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Termination of National Bank Status

Comptroller's Licensing Manual

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Termination of National Bank Status

Introduction

This booklet covers the process for the termination of national bank status when a national bank wishes to relinquish its national bank charter. This may occur in various ways, including:

- Conversion, merger, or consolidation of a national bank into a state bank or federal savings association charter.
- Merger of a national bank that is not FDIC-insured into a nonbank affiliate or nonbank subsidiary of the national bank, when the resulting entity is not a bank or depository institution.
- Standard voluntary liquidation.
- Expedited voluntary liquidation.

This booklet contains step-by-step procedures for each of the processes listed above. This booklet also should be used together with other booklets of the *Comptroller's Licensing Manual*, including the "General Policies and Procedures" booklet for discussion of general filing instructions and procedures.

The reference section of this booklet includes applicable laws, regulations, and OCC issuances to assist applicants in completing the termination process. Hyperlinks to other related booklets and to sample filing documents are included in this booklet when needed.

Key Policies

General

The decision to terminate a bank's status as a national banking association is generally a business decision made by the bank's board of directors and shareholders. The bank must provide a notice or application to the OCC. Circumstances under which a notice or application is required are discussed under each termination process.

The OCC may also encourage or require a bank to terminate if exiting the national banking system is a viable way to address serious long-term supervisory issues or if the bank encounters significant financial deterioration and is at risk of receivership.

The OCC discourages a national bank from removing substantially all of its assets and liabilities, thereby creating a dormant or shell bank. As such, once a bank begins the termination process, the bank should complete the process in a timely manner and promptly end its status as a national bank. Refer to the "General Policies and Procedures" booklet for additional guidance.

Return of OCC Documents

Before the OCC considers the termination of a national bank charter to be effective, the national bank must return to the OCC certain original documents, such as the bank's charter certificate, and applicable branch authorizations or certifications or trust permit. In addition, OCC reports of examination and related supervisory correspondence are the property of the OCC and must be returned or destroyed. Community Reinvestment Act (CRA) Public Performance Evaluations are public documents that need not be returned or destroyed.

OCC Semi-annual Assessment

As long as a national bank's charter continues to be active, the bank is subject to the OCC's semi-annual fee assessments. A national bank must leave the national banking system before the close of business on the Consolidated Reports of Condition and Income (call report) date to avoid paying the *full* semi-annual assessment. If a bank leaves the national bank system no later than June 30 or December 31, no fee is assessed for the upcoming period. The OCC does not pro-rate assessments or grant refunds.

Assessment fees are due on March 31 or September 30 of each year and are automatically deducted from the bank's designated bank account on the payment due date. If a bank leaves the national bank system before the payment due date, the bank should contact the OCC's Financial Management Division at 202-874-5150 to discuss arrangements for payment.

Termination Processes

The OCC must always be notified of a bank's plan to terminate its national bank status so that the OCC may monitor the bank's progress to confirm that the bank can liquidate on a solvent basis and to assure compliance. As discussed below, prior OCC approval is required when a bank merges with and into a nonbank affiliate. Further, it may be required before a bank, at the OCC's direction, commences liquidation procedures as a result of supervisory concerns.

In addition to the four termination processes discussed below, a national bank ceases to exist as a national bank when it is acquired by another national bank. If one national bank acquires another national bank through a merger or consolidation, or if one national bank purchases substantially all of the assets and assumes substantially all of the liabilities of another national bank in a purchase and assumption (P&A) transaction, the acquiring national bank should follow the procedures in the "Business Combinations" booklet. In these P&A transactions, the bank that is selling its assets (*target* national bank) must apply to the OCC pursuant to 12 CFR 5.53. Refer to the "General Policies and Procedures" booklet for instructions on obtaining OCC prior approval for a change to the composition of all, or substantially all of its assets under 12 CFR 5.53.

Conversion, Merger, or Consolidation into a State Bank or Federal Savings Association

A national bank may convert to a state bank or a federal savings association in accordance with 12 USC 214a – 214c and 12 CFR 5.24, as applicable. Prior OCC approval is not required. Applications to convert are filed with the applicable chartering authority.

A national bank may be merged or consolidated into a state bank or federal savings association in accordance with 12 USC 214a - 214c, 215c, 321, 1828(c), 1831u, and 12 CFR 5.33(g)(3), as applicable. Prior OCC approval is not required. These transactions require the prior approval of the primary federal and state regulators of the state bank or federal savings association.

A national bank desiring to convert, merge, or consolidate into a state bank or a federal savings association shall submit a notice to the appropriate OCC district office advising of its intention. The national bank shall submit this notice at the time the applications are filed with the primary federal and state regulators of the state bank or federal savings association.

Upon receipt of notice of the bank's intent to convert, merge, or consolidate, the OCC refers the bank to this booklet for guidance and provides additional instructions on the termination process, if needed. The OCC monitors the bank's termination process to ensure its compliance with applicable statutes, particularly those pertaining to shareholders' rights.

A majority of the national bank's board of directors, and at least two-thirds of the shareholders for each class of capital stock outstanding, must approve the conversion, merger, or consolidation. Notice of the shareholders' meeting must be published at least once a week for four consecutive weeks in a newspaper of general circulation in the place where the national bank's principal office is located. Under certain conditions, the publication can be shortened with prior OCC approval, or waived entirely with the unanimous consent of all shareholders. The bank must also send each shareholder notice of the shareholders' meeting at least 10 days prior to the meeting by registered or certified mail. The notice may be waived specifically by any shareholder.

Shareholders of the national bank who vote against the conversion, merger, or consolidation, or who have given written notice that they dissent from the plan, may be eligible to receive cash compensation for their shares. Twelve USC 214a and 12 CFR 5.33(g)(3)(iii)(B) define the procedure to value the shares in question.

