

Conversions

Comptroller's Licensing Manual

Washington, DC
April 2010

Conversions

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Conversions

Introduction

Under applicable federal and state law, certain types of depository institutions may convert to become national banks. These include state commercial banks, state savings associations, state savings banks, state trust companies, federal savings banks and federal savings associations. A depository institution seeking to convert must submit an application and obtain prior OCC approval. A mutual depository institution may need to convert to a stock form of ownership prior to converting to a national bank.

This booklet contains policies and procedures to guide depository institutions in converting to national bank charters and discusses any exceptions to these requirements. It also contains a step-by-step procedures section for use by the applicant and the OCC, a glossary of terms, and a reference section. The reference section includes applicable laws, regulations, and OCC issuances to assist applicants in completing the filing process. Users of the "Conversions" booklet may also want to refer to the "General Policies and Procedures" (GPP) booklet for a discussion of general filing instructions and procedures.

A national bank seeking to convert to an institution with another type of charter is discussed in the "Termination of National Bank Status" booklet. National banks intending to leave the national banking system, through statewide mergers or other complex transactions where the OCC will not be the regulator of the resulting institution, generally should not structure their transactions in a manner that requires OCC approval. Rather, such transactions should be structured to provide that the regulatory authorities of the resulting institution have the authority and responsibility to handle all aspects of the transaction.

The conversion booklet does not address conversions to become District banks (those operating under the code of law for the District of Columbia). Institutions considering this should contact Licensing to determine the requirements subject to review by the OCC as the appropriate federal banking agency under the Federal Deposit Insurance Act and other statutes (see 12 USC 1813(q)(1) and 1828(i)(2)(A)).

Key Policies

The OCC, consistent with its chartering policy, permits a depository institution that demonstrates the ability to operate safely and soundly and in compliance with applicable laws, regulations, and policies to convert to a national bank charter if consistent with the National Bank Act and applicable OCC regulations and policies.

The OCC may conduct a conversion examination whenever necessary to obtain relevant information about the condition of the institution. Conversion examinations are done for most conversion applications.

If the conversion is not consummated within six months from the date of an approval, the approval will be withdrawn. The OCC does not grant extensions of the approval period except under the most extenuating circumstances. The OCC expects the conversion to occur as soon as possible.

Decision Criteria

In determining action on a conversion application, the OCC normally considers the applicant's:

- Condition and management, including compliance with regulatory capital requirements. If significant weaknesses exist in these financial and managerial factors, the conversion normally will be denied. If the applicant is under a formal agreement or cease and desist order from a financial regulatory agency, the conversion normally will not be approved unless an agreement is reached with the OCC about the applicant's practices. In addition, federal savings associations that seek to convert under the authority of 12 USC 1464(i)(5) must meet all financial, managerial, and capital requirements applicable to the resulting bank.
- Conformance with statutory criteria, including many of the same standards applicable to chartering a de novo national bank.
- Adequacy of policies, practices, and procedures that parallel OCC's Minimum Policies & Procedures. Correction of any deficiencies may be included as conditions, as appropriate, if an approval decision is made. Written policies and procedures may not be necessary for small community banks engaged in limited or traditional activities.
- CRA record of performance. The OCC expects a satisfactory record of CRA performance. In the event the applicant's CRA record is less than satisfactory or CRA issues exist; and the OCC has other compelling reasons to permit the conversion, the conversion may be approved conditioned on the improvement of an applicant's record of CRA performance or the development and implementation of an adequate plan to meet CRA obligations.

The OCC may deny a conversion application for:

- Safety or soundness issues.
- Inadequate capital.
- Financial condition concerns.
- Significant CRA or compliance concerns.
- Ownership issues.
- Inconsistency with applicable law, regulation, or OCC policy.
- Attempting circumvention of supervisory action by the current regulator.
- Failure to provide requested information so that the OCC can make an informed decision.

Special Conditions

The OCC may impose special conditions for approvals to protect the safety and soundness of the bank; prevent conflicts of interest; provide customer protections; ensure that approval is consistent with the statutes and regulations; or provide for other supervisory or policy considerations. The OCC may apply these special conditions as "conditions imposed in writing" within the meaning of 12 USC 1818. These enforceable conditions remain in effect after the effective or consummation date of an approved transaction or activity and continue until the OCC removes them.

Special supervisory conditions may be used depending on whether the particular circumstances warrant it. The OCC tailors special supervisory conditions to specific situations, such as:

- Maintaining a specified minimum capital floor.
- Executing a written agreement between the proposed bank and its holding company that provides for capital maintenance, liquidity support, or other assurances to the bank, if and when necessary.
- Developing a contingency business plan agreement between the proposed bank and the OCC setting forth certain actions that the bank will take if the bank does not achieve the business plan results. The agreement could include, but need not be limited to, obtaining additional capital; developing and implementing a corrective action plan or new satisfactory business plan to remedy plan shortfalls or failures; or developing and implementing a contingency plan to sell, merge, or liquidate the bank at no cost to the FDIC.
- Requiring all final third-party relationship contracts to stipulate that the performance of services provided by the vendors to the bank are subject to the OCC's examination and regulatory authority.

If a conversion examination identifies a particular weakness in an operational area of a bank that should be strengthened by improved policies, the following condition may be imposed:

The board of directors must adopt and have in place written policies and procedures concerning (insert problem area) to ensure the safe and sound operation of the bank. The board must continually review these policies and procedures and ensure the bank's compliance.

If the converting institution has supervisory concerns that could be addressed or monitored by obtaining an external audit, the following language may be used:

Prior to conversion, the institution's directors must engage an independent, external auditor to perform an audit according to generally accepted auditing standards. The audit must be of sufficient scope to enable the auditor to render an opinion on the institution's (or consolidated holding company's) financial statements. The audit period must begin on the date that the institution converts to a national bank and may end on any calendar quarter-end no later than 12 months after the conversion. The audit will be performed on an annual basis for at least (number) years.

