

Re: Conversion of National Bank to State-Chartered Commercial Bank

This correspondence provides the procedure for conversion from a national bank to a state chartered bank. Tennessee Code Annotated Section 45-2-1303(a)(1)(B) provides that a national bank may convert into a state bank in a manner prescribed by the laws of the United States. In addition, TCA Section 45-2-1307 provides that a national bank seeking to convert to a state bank may be granted a state bank charter if the Commissioner finds: 1) that each office of the national bank is legally in operation; 2) that the resulting state bank will have an adequate capital structure, including surplus, in relation to its deposit liabilities and its other activities, not less than the capital structure required for a new state bank, and; 3) that the officers and directors of the resulting bank are persons of sound judgment and discretion.

TCA Section 45-2-1307(b) provides that a national bank may apply for a charter by filing:

- 1) A certificate signed by its president and cashier and by a majority of the entire board of directors, setting forth the corporate action taken in compliance with the provisions of the laws of the United States governing the conversion of a national to a state bank; and
- 2) The plan of conversion and the proposed articles of incorporation approved by the stockholders, for the operation of the bank as a state bank.

You may want to check with the OCC to determine what information they will require for you to convert to a state-chartered bank. You will also need to check with the FDIC to determine what information they will require to continue your insurance as a state-chartered bank. For your convenience, I have enclosed a copy of the OCC's statutes and rules that address the conversion process. (See, 12 USC Section 214a and 12 CFR 5.24).

#### PLAN OF CONVERSION

The plan of conversion required by TCA Section 45-2-1307 shall contain the items required by TCA Section 45-11-105(a), as follows:

- 1) The type of financial institution which will result from the conversion including the location of all branch facilities of the institution.
- 2) The proposed name of the resulting institution.
- 3) The proposed effective date of the conversion.
- 4) A copy of the current charter of the national bank and the proposed charter of the resulting institution. In addition, please provide the current charter.

- 5) A copy of the current by-laws of the national bank and the proposed by-laws of the resulting institution. In addition, please provide the current by-laws.
- 6) The method for converting the current capital structure of the institution to the structure indicated for the resulting institution by the proposed charter.
- 7) The name of each director and executive officer, the office held and such director's and officer's experience.
- 8) The method and schedule for terminating any activities and disposing of any assets which do not conform to the requirements of the resulting institution and for meeting any requirements applicable to the resulting institution which the converting institution does not presently satisfy.
- 9) Any additional activities which the converting institution intends to conduct upon the effective date of the conversion, which it does not presently conduct.
- 10) A copy of the application for deposit insurance or proof of deposit insurance or insurance of accounts, if already insured.
- 11) Provisions for appointment of successors to any fiduciary positions held by the converting institution if the resulting institution will not exercise trust powers.
- 12) The competitive impact of the conversion, if any, including any effect on the availability of particular financial services in the community served by the institution.
- 13) A statement that the conversion is subject to approval by the Commissioner and shareholders of the financial institution.
- 14) To what extent the converting institution currently engages in any non-traditional activities such as: mortgage banking, insurance product sales, annuity sales, brokerage services or finance subsidiary. Relative to subsidiaries of the converting bank, please include the name, complete address and the purpose of all subsidiaries.
- 15) Each director, executive officer and anyone owning 10% or more of the stock of the institution must complete pages i-7 of the form at this link: <http://www.fdic.gov/formsdocuments/Bio-FinReport.pdf> In addition, the Commissioner reserves the right to request the financial portion of the form at any time during the application process.

#### APPLICATION FILING

Please submit the plan of conversion and the certificate required by TCA Section 45-2-1307(b)(1) to the Commissioner for approval. Any of the above information that is not applicable should be so noted in the plan of conversion.

The application for conversion shall be accompanied by a non-refundable fee of \$3,000. Please make the check payable to the Tennessee Department of Financial Institutions.

Stockholder approval for the conversion as well as notice of the meeting of the stockholders shall be in compliance with the provisions of the laws of the United States governing the conversion of a national bank to a state-chartered bank. The conversion must be approved by a majority vote of the outstanding voting stock of each class at a meeting called to consider such action, which vote shall constitute the adoption of the charter and bylaws of the resulting financial institution.