- In the case of a conversion, merger, or consolidation into a state bank, if the dissenting shareholders do not accept the valuation, they may request the OCC determine the value of their shares. The OCC will then make a value determination, which shall be binding on all parties. The resulting state bank must pay any OCC expenses associated with the value determination.
- In the case of a conversion, merger, or consolidation into a federal savings association, if the dissenting shareholders do not accept the valuation, they may request the OCC determine the value of their shares. The OCC will make a value determination only if the parties agree that the determination will be final and

binding and agree on how any OCC expenses associated with this value determination will be paid.

At consummation of the conversion, merger, or consolidation, the bank should submit documentation or certifications to the OCC that applicable regulatory approvals have been obtained, and that other legal requirements have been met. The OCC will provide a letter acknowledging that the national bank has ceased operations and will terminate the bank's charter. (Refer to the Procedures section of this booklet for specific guidance.)

Merger into a Nonbank Affiliate

With the prior approval of the OCC, a national bank that is not FDIC-insured may merge with and into a nonbank affiliate, provided that the law under which the nonbank affiliate is organized allows the nonbank affiliate to engage in the merger. In evaluating the application, the OCC will consider the purpose of the transaction, the impact on the safety and soundness of the national bank, and any effect on the bank's customers. It will also evaluate the financial ability of the affiliate to assume any non-deposit liabilities, including contingent liabilities, of the merging national bank so that the merger does not disadvantage any of its creditors.

Because only a bank that is not FDIC-insured may merge into a nonbank affiliate, an insured bank must first eliminate any insured deposits and obtain certification from the FDIC that deposit insurance is terminated before it may merge into a nonbank affiliate. Generally, the insured status of a bank transferring all of its deposits to another depository institution terminates on the date the FDIC is notified that all insured deposits have been transferred (12 CFR 307). A bank planning to become uninsured should contact the FDIC for guidance on its procedures.

The bank may sell loans or other lines of business to other parties to reduce its balance sheet prior to the merger.

The national bank also must follow the procedures of 12 USC 214a, similar to those outlined previously for a merger with a state bank or a federal savings association, including those regarding shareholder voting, publication and notification requirements, and dissenters' rights.

A merger into a nonbank affiliate can be used, with related transactions, as an alternative to liquidation. This process typically consists of one or more purchase and assumption transactions in which the national bank transfers its assets and liabilities, including deposits, if any, to another institution, followed by the bank's merger into a nonbank affiliate. If the bank is insured, another insured institution assumes the bank's deposits, and the national bank becomes uninsured. The bank sells assets, if desired. Then the uninsured bank merges into a nonbank affiliate.

This method of termination has several advantages over liquidation, primarily the speed at which it may consummate. The method is particularly useful in situations in which another insured institution has assumed all of the bank's deposits and the bank has sold most of its assets, but still retains some liabilities. Because it retains some liabilities, it is not eligible for expedited liquidation. Rather than enter standard liquidation, the bank can use this method of termination.

If a national bank sells substantially all of its assets and liabilities to another bank, or transfers any insured deposits, the acquiring institution must obtain permission from its regulator by filing a P&A application under the Bank Merger Act. Acquiring national banks should follow the procedures in the "Business Combinations" booklet.

The selling national bank needs OCC prior approval before changing the composition of all, or substantially all of its assets through sales or other dispositions unless the bank undertakes the change at the direction of the OCC (for example, an enforcement action), or unless it is in conjunction with a voluntary liquidation that will be final within one year of its commencement. Selling national banks should refer to the "General Policies and Procedures" booklet for discussion of filing instructions and procedures to obtain OCC approval of a change to the composition of all, or substantially all of its assets, if applicable. (12 CFR 5.53.)

Once the national bank sells its assets or deposits in the P&A (if applicable), the OCC expects the resulting bank to consummate its merger into the nonbank affiliate as soon as possible, often on the same day or immediately thereafter in order to prevent the creation of a dormant or shell bank. The bank should provide the OCC with a 10-day advance notice of the consummation of the merger. The OCC will coordinate with any other regulators, including the FDIC, to monitor receipt of any required approvals and to coordinate the consummation of all applicable steps.

The OCC will provide a letter acknowledging that the national bank has ceased operations and will terminate the bank's charter. Refer to the Procedures section of this booklet for specific consummation guidance.

Standard Voluntary Liquidation

General

Voluntary liquidation is the process by which a solvent national bank that has decided to close, without being sold to another owner or merged into another entity, winds down its operations and ceases to exist.

A national bank that wishes to voluntarily liquidate does so in accordance with 12 USC 181 and 182. The decision to enter into voluntary liquidation must be approved by at least two-thirds of the shareholders. If the liquidation is to be effected in whole or in part through the sale of any assets to, and the assumption of its deposit liabilities by, another bank, the purchase and assumption agreement must also be approved by at least two-thirds of the shareholders.

During the voluntary liquidation process, the board and the liquidating agent or committee (see Shareholder Vote and Appointment of Agent) collect or sell assets and pay off depositors and other creditors. When all liabilities, including contingent liabilities, have been paid or disposed of, the bank completes the liquidation by distributing the remaining assets to the shareholders on a pro-rata basis. The board of directors adopts a resolution certifying completion of the process and dissolving the bank.

To conduct a voluntary liquidation, the bank must be able to pay all depositors in full or have another insured depository institution assume all deposits. The bank must also be able to pay, or otherwise satisfy, all other creditors. The OCC expects that a national bank that is FDIC-insured will remain insured during the liquidation process. To retain insurance, the FDIC requires that a bank maintain an aggregate amount of deposits (including deposits from affiliates or shareholders) of at least $500,000. The bank in liquidation does not repay the required minimum deposit(s) until immediately before dissolution of the bank.

If a bank cannot successfully complete a voluntary liquidation on a solvent basis, it may be necessary for the OCC to appoint a receiver for the bank.

