



Office of the  
Comptroller of the Currency

COMPTROLLER'S LICENSING MANUAL

# CAPITAL AND DIVIDENDS

DECEMBER 2021

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# Introduction

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This booklet of the *Comptroller's Licensing Manual* provides guidance concerning the licensing procedures of the Office of the Comptroller of the Currency (OCC) relating to capital and dividends. The requirements referred to in this guidance document reflect provisions in existing statutes and regulations. The relevant statutes and regulations are listed at the end of this booklet or referenced as applicable throughout the document.<sup>1</sup>

Transactions that affect the capital accounts of a national bank or a federal savings association (FSA) (collectively, banks) can take a variety of forms but typically include declaring dividends, issuing common or preferred stock, redeeming preferred stock, and making contributions to capital. This *Comptroller's Licensing Manual* booklet describes the key policies, applicable licensing requirements, and other guidance adopted by the OCC that apply to capital account transactions. It is designed to help banks plan for various types of capital account transactions.

In addition to a discussion of the overall OCC process, the "Reference Tables" section of this booklet lists various transactions that could affect the capital accounts of banks, as well as the other booklet sections to consult for more information about applicable laws, regulations, and procedures for those transactions. The table for FSAs further notes the different types of transactions available for FSAs based on their charter type (stock or mutual). This booklet also includes a glossary of terms. Banks should use this booklet with other *Comptroller's Licensing Manual* booklets, including "General Policies and Procedures," which discusses general filing instructions and procedures.

Banks should contact the appropriate OCC district licensing office with questions or concerns regarding various types of capital transactions that might affect their capital accounts.

## Different Requirements

There are separate procedures and requirements for capital transactions by national banks and FSAs, often because of the different statutory requirements for each charter type. Although there are some similarities, banks should take care to follow the requirements that apply to their charter type.

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<sup>1</sup> This booklet also may include procedures that banks must follow in connection with the filing of applications and notices with the OCC. Such procedures are not substantive rules that establish decision criteria. Rather, they are steps a bank must take in connection with the filing of an application or notice to allow the OCC to assess whether a bank has met the substantive requirements for the application or notice in existing statutes and regulations. Consistent with the Administrative Procedure Act, the OCC may issue guidance concerning licensing that contains binding procedural steps a bank must take to allow the OCC to assess a bank's application or notice. See 5 USC 553(b)(A).

## Other Requirements

Many of the capital transactions described in this booklet require approval by a bank's board of directors, shareholders, or members. This booklet notes any approval requirements established by federal banking laws or regulations. However, a bank must also follow any separate approval requirements in its articles of association, charter, or bylaws to the extent those requirements are not inconsistent with federal banking laws or regulations.

## Regulatory Capital

Many capital transactions also affect a bank's regulatory capital, which is determined pursuant to 12 CFR 3. To assist banks in capital planning, this booklet notes additional regulatory capital requirements applicable to various types of capital transactions and considered in the review process. However, this booklet is not intended to be a comprehensive description of the regulatory capital requirements. A detailed discussion of those requirements is in 12 CFR 3. In addition, certain subordinated debt instruments may qualify as regulatory capital, though these instruments are not considered part of the capital accounts. More information is available in the "Subordinated Debt" booklet of the *Comptroller's Licensing Manual*.

# Reference Tables

The following tables provide references to sections of this booklet that contain relevant procedures and requirements based on a transaction’s impact on a bank’s capital accounts.

**Table 1** addresses the requirements applicable to capital transactions by national banks.

**Table 2** addresses the requirements for FSAs and further divides the applicable requirements between stock and mutual FSAs.

**Table 1: National Bank Capital Transactions That Result in Changes to Shareholders’ Equity**

Shareholders’ equity component	Capital transaction		
	Increases	Decreases	Other changes
<b>Common stock—par</b>  <b>Common stock—additional paid-in capital</b>	“Issuance of Common Stock” (page 7)	“Reduction in Permanent Capital” (page 12)	<input type="checkbox"/> “Change in Par Value” (page 18) <input type="checkbox"/> “Increase Authorized Shares” (page 18) <input type="checkbox"/> “Stock Split” (page 19) <input type="checkbox"/> “Reverse Stock Split” (page 19) <input type="checkbox"/> “Fractional Shares” (page 20)
<b>Preferred stock—par</b>  <b>Preferred stock—additional paid-in capital</b>	“Issuance of Preferred Stock” (page 8)		<input type="checkbox"/> “Increase Authorized Shares” (page 18)
<b>Additional capital contributions</b>	“Additional Capital Contributions” (page 10)		
<b>Treasury stock</b>	“Treasury Stock” (page 13)	“Treasury Stock” (page 13)	
<b>Retained earnings</b>  <b>Current period income</b>		<input type="checkbox"/> “Dividends—Cash” (page 14) <input type="checkbox"/> “Dividends—Stock” (page 16) <input type="checkbox"/> “Dividend—Noncash” (page 17)	
<b>Related topics</b>	<input type="checkbox"/> “Accounting Adjustments” (page 21) <input type="checkbox"/> “Quasi-Reorganizations” (page 21)		

**Table 2: FSA Capital Transactions That Result in Changes to Equity Capital**

Form	Capital component	Capital transaction		
		Increases	Decreases	Other changes
Stock	Common stock—par	"Issuance of Common Stock" (page 23)	"Capital Distributions" (page 32)	<input type="checkbox"/> "Change in Par Value" (page 28) <input type="checkbox"/> "Increase Authorized Shares" (page 28) <input type="checkbox"/> "Stock Split/Reverse Stock Split" (page 29) <input type="checkbox"/> "Fractional Shares" (page 29)
	Common stock—additional paid-in capital			
	Preferred stock—par			
	Preferred stock—additional paid-in capital			
	Additional contributed capital	"Additional Capital Contributions" (page 25)		
	Treasury stock	"Treasury Stock" (page 26)	"Treasury Stock" (page 26)	
Mutual	Mutual capital certificates	"Issuance of Mutual Capital Certificates" (page 31)	"Capital Distributions" (page 32)	
Both	Retained earnings		<input type="checkbox"/> "Capital Distributions" (page 32) <input type="checkbox"/> "Dividends—Stock" (page 27) (stock FSA only)	
	Current period income			
	Related topics			

# Key Policies

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## Permanent Capital Increases for National Banks and Stock FSAs and Permanent Capital Decreases for National Banks

The OCC applies the following principles when reviewing a filing for a transaction that would increase a national bank's or stock FSA's permanent capital accounts (stock accounts and additional contributed capital) or decrease a national bank's permanent capital accounts. The OCC considers whether the filing and/or proposed transaction

- is consistent with law, regulation, and OCC policy.
- provides an adequate capital structure.
- complies with the bank's capital plan, if applicable.
- presents significant supervisory, compliance or Community Reinvestment Act (CRA) concerns (if applicable).
- provides sufficient information necessary for the OCC to make an informed decision.

The applicable requirements are found in 12 CFR 5.46 (national banks), 12 CFR 5.45 (stock FSAs), and 12 CFR 5.13 as it applies to the decision-making process.

## Capital Distributions for FSAs

The OCC applies procedures and standards in 12 CFR 5.55 when reviewing a filing for a proposed transaction that would decrease an FSA's capital accounts. The OCC may deny a filing under 12 CFR 5.55(h)(1) if

- the FSA would be undercapitalized, significantly undercapitalized, or critically undercapitalized as defined in 12 CFR 6.4 following the distribution;<sup>2</sup>
- the proposed capital distribution raises safety or soundness concerns; or
- the proposed capital distribution would violate a prohibition in any statute, regulation, agreement with the OCC, or condition imposed on the FSA. Refer to 12 CFR 5.55 for additional discussion.

## Other Capital Transactions

Other types of capital transactions do not have specific regulatory standards of review. However, the OCC does generally consider the following principles:

- The transaction has a valid business purpose.
- The transaction complies with law and regulation.
- The transaction complies with OCC policy.
- The transaction does not raise safety and soundness concerns.

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<sup>2</sup> The OCC may approve the distribution under certain circumstances. Refer to 12 USC 1831o(d)(1)(B).