If the converting institution has converted from a mutual to stock institution, or its parent holding company has converted from a mutual to a stock holding company, the OCC may need to impose conditions to ensure compliance with regulations. The language of these conditions will differ depending on the case and the regulations involved. Liquidation account conditions or other conditions dealing with OTS regulations governing mutual to stock conversions would be included in this category.

If the OCC believes there is a heightened supervisory risk that exists after a conversion, the significant deviation condition may be used. If the condition is deemed necessary, the following language will be used:

The Bank: (i) shall give the [insert the OCC supervisory office] at least sixty (60) days prior written notice of the Bank's intent to significantly deviate or change from its business plan or operations¹ and (ii) shall obtain the OCC's written determination of no objection before the Bank engages in any significant deviation or change from its business plan or operations. The OCC may impose additional conditions it deems appropriate in a written determination of no objection to a bank's notice.

The OCC considers the imposition of a significant deviation condition for conversion applications on a case-by-case basis. The condition of the converting institution and whether the institution or sponsor plans to change its business plan or operations are key considerations in assessing risks of institutions converting to national bank charters. The OCC may impose the significant deviation condition, if the converting institution has financial weaknesses, if the sponsor plans to make significant changes in the business plan or operations of the institution, or if the OCC believes that the institution is vulnerable to a potentially significant adverse change in the short- or intermediate-term.

For purposes of the significant deviation condition, a "significant deviation" or change is defined as a material variance from the bank's business plan or operations that occurs after the proposed transaction has been consummated. A significant deviation from the bank's business plan or operations may include, but is not limited to, a material deviation or material change in the bank's projected growth, strategy or philosophy; lines of business; funding sources; scope of activities; and changes in relationships with a parent company or affiliate. Even though an applicant may disclose its plan to change the bank's operations in the application, the heightened supervisory risk may nonetheless warrant imposing this condition because the bank may subsequently fail to accomplish the original plan's objectives or the bank may subsequently deviate from the plan. The condition also may be appropriate if the applicant discloses future plans to offer a new product, service, or enter a new market, but no formal plans exist at the time that application is filed, and implementation of these plans will occur after OCC approval.

¹ If the deviation is the subject of an application filed with the OCC, the OCC does not require any further notice to the supervisory office.

Deviations in financial performance alone are not significant deviations under this condition. However, the OCC still may consider the underlying reasons for the deviation in financial performance a significant deviation.

Application Process

Prefiling Communications

Prior to filing, the OCC encourages applicants to consult with the appropriate licensing manager to discuss the application process, the possible need for a conversion examination, the need for a review of policies and procedures, any unusual or complex issues, and the benefits of scheduling a prefiling meeting. If a prefiling meeting is appropriate, it is usually held in the district office in which the application will be filed. At the request of the applicant, it may be held at another location.

If a prefiling meeting is held, the applicant will be advised if a legal opinion is needed (see the State and Federal Law Considerations section of this booklet for additional discussion). The applicant also will be reminded that the OCC will review the institution's policies, practices, and procedures prior to its conversion to a national bank. If a prefiling meeting is not held, these items will be discussed at the time the applicant files its application.

Filing the Application

An existing depository institution that wishes to convert to a national bank submits to the licensing manager a Conversion Application, signed by the president or other authorized officer.

The application requires information on the institution's status and condition, reports of condition and income, audited financial statements, and an opinion on the legality of the conversion, as well as other information. When an insured depository institution converts to a national bank, it is not necessary to reapply for FDIC insurance for the converted entity. A Federal Reserve filing may be necessary, however. For instance, when a federal savings bank owned by a thrift holding company seeks to convert to a national bank, the holding company must file to become a bank holding company.

Publication

Generally, public notice under 12 CFR 5.8 does not apply to conversions unless the OCC determines that the application presents a significant or novel policy, supervisory, or legal issue where a public notice is considered necessary. A public notice also may be required when a conversion application is accompanied by a second application that requires a publication notice under 12 CFR 5.8. In this instance a public notice describing the entire transaction may be necessary to ensure that the public has a full understanding of the entire transaction.

Expedited Review

An eligible depository institution will be considered for expedited treatment at the time it submits its application and filing fee for conversion. If processed under expedited time frames, the OCC may either deem the application automatically approved through the passage of time 30 days after the licensing manager's receipt of the application or may decide the application prior to the 30th day.

All applications from eligible depository institutions are processed under expedited time frames unless the OCC notifies the applicant prior to that date that the filing is not eligible for expedited review under the decision standards of 12 CFR 5.13(a)(2). In addition, the OCC may determine that a filing from an eligible depository institution is not eligible for expedited review if it presents significant legal, policy, supervisory, compliance, or CRA issues. Finally, if it is determined that a conversion examination is necessary, an application from an eligible depository institution will be removed from expedited review. If removed from expedited review, the OCC may request additional information, charge an additional filing fee to process the notice under the standard process, and charge a fee for the conversion examination.

Specific Requirements

Corporate Title

The resulting national bank's title must include the word "national." The word "national" must be spelled out on all legal documents.

Shareholder Approval

Shareholders owning no less than 51 percent of the institution's capital stock must approve the proposed conversion. If the converting entity, however, is a state depository institution and applicable state law requires a greater percentage, this greater percentage must be obtained. Similarly, if the converting entity is a federal institution, such as a federal savings bank, and applicable federal law requires a greater percentage, this greater percentage must be obtained.

Directors' Approval

A majority of the directors should execute the Articles of Association and Organization Certificate. The Organization Certificate must state that the owners of at least 51 percent of the capital stock, or a greater amount if required by applicable federal or state law, have authorized the directors to execute such Organization Certificate and Articles of Association, and to change or convert the depository institution into a national bank.