Prior to mailing, notice of the meeting of the shareholders or members and the proxy statement or mail ballot form shall be submitted to the commissioner for approval. The Commissioner may require changes in the disclosures and the proxy or mail ballot provided to the stockholders or members to assure full and adequate disclosure prior to those documents being mailed to stockholders or members. Notice of the meeting and other disclosures shall be mailed to each stockholder or member thirty (30) days prior to the date of the meeting called to consider the conversion.

The Commissioner may approve the plan of conversion if it meets the requirements of T.C.A. Section 45-2-1307(a) and (b).

Directors, officers and any shareholder owning 10% or more of the stock of the institution must complete the Interagency Biographical Section, including Page 15, of the Interagency Biographical and Financial Report, the appropriate pages are attached for your convenience. The Department reserves the right to request the financial portion of the report during the application process if deemed necessary to process the application.

PUBLICATION NOTICE REQUIREMENTS. Within three (3) days of the filing date (date mailed or delivered to the Department) of the application for a charter conversion, the applicant must publish one (1) time in a newspaper of general circulation in the community where the home office of the applicant is located, and each community where any other office or branch is located:

“Notice is hereby given that, pursuant to T.C.A. Section 45-2-1307, \_\_\_\_\_ (“Applicant”), with its main office located in \_\_\_\_\_, Tennessee, has filed an application with the Commissioner of Financial Institutions for the State of Tennessee for permission to convert its charter from that of a

\_\_\_\_\_ to a \_\_\_\_\_ (“commercial bank”, “savings bank”). Any person wishing to comment on or protest this application or any person having information which may have a bearing on the fitness of the Applicant, or any of its directors or officers, may file comments with the Commissioner of Financial Institutions at the Tennessee Tower, 26<sup>th</sup> Floor, 312 Rosa L. Parks Avenue, Nashville, Tennessee 37243, or telephone the Department of Financial Institutions at 615/741-5018. Written or telephonic notice must be made to the Commissioner within fifteen (15) days of this publication.”

#### FILING OF CHARTER AND CERTIFICATE OF CONVERSION

Upon the Commissioner’s approval of the conversion, the Commissioner shall file the proposed charter of the resulting financial institution with the Secretary of State and issue the resulting financial institution a Certificate of Conversion. The Certificate of Conversion shall be conclusive evidence of the conversion and correctness of all proceedings in courts and places, and will be recorded in the same manner as is provided for recording of a charter of such institution.

#### CONCLUSION

Again, please note that it is necessary to contact the appropriate federal regulatory agencies in order to obtain requirements of those agencies in regard to the proposed conversion.

I hope that you find this information to be helpful in guiding you through the conversion process. Please feel free to contact, Debra Grissom, Chief Administrator for Applications, at 615/741-5018 or William Cook, Program Administrator for Applications, at 615/253-1085 if you have questions concerning the application process or if we may offer further assistance. We look forward to working with you and the bank during the conversion process.

Attachments: 12 USC 214a; 12 CFR 5.24;

Link to access Tennessee statutory provisions:

<https://advance.lexis.com/container?config=014CJAA5ZGVhZjA3NS02MmMzLTRIZWQtOGJjNC00YzQ1MmZlNzc2YWYKAFBvZENhdGFsb2e9zYpNUjTRaIWVfyrur9ud&crld=8097cfaa-3ace-4b74-8ecf-1021cc693650&prid=22bb260e-8765-49b5-a349-6f6e8246fbel>

amending of sections 264 and 321 of this title], or the application thereof to any person or circumstance, is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby."

**§ 214a. Procedure for conversion, merger, or consolidation; vote of stockholders**

A national banking association may, by vote of the holders of at least two-thirds of each class of its capital stock, convert into, or merge or consolidate with, a State bank in the same State in which the national banking association is located, under a State charter, in the following manner:

**(a) Approval of board of directors; publication of notice of stockholders' meeting; waiver of publication; notice by registered or certified mail**

The plan of conversion, merger, or consolidation must be approved by a majority of the entire board of directors of the national banking association. The bank shall publish notice of the time, place, and object of the shareholders' meeting to act upon the plan, in some newspaper with general circulation in the place where the principal office of the national banking association is located, at least once a week for four consecutive weeks: *Provided*, That newspaper publication may be dispensed with entirely if waived by all the shareholders and in the case of a merger or consolidation one publication at least ten days before the meeting shall be sufficient if publication for four weeks is waived by holders of at least two-thirds of each class of capital stock and prior written consent of the Comptroller of the Currency is obtained. The national banking association shall send such notice to each shareholder of record by registered mail or by certified mail at least ten days prior to the meeting, which notice may be waived specifically by any shareholder.