# Application Process

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## Process Overview

Depending on the specific transaction, the OCC may require that a bank submit an application for prior approval, an after-the-fact notice, or both. The application and notice forms, available on the [OCC's website](#), and the applicable sections in this booklet note any supporting information required with the submission of the application or notice. If an application is required, the OCC issues an approval or denial letter (unless the transaction is automatically approved under an expedited review). For transactions that increase capital for national banks, the OCC issues a certification of the increase. Additional information and time frames can be found in the sections in this booklet for each specific capital transaction.

If prior approval is not required for a particular capital transaction, a bank has the option to still request that the OCC review it. In this case, the bank should submit the appropriate application form alongside any relevant information that would apply.

## Expedited Review

For many transactions that require prior OCC approval, OCC regulations stipulate an expedited process for eligible banks. As described under the relevant transaction type, the process allows for automatic approval of many transactions 15 days after receipt. An eligible bank or eligible savings association is a national bank or FSA that

- is well capitalized, as defined in 12 CFR 6.4.
- has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System.
- has a CRA rating of “outstanding” or “satisfactory,” if applicable.
- has a consumer compliance rating of 1 or 2 under the Uniform Interagency Consumer Compliance Rating System.
- is not subject to a cease and desist order, consent order, formal written agreement, or prompt corrective action directive with the OCC (under 12 CFR 6, subpart B), or if so, has been notified in writing by the OCC that it may still be treated as an eligible bank for the purposes of 12 CFR 5.

## Where to Submit Filings

All banks are strongly encouraged to file any required applications and notices by using the OCC's Central Application Tracking System to ensure the fastest OCC receipt. Alternately, banks can submit filings to the appropriate licensing office or supervisory office, as noted under the specific transaction. Banks should not use both methods because that would create a duplicate filing and could delay the OCC's processing.

The Central Application Tracking System is available through [BankNet](#).

## Time Frames

Unless otherwise noted, all times provided are measured in calendar days. Due dates that fall on weekends or holidays are moved to the next business day.

# National Bank Capital Transactions

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## Issuance of Common Stock

### Background

A national bank is permitted to issue additional common stock if doing so is approved by a vote of holders of at least two-thirds of the shares of the bank's voting stock. Common stock may be issued with or without a par value; if the stock has a par value, it may not exceed \$100 per share. The stock may be issued in exchange for cash or other property, including being issued under an employee stock ownership plan (ESOP) or employee stock option plan. Common stock may be issued for less than par value in limited circumstances. Refer to Interpretive Letter 1112 for additional information. If common stock is issued for more than par value, the difference is recorded as additional paid-in capital (APIC) related to the common stock.

### Prior Approval Requirement

If either of the following conditions applies, a national bank must obtain prior approval:

- The national bank is issuing stock in exchange for noncash consideration.
- The national bank is required to obtain OCC approval pursuant to a letter, order, directive, written agreement, or otherwise.

If prior approval is required, the national bank must submit the [“Increase in Permanent Capital Application”](#) form to the appropriate licensing office. The OCC reviews the transaction under the applicable regulatory criteria, which are described in the “Permanent Capital Increases for National Banks and Stock FSAs” section of this booklet. For an eligible national bank, the transaction is automatically approved 15 days after receipt, unless the OCC removes the application from expedited review or the expedited review process is extended. The OCC issues a decision letter to the national bank. The OCC does not issue a letter if the transaction was automatically approved under expedited review. The common stock must be issued within one year of the OCC's approval date unless the OCC specifies a longer period.

When a national bank proposes to issue common stock for noncash consideration, such as property or services, it should submit evidence of the fair value of the property or reasonableness of the services received, which the OCC reviews and evaluates.

## After-the-Fact Notice Requirement

In all transactions involving the issuance of common stock, including those for which prior approval by the OCC is required and granted, the national bank must submit notice to the appropriate licensing office within 10 business days of issuance by using the [“Increase in Permanent Capital Notice”](#) form, which must be acknowledged by a designated bank official before a notary public. The OCC reviews the notice and issues a certification confirming the increase in permanent capital. If prior approval was not required, the increase is automatically certified seven business days after the OCC receives notice, unless the OCC issues an earlier certification. The certification is generally effective as of the date of the transaction.

## Additional Requirements and Considerations

The national bank’s articles of association or bylaws determine whether existing shareholders have preemptive rights to purchase any additional shares issued.

If the common stock proposed to be issued exceeds the amount of common stock authorized to be issued under the articles of association, the bank must follow the procedures in the “Articles of Association, Charter, and Bylaw Amendments” booklet of the *Comptroller’s Licensing Manual* to increase the amount of authorized shares.

If the national bank wants to include the additional common stock as regulatory capital, the common stock sold must also meet the applicable criteria under 12 CFR 3.20. Generally, common stock sold to third parties qualifies as regulatory capital, as does stock transferred to ESOPs under certain conditions.

An issuance of common stock by a national bank may require registration of the security pursuant to the OCC’s Securities Offering Disclosure Rules at 12 CFR 16, unless the offering qualifies for an exemption from registration.

## Reference Laws and Regulations

- 12 USC 57
- 12 CFR 3.20 and 5.46

## Issuance of Preferred Stock

### Background

A national bank is permitted to issue preferred stock if doing so is approved by a vote of shareholders owning a majority of its shares of voting stock. The preferred stock may allow for cumulative dividends; if so, those dividends must be satisfied before any dividends can be paid on common stock. Preferred stock may be issued in exchange for cash or other property. Preferred stock may be issued for an amount equal to or greater than par value. If preferred

stock is issued for more than par value, the difference is recorded as APIC related to the preferred stock.

## Authorization of Preferred Stock

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:

- dividend amount and payment rights.
- voting and conversion rights, if applicable.
- retirement or redemption provisions, if applicable.
- rights to exercise control over the national bank's management, if applicable.

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. If the OCC has already approved the relevant provisions of the articles of association authorizing the issuance of preferred stock, and these provisions have not changed, the national bank may submit notice of this fact to the OCC without resubmitting the articles.

If the national bank's articles of association do not contain any provisions referring to the issuance of preferred stock, the national bank must amend its articles of association following the procedures described in the "Articles of Association, Charter, and Bylaw Amendments" booklet of the *Comptroller's Licensing Manual*.

The OCC automatically approves the authorization 15 business days after receipt of the relevant terms (or of notice that the relevant terms have not changed) unless the OCC requires additional time to review and notifies the national bank of the reason for the delay.

## Prior Approval Requirement

If either of the following conditions applies, a national bank must submit an application for prior OCC approval to issue preferred stock:

- The national bank is issuing preferred stock in exchange for noncash consideration.
- The national bank is required to obtain OCC approval pursuant to a letter, order, directive, written agreement, or otherwise.

If prior approval for issuance is required, the national bank should note that when submitting the relevant terms required for authorization. The OCC reviews the transaction under the applicable regulatory criteria, which are described in the "Permanent Capital Increases for National Banks and Stock FSAs" section of this booklet. For an eligible national bank, the transaction is automatically approved 15 days after receipt, unless the OCC removes the

application from expedited review or the expedited review process is extended. The OCC issues a decision letter to the national bank unless the transaction is automatically approved. The preferred stock must be issued within one year of the OCC's approval date, unless the OCC specifies a longer period.

When a national bank issues preferred stock for noncash consideration, such as property or services, it should submit evidence of the fair value of the property or reasonableness of the services received, which the OCC reviews and evaluates.

## After-the-Fact Notice Requirement

In all transactions involving the issuance of preferred stock, including those for which prior approval by the OCC is required and granted, a national bank must submit an after-the-fact notice to the appropriate licensing office within 10 business days of issuing the preferred stock by using the [“Increase in Permanent Capital Notice”](#) form, which must be acknowledged by a designated bank official before a notary public. The OCC reviews the notice and issues a certification confirming the increase in permanent capital. If prior approval was not required, the increase is automatically certified seven business days after the OCC receives notice, unless the OCC issues an earlier certification. The certification is typically effective as of the date of the transaction.

