

## Appendix A: Key Elements of the Procedures Rule

### More opportunities for expedited review

Under revised Part 5, national banks have more opportunities for expedited review of applications, particularly eligible banks and other qualifying banks. Some expedited review procedures in Part 5, however, do not require qualifying banks to meet the standards that apply to eligible banks, including for non-controlling investments.

**Eligible banks.** Expedited review can significantly reduce review periods to 10–45 days. A national bank must meet all of the following criteria to be an eligible bank:

Rating/ condition	Minimum standards to be an eligible bank
Capital	Well capitalized (as defined in the rule)
CAMELS composite	1 or 2  Note: this prong is distinct from being “well managed,” discussed below in this section
Consumer compliance <sup>10</sup>	1 or 2
CRA	Satisfactory
Enforcement	No cease and desist order, consent order formal written agreement, or Prompt Corrective Action

In addition, the rule includes new opportunities for expedited review of applications (i.e., when an opportunity to provide mere notice is not available). Key, new opportunities include:

Application for	Eligible banks only? <sup>11</sup>	Well managed banks only?	Timing <sup>12</sup>
Federal savings association conversion to national bank (or vice versa)	Y	N	45 days
Fiduciary powers	Y	N	30 days
Business combinations (streamlined)	Y	N	15 days

<sup>10</sup> Under the Uniform Interagency Consumer Compliance Rating System.

<sup>11</sup> Other conditions may apply.

<sup>12</sup> Unless extended under revised 12 CFR § 5.13(a)(2).

Changes in permanent capital	Y	N	15 days
Non-controlling investments	N	N	10 days

**Well managed banks.** In addition, the OCC has standardized the definition of “well managed” in a new definition that applies to all of Part 5. Under the procedures rule, a bank must have two key ratings to be well managed:

Minimum ratings	National banks	Federal branches of non-US banks
Composite rating	1 or 2 under CAMELS	1 or 2 under ROCA
Management-specific rating	1 or 2 under CAMELS for management	1 or 2 under ROCA for risk management

This approach aligns with the well-managed standard in the Federal Reserve’s Regulation Y, which also includes both composite and management ratings and applies to expedited processing or notices and financial holding company activities, which are generally analogous to the activities permissible for a financial subsidiary.

Consequently, under revised Part 5, a bank that is well capitalized and well managed may establish or acquire an operating subsidiary (or perform a new activity in an existing operating subsidiary), subject to other conditions (discussed below), by merely providing notice to the OCC either prior to or within 10 days of beginning the activity. In certain cases, no notice is needed. Similarly, to take advantage of the notice procedures for non-controlling investments (discussed below), a bank must certify that it is well managed, among other requirements.

The CAMELS management rating has been a source of industry criticism. Nevertheless, the rating will continue to be an important factor for banks that seek to take advantage of these streamlined and expedited procedures.

## More flexibility for certain non-controlling investments

Banks seeking to make non-controlling investments in entities have more options under revised Part 5. Each of the three procedures for a bank to make non-controlling investments entails different timing considerations, requires a bank to be both well capitalized and well managed, and is available based on the ability of the bank or non-controlled entity to make certain representations and certifications, among other requirements:

	Expedited review	Notice	No filing
Timing	Approval within 10 days	Must file within 10 days after making investment	None
Activities restrictions (entity)	Permissible bank activities (described in revised section 5.36(e))	Permissible operating subsidiary activities (described in revised	Limited to activities previously reported by the bank in connection with

	Expedited review	Notice	No filing
		section 5.34(f)(5) – <b>See Appendix B)</b>  or  Activities that are substantively the same as those contained in published OCC precedent approving a non-controlling investment by a bank or its operating subsidiary	making a non-controlling investment  Activities continue to be permissible  Bank’s non-controlling investment is made in accordance with any OCC conditions in approvals for <b>any</b> prior non-controlling investment in an entity conducting these same activities
Well capitalized	Y	Y	Y
Well managed	Y	Y	Y
Quantitative limitations on the non-controlling investment	< 1% of the bank’s capital and surplus; and  < 50% of the entity is owned or controlled by banks subject to federal banking agency examination <sup>13</sup>	N	N
Investment is not merely passive and unrelated to bank’s business	Y	Y	Y
Certify that the bank’s loss exposure is limited	Y	Y	Y (bank must be able to certify)
Ability to limit entity to permissible activities restrictions (or withdraw bank investment)	Y	Y	Y
Entity must agree to OCC supervision and examination	N	Y	Y

<sup>13</sup> Or credit unions insured by the NCUA.

The OCC may, however, notify the bank that its application has been removed from expedited review, or that the review process has been extended.

## Operating subsidiaries—simplified procedures

Banks that seek to engage in activities in operating subsidiaries that are substantively the same as activities previously approved by the OCC can benefit from notice and expedited review processes.

A new procedure allows for notice for an activity that is substantively the same as a previously approved activity, provided the bank meets certain eligibility criteria:

Criteria	Bank must be, have, or do the following:
Capital ratings	Well capitalized
Management ratings	Well managed
Voting interests	> 50% of the voting (or equivalent) interests in the subsidiary
Management and operations control	Voting interests sufficient to select the number of directors needed to control the subsidiary's board and to select and terminate senior management
Accounting	Consolidate financial statements with those of the subsidiary under US GAAP

The operating-subsidary activities for which notice is available are included in the **Appendix B** to this alert and generally span specified services to the bank, and certain lending, investment and securities, tax and transactional advice, insurance and other activities.

The OCC, however, did not adopt a proposed alternative procedure whereby no filing requirements for operating subsidiaries would be required, whether for acquiring or establishing an operating subsidiary, or commencing a new activity in an existing operating subsidiary.<sup>14</sup> The OCC noted that it may revisit this option after it gains experience with the new notice procedures.

<sup>14</sup> The bank would have to be well capitalized and well managed and meet the ownership and structural requirements for the notice procedures. The reasoning for the proposed alternative was that operating subsidiaries may only engage in activities permissible for a bank, and banks do not generally need to provide any filing to the OCC to conduct permissible activities, so streamlining seemed reasonable.