Notice to the OCC

When a national bank is considering going into voluntary liquidation, the bank files a preliminary notice with the OCC.

After the bank's shareholders have approved a resolution to voluntarily liquidate, the bank must promptly send to the OCC the voluntary liquidation notice. The president or cashier of the bank must certify the notification letter under the seal of the association. The notice should include a copy of the shareholders' resolution to go into liquidation and the planned commencement date of the liquidation. The notice should be sent to the Director for District Licensing, or to the Director for Licensing Activities in Washington, DC.

Liquidation Plan

Before entering liquidation, the bank should prepare a written liquidation plan that addresses:

- The feasibility of completing the liquidation on a solvent basis.
- An assessment of realizable value of the bank's assets, generally on a liquidation basis and not on the basis of a "going concern."
- The identity of all known and probable creditors, including contingent liabilities, and if they are secured or unsecured creditors.
- The liquidation strategy and timeline, including what transactions (such as asset sales or transfers of deposits) will occur before the formal liquidation officially commences, what transactions will occur during formal liquidation, how long the liquidation is likely to take, and plans for the final winding up of the bank's affairs.
- If applicable, transfer of trust accounts to a successor fiduciary.
- Provisions for maintenance of bank records after the liquidation, including OCC access to those records.

The OCC will review the draft liquidation plan and provide feedback if necessary. A final liquidation plan should be submitted with the voluntary liquidation notice.

While no prior OCC approval is needed to commence liquidation, the OCC will monitor the bank's progress to confirm that the bank can liquidate on a solvent basis and to assure compliance.

When the OCC has required a bank to liquidate to resolve supervisory concerns, prior OCC approval may be required before the bank may commence liquidation. Furthermore, the OCC may require the bank to amend the draft liquidation plan if it finds the plan deficient and may require the bank to obtain prior OCC approval of any significant changes to the final liquidation plan.

Shareholder Vote and Appointment of Agent

Shareholders owning two-thirds of the bank's stock must approve the liquidation. If a bank has issued preferred stock, it should follow the provisions of its Articles of Association for the required vote of the preferred shares to place it in liquidation (12 USC 51b and 51b-1). The bank must notify shareholders of the meeting in accordance with its Articles of Association. The OCC recommends that shareholders' meetings be recessed, subject to recall, when further shareholder participation is required.

The shareholders' resolution to place the bank into liquidation must specify the date on which the liquidation is to commence. The commencement date of the liquidation must be on or after the date on which the shareholders adopted the resolution.

The shareholders must designate one or more persons to act as liquidating agent or committee (agent). By a majority vote, shareholders may remove the agent at any time and appoint one or more other persons. The agent reports to the bank's board of directors and is responsible for coordinating the liquidation and acting as the liaison with the OCC. If a committee is appointed, a correspondent or contact person should be named. The agent should not have any conflicts of interest regarding the liquidation. A national or state bank that lacks fiduciary powers may not act as liquidating agent.

The agent posts a bond in favor of the bank in an amount that the bank's board of directors deems adequate, after it considers the nature and value of the assets to be liquidated. The chairman of the board of directors, or a designee who is not the agent, generally holds the bond. No additional bond is required if the agent is an employee of the bank or its holding company, provided the agent is already covered by an appropriate banker's blanket bond.

Whenever a national bank exercising fiduciary powers is in voluntary liquidation, the agent shall liquidate its fiduciary accounts in accordance with 12 USC 92a(j) and 12 CFR 9.

Publication and Other Notice of Liquidation

After shareholders approve the liquidation, the bank must publish notice of the liquidation daily for two months in a local newspaper published where the bank's main office is located. If a bank's operations are conducted over a large geographic area, the OCC may require publication to be in more than one newspaper. If only weekly publication is available, the notice must be published for nine consecutive weeks. The first publication of the liquidation notice should appear as soon as practicable after the shareholders approve the liquidation.

The notice must announce that the bank is closing its affairs and that creditors should present their claims for payment. The notice should specify how and where creditor claims should be filed and set a reasonable date, following the end of the publication period, by which claims should be filed.

Laws governing the liquidation of a national bank do not contain any "bar date," or a date by which claims must be filed to be considered valid. As long as the bank is in existence during its liquidation, any valid claim that is received must be recognized and settled.

Claims and Payments

The OCC generally expects that the bank will notify all known creditors of the liquidation by certified mail, and provide them with information about the liquidation sufficient to enable them to submit timely claims.

During liquidation, payments to creditors, affiliates, insiders, shareholders, or related parties should not be made unless they are regularly scheduled and in the normal course of business, or are payments to creditors pursuant to the claims process of the liquidation.

Claims and liabilities that are on the bank's books and records must be recognized and settled, even if the creditor does not file a formal claim.

Periodic Reports

The liquidating bank must submit a report of the condition of its commercial, trust, and other departments to the appropriate district office as of the date it begins voluntary liquidation. The liquidating bank also must continue to file its quarterly call reports until the liquidation is completed. Generally, the value of the bank's assets and liabilities would be reported on a liquidating basis, and not as a "going concern."

Annually, as of December 31, the agent must submit a "Report of Progress of Liquidation" to the Director for District Licensing. This annual submission continues until the liquidation is completed.

Additionally, the agent must report to the shareholders at their annual meeting until the liquidation is completed.

Examination and Field Investigation

The OCC may perform examinations or field investigations, until the claims of all creditors have been satisfied, and the liquidation process is completed.

Completion of Liquidation

Generally, a liquidating bank does not require prior OCC approval before the final distribution of assets to the shareholders when the liquidation is complete. However, when the liquidating bank is subject to existing OCC enforcement actions or has other serious supervisory problems, the OCC may require that the bank seek prior OCC concurrence before issuing the final liquidating distribution.

