

### B. Part 7 Amendment

As corporate transactions have become more sophisticated, an integral part of financial and transactional advice with respect to mergers and other corporate restructurings inevitably involves providing advice on the tax implications of those transactions. Recently amended § 5.34(e)(5)(v)(J) and (K) permit national banks to provide tax planning services and to provide financial and transactional advice on structuring, arranging, and executing financial transactions, including mergers, acquisitions, and divestitures. Providing tax planning services encompasses tax consulting in order for a bank to be able to offer comprehensive services in this area. Accordingly, the proposal deleted as outdated the prohibition against serving as an expert tax consultant that currently appears at § 7.1008.<sup>13</sup> We received no comments regarding this change, and therefore adopt it as proposed.

### C. Part 9 Amendment

Currently, 12 CFR 9.18(b)(4)(i) requires valuation of collective investment funds at least every three months. However, certain funds are only required to be valued once a year. Those funds must be “(a)(2) funds” (*i.e.*, funds that may be held pursuant to 12 CFR 9.18(a)(2) that are primarily invested in real estate or other assets that are not readily marketable). A growing number of collective investment funds, including (a)(1) funds, however, are comprised of a mix of assets that are readily marketable and assets that are not readily marketable. Those funds do not qualify for the one-year valuation because they are not (a)(2) funds primarily invested in real estate or other assets that are not readily marketable. However, a one-year valuation may be appropriate for assets in those funds that are not readily marketable. Thus, we proposed to amend the regulation to require quarterly valuation of readily marketable assets in all collective investment funds, including (a)(1) funds. Assets that are not readily marketable must be valued at least once a year regardless of whether the assets are in (a)(1) or (a)(2) funds or whether the funds’ assets are primarily invested in real estate or other assets that are not readily marketable. For purposes of an admission or withdrawal date, this

provision does not negate the need to provide a current value at the time of such admission or withdrawal. We received no comments regarding this change, and therefore adopt it as proposed.

### D. Part 34 Amendment

Section 34.3 restates the comprehensive authority vested in the OCC by 12 U.S.C. 371 to regulate real estate lending by national banks. Section 371 authorizes national banks to engage in real estate lending subject to 12 U.S.C. 1828(o) (real estate lending safety and soundness standards) and “such restrictions and requirements as the Comptroller of the Currency may prescribe by regulation or order.” The cross-reference to 12 U.S.C. 1828(o) was added to the statute in 1991, but the text of the regulation was never revised to reflect it. Thus, the proposal updated the regulation to reflect that change to the underlying statute. Other portions of the regulation remain unchanged.<sup>14</sup> We received no comments regarding this change, and therefore adopt it as proposed.

### III. Technical Amendments

The proposal contained the following technical amendments:

- 12 CFR part 3, appendix A, section 3(a)(2)(ix) currently cross-references a definition of “General obligation of a State or political subdivision” but contains the wrong regulatory citation for that definition. The definition in question has been moved from 12 CFR 1.3(g) to 12 CFR 1.2(b). The proposed revision corrected the citation. Also in part 3 appendix A, section 4(a)(11)(ii), the references to section 4(a)(8)(i) and (ii) were corrected to refer to section 4(a)(9)(i) and (ii), respectively.
- The citations to FDIC regulations in current 12 CFR 6.4(c)(1)(i) and (ii) are incorrect. The proposal amended the citations to correct them.
- Current 12 CFR 7.1016(a) contains a footnote reference and accompanying footnote text. The footnote reference number is 30, but should be 1. The proposal made this change.
- Current 12 CFR 9.20(b) contains a reference to SEC rules 17 CFR 240.17Ad-1 through 240.17Ad-16. A new rule, at 17 CFR 240.17Ad-17, has been added, so the proposal changed the reference to 240.17Ad-16 to reflect the addition.
- Current 12 CFR 28.16(e), dealing with uninsured deposit notices, makes a

reference to an FDIC regulation, 12 CFR 346.7, which was removed in 1998. The proposal corrected this citation to refer to the current rule for uninsured deposit notices, which can now be found at 12 CFR 347.207.

We received no comments regarding these changes, and therefore adopt them as proposed.

### IV. Regulatory Analysis

#### CDRI Act Delayed Effective Date

This final rule takes effect 30 days after the date of its publication in the **Federal Register**, consistent with the delayed effective date requirement of the Administrative Procedure Act. *See* 5 U.S.C. 553(d). Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act), 12 U.S.C. 4802(b), provides that regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions may not take effect before the first day of the quarter following publication unless the agency finds that there is good cause to make the rule effective at an earlier date. The regulations in this final rule provide procedures to be used by national banks wishing to take advantage of the new transactions or corporate governance options permitted by the AHEOA. The regulations make it easier for national banks to exercise this new statutory authority. Accordingly, the OCC finds that there is good cause to dispense with the requirements of the CDRI Act.

#### Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule.

Pursuant to section 605(b) of the RFA, the OCC hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not needed. The amendments to the OCC’s regulations relating to the AHOEA are permissive provisions that will be used only by banks that wish to take advantage of the new transactions, procedures, or corporate governance options permitted by the statute as implemented by the regulations. 12 CFR 5.33(g)(5) reduces burden by implementing a simpler way to

<sup>13</sup> National banks engaged in providing the services permitted by 12 CFR 5.34(e)(5)(v)(J) and (K) must comply with applicable regulations of the Internal Revenue Service (IRS) governing the provision of such services. Information about the IRS regulations may be obtained at [www.irs.treas.gov](http://www.irs.treas.gov).

<sup>14</sup> We have proposed additional changes to part 34 in a separate rulemaking that invites comment on changes to the provisions governing preemption. *See* 68 FR 46119 (Aug. 5, 2003). The comment period for that rulemaking closed October 6, 2003.