## Additional Requirements and Considerations

If the national bank wants to include the preferred stock as regulatory capital, the terms of the preferred stock must also meet the applicable criteria under 12 CFR 3.20. A national bank may request that the OCC review the terms of an offering. The OCC encourages the national bank to include an analysis of the desired capital treatment (additional tier 1 or tier 2) to improve the efficiency of the review. Further detail on the capital requirements can be found in the “Regulatory Capital Framework” section of the “Capital and Dividends” booklet of the *Comptroller’s Handbook*.

If the national bank plans to sell the preferred stock to the public, it must also follow any applicable requirements for securities offerings under 12 CFR 16.

## Reference Laws and Regulations

- 12 USC 51a, 51b, and 57
- 12 CFR 3.20 and 5.46

## Additional Capital Contributions

### Background

A national bank may receive capital contributions in transactions that do not involve the issuance of additional capital instruments. The most common examples are a holding

company contributing funds to the national bank or forgiving a debt the bank owes the holding company.

## Prior Approval Requirement

If either of the following conditions applies, a national bank must obtain prior approval:

- The contribution is noncash and material (generally considered to be 3 percent or more of total equity capital as defined in the [Instructions for Preparation of the Consolidated Reports of Condition and Income](#) (call report).
- The national bank is required to obtain OCC approval pursuant to a letter, order, directive, written agreement, or otherwise.

If prior approval is required, the national bank must submit the [“Increase in Permanent Capital Application”](#) form to the appropriate licensing office. The OCC reviews the transaction under the applicable regulatory criteria described in the “Permanent Capital Increases for National Banks and Stock FSAs” section of this booklet. For an eligible bank, the transaction is automatically approved 15 days after receipt, unless the OCC objects or requests additional time to review during that period. The OCC issues a decision letter to the national bank unless the transaction is automatically approved. The contribution must occur within one year of the OCC’s approval date unless the OCC specifies a longer period.

When the transaction includes a material noncash capital contribution, the national bank must describe the method for valuing the contribution. The OCC evaluates the reasonableness of the valuation method and may require an alternate valuation method.

## After-the-Fact Notice Requirement

In all transactions involving additional capital contributions, including those for which prior approval is required, a national bank must submit an after-the-fact notice to the appropriate licensing office within 10 business days of the capital contribution by using the [“Increase in Permanent Capital Notice”](#) form, which must be acknowledged by a designated bank official before a notary public . The OCC reviews the notice and issues a certification confirming the increase in permanent capital. If prior approval was not required, the increase is automatically certified seven business days after the OCC receives notice, unless the OCC issues an earlier certification. The certification is generally effective as of the date of the transaction.

## Additional Requirements and Considerations

Additional capital contributions are considered surplus associated with common stock under the OCC’s risk-based capital rule (12 CFR 3.20(b)(1)) and count as common equity tier 1 (CET1) capital.

## Reference Laws and Regulations

- 12 USC 57
- 12 CFR 3.20 and 5.46

## Reduction in Permanent Capital

### Background

A national bank is permitted to reduce its permanent capital accounts if doing so is approved by a vote of holders of at least two-thirds of the shares of the national bank's voting stock. This section applies to all transactions that reduce permanent capital, including the following:

- Returning capital to shareholders in excess of retained earnings and current profits
- Redeeming preferred stock at maturity
- Redeeming preferred stock by exercising a call option
- Declaring dividends on preferred stock in excess of retained earnings and current profits

### Prior Approval Requirement

A national bank must obtain prior OCC approval for any transaction that reduces permanent capital. The national bank must submit the [“Reduction of Permanent Capital Application”](#) form to the appropriate licensing office. The OCC reviews the transaction under the applicable regulatory criteria described in the “Permanent Capital Decreases for National Banks” section of this booklet. For an eligible bank, the transaction is automatically approved 15 days after receipt, unless the OCC removes the application from expedited review or the expedited review process is extended. The OCC issues a decision letter to the national bank unless the transaction is automatically approved. The distribution must occur within one year of the OCC's approval date unless the OCC specifies a longer period.

If a reduction in permanent capital involves the distribution of property other than cash, the bank should generally use the accounting valuation method (i.e., book value or fair value) required by generally accepted accounting principles (GAAP).

### After-the-Fact Notice Requirement

A national bank must notify the appropriate licensing office after the completion of the reduction in permanent capital. The OCC does not require a specific form for this notice.

### Additional Requirements and Considerations

An eligible bank may request approval for up to four consecutive quarters of reductions in permanent capital in a single submission under expedited review. The approval is conditional on the national bank maintaining its status as an eligible bank before and after each reduction in capital. Additionally, any national bank may request approval for a reduction in capital for

multiple quarters under standard review procedures. A request for such a reduction need only specify a total dollar amount for the requested period and need not specify amounts for each quarter. A notice is required only after completing the final transaction approved as part of the series.

The national bank's application for a reduction in permanent capital also satisfies the requirement to seek OCC approval before redeeming a regulatory capital instrument under 12 CFR 3.20.

## Reference Laws and Regulations

- 12 USC 56 and 59
- 12 CFR 3.20, 5.46 and 5.63

## Treasury Stock

### Background

A national bank is allowed to purchase and hold its own common stock as treasury stock. Once purchased, a national bank is allowed to sell, retire, cancel, or otherwise dispose of the treasury stock.

### Purchasing and Holding Treasury Stock

Purchasing and holding shares as treasury stock reduces the bank's outstanding capital instruments and is a reduction in permanent capital. Therefore, the national bank must follow the applicable requirements in the "Reduction in Permanent Capital" section of this booklet, including approval by a vote of holders of at least two-thirds of the bank's voting stock shares.

A national bank acquiring its own stock as part of a contemporaneous transaction in which the national bank resells the stock (on the same business day) is not considered a purchase of treasury stock, because the transaction would not reduce the national bank's permanent capital instruments outstanding. These transactions include the following:

- Purchasing shares for simultaneous resale to another third party.
- Purchasing shares for immediate transfer or resale to an ESOP or stock option or compensation plan.
- Purchasing shares from a retiring director for simultaneous resale to another third party.

### Selling Treasury Stock

A national bank's sale or transfer of its treasury stock to a third party or sale to existing shareholders increases the bank's permanent capital instruments outstanding. Therefore, the national bank must follow the procedures in the "Issuance of Common Stock" section of this



booklet under “National Bank Capital Transactions,” including approval by a vote of holders of at least two-thirds of the shares of the bank’s voting stock. A national bank’s transfer of treasury stock to its existing shareholders in proportion to their current ownership and for no consideration is treated as a stock dividend and must follow the procedures in the “Dividends—Stock” section of this booklet under “National Bank Capital Transactions.”

## Retiring Treasury Stock

A national bank may retire or cancel shares of treasury stock it has acquired, either immediately upon acquisition or at a later date. For subsequent retirements, because permanent capital was reduced when the treasury stock was originally acquired, the OCC does not require any application or notice to retire or cancel treasury stock. However, the national bank is subject to any applicable requirements in its articles of association or bylaws.

## Reference Laws and Regulations

- 12 USC 59
- 12 CFR 5.46

## Dividends—Cash

### Background

A national bank is permitted to pay cash dividends on common stock or preferred stock if the bank’s board of directors declares the dividend. Although the bank must comply with the laws and regulations discussed in the following sections, the OCC requires prior approval for cash dividends only in limited circumstances.

### Restrictions on Declaring Dividends

A national bank’s board of directors may not declare, and a national bank may not pay, any dividend in an amount greater than the sum of current period net income and retained earnings. Any dividends declared must come solely from the bank’s retained earnings account. A distribution in excess of that amount is a reduction in permanent capital, and the national bank would need to follow the applicable procedures in the “Reduction in Permanent Capital” section of this booklet. A national bank’s board of directors may not declare a dividend if paying it would result in the bank being undercapitalized under 12 CFR 6. A national bank’s board of directors may not declare a dividend on common stock unless it has satisfied any dividend requirements on cumulative preferred stock.

### Prior Approval Requirement

A national bank must obtain prior approval to pay a cash dividend if the dividend would exceed the sum of current period net income and retained earnings from the past two years,

after deducting the following transactions during that period: any dividends previously declared, extraordinary transfers required by the OCC, and payments made for the retirement of preferred stock. The calculation is performed on a rolling basis as described in 12 CFR 5.64.