When the liquidation is complete, the bank's liquidating agent submits the Final Report of Liquidation (Final Report) to the OCC, along with a copy of the board's resolution (1) certifying that the claims of all creditors have been satisfied and the liquidation has been completed and (2) dissolving the bank. The Final Report also should include the effective date of the dissolution of the bank and notify the OCC of the arrangements made for retention of key bank records and the OCC's access to those records.

After receipt of the Final Report, the OCC will provide an acknowledgment letter indicating that the national bank has ceased operations and will terminate the bank's charter.

Refer to the Procedures for Standard Voluntary Liquidation for the specific steps involved.

Expedited Voluntary Liquidation

The OCC permits an expedited liquidation when the liquidating bank sells or otherwise disposes of substantially all of its assets, and all of its liabilities, including contingent liabilities, to another depository institution. The remaining shell national bank may be dissolved immediately afterwards by distribution of any remaining assets to its shareholders.

However, if the target national bank will retain any liabilities after the transaction, it must follow the standard voluntary liquidation procedures. In either case, the acquiring depository institution must comply with the Bank Merger Act (12 USC 1828(c)) and seek prior approval from the appropriate regulator.

An expedited liquidation process is available following a whole bank P&A transaction, if:

- The national bank has notified the Director for District Licensing of its plans at the same time that the application to be acquired by another depository institution is filed with the appropriate regulatory agency.

- Two-thirds of the national bank's shareholders have voted to liquidate the bank.

- The acquiring depository institution certifies to the OCC that it has purchased all the assets and assumed all the liabilities, including contingent liabilities, of the liquidating national bank.

- The acquiring depository institution and the national bank in liquidation have published notice that the bank will dissolve after the P&A transaction. Joint names of all banks involved should be included in the notice for the P&A required to be published under the Bank Merger Act and 12 CFR 5.33, if appropriate. (Refer to the "General Policies and Procedures" and the "Business Combinations" booklets for instructions on public notices.)

Once a national bank has sold or otherwise disposed of its assets and liabilities in the P&A, the OCC expects the bank to consummate its liquidation immediately and avoid the creation of a dormant or shell bank.

The bank's liquidating agent must notify the Director for District Licensing when the liquidation is completed.

Refer to the Procedures, Expedited Voluntary Liquidation section, for the specific steps involved.

Procedures: Conversion, Merger, or Consolidation into a State Bank or Federal Savings Association

Use these procedures when a national bank intends to terminate its national bank status by converting to, merging into, or consolidating into a state bank or federal savings association.

Inquiry

Licensing Staff

1. Refers a bank that requests instructions about termination of national bank status to the "General Policies and Procedures" booklet and this booklet of the *Comptroller's Licensing Manual.*

Bank

2. A majority of the board of directors approves the plan of conversion, merger, or consolidation.

3. Publishes notice of the time, place, and purpose of the shareholders' meeting called to consider converting the national bank to a state bank or a federal savings association charter, or merging or consolidating the national bank with a state bank or federal savings association. Provides appropriate proxy material to the shareholders. Registered banks subject to 12 CFR 11 will need to submit proxy materials to the Securities and Corporate Practices Division for prior review. Notice to the shareholders also must be sent at least 10 days in advance of the meeting by registered or certified mail, unless the Articles of Association provide for greater advance notice.

Shareholders

4. At least two-thirds of the bank's shareholders must approve the resolution to convert, merge, or consolidate the bank.

Filing the Notice

Bank

5. Notifies the OCC Licensing staff of the bank's decision to convert, merge, or consolidate into a state bank or federal savings association. This notice may precede the shareholders' vote, but it should be filed no later than when the required applications are filed with other regulators.

Review

Licensing Staff

6. (If appropriate) Within five business days acknowledges receipt by letter of the notice to terminate status as a national bank, and refers the bank to this booklet for instructions on procedures for the transaction.

7. Enters information into the Corporate Activities Information System (CAIS).

8. Establishes the official file to maintain all original documents.

9. Sends an e-mail to notify the Assistant Deputy Comptroller (ADC) and ADC analyst, or large bank Examiner-in-Charge (EIC) of the bank's intent to terminate its status as a national bank.

10. Monitors bank's completion of termination requirements, and:

    - Reviews the proposed disclosures to ensure that shareholders' rights have been provided for adequately.

    - Reviews for compliance with applicable statutes and regulations.

Bank

11. Upon receipt of all required approvals, satisfaction of all legal requirements, and consummation of the transaction, notifies the OCC of the effective date of the conversion, merger, or consolidation, provides the OCC with copies of the approvals, and certifies to the OCC that legal requirements have been met.

12. Returns the national bank's charter certificate and, if applicable, any branch authorizations or certificates for national branches to be closed as a result of the transaction, as well as its trust permit. Additionally, all OCC reports of examination, and any related correspondence, must be destroyed or returned.

13. If the resulting bank is not a member of the Federal Reserve System, contacts the Federal Reserve for procedures to redeem the bank's Federal Reserve stock.

Licensing Staff

14. Notifies the ADC and ADC analyst, or large bank EIC and Headquarters Licensing (HQ LIC) of the effective date of the conversion, merger, or consolidation.

15. Makes CAIS entries.

16. When all termination requirements have been met, sends an acknowledgment to the bank accepting termination of its status as a national bank.

Close Out

17. Reviews the file for completeness and forwards it to Central Records.

18. Makes CAIS entries.

Dissenters' Rights

Bank and Dissenters

19. If necessary, submits a request for a stock appraisal directly to HQ LIC in accordance with 12 USC 214a. Refers to "Business Combinations" booklet for detailed guidance and procedures.

HQ LIC

20. Processes the request for a stock appraisal as outlined in the "Business Combinations" booklet. Refers to the Dissenters' Rights, Procedures section.