The directors, after executing the Articles of Association and the Organization Certificate, are authorized and have the power to execute all other documents and do what may be necessary to complete the conversion to a national bank. Although all documents are executed prior to the effective date of the conversion, none of the documents will be effective until consummation.

An original of the Articles of Association and the Organization Certificate should be submitted to the appropriate district office for processing by Licensing (LIC) staff. The bank may execute a second set of originals or keep a copy for its records. The Organization Certificate must be notarized. The same people should execute the Organization Certificate and the Articles of Association. At least a majority of the board must sign these documents, with a minimum of five signatures required.

The bylaws must be adopted by the board, but are not executed by the board of directors. The Secretary or Cashier must certify the bylaws.

State and Federal Law Considerations

An institution desiring to convert to a national bank must include with the application, unless the OCC otherwise advises, an opinion of counsel stating that conversion, in the case of a state bank, is not in contravention of applicable state law or, in the case of a Federal Savings Association, is not in contravention of applicable federal law. If the proposal presents unusual legal issues, a comprehensive opinion of counsel may be required. These issues may include, but are not limited to:

- Noncompliance with state law though the conversion is believed to be legal under national banking law.
- Whether a state-chartered institution meets the definition of a "state bank" as that term is defined for purposes of 12 USC 35 and 12 CFR 5.24.
- Unusual ownership structure or is not stock-owned.
- Branch retention
- Nonconforming asset retention, including nonconforming subsidiaries.
- Main office location.
- Interstate operations.
- Exercise of fiduciary powers.
- Noncompliance with residency or citizenship requirements.

The OCC reserves the right to require an opinion of counsel if it determines one is necessary.

Branch Authorization

A converting institution may retain existing branches as a national bank, if such retention is consistent with applicable law. The applicant must identify all branches that will be retained following the conversion.

All approved, but unopened, branches must be authorized to open in accordance with OCC policy (12 CFR 5.30) and applicable law. The application must include approval documents for these branches from the state banking department and

either the FDIC, Federal Reserve Board (FRB), or Office of Thrift Supervision, as appropriate. Any facilities that would be identified as branches under national banking laws (brick and mortar and nontraditional branches) but are not currently considered branches under state law must also be authorized.

The applicant should certify that the resulting branch structure complies with applicable state and federal branching laws and should list the requirements of those laws in the application. Certification of the institution's compliance with law, where applicable, must include consideration of geographic limitations and any quantitative and qualitative factors (see the "Branches and Relocations" booklet).

Provided they are legally permissible, the decision letter will include branch authorization numbers for the converting institution's existing branches, any approved but unopened branches, and any newly approved branches by the OCC. For those branches that are not opened at consummation, the institution must notify the OCC of the opening date(s), no later than 10 days after the opening(s), so the OCC may complete its records. The OCC will provide the institution 18 months from the OCC conversion approval date to open these branches, if not inconsistent with state branching law as applied to national banks under 12 USC 36. The branch approvals and authorizations will automatically terminate for any branches not opened within that time period, unless the OCC grants an extension.

Main Office Location

Under certain circumstances and as part of the conversion, an institution may wish to designate in its Articles of Association and Organization Certificate that the main office of the resulting national bank will be at a site other than the current main office site of the institution being converted. In such cases, the applicant should consult with the OCC.

Activities of Subsidiaries

A depository institution seeking to convert to a national bank must identify all subsidiaries that will be retained following the conversion. The conversion application should provide a complete description of the activities and all other information that would be required for a national bank to establish or acquire an operating, statutory, or financial subsidiary under the notice, certification, or application provisions of 12 CFR 5.34, 5.36(d), and 5.39. An additional fee is not required for the subsidiary portion of the conversion application.

The OCC will analyze the permissibility of the activities and whether the performance of such activities by national banks is consistent with the safe and sound operation of the applicant and the national banking system. The OCC will request a legal analysis if the permissibility of the subsidiary's activities is unclear. (See the "Investment in Subsidiaries and Equities" booklet for specific information.) The OCC's decision on the operating, statutory, or financial subsidiary's activities will be included in the conversion decision. If the OCC approves the conversion, but objects to an operating, statutory, or financial subsidiary, it will instruct the applicant to divest of the subsidiary prior to consummation or within a specific period of time as may be necessary to enable the nonconforming subsidiary to be resolved without undue hardship.

Nonconforming Assets and Activities

Permanent Retention

Pursuant to 12 USC 35, the OCC may permit a state depository institution converting to a national charter to permanently retain assets it holds that otherwise would be nonconforming assets for national banks.

The applicant must identify all nonconforming assets that it holds and request prior approval to permanently retain them. Full details regarding the asset should be provided, including a description, when it was acquired, and its value. An approval may be subject to conditions and an OCC determination of the carrying value of the retained assets.

A legal opinion describing how the nonconforming assets comply with laws that pertain to the preconverted state-chartered institution should be submitted if the applicant wishes to permanently retain the assets after conversion.

Temporary Retention

The OCC will permit a converting institution a reasonable period of time, generally not to exceed two years after conversion, to divest of, or conform, any nonconforming assets or activities, including nonconforming subsidiaries, not being permanently retained under 12 USC 35. A reasonable period of time is given so that the converting institution may take the necessary action without undue hardship.

If the applicant wishes to divest or conform nonconforming assets or activities, the application must identify and provide information regarding the assets or activities. In addition, the application should describe the plan to divest or conform those assets or activities and should outline the period of time needed.