A national bank that must obtain prior approval must submit a request to the appropriate supervisory office. The request should include the proposed date and amount of the dividend, evidence of compliance with the restrictions on declaring dividends, and supporting calculations showing the portion of the dividend that triggers the prior approval requirement. The OCC reviews the transaction under the applicable regulatory criteria, which are described in the “Other Capital Transactions” section of this booklet. The OCC issues a decision letter to the national bank.

## Additional Requirements and Considerations

A national bank should review 12 CFR 3.11, “Capital Conservation Buffer and Countercyclical Capital Buffer Amount,” to determine whether that regulation imposes any additional limits on discretionary distributions, such as dividend payments. A national bank with CET1 capital of at least 7 percent, tier 1 capital of at least 8.5 percent, and total capital of at least 10.5 percent would not have any dividend restrictions imposed by the capital conservation buffer.<sup>3</sup>

If a national bank is subject to a formal or informal enforcement action, the provisions in that action may limit the bank’s ability to pay a dividend that would otherwise be permissible as described in this section.

## Reference Laws and Regulations

- 12 USC 51b, 56, 59, and 60
- 12 CFR 3.11 and 5.60 through 5.65

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<sup>3</sup> A qualifying community banking organization, as defined in 12 CFR 3.12, that elects to use the community bank leverage ratio framework generally would not be required to calculate the risk-based capital requirements and, therefore, generally would not have any dividend restrictions imposed by the capital conservation buffer.

## Dividends—Stock

### Background

A national bank is permitted to issue stock dividends if doing so is approved by holders of at least two-thirds of the shares of the bank's voting stock. In a stock dividend transaction, shares of common stock are issued to existing shareholders in proportion to their existing holdings. An amount equal to the fair value of the shares is transferred from retained earnings to common stock (par value, if applicable, and surplus), similar to an increase in permanent capital. A stock dividend often creates fractional shares; if so, the national bank must also follow any applicable requirements in the "Fractional Shares" section of this booklet under "National Bank Capital Transactions."

### Limits on Stock Dividends

A stock dividend may be declared only if the sum of current period net income and retained earnings is positive. A stock dividend cannot reduce current period net income and retained earnings to less than 20 percent of permanent capital as calculated after the dividend.

### Prior Approval Requirement

A national bank must obtain prior approval for a stock dividend only if the bank is required to obtain OCC approval under a specific letter, order, directive, or other written agreement. If OCC approval is required, the bank must submit the ["Reduction of Permanent Capital Application"](#) form to the appropriate licensing office.

The OCC reviews the transaction under the applicable regulatory criteria, which are described in the "Permanent Capital Decreases for National Banks" section of this booklet. For eligible banks, the transaction is automatically approved 15 days after receipt, unless the OCC objects or requests additional time to review during that period. The OCC issues a decision letter to the national bank unless the transaction is automatically approved. The stock dividend must be issued within one year of the OCC's approval date unless the OCC specifies a longer period.

### After-the-Fact Notice Requirement

If a stock dividend involves a reduction in permanent capital, the national bank must notify the appropriate licensing office after the completion of the reduction. The OCC does not require a specific form for this notice.

### Additional Requirements and Considerations

If the common stock proposed to be issued pursuant to the dividend exceeds the amount of common stock authorized to be issued under the national bank's articles of association, the national bank must follow the procedures in the "Articles of Association, Charter, and Bylaw

Amendments” booklet of the *Comptroller’s Licensing Manual* to increase the amount of authorized shares.

A stock dividend typically does not affect a national bank’s regulatory capital because current period net income, retained earnings, and the common stock accounts are all considered CET1 capital instruments under 12 CFR 3.20.

## Reference Laws and Regulations

- 12 USC 56 and 57
- 12 CFR 5.46, 5.60, and 5.63

## Dividends—Noncash

### Background

A national bank is permitted to pay noncash dividends on common or preferred stock if the bank’s board of directors declares the dividend and it is approved by the OCC. Any property distributed as a dividend must be distributed at fair value, and any calculations described in this section must reflect the property at fair value.

### Restrictions on Declaring Dividends

A national bank may not pay any dividend in an amount greater than the sum of current period net income and retained earnings. A distribution in excess of that amount is a reduction in permanent capital, and the national bank would need to follow the applicable procedures in the “Reduction in Permanent Capital” section of this booklet. A national bank may not pay a dividend if paying it would result in the bank being undercapitalized under 12 CFR 6. A national bank may not pay a dividend on common stock unless it has satisfied any dividend requirements on cumulative preferred stock.

### Prior Approval Requirement

A national bank must obtain prior approval for the payment of or distribution of noncash dividends. The national bank must submit a request to the appropriate licensing office by using the [“Reduction of Permanent Capital Application”](#) form. The request should include the proposed date and amount of the dividend, evidence supporting the fair value of the noncash distribution, and evidence of compliance with the restrictions on declaring dividends. The national bank should also note whether the dividend would exceed the sum of current period net income and retained earnings from the past two years, after deducting the following transactions during that period: any dividends previously declared, extraordinary transfers required by the OCC, and payments made for the retirement of preferred stock. This calculation is performed on a rolling basis, as described in 12 CFR 5.64. The OCC reviews the transaction under the applicable regulatory criteria described in the “Other Capital

Transactions” section of this booklet. Upon approval, the OCC issues a decision letter to the national bank.

## Reference Laws and Regulations

- 12 USC 51b, 56, 59, and 60
- 12 CFR 5.60 and 5.66

## Change in Par Value

### Background

A national bank is permitted to adjust the par value of its common stock. The national bank would need sufficient APIC or retained earnings to adjust the par value. Adjusting the par value requires amending the articles of association. The “Articles of Association, Charter, and Bylaw Amendments” booklet of the *Comptroller’s Licensing Manual* states the required procedures. Because adjusting the par value has no impact on permanent capital, the OCC does not require any additional filings. By statute, however, par value may not exceed \$100 per share.

## Reference Laws and Regulations

- 12 USC 52

## Increase Authorized Shares

### Background

A national bank is permitted to increase the amount of authorized shares of common or preferred stock by amending the articles of association. The “Articles of Association, Charter, and Bylaw Amendments” booklet of the *Comptroller’s Licensing Manual* contains the required procedures. However, a national bank cannot sell the newly authorized shares unless it follows the requirements in the “Issuance of Common Stock” or “Issuance of Preferred Stock” sections of this booklet under “National Bank Capital Transactions.”

## Reference Laws and Regulations

- 12 USC 21a and 57

## Stock Split

### Background

A national bank is permitted to split its stock. In a forward stock split, existing shareholders receive new shares in proportion to their existing holdings (e.g., two new shares for one existing share). A stock split also adjusts the par value of the shares in inverse proportion to the split. Therefore, the national bank must follow the procedures in the “Articles of Association, Charter, and Bylaw Amendments” booklet of the *Comptroller’s Licensing Manual* to adjust the par value of the stock, and may also need to increase the amount of authorized shares using the same process. Because a stock split typically has no impact on permanent capital, the OCC does not require any additional filings. In the rare case a stock split does give rise to fractional shares, see the discussion in the “Fractional Shares” section of this booklet under “National Bank Capital Transactions” for the required procedures.

### Reference Laws and Regulations

- 12 USC 21a

## Reverse Stock Split

### Background

A national bank is permitted to engage in a reverse stock split and should submit a request to the appropriate licensing office by using the [“Reverse Stock Split Application”](#) form. A national bank submitting this form for a reverse stock split that results in a reduction of permanent capital would not be required to submit a separate filing for the capital reduction.

In a reverse stock split, existing shareholders receive new shares in proportion to their existing holdings in an inverse relationship (e.g., one new share for three existing shares). A reverse stock split also adjusts the par value of the shares in inverse proportion to the split. Therefore, the national bank must follow the procedures in the “Articles of Association, Charter, and Bylaw Amendments” booklet of the *Comptroller’s Licensing Manual* to increase the par value of the stock, which cannot exceed \$100. If the reverse stock split only involves issuing new shares, the OCC does not require any additional filings. The reverse stock split must serve a valid corporate purpose, such as reducing the number of shareholders to reduce costs or to allow for S corporation status. In addition, if the reverse stock split reduces any shareholder’s relative voting power, the national bank must provide for adequate dissenting shareholders’ rights as determined by the national bank’s home state law.

