

# **Increase in Permanent Capital And Preferred Stock Terms Application**

## **General Information and Instructions**

### **Preparation and Use**

This application informs the Office of the Comptroller of the Currency (OCC) of an increase in permanent capital that requires prior approval under 12 CFR 5.45 (federal savings associations) and 12 CFR 5.46 (national banks) (collectively, banks, or individually, bank or applicant).

A bank must submit an application and obtain prior OCC approval to increase its permanent capital if the bank is: required to receive OCC approval pursuant to letter, order, directive, written agreement, or otherwise; selling common or preferred stock for consideration other than cash; or receiving a material noncash contribution to capital surplus.

In addition, before issuing preferred stock, a national bank must submit to the appropriate OCC licensing office any provisions in the articles of association that govern the following terms of the preferred stock, if applicable: dividend amount and payment rights; voting and conversion rights; retirement or redemption provisions; and rights to exercise control over the national bank's management. When the articles of association authorize the board of directors to set the terms of any preferred stock (commonly referred to as blank check preferred stock), the national bank must submit (1) the blank check provisions of the articles along with (2) the terms set by the board for the proposed issuance described above. These terms can be provided as part of the proposed securities documents or within a term sheet. See Item 6 in the application for additional information. The terms are considered approved by the OCC within 15 days of receipt unless the OCC notifies the applicant otherwise.

All questions must be answered with complete and accurate information that is subject to verification. If the answer is "none," "not applicable," or "unknown," so state. Answers of "unknown" should be explained.

The questions in the application are not intended to limit the applicant's presentation nor are the questions intended to duplicate information supplied on another form or in an exhibit. For such information, a cross-reference to the information is acceptable. Any cross-reference must be made to a specific citation or location in the documents, so the information can be found easily. Supporting information for all relevant factors, setting forth the basis for the applicant's conclusions, should accompany the application. The regulatory agency may request additional information.

This application form collects information that the OCC will need to evaluate an increase in permanent capital. The OCC must consider the applicable statutory requirements set forth above, as well as applicable regulatory requirements, when acting on this application. For additional

information regarding these statutory and regulatory requirements, as well as processing procedures and guidelines and any supplemental information that may be required, refer to the OCC's procedural guidelines in the *Comptroller's Licensing Manual*. The applicant may contact the OCC directly for specific instruction or visit the OCC's Web site at [www.occ.gov](http://www.occ.gov).

### **Notice of Publication**

Generally, public notice under 12 CFR 5.8 does not apply to an increase in permanent capital 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 where an increase in permanent capital 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 the public has a full understanding of the entire transaction.

If a notice is required, the applicant must publish notice of the proposed increase in permanent capital in a newspaper of general circulation in the community or communities in which the applicant proposes to engage in business. The OCC will provide specific requirements for the notice of publication.

### **Submission**

In addition to an original application and the appropriate number of signed copies, submit an electronic copy of the information in the application, especially of the business plan's financial projections, if applicable. For e-mail submissions, contact the OCC for instructions and information about secure transmission of confidential material.

### **Confidentiality**

Any applicant desiring confidential treatment of specific portions of the application must submit a request in writing with the application. The request must discuss the justification for the requested treatment. The applicant's reasons for requesting confidentiality should specifically demonstrate the harm (for example, loss of competitive position or invasion of privacy) that would result from public release of information (5 USC 552 or relevant state law). Information for which confidential treatment is requested should be (1) specifically identified in the public portion of the application (by reference to the confidential section), (2) separately bound, and (3) labeled "Confidential." The applicant should follow the same procedure when requesting confidential treatment for the subsequent filing of supplemental information to the application. Contact the OCC for any further questions regarding requests for confidential treatment.

**Increase in Permanent Capital  
And  
Preferred Stock Terms Application**

**Applicant**

Bank Name			Charter Number
Street Address			
City	County	State	Zip Code

**Parent Company Identifying Information** (if applicable)

Name			
Street Address			
City		State	Zip Code

**Contact Person**

Name			Title
Employer			
Street Address			
City		State	Zip Code
Phone No.			Email

Overview: Please answer the applicable questions below.

1. Please select the appropriate reason applicable to the application:

- Application required as a result of complying with a letter, order, directive, written agreement, or otherwise.

Is the bank currently subject to a capital plan?

Yes  No

If “Yes”, has the capital plan been approved by the OCC?

Yes  No

Sale of common or preferred stock for consideration other than cash.

Capital increase resulting from a material noncash contribution to capital surplus.

2. Describe how the increase in permanent capital is consistent with the bank’s business strategy.
3. Indicate the total amount of proposed capital increase and the source of funds. Indicate whether the funds are from a current or new stockholder, if applicable.
4. Include pro forma analysis of the change in the equity accounts and capital ratios.
5. For a sale of common or preferred stock<sup>1</sup> for consideration other than cash, please provide the information described below. For a material noncash contribution, please provide only the information described in questions c. through f.
  - a. Price per share for common or preferred stock to be sold.
  - b. The number, type, and par value of shares issued in exchange for the asset or the conversion of preferred stock.<sup>2</sup>
  - c. A description of the asset contributed.
  - d. The value of the contributed asset.
  - e. Describe the method used to value the contributed asset
  - f. If the value was determined by an independent third party, provide a copy of the valuation report.
6. Describe the terms of the preferred stock including but not limited to
  - a. Dividends.
  - b. Voting and conversion rights.
  - c. Retirement.
  - d. Rights to exercise control over management.
7. Desired action date: mm/dd/yyyy

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<sup>1</sup> Any change in preferred stock terms requires OCC review and approval.

<sup>2</sup> The shareholder converting preferred stock may be subject to a change in bank control filing. (See 12 CFR 5.50.) In addition, existing or outside parties acquiring newly issued preferred stock may also be required to submit a change in control filing.

**NOTE: Discuss and confirm any change in the bank’s capital category and the legal lending limit with your supervisory office.**

**OCC CERTIFICATION**

**I certify that the bank’s board of directors, shareholders, or a designated official has authorized the filing of this application.** I certify that the information contained in this application has been examined carefully and is true, correct, complete and current as of the date of this submission. Additionally, I agree to notify the OCC if the facts described in the filing materially change prior to receiving a decision or at any time prior to consummation of the action contemplated herein.

I acknowledge that any misrepresentation or omission of a material fact with respect to this application, any attachments to it, and any other documents or information provided in connection with this application may be grounds for denial of the application or revocation of its approval, and may subject the undersigned to legal sanctions, including the criminal sanctions provided for in Title 18 of the United States Code.

I acknowledge that the approval of this application is in the discretion of the OCC. The activities and communications by OCC employees in connection with the filing, including approval of the application if granted, do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the United States, any agency or entity of the United States, or any officer or employee of the United States, and do not affect the ability of the OCC to exercise its supervisory, regulatory and examination authorities under applicable law and regulations. I further acknowledge that the foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

\_\_\_\_\_  
President or other authorized officer

\_\_\_\_\_  
Typed name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Employer