Noncontrolling Interests

The OCC may permit a converting institution to permanently or temporarily retain noncontrolling interests in other entities and in other equity investments as a national bank if such retention is consistent with applicable law. The applicant must identify all noncontrolling interests that will be retained following the conversion. The applicant should identify whether it desires permanent or temporary retention; whether conformance or divestiture will be necessary; and any time frame necessary for conformance or divestiture. In addition, information must be provided that would normally be provided if applying to establish or acquire a noncontrolling interest pursuant to 12 CFR 5.36(e).

Business Plan

A business plan required if an institution has been chartered less than three years; if there will be a significant change in the institution's operations, strategy, market area, funding, loan composition, portfolio, products, or services; if the institution is not granted expedited review; or, if the OCC deems one appropriate. Institutions

not required to submit business plans should submit a representation that no significant changes will be made for a period of three years.

Capital

National banks are subject to certain statutory and regulatory minimum capital requirements. The institution should refer to 12 CFR 3, Minimum Capital Ratios, for the required minimal acceptable capital ratio for national banks and 12 CFR 6, Prompt Corrective Action, which specifies supervisory actions restricting the activities of banks categorized as undercapitalized, significantly undercapitalized, or critically undercapitalized.

The adequacy of the capital structure should be discussed in the application relative to internal and external risks; operational and financial assumptions, including technology, branching, and operating expenses; and any off-balance sheet activities.

The institution's capital stock may be divided into shares of \$100 each, as set forth in 12 USC 52, or a lesser amount as provided in the Articles of Association. In addition, no par common stock is now permissible for national banks.

Every national bank seeking to establish branches outside of the city, town, or village in which it is situated must, under 12 USC 36(c), have capital and surplus at least equal to that required of state-chartered banks applying to establish branches.

Directors

Directors of the converting institution may continue to be directors of the national bank until others are elected or appointed. A national bank's board must consist of at least 5 members. If the board consists of more than 25 members, prior notice must be provided to the OCC. Every director must own qualifying shares of the capital stock prior to conversion to a national banking association in conformance with 12 USC 72 and 12 CFR 7.2005. In addition, national banks may adopt bylaws that provide for staggering the terms of its directors in accordance with 12 CFR 7.2024.

Background Investigations

Existing directors and executive officers are normally not required to submit the Interagency Biographical and Financial Report. However, the OCC reserves the right to require submission of either or both sections of the report. Additional information on the background check process may be found in the "Background Investigations" booklet.

Citizenship and Residency Requirements

All directors must comply with the residency and citizenship requirements set forth in 12 USC 72.

The law requires that every director be a citizen of the United States for the entire term of service. If the converting institution wishes to elect or appoint one or more non-United States citizens to its board of directors, the institution may request a

waiver of the citizenship requirement from the OCC. The OCC may not waive the requirement of citizenship for more than a minority of the total number of directors of any national bank. Additional information on waivers is contained in the "Director Waivers" booklet.

The law also requires that a majority of a bank's directors reside in the state where the bank is located (that is, the state(s) in which the bank has its main office or branches) or within 100 miles of its main office for at least one year immediately preceding their election. In addition, directors must maintain their state residency or reside within 100 miles of the location of the main office during their continuance in office. The OCC may waive the residency requirement in certain circumstances upon request. Additional information on waivers is contained in the "Director Waivers" booklet.

Insurance

Fidelity Bond

The institution must have adequate fidelity bond coverage in accordance with 12 CFR 7.2013, which lists four factors the directors should consider to determine adequacy. They are:

- Number of employees.
- Amount of deposit liabilities.
- Amount of cash and securities normally held by the bank.
- Internal auditing safeguards in place.

Credit Life

If the institution sells credit life insurance to loan customers, all income from that activity must be credited as described in 12 CFR 2. The institution's directors must select a means of marketing the insurance to accomplish that objective. The directors must also ensure the program complies with all federal and state banking and applicable insurance laws.

Federal Home Loan Bank (FHLB) Membership

If the converting institution is a member of the FHLB system, and at any time ceases to be a member, it must use its best efforts, including contacting the appropriate FHLB or the Federal Housing Finance Board, to dispose of any stock in the FHLB. The OCC will consider the stock a nonconforming asset if the institution is not a member of the FHLB system. Once membership has been terminated, the FHLB has discretion and may also require that any FHLB advances be repaid at that time.

Federal Reserve Membership

If not already a member, the institution must apply to purchase the required amount of stock in the Federal Reserve Bank to the extent required by 12 CFR 209, if applicable.

Fiduciary Powers

An institution seeking to convert to a national bank and exercise fiduciary powers must request and obtain prior OCC approval to exercise fiduciary powers. This requirement applies uniformly to all converting institutions seeking fiduciary powers regardless of whether they currently exercise them. If approval to exercise fiduciary powers is requested, the converting institution must also comply with the procedures in 12 CFR 5.26 (see the "Fiduciary Powers" booklet).

Internal and External Audits

The OCC requires each national bank to adopt an internal audit system appropriate to its asset size, nature, and scope of activities. Some banks may elect to adopt a system that incorporates independent reviews instead of dedicated audit staff (see the "Internal and External Audits" booklet of the *Comptroller's Handbook*). National banks should conduct their internal audit and outsourced internal audit activities in accordance with OCC Bulletin 2003-12, Interagency Policy Statement on Internal Audit and Internal Audit Outsourcing.

Insured institutions with \$500 million or more in assets are required by 12 CFR 363 to have an independent external audit of their financial statements. In addition, under 12 CFR Part 11, all national banks registered under the Securities Exchange Act of 1934 are required to have external audits. For national banks with less than \$500 million in assets, the external audit function should comply with OCC Bulletin 99-37, Interagency Policy Statement on External Auditing Programs.

