

# **Change in Bank Control**

## **Comptroller's Licensing Manual**

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# Change in Bank Control

# Table of Contents

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|   |    |
|---|----|
| Introduction.....   | 1  |
| Exemptions.....   | 1  |
| Filing Exemptions .....                                   | 1  |
| Prior Notice Exemptions .....                             | 2  |
| Rebuttal of Control .....                                 | 3  |
| Key Policies.....   | 3  |
| Decision Criteria.....                                    | 3  |
| Background Investigations .....                           | 4  |
| Situations that May Result in Disapproval .....           | 4  |
| Agreements .....  | 5  |
| Parallel-owned Banking Organizations .....                | 5  |
| Notice Process.....                                       | 6  |
| General.....  | 6  |
| Notice Contents.....                                      | 6  |
| Publication and Comment Period .....                      | 7  |
| Changes to Business Strategy or Corporate Structure ..... | 8  |
| Time Frame .....  | 8  |
| Additional Information Request .....                      | 9  |
| Appeals .....   | 9  |
| Consummation .....  | 10 |
| Specific Requirements .....                               | 10 |
| Director Qualifications .....                             | 10 |
| Hart-Scott-Rodino Filing.....                             | 10 |
| Pushdown Accounting.....                                  | 11 |
| Reporting of Stock Loans .....                            | 11 |
| Tardy Notices .....                                       | 11 |
| Tender Offers .....                                       | 11 |
| Procedures .....  | 13 |
| Appendix.....   | 19 |
| Glossary .....  | 23 |
| References.....   | 25 |

# Change in Bank Control

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## Introduction

Parties who wish to acquire control of a national bank through the purchase, assignment, transfer, pledge, or other disposition of voting stock must notify the Comptroller of the Currency (OCC) and submit the information requested by the Interagency Notice of Change of Control form.

This booklet provides detailed guidance, instructions, and policies and procedures for persons submitting a change in bank control notice. The booklet includes information on time frames for filing notices for changes in bank control; the statutory factors the OCC considers in reaching a decision; the notice process, including the pre-filing process, filing the notice, determining when the notice is technically complete, and processing time frames; and other specific requirements. This booklet includes step-by-step procedures for an acquiring person and the OCC to follow and a glossary of terms. Throughout this booklet there are hyperlinks to forms, such as the [Interagency Notice of Change in Control](#) form and [Interagency Biographical and Financial Report](#), and other information that an acquiring person may find useful when filing a change in bank control notice.

Under the Change in Bank Control Act (CBCA) (12 USC 1817(j)) and the OCC's change in control regulation (12 CFR 5.50), any party seeking to acquire the power to vote 25 percent or more of a class of voting securities of a national bank must give notice to the OCC at least 60 days prior to the acquisition (see Time Frame discussion for timing aspects of the review process). In addition, persons seeking to acquire the power to vote 10 percent or more of a class of voting securities are presumed to have acquired control in certain circumstances. This includes situations when two or more persons simultaneously acquire equal percentages of 10 percent or more of a national bank's voting securities.

Persons intending to acquire control of a national bank without federal deposit insurance, including a national trust bank or national credit card bank established under the Competitive Equality Banking Act of 1987, also are subject to Part 5.50's notice requirements. This includes corporations, partnerships, certain trusts, associations, and similar organizations that are not required to obtain Federal Reserve approval under the Bank Holding Company Act (BHC Act) to acquire a national bank.

## Exemptions

### Filing Exemptions

The following transactions are exempt from the notice requirements of section 5.50:

- Acquisition of additional shares by a person who:

- Has, continuously since March 9, 1979, or since the bank commenced business, held the power to vote 25 percent or more of the voting securities of the bank, or
  - Is presumed to have controlled the bank continuously since March 9, 1979, if the transaction does not result in the person’s direct or indirect ownership or power to vote 25 percent or more of any class of voting securities of the bank, or in other cases, when the OCC determines that the person has controlled the bank continuously since March 9, 1979, or
  - Has previously filed a notice for the subject bank and has not been disapproved and the person has continuously maintained a control position with the bank.
- Transactions subject to approval under:
    - Section 3 of the BHC Act, 12 USC 1842.
    - Section 18 of the Federal Deposit Insurance Act, 12 USC 1828.
    - Section 10 of the Home Owners Loan Act, 12 USC 1467a.
  - Certain transactions described in the BHC Act under:
    - 12 USC 1841(a)(5).
    - 12 USC 1842 (a)(A) and (B).
  - Transactions involving a customary one-time proxy solicitation or receipt of pro rata stock dividends.
  - Transactions involving the acquisition of shares of a foreign bank that has a federally licensed branch in the United States.