Procedures: Merger into a Nonbank Affiliate

Use when a national bank intends to terminate its national bank status by merging into a nonbank affiliate. Only national banks that are not FDIC-insured may merge into a nonbank affiliate.

Inquiry

Licensing Staff

1. Refers a bank that requests instructions about termination of national bank status to the "General Policies and Procedures" booklet and this booklet of the *Comptroller's Licensing Manual*. If a purchase and assumption (P&A) with another national bank is involved, refers the purchasing national bank to the "Business Combinations" booklet.

2. As appropriate, arranges for prefiling discussions, and invites appropriate OCC staff (for example, supervision, legal). If any prefiling discussion or meeting reveals significant policy, legal, or supervisory issues, immediately contacts Headquarters Licensing (HQ LIC) to decide if and when:

   - To forward the application to HQ LIC for processing, or

   - To forward specific issues to HQ LIC for action (while continuing to process the application in the appropriate district office).

3. Prepares memoranda on all prefiling meetings and records pertinent information. Retains memoranda and other information in an official file.

Filing the Application

Bank

If the national bank is not FDIC-insured, proceed to step 5.

4. If the national bank is insured, takes appropriate action to eliminate or sell all insured deposits and to terminate FDIC insurance immediately prior to the merger of the bank into the nonbank affiliate. The bank should remain insured until immediately prior to consummation. Contact the FDIC for instructions on its procedures. Refer to www.fdic.gov.

5. If applicable, pursuant to 12 CFR 5.53, files an application with the appropriate district office (see Glossary) or HQ LIC to request OCC approval of a significant change in asset composition prior to the sale of the bank's deposits or other lines of business.

6. Files an application with the appropriate district office or HQ LIC for approval for the national bank to merge with and into a nonbank affiliate. Include any related requests such as a capital reduction or dividends that require OCC approval.

Initial Review

Licensing Staff

7. Initiates and enters information into the Corporate Activities Information System (CAIS).

8. Establishes the official file to maintain all original documents and subsequent correspondence.

9. Within five business days, acknowledges receipt of the filing by letter.

10. Sends an e-mail to notify the Assistant Deputy Comptroller (ADC) and the ADC analyst, or the large bank Examiner-in-Charge (EIC), of the filing, providing a brief description of the filing including any issues identified, and offers to provide a copy of the application, and to request, if necessary, additional information from the applicant. Requests comments within 15 calendar days from the initial filing.

11. Notifies other appropriate OCC divisions of the filing (HQ LIC, district legal) and requests comments as needed.

12. Reviews the filing and determines if it contains all information necessary to reach a decision.

    If not complete, requests necessary information in writing from the bank and establishes a due date to provide the information.

13. Gathers comments requested from other OCC divisions. Coordinates with any other regulator on related applications.

14. Prepares the <u>Confidential Memorandum</u> (CM) and decision letter.

Issues Directed to HQ LIC

HQ LIC

15. Receives and reviews files that the district Licensing staff forwards, and solicits comments from other OCC divisions or supervisory agencies.

16. Makes CAIS entries.

17. Prepares and forwards to the district Licensing staff a memorandum concerning the issues and language to insert into the decision letter or, if applicable, the CM.

Decision

Licensing Staff

18. Deciding official decides the application under delegated authority, and signs the decision letter, including language received from HQ LIC.

19. Notifies the following of the decision:

    - The contact person by telephone. If the contact person requests, sends a facsimile copy of the decision letter.

    - The ADC, or large bank EIC, by sending e-mail comments and a copy of the decision letter and, if applicable, the CM.

    - The Securities and Corporate Practices Division (SCP) by e-mail if the bank is subject to 12 CFR 11.

20. Mails the decision letter to the contact person, along with a satisfaction survey.

21. Mails the decision letter to other interested parties.

22. If the decision letter includes conditions imposed in writing under 12 USC 1818 or as HQ LIC directs, forwards a copy of the decision letter to the secretary to the Director for Licensing Activities.

23. Makes CAIS entries.

HQ Decision

HQ LIC

24. Receives the official file, including CM, from the district Licensing staff and makes CAIS entries.

25. Reviews the file and all relevant information, and:

    - Solicits comments from other OCC divisions or supervisory agencies if necessary.

    - Makes a recommendation. If denial is recommended, contacts and seeks concurrence of the Litigation Division.

    - Routes the official file to the deciding official.

26. Deciding official signs the decision letter and returns the file to the HQ LIC staff.

27. HQ LIC staff notifies the contact person of the decision by telephone and, if the contact person requests, sends a facsimile copy of the decision letter.

28. Notifies by e-mail the Licensing staff and the ADC and ADC analyst, or large bank EIC, of the decision and attaches a copy of the decision letter. Notifies SCP of the decision by e-mail if the bank is subject to 12 CFR 11.

29. Mails the decision letter to the contact person, along with a satisfaction survey.

30. Sends a copy of the decision letter to other interested parties.

31. If the decision letter includes conditions imposed in writing under 12 USC 1818, forwards a copy of the letter to the secretary to the director, Licensing Activities.

32. Makes CAIS entries.

Board and Shareholder Approvals

Bank

33. A majority of the board of directors approves the plan of merger.

34. Publishes notice of the time, place, and purpose of the shareholders' meeting called to consider merging the national bank into a nonbank affiliate.

35. Provides proxy material to the shareholders. Registered banks subject to 12 CFR 11 will need to submit proxy materials to SCP for prior review. Notice to the shareholders must also be sent at least 10 days in advance of the meeting by registered or certified mail, unless the Articles of Association provide for greater advance notice.

36. Certifies to OCC that applicable shareholder dissenters' rights were provided.

37. Obtains shareholders' resolution to merge into a nonbank affiliate. Shareholders owning two-thirds of the stock of the bank must approve the merger. Shareholders of the nonbank affiliate approve the transaction as required under the law under which the nonbank affiliate is organized.