Conversion of Special Purpose and Narrow Focus Banks

Special purpose and narrow focus banks may convert to national banks. These banks offer limited products or services, serve a limited customer base or narrowly defined market niche, incorporate nontraditional elements, or have a narrowly focused business plan. Special purpose banks and those with a narrow focus must meet the same statutory and regulatory requirements as other nationally chartered banks, unless applicable laws or regulations provide otherwise. The OCC requires each special purpose or narrow focus bank to indicate the nature of its operations in its articles of association.

Applicants should tailor the contents of the conversion application consistent with the nature of its special purpose or narrow focus charter. The OCC's review of a special purpose or narrow focus proposal may exceed traditional processing time frames because of the time needed to evaluate the supervisory risks associated with these proposals. Refer to the Charters Booklet for a full discussion of the types of special purpose banks, the supervisory risk associated with each, and the OCC's expectations and requirements for these banks.

Liquidation Account

When the converting institution has a liquidation account, the resulting national bank must maintain the account. A liquidation account results when a depository institution converts from a mutual to a stock institution. A depository institution that has not converted from a mutual to stock conversion also may have a liquidation account if they have acquired a depository institution that had a liquidation account. The liquidation account is merely a segregation for accounting purposes of a converted (mutual to stock) institution's undivided profits. It represents the eligible depositors' interest in the net worth of a mutual institution at the time the mutual institution converts to a stock institution.

After conversion to a stock institution, the liquidation account is reported, for risk-based capital and call report purposes, as a segregated amount of the bank's undivided profits and included in Tier 1 capital. In the event the institution is involved in a future merger or acquisition, the liquidation account and its balance must be preserved by the resulting entity for eligible deposit holders, at the time of conversion to stock, in the event of liquidation. In the event of liquidation, eligible depositors are entitled to a priority distribution from the institution's net worth, after creditors, but before any distributions are made to capital stockholders. Accordingly, an institution with a liquidation account should indicate this in reports to its shareholders.

Conversion Examination

Usually the OCC will conduct a conversion examination to obtain relevant information about the condition of the institution.

If the OCC schedules a conversion examination to ascertain an applicant's qualifications to convert to a national banking association, it assesses a separate fee. Only the Director for Licensing Activities has the authority to waive the examination fee.

Provided we are approving the application and an examination fee was paid, Licensing will provide a copy of the examination report to the applicant with the conversion decision. The report will include a clear warning against improper use or disclosure of the report. Management is responsible for correcting deficiencies found in the conversion examination as directed by the OCC. The OCC may share the information obtained in the examination with other regulators.

If the examination finds that the institution's condition, management, and community service are satisfactory, the OCC generally will grant approval. The institution will be notified of further conversion requirements and procedures at that time.

Compensation Arrangements

The applicant should describe all outstanding and proposed stock awards, options, warrants, or other similar stock-based compensation plans offered as compensation to bank directors, executive officers, principal shareholders, and other bank insiders. Such disclosure should be made regardless of whether it is at the bank or holding company level.

Ownership

The applicant should submit a list of directors and shareholders owning 10 percent or more of capital stock with the application to convert. Those owning 10 percent or more are deemed to be "controlling shareholders" pursuant to 12 USC 1817(j) and 12 CFR 5.50. Additional information on controlling shareholders may be found in that statute, the regulation, and in the "Change in Control" booklet.

Post Conversion Supervisory Activities

The OCC strives to deliver to national banks high-quality bank supervision centered on the accurate evaluation and management of risks. Supervisory efforts are directed toward identifying material or emerging problems and ensuring that they are corrected appropriately.

The OCC continuously supervises national banks through on-site supervisory activity and periodic monitoring. These activities help the OCC determine the condition of individual banks and the overall stability of the national banking system. Details regarding the supervision of national banks are provided in the "Large Bank Supervision" and "Community Bank Supervision" booklets of the *Comptroller's Handbook*.

Monitoring

Monitoring activities are performed periodically as set forth in the "Large Bank Supervision" and the "Community Bank Supervision" booklets. Examiners also will perform a quarterly business plan analysis for those banks that were required to submit a business plan during the conversion process.

Examinations

All converted *insured* national depository institutions, including converted insured trust banks, must receive full-scope examinations as prescribed by 12 USC 1820(d). Generally, an *insured* converted national bank must receive a full-scope examination within 12 months from the date of its last full-scope examination conducted by a federal banking agency or its last examination by its state regulator, if the examination met Federal Financial Institutions Examination Council (FFIEC) guidelines. The time period may be extended to 18 months from its last examination if the bank meets the standard statutory criteria for such an extension. The timing of the first full-scope examination may be influenced by whether a conversion examination was performed, if increased risks, concerns, or weaknesses are disclosed or if the converted bank is pursuing a nontraditional strategy.

A converted *uninsured* national trust bank or an *uninsured* national trust bank formed exclusively from the business existing in a national or state-chartered bank must receive a full-scope examination within 12 months from the date of its last full-scope examination conducted by a federal banking agency. The time period may be extended to 18 months from its last examination if the bank meets the standard criteria for such an extension.

Procedures: Standard

Prefiling

Licensing Staff

1. Refers an institution that requests instructions to this booklet and the "General Policies and Procedures" booklet of the *Comptroller's Licensing Manual*.

Applicant

2. (Optional) Requests a prefiling meeting to discuss the proposal, to discuss the factors that may influence the OCC's review of the application, and to review the procedures for conversion to a national bank charter.

Licensing Staff

3. Arranges a prefiling meeting with the applicant, if appropriate. Invites the appropriate OCC staff (for example, legal, supervision, compliance, community development, economics).
4. If at any time the conversion proposal presents significant or novel policy, legal, or supervisory issues, or involves permanent retention of nonconforming assets, including subsidiaries and activities, contacts Headquarters Licensing (HQ LIC) for guidance on whether:
 - The application should be filed with HQ LIC for processing.
 - Specific issues should be "stripped out" for HQ LIC action while the application is simultaneously processed in the appropriate district office.
5. Prepares summary memorandum on all prefiling communications, meetings, and policy or legal issues raised. Retains all pertinent information in the pending file. If Supervision was unable to attend the prefiling meeting and there are significant or noteworthy issues, forwards a copy of the prefiling meeting memorandum to supervision.

