

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 on these provisions and adopt them as proposed.

Proposed § 5.33(g)(5)(v) stated that the corporate existence of each entity participating in the merger shall be continued in the resulting nonbank affiliate, and all the rights, franchises, property, appointments, liabilities, and other interests of the participating national bank shall be transferred to the resulting nonbank affiliate as set forth in 12 U.S.C. 214b, 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. 214a, as if the nonbank affiliate were a state bank. A number of commenters suggested that we clarify that where the surviving entity is a nonbank affiliate, it does not succeed to any of the powers of the national bank, and that the national bank and its powers cease to exist. We agree that a national bank ceases to exist following consummation of a section 1206 Merger and that a surviving nonbank affiliate will not be permitted to exercise powers of the former national bank except to the extent permitted under state law or other law applicable to the resulting nonbank affiliate. The wording of the regulation does not say otherwise, however and in our view it is important to be clear that the surviving nonbank affiliate does enjoy corporate succession to the corporate rights, franchises, property, appointments, liabilities, and other interests of the former national bank. This is the same result as when a national bank merges into a state bank under 12 U.S.C. 214a and 214b. We do not believe that any change to the regulation is necessary by virtue of these comments and adopt this provision as proposed.

Finally, the proposal added a new paragraph (j)(1)(iv) to § 5.33 that permits applications for certain transactions under § 5.33(g)(4) to receive streamlined treatment. In order to qualify for such treatment, the acquiring bank must be an eligible bank, the resulting national bank must be well capitalized immediately following consummation of the transaction, the applicants in a pre-filing communication must request and obtain approval from the appropriate district office to use the streamlined application, and the total assets acquired in the transaction must not exceed 10 percent of the total assets of the acquiring national bank, as reported in the bank's Consolidated

Report of Condition and Income filed for the quarter immediately preceding the filing of the application. We received no comments on this provision and adopt it as proposed.

3. National Bank Directors—§ 7.2024 (new)

Section 1205 of the AHEOA amended section 5145 of the Revised Statutes of the United States (12 U.S.C. 71) and section 31 of the Banking Act of 1933 (12 U.S.C. 71a) regarding national bank directors. Section 1205 increases the maximum term a director may serve from one to not more than three years and permits a national bank to adopt bylaws that provide for staggering the terms of its directors in accordance with the OCC's regulations. In addition, this section permits the OCC to exempt a national bank from the otherwise applicable requirement that it have no more than 25 directors.

The proposal added a new § 7.2024 conforming the OCC's rules to these provisions. Pursuant to proposed § 7.2024(a), national banks may adopt bylaws that provide for staggering the terms of their directors. Proposed § 7.2024(b) increased the permissible maximum term of national bank directors from one year to three years. Finally, paragraph (c) provided that a national bank may increase the size of its board of directors above the statutory limit of 25 provided that the bank satisfies the notice requirements set out in that section. We received two comments on this provision, both of which supported the proposal. Accordingly, we adopt it as proposed.

II. Additional Changes to Parts 5, 7, 9, and 34

A. Part 5 Amendments

The final rule also revised three other provisions in part 5 of our regulations. Section 5.20 of our regulations contains the requirements that govern the organization of a national bank. The proposal amended § 5.20(e)(1) to provide that the newly organized bank may be a special purpose national bank that limits its activities to fiduciary activities or to any other activities within the business of banking. The purpose of this proposed change was to clarify that a limited purpose national bank may exist with respect to activities other than fiduciary activities, provided the activities in question are part of the business of banking. Some commenters expressed concern that this provision was too broad and that the expansion of the limited purpose charter had the potential to exclude from state oversight entities conducting activities only

loosely related to banking. We agree that it is appropriate to provide further clarification of the scope of activities permissible for a limited purpose national bank, and we have amended this provision to require limited purpose national banks to conduct at least one of the following core banking functions: (1) Receiving deposits; (2) paying checks; or (3) lending money. These functions are based on 12 U.S.C. 36, which identifies activities that cause a facility to be considered a bank branch.

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 and the CRA. As part of the USA PATRIOT Act,¹¹ Congress amended the Bank Merger Act by adding a 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.¹² The proposal conformed our regulations with the statute by adding the factor at § 5.33(e)(1)(v).

Finally, 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. Since the list was last revised, the OCC has determined, in Corporate Decision 2001-10 (April 23, 2001) and Corporate Decision 2000-16 (August 29, 2000), that credit-related reinsurance products satisfy GLBA section 302's statutory requirements and are "authorized products." The proposal therefore amended 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.

We received no comments on these proposed changes to §§ 5.33(e) or 5.34(e) and therefore adopt these changes as proposed.

¹¹ Pub. L. 107-56, 115 Stat. 272 (Oct. 26, 2001).

¹² 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).