

receive prior approval by the FDIC. As noted above, if the national bank involved is insured, the transaction is also subject to approval by the FDIC under the Bank Merger Act. For purposes of clarification, we have added this language to the final rule. In addition, we have also added language stating that in determining whether to approve a merger under this section, the OCC will consider the purpose of the transaction, its impact on the safety and soundness of the bank, and any effect on the bank's customers. The OCC may deny the merger if it would have a negative effect on any of these factors.

A few commenters questioned the OCC's decision to condition the merger of a nonbank affiliate on whether the law of the state or other jurisdiction under which the affiliate is organized permits the affiliate to participate in such a merger. These commenters contended that there is no such requirement in the statute and that this condition encourages states to discriminate against national banks by enacting laws that prohibit this type of merger. One commenter suggested that this requirement be revised to permit the merger where the state's law permits a merger between the nonbank affiliate and any other body corporate. We believe the language of the proposal as drafted already achieves this result. The proposal required only that the state statute permit such a merger. As long as this is the case, the state statute providing merger authority need not specifically mention national banks. For these reasons, the state law provision is retained in the final rule.

Proposed § 5.33(g)(4)(ii) stated that a national bank entering into such a merger must follow the procedures and requirements contained in 12 U.S.C. 215a (which addresses the merger of state banks into national banks), as if the nonbank entity were a state bank. The proposal applied the procedures and requirements in 12 U.S.C. 215a because section 215a addresses the same issues that arise in a Section 1206 Merger and its requirements are familiar to national banks. In addition, we believe that these procedures and requirements impose the least amount of burden on the participants consistent with our supervisory objectives in reviewing the proposed transactions. We received no comments on this provision and, therefore, adopt it as proposed.

Proposed § 5.33(g)(4)(iii) stated that a nonbank affiliate entering into such a merger is to follow the procedures in the law of the state or other jurisdiction under which the nonbank entity is organized. Two commenters disagreed with the use of state law procedures for

mergers of a nonbank affiliate into a national bank. One commenter contended that there is no such requirement in the statute and that it has the effect of requiring the national bank to follow both state and Federal law, which may be in conflict. We note, however, that in a merger of a state bank into a national bank, the state bank follows the procedures for mergers in state law. Proposed § 5.33(g)(4)(iii) simply treats nonbank affiliates the same as state banks by requiring them to follow the procedures contained in the law of the state in which they are incorporated. We believe that this similarity of treatment is appropriate and, therefore, have adopted this provision as proposed.

Proposed § 5.33(g)(4)(iv) stated that the rights of dissenting shareholders and appraisal of dissenters' shares of stock in the nonbank entity shall be determined in accordance with the laws of the state or other jurisdiction under which the nonbank entity is organized. We received no comments suggesting changes to this section of the proposed rule and have, therefore, adopted it as proposed.

Proposed § 5.33(g)(4)(v) of the proposal stated that the corporate existence of each institution participating in the merger shall be continued in the resulting national bank, and all the rights, franchises, property, appointments, liabilities, and other interests of the participating institutions shall be transferred to the resulting national bank in the same manner and to the same extent as in a merger between a national bank and a state bank under 12 U.S.C. 215a, as if the nonbank affiliate were a state bank. A few commenters suggested that this provision state that a national bank resulting from a merger with a nonbank affiliate may not exercise any power or engage in any activity that would not be permissible for a national bank under applicable provisions of Federal law other than section 215a–3. We note that this language is already set forth specifically in the statute at 12 U.S.C. 215a–3(b)(2). In addition, current § 5.33(e)(5) states that the OCC generally requires a national bank to discontinue nonconforming activities within a reasonable time following a business combination. This provision would be applicable to transactions under § 5.33(g)(4). Because the statute and our rules already address this point, we believe no further clarification is required, and we have adopted the provision as proposed.

The proposal also added a new § 5.33(g)(5), which addressed section 1206 Mergers of uninsured national

banks with their nonbank affiliates when the resulting entity is a nonbank affiliate. The proposal limited this type of section 1206 Merger to national banks that are not insured banks (as defined in 12 U.S.C. 1813(h)). Prior to the enactment of section 1206, there was no efficient way for a national bank to cease its deposit-taking business, surrender its charter, and combine its business with that of an affiliate because no statutory provisions addressed this type of transaction. The section 1206 authority allows this transaction to take place in a merger and therefore allows the OCC to establish the procedures necessary when an uninsured national bank wishes to surrender its national charter but continue conducting lines of business that are authorized for the nonbank affiliate.

Proposed § 5.33(g)(5)(i) stated that this type of section 1206 Merger may be entered into when the law of the state or other jurisdiction under which the nonbank affiliate is organized allows such mergers. It also provided that an uninsured national bank must obtain the OCC's approval for the transaction. As was done in § 5.33(g)(4)(i), we have added language to the final rule in § 5.33(g)(5)(i) stating that the OCC will consider the purpose of the transaction, its impact on the safety and soundness of the bank, and any effect on the bank's customers. The OCC may deny the merger if it would have a negative effect on any of these factors.

Proposed § 5.33(g)(5)(ii) stated that a national bank entering into such a merger shall follow the procedures and requirements contained in 12 U.S.C. 214a (which addresses the merger of national banks into state banks), as if the nonbank entity were a state bank. Section 5.33(g)(5)(iii) stated that a nonbank affiliate entering into such a merger shall follow the procedures and requirements in the law of the state or other jurisdiction under which the nonbank entity is organized. Section 5.33(g)(5)(iv) of the proposal stated that dissenting national bank shareholders may receive in cash the value of their national bank shares if they comply with the requirements of 12 U.S.C. 214a as if the nonbank affiliate were a state bank. That section also stated that the OCC may conduct an appraisal or reappraisal of dissenters' shares of stock in a national bank involved in a merger with a nonbank affiliate that results in a nonbank affiliate if all parties agree that the determination is final and binding on each party and agree on how the OCC's expenses relating to the appraisal will be divided among the parties and paid to the OCC. The proposal provided that rights of