Filing the Application

Applicant

6. Submits a complete Conversion application, signed by the institution's president or other duly authorized officer, to the appropriate licensing manager.

Review

Licensing Staff

7. Initiates and enters appropriate information into the Corporate Activities Information System (CAIS).
 8. Establishes the official file to maintain original documents.
 9. Forwards the correct filing fee and the deposit memorandum (Form 6043-01) to the Comptroller of the Currency, Attention: Accounts Receivable, 250 E Street, S.W., MS 4-8, Washington, DC 20219. Retains a copy of the deposit memorandum. Requests a filing fee if not received.
 10. Within five business days, notifies the assistant deputy comptroller (ADC) and the supervisory or ADC analyst that the application has been received and forwards a copy to the supervisory office.
 11. Within five business days, contacts the institution's state and federal supervisors by phone to:
 - Obtain their supervisory background and comments.
 - Determine whether the institution is subject to an agreement, other enforcement proceeding, or order.
 - Obtain the dates and ratings of the bank's most recent ROE and CRA examinations so that the supervisory office can create the "supervisory cycle" in Examiner View (EV). (Note: The examiners cannot begin the conversion examination in EV until the supervisory cycle is created.)
 - Obtain the institution's safety and soundness and CRA reports of examination issued during the most recent three years.
- If the regulator asks you to request this information in writing, sends a letter or e-mail request.
12. Within five business days of receipt, determines if the institution meets the "eligible depository institution" criteria for expedited review and acknowledges the filing. If it is not eligible for expedited review, identifies the specific reason and provides the institution notice of standard processing.
 13. Within five business days of receipt, notifies district legal, supervision, community development, compliance, and any other applicable OCC divisions of the filing and solicits comments, as appropriate. A preliminary response is required from each within 15 days.
 14. Within five business days of receipt, reviews the filing and any other relevant information about the institution, including the draft Articles of Association and Organization Certificate, and:

- Determines if the filing contains all information necessary to reach a decision. If not, requests the necessary information from the institution and establishes a specific due date to provide the information.
 - Determines if the filing presents significant or novel policy, legal, or supervisory issues. If so, repeats step 4.
 - Determines if the institution has requested that the main office of the resulting national bank will be at a site other than the main office of the institution being converted. If so, the issue should be addressed specifically and called to the attention of the appropriate HQ LIC analyst and district counsel.
15. As soon as the prior examination information is received, forwards the reports of examination to the ADC and the supervisory or ADC analyst so that the supervisory office can populate EV.
 16. Reviews recent examination reports and other information pertaining to the condition of the converting institution.
 17. If necessary, performs background checks on all directors, executive officers, and principal shareholders (see the "Waivers" section of the "Background Investigations" booklet).
 18. Verifies that existing and proposed directors meet the residency and citizenship requirements of 12 USC 72 and 12 CFR 7.2005, or appropriate waivers have been requested.
 19. After consultation with the supervisory office regarding the institution's condition, Licensing determines if an OCC conversion examination is needed.² If not needed, documents the decision in the file and goes to step 24. If it is needed:
 - Requests the appropriate supervisory office to assign a national bank examiner (NBE) to the conversion examination.
 - Provides the NBE with relevant materials not already sent to the supervisory office (that is, charter number, spokesperson's name and phone number, any application amendments).
 - Determines whether any OCC specialists should be included in the conversion examination and discusses it with the NBE.
 - Coordinates with the supervisory office to set the scope of the exam and estimates the number of on-site hours it will require. The NBE inputs the scope of the exam in EV identifying supervisory issues and concerns. Licensing also provides the NBE with a conversion scope memo at least two weeks prior to the examination if there are any additional specific areas where Licensing requests review. Any issues identified for review by other OCC areas should be included in the scope memo if received in

² Conversion examinations may be waived for conversion applications accorded expedited review.

time. Issues from other OCC areas may be sent by separate e-mail to the NBE if not incorporated into the scope memo.

- Notifies the spokesperson that a conversion examination will be conducted and that the NBE will call to schedule the date. Advises the spokesperson of the approximate cost and that a letter will be forthcoming to that effect.³ Sends "Letter Advising of Examination Fee" with "Agreement to Pay for Conversion Examination" enclosure.
20. Receives the "Agreement to Pay for Conversion Examination" from the bank and notifies the ADC and NBE that we may proceed with the examination.
 21. Reviews the results of any conversion examination in EV and the ADC's comments. Any matters identified in the examination report are discussed with supervision and resolved. Licensing should send a copy of any response received from the institution's management to the supervisory office.
 22. Obtains the number of hours spent on-site from the NBE, reduces it by 20 hours, and fills the hours in at the bottom of the "Agreement to Pay for Conversion Examination".⁴ Forwards a copy of the completed "Agreement to Pay for Conversion Examination" with the "Cover Memo to Financial Management" to the Team Leader-Revenue in OCC Financial Management. Financial Management will prepare the invoice and return it to you.
 23. Sends the "Letter Forwarding the Examination Fee Invoice", along with the invoice received from Financial Management, to the institution.