Many reverse stock splits give rise to the creation of fractional shares. See the “Fractional Shares” section of this booklet under “National Bank Capital Transactions” for potential options to address fractional shares. If the national bank chooses to issue warrants, allow shareholders to sell their fractions to outside parties, or sell full shares under the auction method, there is no change to permanent capital and no filing is required with the OCC. If the

national bank allows shareholders to “top up” fractional holdings to full shares, this requires issuing additional shares and the national bank must follow the procedures in the “Issuance of Common Stock” section of this booklet under “National Bank Capital Transactions.” If the national bank issues shareholders cash in lieu of fractional shares, this creates a reduction in permanent capital and the national bank must follow the procedures in the “Reduction in Permanent Capital” section of this booklet.

## Reference Laws and Regulations

- 12 USC 21a and 52
- 12 CFR 5.67 and 7.2023

## Fractional Shares

### Background

A number of corporate transactions, including stock dividends, stock splits, reverse stock splits, and corporate mergers or acquisitions, may entitle shareholders to receive less than a whole number of shares. A national bank may take measures to preclude issuance of fractional shares, such as issuing the cash equivalent of the fraction not being issued, based on market value or a reliable, disinterested determination if no market exists. In this situation, the national bank would be required to follow the procedures in the “Reduction in Permanent Capital” section of this booklet, as discussed below. Additionally, the national bank may propose an alternate method in its application for the related corporate transaction filed with the OCC. Other potential options to address fractional shares and to protect the economic value of those fractional amounts include:

- A national bank may issue scripts or warrants representing the fractional amounts.
- If there is an established and active market in the national bank’s stock, the national bank may allow the shareholder to sell the fractional share in the market or purchase an additional fraction to equal a full share.
- A national bank may sell full shares representing all fractional shares at public auction, or in a sealed bid auction involving at least three licensed stockbrokers and distribute the proceeds pro rata to shareholders entitled to fractional shares.

When deciding how to address fractional shares, the national bank’s determination must allow for adequate dissenting shareholders’ rights. The national bank’s decision must also comply with any conditions in the its articles of association or bylaws.

As described above, if the method chosen by the national bank for addressing fractional shares would result in selling additional shares, the national bank must follow the procedures in the “Issuance of Common Stock” section of this booklet under “National Bank Capital Transactions.” If the method would result in the national bank reducing permanent capital by issuing cash in lieu of fractional shares, it must follow the procedures in the “Reduction in

Permanent Capital” section of this booklet. If the method chosen does not affect the permanent capital accounts, the OCC does not require any additional filings.

## Reference Laws and Regulations

- 12 CFR 5.67

## Accounting Adjustments

### Background

From time to time, a national bank may be required to make accounting adjustments to its permanent capital or retained earnings accounts. These adjustments often stem from the application of new accounting standards or may be due to subsequent adjustments related to acquisition accounting. Accounting adjustments recorded in the current period net income or retained earnings will not trigger permanent capital or dividend filing requirements.

### Notification Requirement

If a national bank records an accounting adjustment that increases or decreases total permanent capital in an amount greater than 5 percent of the bank’s total permanent capital prior to the adjustment; or if a national bank is subject to an OCC letter, order, directive, written agreement, or otherwise related to changes in permanent capital, the national bank must notify the OCC within 30 days after the end of the calendar quarter in which the adjustment occurred. The notification must include the amount and description of the adjustment and cite any relevant GAAP provisions. The OCC does not certify changes in permanent capital related to accounting adjustments.

## Reference Laws and Regulations

- 12 CFR 5.46

## Quasi-Reorganizations

### Background

A quasi-reorganization is an accounting procedure that allows a national bank to restate its capital accounts to remove a deficit in retained earnings, but without going through a legal reorganization. The procedure is based on the accounting concept that an entity that previously suffered losses but has significantly changed its business to correct its problems should be allowed to present its financial statements on a “fresh start” basis.



## Requirements

A quasi-reorganization is a very involved procedure; in addition to revising the capital accounts, under GAAP the national bank must also revalue and restate all asset and liability accounts. A national bank considering a quasi-reorganization should contact the appropriate supervisory office for a pre-filing meeting to discuss the transaction and plans for all the necessary accounting adjustments.

A quasi-reorganization almost always results in a decrease in permanent capital. Therefore, a national bank should follow the procedures in the “Reduction in Permanent Capital” section of this booklet, including obtaining approval of holders of at least two-thirds of the shares of the national bank’s voting stock, as applicable, and should use the [“Quasi-Reorganization Application”](#) form.

## Additional Requirements and Considerations

Accounting guidance on quasi-reorganizations can be found in Topic 8B of the OCC’s [Bank Accounting Advisory Series](#).

## Reference Laws and Regulations

- 12 USC 59
- 12 CFR 5.46

# Stock FSA Capital Transactions

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## Issuance of Common Stock

### Background

A stock form FSA is permitted to issue additional common stock following the initial offering. Common stock may be issued with or without a par value. The stock may be issued in exchange for cash, other property, or services. Common stock may not be issued for less than par value; if it is issued for more than par value, the difference is recorded as APIC related to the common stock.

### Prior Approval Requirement

If either of the following conditions applies, an FSA must obtain prior OCC approval:

- The FSA is issuing stock in exchange for noncash consideration.
- The FSA is required to obtain OCC approval pursuant to a letter, order, directive, written agreement, or otherwise.

If prior approval is required, the FSA must submit the [“Increase in Permanent Capital Application”](#) form to the appropriate licensing office. The OCC reviews the transaction using the applicable regulatory criteria, which are described in the “Permanent Capital Increases for National Banks and Stock FSAs” section of this booklet. For an eligible savings association, the transaction is automatically approved 15 days after receipt, unless the OCC requests additional time to review during that period. The OCC issues a decision letter to the FSA unless the transaction is automatically approved. The common stock must be issued within one year of the OCC’s approval date unless the OCC specifies a longer period.

When an FSA issues stock for noncash consideration, such as property or services, the OCC evaluates the fair value of property or reasonableness of services received.

### After-the-Fact Notice Requirement

In transactions involving the issuance of common stock for which prior approval is required, the FSA also must submit an after-the-fact notice to the appropriate licensing office within 10 business days after the issuance of the common stock by using the [“Increase in Permanent Capital Notice”](#) form.

### Additional Requirements and Considerations

The FSA’s charter sets the maximum amount of authorized shares that can be issued. If the FSA plans to issue more shares than authorized by the charter, it must amend the charter by

following the procedures in the [“Articles of Association, Charter, and Bylaw Amendments”](#) booklet of the *Comptroller’s Licensing Manual*.

An issuance of common stock by an FSA may require registration of the security pursuant to the OCC’s Securities Offering Disclosure Rules in 12 CFR 16, unless the offering qualifies for an exemption from registration.

To be included in regulatory capital, the common stock must also meet the applicable criteria under 12 CFR 3.20. Generally, common stock sold to third parties qualifies for regulatory capital, as does stock transferred to ESOPs under certain conditions.

## Reference Laws and Regulations

- 12 USC 1464
- 12 CFR 3.20 and 5.45

## Issuance of Preferred Stock

### Background

An FSA chartered with a stock ownership structure is permitted to issue preferred stock. Preferred stock may be issued in exchange for cash or other property. If preferred stock is issued for more than par value, the difference is recorded as APIC related to the preferred stock.

### Prior Approval Requirement

If either of the following conditions applies, an FSA must obtain prior approval:

- The FSA is issuing preferred stock in exchange for noncash consideration.
- The FSA is required to obtain OCC approval pursuant to a letter, order, directive, written agreement, or otherwise.

If prior approval is required, the FSA must submit the [“Increase in Permanent Capital Application”](#) form to the appropriate licensing office. The OCC reviews the transaction using the applicable regulatory criteria, which are described in the “Permanent Capital Increases for National Banks and Stock FSAs” section of this booklet. For an eligible savings association, the transaction is automatically approved 15 days after receipt, unless the OCC requests additional time to review during that period. The OCC issues a decision letter to the FSA unless the transaction is automatically approved. The common stock must be issued within one year of the OCC’s approval date unless the OCC specifies a longer period.