**(b) Rights of dissenting stockholders**

A shareholder of a national banking association who votes against the conversion, merger, or consolidation, or who has given notice in writing to the bank at or prior to such meeting that he dissents from the plan, shall be entitled to receive in cash the value of the shares held by him, if and when the conversion, merger, or consolidation is consummated, upon written request made to the resulting State bank at any time before thirty days after the date of consummation of such conversion, merger, or consolidation, accompanied by the surrender of his stock certificates. The value of such shares shall be determined as of the date on which the shareholders' meeting was held authorizing the conversion, merger, or consolidation, by a committee of three persons, one to be selected by majority vote of the dissenting shareholders entitled to receive the value of their shares, one by the directors of the resulting State bank, and the third by the two so chosen. The valuation agreed upon by any two of three appraisers thus chosen shall govern; but, if the value so fixed shall not be satisfactory to any dissenting shareholder who has requested payment as provided herein, such shareholder may within five days after being notified of the appraised value

of his shares appeal to the Comptroller of the Currency, who shall cause a reappraisal to be made, which shall be final and binding as to the value of the shares of the appellant. If, within ninety days from the date of consummation of the conversion, merger, or consolidation, for any reason one or more of the appraisers is not selected as herein provided, or the appraisers fail to determine the value of such shares, the Comptroller shall upon written request of any interested party, cause an appraisal to be made, which shall be final and binding on all parties. The expenses of the Comptroller in making the reappraisal, or the appraisal as the case may be, shall be paid by the resulting State bank. The plan of conversion, merger, or consolidation shall provide the manner of disposing of the shares of the resulting State bank not taken by the dissenting shareholders of the national banking association.

(Aug. 17, 1950, ch. 729, § 2, 64 Stat. 455; Pub. L. 86-507, § 1(10), June 11, 1960, 74 Stat. 200; Pub. L. 96-221, title VII, § 706, Mar. 31, 1980, 94 Stat. 188.)

AMENDMENTS

1980—Subsec. (b). Pub. L. 96-221 substituted "majority" for "unanimous".

1960—Subsec. (a). Pub. L. 86-507 inserted "or by certified mail" after "registered mail".

**§ 214b. Continuation of business and corporate entity**

The franchise of a national banking association as a national banking association shall automatically terminate when its conversion into or its merger or consolidation with a State bank under a State charter is consummated and the resulting State bank shall be considered the same business and corporate entity as the national banking association, although as to rights, powers, and duties the resulting bank is a State bank. Any reference to such national banking association in any contract, will, or document shall be considered a reference to the State bank if not inconsistent with the provisions of the contract, will, or document or applicable law.

(Aug. 17, 1950, ch. 729, § 3, 64 Stat. 456.)

**§ 214c. Conversions in contravention of State law**

No conversion of a national banking association into a State bank or its merger or consolidation with a State bank shall take place under this subchapter and section 321 of this title in contravention of the law of the State in which the national banking association is located; and no such conversion, merger, or consolidation shall take place under said sections unless under the law of the State in which such national banking association is located State banks may without approval by any State authority convert into and merge or consolidate with national banking associations under limitations or conditions no more restrictive than those contained in section 214a of this title with respect to the conversion of a national bank into, or merger or consolidation of a national bank with, a State bank under State charter.

(Aug. 17, 1950, ch. 729, § 4, 64 Stat. 456; July 12, 1952, ch. 696, 66 Stat. 590; Sept. 3, 1954, ch. 1263, § 25, 68 Stat. 1235.)

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to a Federal savings association charter is deemed approved by the OCC as of the 60th day after the filing is received by the OCC, unless the OCC notifies the applicant prior to that date that the filing is not eligible for expedited review under § 5.13(a)(2).

(e) *Conversion of a mutual depository institution to a Federal mutual savings association—supplemental rules.* In addition to the rules and procedures set forth in paragraph (d) of this section, an applicant converting from a mutual depository institution to a Federal mutual savings association shall comply with the following: After a Federal charter is issued to a converting institution, the association's members shall after due notice, or upon a valid adjournment of a previous legal meeting, hold a meeting to elect directors and take care of all other actions necessary to fully effectuate the conversion and operate the association in accordance with law and these rules and regulations. Immediately thereafter, the board of directors shall meet, elect officers, and transact any other appropriate business.