Licensing Staff

38. Monitors bank's completion of legal and procedural requirements, and:

    - Reviews the proposed shareholder materials to ensure that shareholders' rights have been provided for adequately.

    - Reviews compliance with applicable statutes.

Consummation

Bank

39. Notifies the district Licensing staff by e-mail or letter of the date that the bank plans to consummate the combination at least 10 days in advance.

40. If not previously done, submits the Secretary's Certificates of the board of directors' approval, the executed combination agreement, and the Secretary's Certificates of shareholder ratification.

41. If applicable, submits to Licensing staff copies of any other required regulatory approvals. In the case of an insured bank that eliminated its insured deposits, submits a copy of the FDIC certification of termination of deposit insurance.

42. Following consummation, returns the bank's charter certificate and, if applicable, any branch authorizations or certificates for national bank branches to be closed as a result of the transaction, as well as its trust permit. Certifies that all OCC reports of examination have been destroyed or returned.

Licensing Staff

43. Reviews the bank's advance consummation notice and verifies that all required actions have been completed. If the bank is subject to 12 CFR 11, verifies that SCP has reviewed the final proxy materials to make sure no significant inconsistencies exist between the proxy materials and the application. Notifies the contact person by telephone of any problems.

44. Prepares the certification letter and mails it following consummation of the combination.

45. Notifies legal and supervisory staff of the effective date of the combination.

46. Makes CAIS entries.

Close Out

47. Reviews the file for completeness, separates documents, and sends the official file and documents to Central Records.

48. Makes CAIS entries, including the effective date of the transaction.

Dissenters' Rights

Bank and Dissenters

49. If necessary, submits a request for a stock appraisal directly to HQ LIC in accordance with 12 USC 214a. Refers to "Business Combinations" booklet for detailed guidance and procedures.

HQ LIC

50. Processes the request for a stock appraisal as outlined in the "Business Combinations" booklet. Refers to the Dissenters' Rights, Procedures section.

Procedures: Standard Voluntary Liquidation

Use when a national bank intends to terminate its national bank status in connection with:

- **A voluntary liquidation.**
- **A purchase and assumption (P&A) transaction after which liabilities remain in the target national bank and a subsequent voluntary liquidation.**

Inquiry

Licensing Staff

1. Refers a bank that requests instructions about termination of national bank status to the "General Policies and Procedures" booklet and this booklet of the *Comptroller's Licensing Manual*. If a P&A is involved in which the acquirer is a national bank, also refers the acquiring bank to the "Business Combinations" booklet.

Bank

2. Assesses whether the bank has sufficient assets to conduct a voluntary liquidation.

3. Notifies the district Licensing staff of the bank's intent to liquidate (refer to sample Preliminary Notice document).

4. Prepares a written liquidation plan that addresses:

   - The feasibility of completing the liquidation on a solvent basis.

   - An assessment of realizable value of the bank's assets, generally on a liquidation basis and not on the basis of a "going concern."

   - The identity of all known and probable creditors, including contingent liabilities, and if they are secured or unsecured creditors.

   - The liquidation strategy and timeline, including what transactions (such as asset sales or transfers of deposits) will occur before the formal liquidation officially commences, what transactions will occur during formal liquidation, how long the liquidation is likely to take, and plans for the final winding up of the bank's affairs.

   - If applicable, transfer of trust accounts to a successor fiduciary.

   - Provisions for maintenance of bank records after the liquidation, including OCC access to those records.

5. Submits a draft plan of liquidation to the Licensing staff.

Initial Review

Licensing Staff

6. Enters information into the Corporate Activities Information System (CAIS).

7. Establishes the official file to maintain all original documents.

8. Sends an e-mail to the Assistant Deputy Comptroller (ADC) and ADC analyst, or large bank Examiner-in-Charge (EIC), appropriate HQ Licensing (HQ LIC) staff, and HQ and district legal staff of the bank's intention to terminate status as a national bank through liquidation and solicits their comments.

9. Together with the supervisory office, assesses the solvency and liquidity of the bank, and its ability to conduct a successful voluntary liquidation. If necessary, provides the bank with feedback on its draft plan of liquidation.

Shareholders' Meeting

Bank

10. Publishes notice of the time, place, and purpose of the shareholders' meeting called to consider liquidating the bank. Provides appropriate proxy material to the shareholders. Registered banks subject to 12 CFR 11 will need to submit proxy materials to the Securities and Corporate Practices Division for prior review. Notice to the shareholders also must be sent at least 10 days in advance of the meeting by registered or certified mail, unless the Articles of Association provide for greater advance notice.

11. Holds shareholders' meeting.

Shareholders

12. Approve the resolution to liquidate the bank voluntarily. Shareholders owning two-thirds of the stock of the bank must approve the liquidation.

13. Designate one or more persons to act as liquidating agent or committee pursuant to 12 USC 181. If a committee is designated, a contact person for the committee should be named.

Filing Notice with the OCC and Publication

Bank

14. Sends the Licensing staff the voluntary liquidation notice, certified under the bank's seal by the president or cashier (or secretary, if pursuant to 12 CFR 7.2015 and no officer is designated as cashier), along with shareholders' resolution and a final liquidation plan.

15. Publishes daily for two months the notice of liquidation to creditors (12 USC 182). Refers to the sample document for publication guidance. Sends a statement to the OCC to verify publication.

16. Sends a notice by certified mail to all known creditors.

Review

Licensing Staff

17. Acknowledges receipt within five business days of receipt by letter of the bank's notice to terminate its status as a national bank.

18. Makes CAIS entries.

19. Sends an e-mail to notify the Assistant Deputy Comptroller (ADC) and ADC analyst, or large bank Examiner-in-Charge (EIC), and other OCC divisions, including HQ LIC and district legal staff, of receipt of the bank's notice of liquidation. Provides a brief description including any issues identified.