When an FSA issues stock for noncash consideration, such as property or services, the OCC evaluates the fair value of property or reasonableness of services received.

## After-the-Fact Notice Requirement

In transactions involving the issuance of preferred stock for which prior approval is required, the FSA must submit an after-the-fact notice to the appropriate licensing office within 10 business days after issuance of the preferred stock by using the [“Increase in Permanent Capital Notice”](#) form.

## Additional Requirements and Considerations

The FSA’s charter sets the terms of preferred stock that can be issued. If the FSA plans to issue preferred stock not permitted under the charter, it must amend the charter by following the procedures in the “Articles of Association, Charter, and Bylaw Amendments” booklet of the *Comptroller’s Licensing Manual*. An FSA may amend its charter to allow preferred stock to be issued on terms set by the board of directors (often referred to as “blank check” preferred stock) to avoid this issue in the future.

An issuance of preferred stock by an FSA may require registration of the security pursuant to the OCC’s Securities Offering Disclosure Rules at 12 CFR 16, unless the offering qualifies for an exemption from registration.

To be included in regulatory capital, the preferred stock must also meet the applicable criteria under 12 CFR 3.20 for additional tier 1 or tier 2 capital.

## Reference Laws and Regulations

- 12 CFR 3.20 and 5.45

## Additional Capital Contributions

### Background

A stock FSA may receive capital contributions in transactions that do not involve the issuance of additional capital instruments. The most common examples are a holding company contributing funds to the FSA or forgiving a debt owed to the holding company.

### Prior Approval Requirement

If either of the following conditions applies, an FSA must obtain prior OCC approval:

- The contribution is noncash and material (generally considered to be 3 percent or more of total equity capital as defined in the call report instructions).
- The FSA is required to obtain OCC approval pursuant to a letter, order, directive, written agreement, or otherwise.

If prior approval is required, the FSA must submit the [“Increase in Permanent Capital Application”](#) form to the appropriate licensing office. The OCC reviews the transaction using the applicable regulatory criteria, which are described in the “Permanent Capital Increases for National Banks and Stock FSAs” section of this booklet. For an eligible savings association, the transaction is automatically approved 15 days after receipt, unless the OCC requests additional time to review the application during that period. The OCC issues a decision letter to the FSA unless the transaction is automatically approved. The common stock must be issued within one year of the OCC’s approval date.

When the transaction includes a material noncash capital contribution, the FSA must describe the method for valuing the contribution. The OCC evaluates the reasonableness of the valuation method and the dollar amount.

## After-the-Fact Notice Requirement

In transactions for which prior approval is required, the FSA must submit an after-the-fact notice to the appropriate licensing office within 10 business days after receipt of the contribution by using the [“Increase in Permanent Capital Notice”](#) form.

## Additional Requirements and Considerations

Additional capital contributions are considered surplus associated with common stock and count as CET1 capital under the OCC’s risk-based capital rule (12 CFR 3.20(b)(1)).

## Reference Laws and Regulations

- 12 CFR 5.45

## Treasury Stock

### Background

A stock FSA is allowed to purchase and hold its own stock as treasury stock. Once the FSA purchases shares of its stock, it is allowed to sell or otherwise dispose of the treasury stock. An FSA may retire or cancel the treasury stock.

### Purchasing and Holding Treasury Stock

Purchasing stock and holding the shares as treasury stock reduces the FSA’s outstanding capital instruments and is a capital distribution. Therefore, the FSA must follow the applicable requirements in the “Capital Distributions” section of this booklet before purchasing treasury stock. The transaction requires either prior approval or prior notice under that section.

An FSA's acquisition of its own stock as part of a transaction in which the FSA resells the stock (on the same business day) is not considered a purchase of treasury stock because the transaction would not reduce the permanent capital instruments outstanding. Such transactions may include the following:

- Purchasing shares for simultaneous resale to another third party.
- Purchasing shares for immediate transfer or resale to an employee purchase or compensation plan.
- Purchasing shares from a retiring director for simultaneous resale to another third party.

## Selling Treasury Stock

An FSA selling or transferring its treasury stock to a third party or selling stock to existing shareholders increases permanent capital instruments outstanding. Therefore, the FSA must follow the procedures in this section. An FSA transferring its treasury stock to its existing shareholders in proportion to their current holdings for no consideration is treated as a stock dividend. See the "Dividends—Stock" section below for more detail.

## Retiring Treasury Stock

An FSA may retire or cancel shares of treasury stock it has acquired. Because permanent capital was reduced when the treasury stock was originally acquired, the OCC does not require any application or notice to retire treasury stock already purchased.

## Reference Laws and Regulations

- 12 CFR 5.45 and 5.55

## Dividends—Stock

### Background

A stock FSA is permitted to issue stock dividends. In a stock dividend transaction, new shares of common stock are issued to existing shareholders in proportion to their existing holdings. An amount equal to the fair value of the shares is transferred from retained earnings to common stock (par value, if applicable, and surplus). Because stock dividends do not affect the total capital of an FSA, the OCC does not require prior approval or notice of the transaction. If a stock dividend results in fractional shares, however, the disposition of those shares may require additional procedures. See the "Fractional Shares" section of this booklet under "Stock FSA Capital Transactions" for more detail.

## Additional Requirements and Considerations

If the common stock proposed to be issued through the stock dividend exceeds the amount of common stock authorized to be issued under an FSA’s charter, the FSA must follow the procedures in the “Articles of Association, Charter, and Bylaw Amendments” booklet of the *Comptroller’s Licensing Manual* to increase the amount of authorized shares.

A stock dividend generally does not affect an FSA’s regulatory capital because retained earnings, current period net income, and the common stock accounts all are considered CET1 capital under 12 CFR 3.20.

## Reference Laws and Regulations

- 12 CFR 5.55

## Change in Par Value

### Background

An FSA is permitted to adjust the par value of its common stock. Adjusting the par value requires the FSA to amend its charter following the procedures in the “Articles of Association, Charter, and Bylaw Amendments” booklet of the *Comptroller’s Licensing Manual*. Because adjusting the par value has no impact on capital, the OCC does not require any additional filings.

## Reference Laws and Regulations

- 12 CFR 5.22

## Increase Authorized Shares

### Background

An FSA is permitted to increase the amount of authorized shares of common or preferred stock by amending the charter. The required procedures are in the “Articles of Association, Charter, and Bylaw Amendments” booklet of the *Comptroller’s Licensing Manual*. An FSA, however, cannot sell the newly authorized shares unless it follows the requirements in the “Issuance of Common Stock” or “Issuance of Preferred Stock” sections of this booklet under “Stock FSA Capital Transactions.”

## Reference Laws and Regulations

- 12 CFR 5.22

## Stock Split/Reverse Stock Split

### Background

An FSA is permitted to split its stock (forward split) or engage in a reverse stock split. In a forward stock split, existing shareholders receive new shares in proportion to their existing holdings (e.g., two new shares for one existing share). In a reverse stock split, existing shareholders receive new shares in proportion to their existing holdings in an inverse relationship (e.g., one new share for three existing shares). Either stock split also adjusts the par value of the shares in inverse proportion to the split. An FSA must follow the procedures in the “Articles of Association, Charter, and Bylaw Amendments” booklet of the *Comptroller’s Licensing Manual* to adjust the par value of the stock and may also need to increase the amount of authorized shares using the same process for a forward split. Because a stock split typically has no impact on capital, the OCC does not require any additional filings.

However, when a forward or reverse split gives rise to fractional shares, see the discussion in the “Fractional Shares” section of this booklet under “Stock FSA Capital Transactions” for the required procedures. If the FSA chooses to issue warrants, allow shareholders to sell their fractions to outside parties, or sell full shares under the auction method as described in the “Fractional Shares” section, there is no change to capital and no filing is required with the OCC. If the FSA allows shareholders to “top up” fractional holdings to full shares, the FSA is required to issue additional shares and must follow the procedures in the “Issuance of Common Stock” section of this booklet under “Stock FSA Capital Transactions.” If the FSA issues shareholders cash in lieu of fractional shares, capital is reduced and the FSA must follow the procedures in the “Capital Distributions” section of this booklet.