(f) *Conversion of a national bank to a Federal stock savings association—supplemental rules—(1) Additional procedures.* A national bank may convert to a Federal stock savings association. In addition to the rules and procedures set forth in paragraph (d) of this section, a national bank that desires to convert to a Federal stock savings association shall follow the requirements and procedures set forth in 12 U.S.C. 214a as if it were converting to a state bank and include in its application information demonstrating compliance with the applicable requirements of 12 U.S.C. 214a.

(2) *Termination and change of status.* The appropriate OCC licensing office provides instructions to the converting national bank for terminating its status as a national bank and beginning its status as a Federal savings association.

(g) *Continuation of business and entity.* The existence of the converting institution shall continue in the resulting Federal savings association. The resulting Federal savings association shall be considered the same business and entity as the converting institution, although as to rights, powers, and

duties, the resulting Federal savings association is a Federal savings association. Any and all of the assets and other property (whether real, personal, mixed, tangible or intangible, including choses in action, rights, and credits) of the converting institution become assets and property of the resulting Federal savings association when the conversion occurs. Similarly, any and all of the obligations and debts of and claims against the converting institution become obligations and debts of and claims against the Federal savings association when the conversion occurs.

[80 FR 28430, May 18, 2015]

### § 5.24 Conversion to become a national bank.

(a) *Authority.* 12 U.S.C. 35, 93a, 214a, 214b, 214c, and 2903.

(b) *Licensing requirements.* A state bank, a stock state savings association, or a Federal stock savings association shall submit an application and obtain prior OCC approval to convert to a national bank charter. A Federal mutual savings association that plans to convert to a national bank must first convert to a Federal stock savings association under 12 CFR part 192.

(c) *Scope.* (1) This section describes procedures and standards governing OCC review and approval of an application by a state bank, a stock state savings association, or a Federal stock savings association to convert to a national bank charter.

(2) As used in this section, *state bank* includes a state bank as defined in 12 U.S.C. 214(a).

(d) *Policy.* Consistent with the OCC's chartering policy, it is OCC policy to allow conversion to a national bank charter by another financial institution that can operate safely and soundly as a national bank in compliance with applicable laws, regulations, and policies. A converting financial institution also must obtain all necessary regulatory and shareholder approvals. The OCC may deny an application by any state bank, stock state savings association, and any Federal stock savings association to convert to a national bank charter on the basis of the standards for denial set forth in § 5.13(b), or when conversion would permit the applicant

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to escape supervisory action by its current regulators.

(e) *Procedures*—(1) *Prefiling communications*. The applicant should consult with the appropriate OCC licensing office prior to filing if it anticipates that its application will raise unusual or complex issues. If a prefiling meeting is appropriate, it will normally be held at the OCC licensing office where the application will be filed, but may be held at another location at the request of the applicant.

(2) *Application*. A state bank, a stock state savings association, or a Federal stock savings association shall submit its application to convert to a national bank to the appropriate OCC licensing office and send a copy to its current appropriate Federal banking agency. The application must:

(i) Be signed by the president or other duly authorized officer;

(ii) Identify each branch that the resulting bank expects to operate after conversion;

(iii) Include the institution's most recent audited financial statements (if any);

(iv) Include the latest report of condition and report of income (the most recent daily statement of condition will suffice if the institution does not file these reports);

(v) Unless otherwise advised by the OCC in a prefiling communication, include an opinion of counsel that, in the case of a state bank, the conversion is not in contravention of applicable state law, or in the case of a Federal stock savings association, the conversion is not in contravention of applicable Federal law;

(vi) State whether the institution wishes to exercise fiduciary powers after the conversion;

(vii) Identify all subsidiaries, bank service company investments, and other equity investments that will be retained following the conversion, and provide the information and analysis of the subsidiaries' activities, the bank service company investments, and the other equity investments that would be required if the converting bank or savings association were a national bank establishing each subsidiary or making each bank service company investment or other equity investment pursuant to

§ 5.34, § 5.35, § 5.36, § 5.39, 12 CFR part 1, or other applicable law and regulation;

(viii) Identify any nonconforming assets (including nonconforming subsidiaries) and nonconforming activities that the institution engages in and describe the plans to retain or divest those assets and activities;

(ix) Include a business plan if the converting institution has been operating for fewer than three years, plans to make significant changes to its business after the conversion, or at the request of the OCC; and

(x) List all outstanding conditions or other requirements imposed by the institution's current appropriate Federal banking agency and, if applicable, current state bank supervisor or state attorney-general in any cease and desist order, written agreement, other formal enforcement order, memorandum of understanding, approval of any application, notice or request, commitment letter, board resolution, or in any other manner, including the converting institution's analysis whether the conversion is prohibited under 12 U.S.C. 35, and state the institution's plans regarding adhering to such conditions or requirements after conversion.