Decision

Licensing Staff

24. Prepares a confidential memorandum and decision letter recommending a decision to the delegated official. If information was forwarded to other OCC areas, includes appropriate information in the decision document.
25. Pursuant to LIC policy, if the application is deemed "significant," sends a copy of the confidential memorandum and draft decision letter to the appropriate ADC or ADC designee to solicit final comments and copies the ADC analyst. A response should be received in five business days. A conversion application is considered "significant" unless the application is expedited *and* the lead depository institution in the bank holding company structure is a national bank.
26. If either the deputy comptroller for mid-size/credit card banks (M/CCBS) or the district deputy comptroller's (DDC) review and signoff is necessary pursuant to LIC policy, requests that the appropriate M/CCBS or DDC, or their designee, concur with the supervisory office's position and comments. A copy of the

³ Only the Director for Licensing Activities has the authority to waive the conversion examination fee.

⁴ There is no charge for the first 20 hours of the conversion exam. If the total on-site hours are less than 20, there is no charge and no information should be sent to Financial Management.

confidential memo, draft decision letter, and supervisory office comments should accompany this request. A response should be received in five business days.

27. If there is a difference of opinion between the MDC/DDC's comments and the licensing manager's recommendation on the filing, HQ LIC is responsible for the resolution of the matter and will decide the case.
28. Ensures the examination fee has been received from the institution by contacting the Team Leader-Revenue, Financial Management, at 202-874-5140.
29. Reviews the circumstances with HQ LIC and decides the application under delegated authority or forwards the official file to HQ LIC for decision.
 - If delegated, notifies applicant and interested parties of the decision by telephone, if appropriate.
 - If referred to HQ LIC for decision, makes CAIS entry and forwards the official file to HQ LIC. Goes to step 36.
30. Sends the applicant a decision letter and a Satisfaction Survey.
 - If a conversion examination was performed and the institution has paid for the conversion examination, includes a copy of the examination report provided we are approving the application.
 - Verifies accuracy of spokesperson's name, address, and telephone number.
31. If the application is conditionally approved or denied, forwards a hard copy of the confidential memorandum, decision document, and transmittal letter to the director for licensing activities. An electronic copy of these documents should also be filed in the designated location on the G drive.
32. Makes appropriate CAIS entries.
 - Makes any necessary correction in CAIS for Communications to forward the OCC manuals and publications.
 - Notifies the appropriate ADC, portfolio manager, ADC or supervisory analyst, and any other applicable OCC departments of the decision by forwarding updated CAIS comments and, if warranted, advises of any written conditions or supervisory concerns in the decision. The appropriate DDC also should be notified of the decision if this is a "significant" transaction pursuant to LIC policy.
33. Enters any conditions imposed, including the significant deviation condition, into the "Enforcement Actions" section of EV.
34. Sends the "handoff" package documents to the supervisory office, using the "Conversion Handoff Package Memo", so that they may post them to EV.
35. Goes to step 47.

HQ LIC

36. Makes appropriate CAIS entries.
37. Reviews file and if precedent setting, involves a policy "strip out" issue, or presents unresolved legal issues, solicits comments from legal, supervision, community development, compliance, and other OCC divisions, as appropriate.
38. Determines if the OCC should publish a public notice for comment in the *Federal Register*.
39. Prepares and sends the confidential memorandum and decision letter, recommending a decision to the signing official.
40. After decision, notifies the institution, district, and interested parties, if applicable, by telephone.
41. Sends the applicant a decision letter and Satisfaction Survey.
 - If a conversion examination was performed and the institution has paid for the conversion examination, includes a copy of the examination report provided we are approving the application.
 - Verifies accuracy of spokesperson's name, address, and telephone number.
42. Makes appropriate CAIS entries.
 - Makes any necessary correction in CAIS for Communications to forward the OCC manuals and publications.
 - Notifies the appropriate ADC, portfolio manager, ADC or supervisory analyst, and any other applicable OCC departments of the decision by forwarding updated CAIS comments and, if warranted, advises of any written conditions or supervisory concerns in the decision. The appropriate DDC should also be notified of the decision if this is a "significant" transaction pursuant to LIC policy.
43. If the HQ LIC decision involved resolving the differing recommendations of Licensing and the DC of M/CCBS or DDC, advises the SDC of midsize/community bank supervision (M/CBS) of the outcome, and documents the official file with the resolution to the matter.
44. For approved or conditionally approved filings, returns the official file, including the conversion examination, to the district for additional processing (to include steps 33 and 34).
45. If the application is conditionally approved or denied, forwards a hard copy of the confidential memorandum, decision documents, and transmittal letter to the Director for Licensing Activities. An electronic copy of these documents should also be filed in the designated location on the G drive.

46. If denied, goes to step 57.

Organization Procedures

Applicant

47. Identifies any material change to the filing and provides notice of such change to the Licensing staff.
48. Completes all steps required to convert (see Conversion Completion Certification by Applicant and other applicant documents.)
49. If a conversion examination was conducted, verifies that deficiencies found have been corrected.
50. Submits the "Conversion Completion Certification" to the Licensing staff certifying the conversion's completion and attesting to the satisfactory resolution of any conditions imposed in the approval letter.

Licensing Staff

51. Checks the organization documents for compliance with all statutory, regulatory, and other requirements. Consults with legal counsel, if necessary.
52. Notifies the institution, by telephone or in writing, of any matters requiring resolution before it may operate as a national bank and ensures that those matters are resolved. If any serious problems are found, including violations of law, unresolved conditions specified in the approval letter, or unresolved conversion examination issues, the conversion may be delayed or approval may be revoked.
53. Determines that the conversion does not contravene applicable federal or state law in any manner and consults the legal department when appropriate.
54. Notifies the institution that it is authorized to operate as a national bank as of a specified date and that the OCC will forward the charter certificate with the "Conversion Completion Acknowledgment." Approval to operate as a national bank will not be given to an institution with a bank holding company until the FRB has approved the holding company.
55. Sends the "Conversion Completion Acknowledgment" to the institution authorizing it to commence business as of a specified date and including the signed charter certificate.
56. Files two copies of the charter certificate in the OCC's official file.