### Reference Laws and Regulations

- 12 CFR 5.22 and 5.55

## Fractional Shares

### Background

A number of corporate transactions, including stock dividends, stock splits, reverse stock splits, and corporate mergers or acquisitions, may entitle shareholders to receive less than a whole number of shares. An FSA may choose any reasonable method permitted by its charter and bylaws to address fractional shares. If the transaction giving rise to fractional shares requires prior notice to or approval by the OCC, the OCC generally would not object to any of the following methods to address fractional shares:

- An FSA may issue scripts or warrants representing the fractional amounts.



- If there is an established and active market in the FSA’s stock, the FSA may allow the shareholder to sell the fractional share in the market or purchase an additional fraction to equal a full share.
- An FSA may give shareholders cash payments in lieu of the fractional amounts, based on market value or a reliable and disinterested determination if no market exists.
- An FSA may sell full shares representing all fractional shares at public auction, or in a sealed bid auction involving at least three licensed stockbrokers and distribute the proceeds pro rata to shareholders entitled to fractional shares.

## Requirements

If the method chosen would result in the FSA selling additional shares, the FSA must follow the procedures in the “Issuance of Common Stock” section of this booklet under “Stock FSA Capital Transactions.” If the method chosen would result in the FSA reducing permanent capital by issuing cash in lieu of fractional shares, the FSA must follow the procedures in the “Capital Distributions” section of this booklet. If the method chosen does not affect the permanent capital accounts, the OCC does not require any notices or filings.

## Reference Laws and Regulations

- 12 CFR 5.22 and 5.55

# Mutual FSA Capital Transactions

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## Issuance of Mutual Capital Certificates

### Background

Mutual FSAs are permitted to issue mutual capital certificates. These certificates are similar to preferred stock instruments issued by stock FSAs but are subject to more requirements and restrictions as provided in 12 USC 1464(b)(4) and 12 CFR 163.74.

### Prior Approval Requirement

All issuances of mutual capital certificates must receive prior approval by the OCC. An FSA must submit an application to the appropriate licensing office by using the [“Increase in Permanent Capital Application”](#) form. The OCC generally approves the application if it meets the requirements of 12 CFR 163.74 and does not raise supervisory concerns. Following OCC approval, the FSA must issue and sell the mutual capital certificates within one year. The OCC may extend the offering period if a written request showing good cause for the extension is filed at least 30 days before expiration.

### Reporting Requirement

Within 30 days after the completion of the sale of mutual capital certificates, the FSA must inform the OCC of the total dollar amount of certificates sold and the net proceeds received by the FSA. Within 90 days after the completion of the sale, the FSA must inform the OCC of the number of certificate purchasers.

### Additional Requirements and Considerations

The FSA’s charter must allow for the issuance of mutual capital certificates. If it does not, the charter must be amended before submitting an application to issue the certificates by following the procedures in the “Articles of Association, Charter, and Bylaw Amendments” booklet of the *Comptroller’s Licensing Manual*.

The FSA should consider whether the mutual capital certificates would be required to be registered pursuant to the OCC’s Securities Offering Disclosure Rules at 12 CFR 16 or whether an exemption from registration may be available. To be included in regulatory capital, the mutual capital certificates must also meet the applicable criteria under 12 CFR 3.20 for additional tier 1 or tier 2 capital instruments.

### Reference Laws and Regulations

- 12 USC 1464(b)(4)
- 12 CFR 3.20 and 163.74

# Stock and Mutual FSAs

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## Capital Distributions

### Background

An FSA is permitted to reduce its capital accounts through distributions to owners or members. A capital distribution for an FSA, as defined in 12 CFR 5.55(d)(2), encompasses a broad range of transactions:

- A distribution of cash (such as a dividend) or other property to owners or members of an FSA made on account of their ownership, except for
  - any dividend consisting only of the shares of the FSA or rights to purchase shares.
  - in the case of a mutual FSA, any payment the FSA is required to make under the terms of a deposit instrument.
- An FSA's payment to repurchase, redeem, retire, or otherwise acquire any of its shares or other ownership interests.
- An FSA's payment to repurchase, redeem, retire, or otherwise acquire debt instruments included in total capital under 12 CFR 3.
- Extending credit to an affiliate to purchase the FSA's shares or interests.
- Making payment to shareholders or affiliates in connection with a corporate restructuring.
- Any other distribution from the capital accounts if the FSA would not be well capitalized, as set forth in 12 CFR 6 following the distribution (e.g., preferred stock dividend).
- Any other transaction the OCC determines by order or regulation to be a distribution of capital.

### Appropriate Filing Office

An FSA must submit any required filings to the appropriate supervisory office if the capital distribution involves solely a cash dividend from retained earnings or a cash dividend from retained earnings and a concurrent cash distribution from other capital accounts.

Otherwise, an FSA must file with the appropriate licensing office. Filings that must be submitted to the appropriate licensing office include applications for capital distributions involving a noncash payment, distribution of property, payment in kind, or other capital distribution (without a concurrent cash dividend from retained earnings).

### Application Requirement

An FSA must file an application with the OCC before making a capital distribution if any of the following conditions apply:

- The FSA would not be well capitalized as defined in 12 CFR 6 or otherwise remain an eligible savings association after the distribution.

- The total amount of the FSA’s capital distributions (including the proposed distribution) for the calendar year exceeds current period net income and retained earnings for the previous two years.<sup>4</sup>
- The distribution would reduce or retire any outstanding common or preferred stock or other instruments included in capital.
- The distribution is paid in property other than cash.
- The FSA is controlled by a mutual holding company.
- The FSA is controlled by a company that is not a savings and loan holding company.
- The distribution would violate a prohibition in any applicable statute, regulation, or agreement with the OCC or violate a condition imposed on the FSA by the OCC.

An application for prior approval for a capital distribution by an eligible savings association is subject to expedited review, unless the distribution would

- exceed the sum of current period net income and retained earnings for the previous two years;
- cause the FSA to be less than adequately capitalized as defined in 12 CFR 6; or
- violate a prohibition contained in any applicable statute, regulation, or agreement with the OCC or violate a condition previously imposed on the FSA by the OCC.

The FSA must submit the [“Reduction of Permanent Capital and Capital Distribution Application”](#) form to the appropriate licensing office at least 30 days before the proposed distribution. An application subject to expedited review is automatically approved after 30 days, unless additional information is required to supplement the application, the OCC removes the application from expedited review, the expedited review process is extended, or the application is denied. The OCC reviews the application under the applicable regulatory criteria, which are in the “Capital Decreases for FSAs” section of this booklet. The OCC issues a decision letter to the FSA unless the transaction is automatically approved. The capital distribution must occur within one year of the OCC’s approval date unless the OCC specifies a longer period.

## Informational Notice Requirement

Section 10(f) of the Home Owners’ Loan Act (HOLA), 12 USC 1467a(f), requires FSAs that are subsidiaries of savings and loan holding companies to file a dividend notice with the Board of Governors of the Federal Reserve System (Federal Reserve Board).

A stock FSA that proposes paying a dividend to its holding company must file with the appropriate district licensing office an informational copy of the notice filed with the Federal Reserve Board, unless the FSA is required to file an application for the OCC’s prior approval.

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<sup>4</sup> If the capital distribution is from retained earnings, this limitation may be calculated in accordance with 12 CFR 5.64(c)(2) pursuant to 12 CFR 5.55(e)(1)(ii). Refer to the “Dividends—Cash” section of this booklet under “National Bank Capital Transactions”

## Additional Requirements and Considerations

An FSA should review 12 CFR 3.11, “Capital Conservation Buffer and Countercyclical Capital Buffer Amount,” to determine whether that regulation imposes any additional limits on discretionary distributions. An FSA with CET1 capital of at least 7 percent, tier 1 capital of at least 8.5 percent, and total capital of at least 10.5 percent would not have any dividend restrictions imposed by the capital conservation buffer.<sup>5</sup>

If an FSA is issuing a dividend to its holding company, the FSA should also review the separate requirements of the Federal Reserve Board under 12 USC 1467a(f) (stock FSAs) and 1467a(o)(11) (FSA subsidiaries of mutual holding companies).