Liquidation Process

Liquidating Agent or Committee

20. Sends the Licensing staff a report of condition as of the commencement date of the liquidation.

21. Posts a bond in favor of the bank in the amount set by the board of directors.

22. Contacts the bank's Federal Reserve Bank. Files appropriate forms with the Federal Reserve Bank to cancel the bank's Federal Reserve Bank stock shortly before the liquidation is final.

23. Carries out the liquidation process. Updates the plan of liquidation as needed. Keeps the OCC continuously informed of any significant changes to the liquidation plan or timetable.

24. Submits a Report of Progress of Liquidation to the Director for District Licensing as of December 31 each year, until the liquidation is completed, or more frequently if required by the OCC.

25. Reports to shareholders the progress of liquidation at the annual shareholders' meeting until the liquidation is complete.

26. Files quarterly Consolidated Reports of Condition and Income (call report).

Licensing Staff

27. Monitors bank's completion of voluntary liquidation or termination requirements, and:

- Reviews the proposed liquidation to ensure that shareholders' rights have been provided for adequately.

- Reviews compliance with the applicable statutes, including 12 USC 181 and 182, and the regulation (12 CFR 5.48).

28. Makes CAIS entries.

29. Sends an e-mail to notify the ADC and ADC analyst, or the large bank EIC, and district legal staff when the periodic Report of Progress of Liquidation is received.

Termination

Liquidating Agent or Committee

30. Upon completion of the liquidation process, submits Final Report of Liquidation to the OCC, along with a copy of the board's resolution certifying to completion of the dissolution of the bank, and provides the effective date of the dissolution.

31. Notifies OCC of arrangements made to provide for retention of key bank records and OCC's access to those records after dissolution.

32. Returns the national bank's charter certificate and, if applicable, any branch authorizations or certificates for national bank branches to be closed as a result of the transaction, as well as its trust permit. Additionally, all OCC reports of examination, and any related correspondence, must be destroyed or returned.

Licensing Staff

33. Notifies the ADC and ADC analyst or large bank EIC and HQ LIC and district legal staff when the Final Report of Liquidation is received.

34. Makes CAIS entries.

35. When all termination requirements have been met, sends an acknowledgment letter to the bank accepting termination as of the effective date of the Final Report of Liquidation.

Close Out

36. Reviews the file for completeness and forwards it to Central Records.

37. Makes CAIS entries.

Procedures: Expedited Voluntary Liquidation

Use only when a national bank intends to terminate its national bank status immediately following a whole bank purchase and assumption (P&A) by another depository institution, when no liabilities, including contingent liabilities, will remain with the national bank following the P&A.

Inquiry

Licensing Staff

1. Refers a bank that requests instructions about an expedited liquidation in connection with an acquisition by another depository institution to the "General Policies and Procedures" and "Business Combinations" booklets and this booklet of the *Comptroller's Licensing Manual.*

Notice and Publication

Bank

2. Notifies the appropriate district office of the national bank's intent to terminate its status at the same time the other depository institution files its application with the appropriate regulatory agency. Refer to the Preliminary Notice sample.

3. Publishes a joint public notice from the liquidating national bank and the acquiring bank that the national bank will dissolve after the purchase and assumption.

4. Provides appropriate proxy material to the shareholders. Registered banks subject to 12 CFR 11 will need to submit proxy materials to the Securities and Corporate Practices Division for prior review. Obtains shareholders' vote to terminate.

Review

Licensing Staff

5. Acknowledges receipt by letter of the bank's notice to terminate its status as a national bank within five business days of receipt.

6. Enters information into the Corporate Activities Information System (CAIS).

7. Establishes the official file to maintain all original documents.

8. Sends an e-mail to notify the Assistant Deputy Comptroller (ADC) and ADC analyst or large bank Examiner-in-Charge (EIC) of any special supervisory concerns about the liquidation.

9. Notifies Headquarters Licensing (HQ LIC) staff and district legal.

10. Monitors the bank's completion of termination requirements.

Termination

Bank

11. Liquidates immediately upon sending a final notice to the OCC that includes:

    - A certification, under the bank's seal, that two-thirds of its shareholders have voted to liquidate.
    - The acquiring depository institution's certification that it has purchased all the assets and assumed all the liabilities, including contingent liabilities, of the national bank in liquidation.
    - A statement that the acquiring depository institution and the national bank in liquidation have published a public notice stating that the target bank will dissolve after the P&A by the acquirer. The OCC may require submission of an affidavit of publication from the newpaper(s).
    - The target bank's national bank charter and, if applicable, branch authorizations or certificates for national bank branches to be closed as a result of the transaction, as well as its trust permit. A certification that all reports of examination, and any related correspondence, have been destroyed or returned.

Close Out

Licensing Staff

12. Sends an e-mail to notify the ADC and ADC analyst or large bank EIC of the effective date of the liquidation.
13. Reviews the certifications and the file for completeness and forwards the file to Central Records.
14. Makes CAIS entries, including the effective date of the liquidation.

Glossary

An **affiliate** generally means any company, including a bank or other depository institution, which controls or is under common control with a national bank. Certain other entities also are affiliates for purposes of sections 23A and 23B of the Federal Reserve Act (12 USC 371c and 371c-1) and Regulation W (12 CFR 223).

The **appropriate district office** means: (1) Headquarters' Licensing for all national bank subsidiaries of certain holding companies assigned to the Washington, DC, Licensing unit; (2) the appropriate OCC district office for all national bank subsidiaries of certain holding companies assigned to a district office Licensing unit; or (3) the OCC's district office where the national bank's supervisory office is located for all other banks.