(3) The OCC may permit a national bank to retain nonconforming assets of a state bank or stock state savings association, subject to conditions and an OCC determination of the carrying value of the retained assets, pursuant to 12 U.S.C. 35. The OCC may permit a national bank to continue nonconforming activities of a state bank or stock state savings association, or to retain the nonconforming assets or nonconforming activities of a Federal stock savings association, for a reasonable period of time following a conversion, subject to conditions imposed by the OCC.

(4) Approval for an institution to convert to a national bank expires if the conversion has not occurred within six months of the OCC's approval of the application, unless the OCC grants an extension of time.

(5) When the OCC determines that the applicant has satisfied all statutory and regulatory requirements, including those set forth in 12 U.S.C. 35, and any other conditions, the OCC

issues a charter certificate. The certificate provides that the institution is authorized to begin conducting business as a national bank as of a specified date.

(f) *Conversion of a Federal stock savings association to a national bank—supplemental rules*—(1) *Additional information*. A Federal stock savings association may convert to a national bank. In addition to the rules and procedures set forth in paragraph (e) of this section, a Federal stock savings association that desires to convert to a national bank shall include in its application information demonstrating compliance with applicable laws regarding the permissibility, requirements, and procedures for conversions, including any applicable stockholder or account holder approval requirements.

(2) *Termination and change of status*. The appropriate OCC licensing office provides instructions to the converting Federal stock savings association for terminating its status as a Federal stock savings association and beginning its status as a national bank.

(g) *Exceptions to rules of general applicability*. Sections 5.8, 5.10, and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that any or all of §§ 5.8, 5.10, and 5.11 apply.

(h) *Expedited review*. An application by an eligible savings association to convert to a national bank charter is deemed approved by the OCC as of the 60th day after the filing is received by the OCC, unless the OCC notifies the applicant prior to that date that the filing is not eligible for expedited review under § 5.13(a)(2).

(i) *Continuation of business and corporate entity*. The corporate existence of the converting institution shall continue in the resulting national bank. The resulting national bank shall be considered the same business and corporate entity as the converting institution, although as to rights, powers, and duties, the resulting national bank is a national bank. Any and all of the assets and other property (whether real, personal, mixed, tangible or intangible, including choses in action, rights, and credits) of the converting institution

become assets and property of the resulting national bank when the conversion occurs. Similarly, any and all of the obligations and debts of and claims against the converting institution become obligations and debts of and claims against the national bank when the conversion occurs.

[80 FR 28432, May 18, 2015]

**§ 5.25 Conversion from a national bank or Federal savings association to a state bank or state savings association.**

(a) *Authority*. 12 U.S.C. 93a, 214a, 214b, 214c, 214d, 1462a, 1463, 1464, and 5412(b)(2)(B).

(b) *Licensing requirement*. A national bank shall give notice to the OCC before converting to a state bank (including a state bank as defined in 12 U.S.C. 214(a)) or a state savings association. A Federal savings association shall give notice to the OCC before converting to a state savings association or a state bank. A Federal mutual savings association that plans to convert to a stock state bank must first convert to a Federal stock savings association under 12 CFR part 192.

(c) *Scope*. This section describes the procedures for a national bank seeking to convert to a state bank or a state savings association or for a Federal savings association seeking to convert to a state savings association or a state bank.

(d) *Procedures*—(1) *National banks*. A national bank may convert to a state bank (including a state bank as defined in 214(a)) or a state savings association in accordance with 12 U.S.C. 214a and 214c, without prior OCC approval, subject to compliance with 12 U.S.C. 214d. Termination of a national bank's status as a national bank occurs upon the bank's completion of the requirements of 12 U.S.C. 214a, and upon the OCC's receipt of the bank's national bank charter in connection with the consummation of the conversion.

(2) *Federal savings associations*. A Federal savings association may convert to a state savings association or to a state bank, without prior OCC approval, subject to compliance with 12 U.S.C. 1464(i)(6). Termination of a Federal savings association's status as a Federal savings association occurs