If a capital distribution involves the distribution of property other than cash, the FSA should generally use the accounting valuation method (i.e., book value or fair value) required by GAAP.

An FSA required to submit an application may request approval for a schedule of distributions occurring over a specified period.

The FSA’s application for a distribution related to permanent capital also satisfies the requirement to seek OCC approval before redeeming a regulatory capital instrument under 12 CFR 3.20.

## Reference Laws and Regulations

- 12 CFR 3.11, 3.20, and 5.55

## Accounting Adjustments

### Background

From time to time, an FSA may be required to make accounting adjustments to its permanent capital or retained earnings accounts. These adjustments often stem from the application of new accounting standards or may be due to subsequent adjustments related to acquisition accounting. Accounting adjustments recorded in the current period net income or retained earnings will not trigger permanent capital or dividend filing requirements.

### Notification Requirement

If an FSA makes an accounting adjustment that increases or decreases total permanent capital by any amount, the FSA must follow the applicable procedures under the “Additional Capital

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<sup>5</sup> A qualifying community banking organization, as defined in 12 CFR 3.12, that elects to use the community bank leverage ratio framework generally would not be required to calculate with the risk-based capital requirements and, therefore, generally would not have any dividend restrictions imposed by the capital conservation buffer.

Contributions” or “Capital Distributions” sections of this booklet under “Stock FSA Capital Transactions.”

## Quasi-Reorganizations

### Background

A quasi-reorganization is an accounting procedure that allows an FSA to restate its capital accounts to remove a deficit in retained earnings, but without going through a legal reorganization. The procedure is based on the accounting concept that an entity that previously suffered losses but has significantly changed its business to correct its problems should be allowed to present its financial statements on a “fresh start” basis.

### Requirements

A quasi-reorganization is a very involved procedure; in addition to revising the capital accounts, under GAAP the FSA must also revalue and restate all asset and liability accounts. An FSA considering a quasi-reorganization should contact the appropriate supervisory office for a pre-filing meeting to discuss the transaction and plans for all the necessary accounting adjustments.

A quasi-reorganization almost always results in a decrease in permanent capital. Therefore, an FSA must follow the procedures in the “Capital Distributions” section of this booklet and should use the [“Quasi-Reorganization Application”](#) form.

### Additional Requirements and Considerations

Accounting guidance on quasi-reorganizations can be found in Topic 8B of the OCC’s [Bank Accounting Advisory Series](#).

### Reference Laws and Regulations

- 12 CFR 5.55

# Glossary

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**Additional tier 1 capital:** The sum of capital elements that meet the criteria in 12 CFR 3.20(c).

**Blank check preferred stock:** Preferred stock authorized under a provision of a bank's articles of association or charter that allows the board of directors to issue and establish specific terms for the stock without further shareholder approval.

**Capital accounts:** Most accounts included in the shareholders' equity section of a bank's balance sheet, such as common stock, preferred stock, retained earnings, and current period net income.

**Capital plan:** A plan describing the manner and schedule by which a bank will attain specified capital levels or ratios or a capital restoration plan filed with the OCC under 12 USC 1831o and 12 CFR 6.5.

**Capital stock:** Includes par value of common and preferred stock.

**Cash dividends:** Payments of cash to stockholders in proportion to the number of shares they own.

**Common equity tier 1 (CET1) capital:** The sum of capital instruments that meet the criteria in 12 CFR 3.20(b).

**Dividends other than cash (dividend-in-kind):** A distribution to stockholders paid in something other than cash.

**Eligible bank or eligible savings association:** A bank that, pursuant to 12 CFR 5.3,

- has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System.
- has an "outstanding" or "satisfactory" CRA rating. (This factor does not apply to an uninsured bank or branch, or a special purpose bank covered by 12 CFR 25.11(c)(3).)
- is well capitalized as defined in 12 CFR 6.4(b).
- 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 still may be treated as an "eligible bank" or "eligible savings association."

**Employee stock option plan:** A contract between a company and its employees giving the employees the right to buy a specific number of the company's shares at a fixed price within a certain period of time.

**Employee stock ownership plan (ESOP):** A retirement plan in which the company contributes its stock to the plan for the benefit of the company's employees.

**Expedited review:** A streamlined application process, pursuant to which a filing is approved within a specified period. The OCC may remove the application from expedited review or extend the expedited review process.

**Permanent capital:** The sum of capital stock and capital surplus.

**Stock dividends:** Distributions of additional shares to stockholders in proportion to the number of shares they own.

**Tier 1 capital:** The sum of CET1 capital and additional tier 1 capital, as defined in 12 CFR 3.20(b) and (c), respectively.

**Tier 2 capital:** The sum of capital elements that meet the criteria in 12 CFR 3.20(d).

**Total capital:** The sum of tier 1 capital and tier 2 capital.

**Treasury stock:** A bank's own stock purchased by the bank that is not retired or canceled. It is held by the bank and is available for reissue. Treasury stock is held as a separate balance sheet item and is deducted from total capital. Although the stock is held in treasury stock it does not have voting rights and does not receive dividends.



# References

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In this section, references apply to national banks (NB) and FSAs unless noted otherwise that the reference law, regulation, or issuance applies to NBs or FSAs.

## **Articles of Association**

Law 12 USC 21a (NB)

## **Assessment—Capital Stock Deficiency**

Law 12 USC 55 (NB)

## **Blank Check Preferred Stock**

Interpretive Letter 921 (NB)

Interpretive Letter 1162 (NB)

## **Capital Category**

Law 12 USC 1831o

Regulation 12 CFR 6

## **Capital Requirements and Minimum Ratios**

Regulation 12 CFR 3

## **Capital Stock—Paid In**

Law 12 USC 53 (NB)

## **Capital Stock—Par Value**

Law 12 USC 52 (NB)

## **Common Equity Tier 1 Capital**

Regulation 12 CFR 3.20(b)

## **Decrease in Capital**

Law 12 USC 59 (NB)

## **Dividends—Capital Limit**

Law 12 USC 56 (NB)

Regulation 12 CFR 5.55 (FSA) and 5.63 (NB)

## **Dividends—Earnings Limit**

Law 12 USC 60 (NB)

Regulation 12 CFR 5.64 (NB)

[OCC Bulletin 1994-41](#), “12 USC 60—Prior Approval of Dividends: New Policy” (NB)

## **Dividends-in-Kind**

Regulation 12 CFR 5.55 (FSA) and 5.66 (NB)

**Dividends—Undercapitalized Banks**

Law 12 USC 1831o  
Regulation 12 CFR 5.55 (FSA) and 5.65 (NB)

**Fractional Shares**

Regulation 12 CFR 5.67

**Increase in Capital**

Law 12 USC 57 (NB)  
Regulation 12 CFR 5.45 (FSA) and 5.46 (NB)

**Mutual Capital Certificate**

Law 12 USC 1464(b)(4) (FSA)  
Regulation 12 CFR 163.74 (FSA)

**Par Value**

Law 12 USC 52 (NB)

**Preferred Stock**

Law 12 USC 51a and 51b (NB)  
Regulation 12 CFR 5.45 (FSA) and 5.46 (NB)

**Prompt Corrective Action**

Law 12 USC 1831o  
Regulation 12 CFR 6

**Quasi-Reorganization**

[Bank Accounting Advisory Series](#) Topic 8B

**Reduction in Capital**

Law 12 USC 59 (NB)  
Regulation 12 CFR 5.46 (NB) and 5.55(FSA)

**Reverse Stock Split**

Regulation 12 CFR 7.2023 (NB)

**Securities Offering Disclosures Rules**

Regulation 12 CFR 16

**Stock Dividend**

Law 12 USC 57 (NB)  
Regulation 12 CFR 5.55 (FSA) and 5.66, 5.67 (NB)

**Tier 1 Capital**  
Regulation

12 CFR 3.20(b) and 3.20(c)

**Tier 2 Capital**  
Regulation

12 CFR 3.20(d)

**Total Capital**  
Regulation

12 CFR 3.2

**Treasury Stock**  
Regulation

12 CFR 7.2025 (NB)

## Table of Updates Since Publication

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Date of Last Publication: November 2017	
Reason	Affected pages
Regulatory and policy clarifications and corrections	Throughout booklet