Business combination (combination) means any merger or consolidation between a national bank and one or more depository institutions in which the resulting institution is a national bank, the acquisition by a national bank of all, or substantially all, of the assets of another depository institution; the assumption by a national bank of deposit liabilities of another depository institution; or a merger between a national bank and one or more of its nonbank affiliates.

A **change in asset composition** means any transaction or series of related transactions in which a national bank changes the fundamental business lines of the bank through substantial sales of loan portfolios, other assets or lines of business, or through sales of substantially all of the bank's deposits or other liabilities. Generally, but not always, these transactions result in the bank being merely a shell with no or few remaining banking activities. Regulation (12 CFR 5.53) requires that a national bank receive prior OCC approval for a change in asset composition before the charter is stripped, and additional prior OCC approval before the stripped charter subsequently expands its operations.

Consolidation, under 12 USC 215 and 1828(c) and 12 CFR 5.33, refers to the combination of existing depository institutions into a new entity under a national bank charter, or under the charter of an existing national bank, when at least one institution is a national bank. Shareholders of the consolidating institutions surrender their equity in return for either equity in the consolidated bank or another form of consideration. Shareholders of the consolidating depository institutions must approve the transaction under 12 USC 215, which provides dissenters' rights to shareholders of all consolidating institutions.

Control refers to when a company or shareholder (i) directly or indirectly, or acting through one or more other persons owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the other company, or (ii) controls in any manner the election of a majority of the directors or trustees of the other company. No company shall be deemed to own or control another company by virtue of its ownership or control of shares in a fiduciary capacity. Regulation W expands the statutory definition of control significantly in two respects. First, it provides a rebuttable presumption that a shareholder that owns or controls 25 percent or more of a company's nonvoting equity capital controls that company. Second, it provides a rebuttable presumption that a shareholder that owns or controls instruments (including warrants and options) that are convertible or exercisable at the option of the holder into other securities (such as common stock), controls those other securities.

A **dormant or shell bank** is a bank that is no longer engaged in core banking activities other than on a *de minimis* basis. This definition includes, for example, a bank that has significantly reduced its activities and services or that has contracted out significant portions of its operations to third-party service providers, other than in the ordinary course of the bank's ongoing business.

A **federal savings association,** for these procedures, includes a federal savings and loan association or federal savings bank.

Liquidation is the process by which a solvent national bank that has decided to close, without being sold to another owner or merged into another entity, winds down its operations and ceases to exist.

Merger, under 12 USC 215a, 215c, 1828(c), and 12 CFR 5.33, generally refers to the acquisition of one or more depository institutions by an existing national bank or interim national bank. The shareholders of the target institution surrender their equity in return for either equity in the acquiring bank or another form of consideration.

A **national bank** means any national banking association operating under the OCC's supervision.

A **state bank**, for the purposes of merger, consolidation, or conversion as discussed in this booklet, means any bank, banking association, trust company, savings bank (other than a mutual savings bank), or other banking institution which is engaged in the business of receiving deposits and which is incorporated under the laws of any state, any territory of the United States, Puerto Rico, or the Virgin Islands, or which is operating under the Code of Law for the District of Columbia (except for a national banking association). A trust company may or may not be FDIC-insured. The term also includes an industrial loan company.

References

Branch Closings	
Law	12 USC 1831r-1
Issuance	Joint Policy Statement on Branch Closing Notices and Policies, June 29, 1999
Business Combinations	
Laws	12 USC 24(7), 215, 215a, 215a-1, 215a-3, 215c, 1828(c)
Regulation	12 CFR 5.33
Issuance	*Comptroller's Licensing Manual*, Business Combinations
Change in Asset Composition	
Regulation	12 CFR 5.53
Issuance	*Comptroller's Licensing Manual*, General Policies and Procedures
Consolidation	
Laws	12 USC 215, 1828(c)
Regulation	12 CFR 5.33
Conversion Transaction	
Laws	12 USC 214a-214c
Dissenters' Rights	
Issuance	*Comptroller's Licensing Manual*, Business Combinations
Examination	
Law	12 USC 181
Regulation	12 CFR 7.4000
Fees	
Regulation	12 CFR 8.8
Fiduciary Powers	
Law	12 USC 92a(j)
Regulations	12 CFR 5.26, 9
Liquidation	
Laws	12 USC 181, 182
Regulation	12 CFR 5.48
Merger or Consolidation Resulting in Federal Savings Association	
Law	12 USC 215(c)
Regulation	12 CFR 5.33(g)

Merger or Consolidation Resulting in State Bank

Law	12 USC 214a-c, 1828(c)
Regulation	12 CFR 5.33(g)

Merger with a Nonbank Affiliate Resulting in a Nonbank

Law	12 USC 215a-3
Regulation	12 CFR 5.33(g)(5)

Preferred Stock Dividends, Voting and Retirement

Laws	12 USC 51b, 51b-1

Proxy or Information Statement

Law	15 USC 78
Regulations	12 CFR 5.33, -11

Proxy Votes, Directors' Proxies

Law	12 USC 61
Regulations	12 CFR 7.2002, 7.2009

Public Comments

Regulation	12 CFR 5.10
Issuance	*Comptroller's Licensing Manual*, Public Notice and Comments

Purchase and Assumption

Laws	12 USC 24(7), 1828(c)
Regulation	12 CFR 5.33

Reports of Liquidation

Laws	12 USC 161, 181

Shareholders' Voting Rights

Law	12 USC 61

Significant Decisions

Issuance	PPM 1009-15, Publication of Significant OCC Interpretive Opinions and Corporate Decisions

State Banks as Members

Law	12 USC 321

Termination of FDIC Insurance

Law	12 USC 1818(p), 1818(q)
Regulation	12 CFR 307

Termination of National Bank Status

Laws	12 USC 214a-214c, 215a-3, 12 USC 181, 182
Regulation	12 CFR 5.33, 5.48