Close Out

57. Reviews the file for completeness and forwards it to Central Records.
58. Makes appropriate CAIS entries.

Glossary

A **depository institution** means any state bank or savings association.

An **eligible bank** is a national bank that:

- Has a composite CAMELS rating of 1 or 2.
- Has a satisfactory or outstanding Community Reinvestment Act (CRA) rating. (This factor does not apply to an uninsured bank, branch, or a special purpose bank covered by 12 CFR 25.11(c)(3).)
- Is well capitalized as defined at 12 CFR 6.4(b)(1).
- Is not subject to a cease and desist order, consent order, formal written agreement, or Prompt Corrective Action directive or, if subject to any such order, agreement, or directive, is informed in writing by the OCC that the bank may be treated as an "eligible bank."

An **eligible depository institution** means a state bank or savings association that meets the criteria for an "eligible bank" and is FDIC-insured.

Fiduciary powers means the authority the OCC permits a bank to exercise pursuant to 12 USC 92a. National banks may exercise the powers afforded fiduciaries under the laws of the state(s) in which the national bank is operating. If the national bank conducts fiduciary activities in more than one state, the bank may designate from among those states the state used for section 92a purposes.

A **national bank** means any national banking association.

A **state bank**, includes any bank, banking association, trust company, savings bank (other than a mutual savings bank), or other banking institution engaged in the business of receiving deposits and incorporated under the laws of any state, any Territory of the United States, Puerto Rico, or the Virgin Islands, or operating under the code of law for the District of Columbia (except a national banking association). Mutual savings banks are specifically excluded from this definition by 214(a). A mutual savings bank or any other "state bank," as defined above, which has a mutual form of ownership may need to convert to a stock form of ownership prior to converting.

A **savings association**, for these procedures, includes a stock-owned state savings association, federal savings association, or federal savings bank.

References

Accounting	
Issuance	EC-255
Audits	
Regulations	12 CFR 11, 30, 363
Issuances	EC-227, OCC Bulletins 99-37, 2003-12
Background Investigation	
Regulations	28 CFR 16.37, 50.12
Bank Secrecy Act (BSA)	
Regulations	12 CFR 21.21, 31 CFR 103
Bank Service Company	
Laws	12 USC 1861-1867, 1843(c)(8)
Regulation	12 CFR 5.35
Branches	
Laws	12 USC 36, 1464(i)(5)
Regulation	12 CFR 5.30
Capital	
Laws	12 USC 35, 36, 52, 56, 60
Regulations	12 CFR 3, 6
Certificate	
Laws	12 USC 1814, 1816
<i>Authority to Transact Banking Business</i>	
Laws	12 USC 26, 27
<i>Capital Stock Certificates</i>	
Law	12 USC 52
<i>Organization</i>	
Law	12 USC 22
<i>Filing/Preservation of</i>	
Law	12 USC 23
Community Reinvestment Act of 1977	
Laws	12 USC 2901-2908
Regulation	12 CFR 25
Conversion	
Laws	12 USC 35, 1464(i)(5)
Regulation	12 CFR 5.24
Corporate Powers and Investment Securities	
Law	12 USC 24
Decisions	
Regulation	12 CFR 5.13

Depository Institutions Management Interlocks Act	
Laws	12 USC 3201-3208
Regulation	12 CFR 26
Directors	
Laws	12 USC 71, 71a
<i>Citizenship</i>	
Law	12 USC 72
<i>Election</i>	
Laws	12 USC 61, 71, 75
Regulations	12 CFR 7.2003, 7.2006
<i>Oath of</i>	
Law	12 USC 73
Regulation	12 CFR 7.2008
<i>President as</i>	
Law	12 USC 76
Regulation	12 CFR 7.2012
<i>Qualifications</i>	
Law	12 USC 72
Regulation	12 CFR 7.2005
<i>Residency</i>	
Law	12 USC 72
<i>Responsibilities</i>	
Regulation	12 CFR 7.2010
Publications	<u>The Director's Book: The Role of a National Bank Director and Internal Controls, A Guide for Directors</u>
Expedited Review	
Regulation	12 CFR 5.24(d)(4)
Factors Considered in Granting/Retention of Deposit Insurance	
Law	12 USC 1814(c)
<i>Authorizing Certificate</i>	
Laws	12 USC 1815, 1816
Federal Reserve Membership	
Laws	12 USC 222, 501a
Regulation	12 CFR 209
Fidelity Insurance	
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Fiduciary Powers	
Law	12 USC 92a
Regulation	12 CFR 5.26
Filing Fees	
Regulations	12 CFR 5.5, 8.6
Issuance	OCC Bulletin 2003-45

Financial Subsidiaries	
Law	12 USC 24a
Regulation	12 CFR 5.39
Investigation, Examination, and Required Information	
Law	12 USC 481
Regulations	12 CFR 5.7, 8.6
Investment in Bank Premises	
Law	12 USC 371d
Regulations	12 CFR 5.37, 7.1000
Noncontrolling Investments	
Regulation	12 CFR 5.36(e)
Operating Subsidiaries	
Regulation	12 CFR 5.34
Organization Certificate	
Law	12 USC 22
Organization of National Bank	
Laws	12 USC 21, 21a, 22, 23, 24
Regulation	12 CFR 5.20
Place of Business	
Law	12 USC 81
Prohibited Lottery Activities	
Law	12 USC 25a
Security Devices and Procedures	
Law	12 USC 1882
Regulation	12 CFR 21
Shareholders' List	
Law	12 USC 62
State Banks	
Laws	12 USC 35, 214
Statutory Subsidiaries	
Regulation	12 CFR 5.36(d)
Title Changes	
Regulation	12 CFR 5.42