

Current § 5.33 sets forth application and notice procedures for national banks entering into business combinations, such as mergers or consolidations, with other national banks or state-chartered banks, as well as OCC review and approval standards for such transactions. The proposal contained amendments to § 5.33 to include Section 1206 Mergers within its scope.

The proposal added 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 were 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 amended the definition of “business combination” to include Section 1206 Mergers, but left the definitions of the other three terms unchanged.

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

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

Proposed § 5.33(d)(5) defined “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 would 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 added the definition of “nonbank affiliate” to describe the entities that are covered by section 1206. Proposed § 5.33(d)(8) defined “nonbank affiliate” of a national bank as any company that controls, is controlled by, or is under common control with the

national bank. Banks and Federal savings associations were not included as “affiliates” because mergers with such entities are governed by statutes other than section 1206. Nonbank subsidiaries would be 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 modified 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 requires, and prescribes 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 proposed to amend § 5.33(f)(1) by adding references to the special procedures to be followed in Section 1206 Mergers. We did not receive any comments on the foregoing provisions and, therefore, we adopt them as proposed.

In addition, we proposed 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 reserved 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.

A few commenters urged the OCC to make the provisions in §§ 5.10 and 5.11 applicable to all Section 1206 Mergers

either because this type of merger is unprecedented and likely to raise many important issues or because these mergers would result in arbitrary or uneven application of the Community Reinvestment Act (CRA)<sup>9</sup> and fair lending laws. For several reasons we decline to adopt the commenters’ suggestion to impose a notice requirement in every Section 1206 Merger. First, if an insured national bank is involved in the merger, FDIC approval is required under the Bank Merger Act.<sup>10</sup> That approval requires publication of notice and provides for public comment. Second, where the national bank involved in the merger is uninsured, such as a trust bank, the OCC may determine on a case-by-case basis that an application presents significant and novel policy, supervisory, or legal issues and that public notice is, therefore, warranted. This standard covers the situations identified by commenters as appropriate for notice and hearings. Evaluating the need for public notice, or a hearing, on a case-by-case basis also avoids unnecessary burdens. In addition, we note that CRA is not applicable to transactions where no deposit facility is being acquired. Therefore, we decline the commenters’ suggestion to impose a notice requirement in every Section 1206 Merger.

Finally, we proposed 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. No comments were received on these provisions. For the reasons discussed above, we adopt § 5.33(f) as proposed.

The proposal also added 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) stated 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 nonbank affiliate to engage in such mergers. This section also required a national bank to obtain the OCC’s approval.

One commenter suggested that we modify the regulation to specify that a merger between an insured national bank and its nonbank affiliate must

<sup>9</sup> 12 U.S.C. 2901 *et seq.*

<sup>10</sup> 12 U.S.C. 1828(c).