCC published a notice of proposed rulemaking in the *Federal Register* (68 FR 6363) to implement the AHEOA and clarify our visitorial powers regulations (NPRM). In addition, we proposed to amend (1) 12 CFR part 5 concerning limited-purpose banks, factors to be considered in business combinations, and operating subsidiary activities eligible for after-the-fact notice requirements; (2) 12 CFR part 7 concerning national banks' ability to provide tax advice; (3) 12 CFR part 9 concerning the valuation of collective investment funds; and (4) 12 CFR part 34 to update regulatory text to conform to a statutory change. Various technical changes to correct citations or footnote numbering were also part of the NPRM.

The OCC received a total of 55 comments on the NPRM. Of this number, 34 addressed the parts of the proposal that implemented the AHEOA provisions and amended 12 CFR parts 5, 7, 9, and 34. These comments included two from bank holding companies, four from banking trade associations, one from a community trade association, one from a non-profit consumer group, one from a bank supervisors' trade association, and 25 from state bank supervisors' offices. While many of the commenters supported the proposed changes, many offered suggestions for changes. For the reasons discussed below, we have adopted the provisions of the NPRM with a number of changes in response to the comments received to clarify certain provisions.

Many of the comments we received on the proposal also addressed the revision to our visitorial powers regulation. A number of these comments contained thoughtful and detailed arguments that we will address in a rulemaking to be published separately in the *Federal Register*.

**I. 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,

<sup>1</sup> The term "state bank" is defined by the statute to include state-chartered banks, banking

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 final rule contains amendments to 12 CFR parts 5 and 7 to implement these changes made by the AHEOA.

**B. Description of the Proposal, Comments Received, and Final Rule****1. Reorganization into a Holding Company Subsidiary—New § 5.32**

Pursuant to section 1204 of the AHEOA, 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.

Proposed new § 5.32 implemented this provision. Paragraph (a) stated the authority for engaging in section 1204 transactions. Paragraph (b) repeated the scope of the statute and provided that § 5.32 applies to a reorganization of a

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).