## Prior Notice Exemptions

The following transactions are exempt from the prior notice requirements, but these transactions do require the filing of a notice within 90 days after they occur:

- Acquisition of voting shares through testate or intestate succession.
- Acquisition of voting shares as a bona fide gift.
- A stock redemption resulting in a person’s percentage of outstanding voting shares increasing.
- Acquisition of control as the result of actions by third parties that are not within the control of the acquirer. For example, the largest shareholder sells a 30 percent interest to a number of individuals not acting in concert. An unrelated shareholder, owning 22 percent of

the bank's shares, now is the largest shareholder and needs to submit a change in bank control notice or rebut the presumption of control (see Rebuttal of Control).

- Acquisition of voting shares in satisfaction of a debt previously contracted in good faith. A person or persons acting in concert, who purchases a previously defaulted loan secured by bank stock, cannot rely on the prior notice exemption to foreclose on the loan, seize, or purchase the underlying collateral, and acquire control of the bank.

## **Rebuttal of Control**

The following situations create a rebuttable presumption of control where any party proposes to acquire 10 percent or more, but less than 25 percent, of a national bank's voting securities:

- The securities to be acquired or voted are subject to the registration requirements of section 12 of the Securities Exchange Act of 1934 (15 USC 78l), or
- Immediately after the transaction no other party owns a greater proportion of that class of voting securities.

In either of these cases, the acquiring party must file a change in control notice or rebut the presumption of control. Any person seeking to rebut the presumption of control should contact the licensing manager in the appropriate district office for further information.

## **Key Policies**

### **Decision Criteria**

The OCC seeks to enhance and maintain public confidence in the banking system by preventing a change in control of a national bank that could have serious adverse effects on a bank's financial stability, among other statutory factors. To prevent such adverse effects, the OCC may disapprove a change in control if it finds that:

- The proposed acquisition of control would result in a monopoly or would further any monopoly or conspiracy to monopolize the business of banking anywhere in the United States.
- The effect of the proposed acquisition may substantially lessen competition or tend to create a monopoly or in any other manner restrain trade and the anticompetitive effects are not clearly outweighed by benefits to the convenience and needs of the community to be served.
- The financial condition of any acquiring party is such as might jeopardize the stability of the bank or prejudice the interests of its depositors.

- The competence, experience, or integrity of any of the acquiring party(ies) or of the proposed management indicate that it would not be in the interests of the depositors and the public for such persons to control the bank.
- The acquiring party does not provide the OCC with all required information.
- The proposal would result in an adverse effect on the FDIC funds.

## Background Investigations

The OCC conducts an investigation of the competence, experience, integrity, and financial ability of each party named in a change in bank control notice, unless waived (see the [“Background Investigations”](#) booklet).

If the OCC receives adverse information on a person providing notice to acquire control of a national bank, he or she is notified and allowed to complete, correct, or challenge the information prior to the OCC making a decision.

## Situations that May Result in Disapproval

The OCC may disapprove a change in bank control notice under certain circumstances, such as:

- The acquiring person mismanaged any financial institution(s) when the person had control, was a director or senior officer, or served in another decision-making capacity.
- The acquiring person received significant, improper benefit from insider transactions at any financial institution with which he or she was previously associated in a management or control position.
- The acquiring person was convicted of a felony.
- The acquiring person was subject to discipline, censure, or denial of the right to do business or practice a profession by a state or federal regulatory agency or a license granting body.
- The acquiring person intentionally or deliberately submitted insufficient, inaccurate, or misleading biographical and/or financial information or failed to provide information the OCC requested.
- The capital level of the target bank is below an acceptable level, unless capital will be restored promptly to an appropriate level.

- The proposed business plan or strategy raises significant concerns about the acquiring person's competence or experience, such as when the business plan:
  - Does not satisfactorily address concerns with respect to strategic planning, financial and risk management, or how the bank will provide a competitive return on investment;
  - Contains unrealistic growth or earnings projections; or
  - Constantly changes during the CBCA notice process.

## Agreements

In certain situations, the OCC will require that the acquiring person enter into a written agreement with the OCC, enforceable under 12 USC 1818, to address identified safety and soundness concerns before the OCC concludes that the notice is technically complete. An agreement may require the acquiring party to take, or refrain from taking, certain actions, such as initiating a material change in the business plan or operations of the target bank beyond those contained in the notice. An agreement also may require the acquiring party to cause the target bank to enter into another enforceable written agreement with the OCC. The agreement between the bank and the OCC would require the bank to take, or refrain from taking, certain actions, such as maintaining capital at or above a certain level.

## Parallel-owned Banking Organizations

Parallel-owned banking organizations are created when a party that owns a foreign bank acquires a national bank. Processing a change in control notice that creates a parallel-owned banking organization is generally more complex and time consuming than a normal change in bank control notice. This processing disparity reflects the OCC's need to fully understand how the overall strategy and management of the parallel-owned banking organization will affect the national bank, how the activities of the foreign bank are supervised, how home-country supervisors view the condition and operations of foreign affiliates, and how affiliates might affect the national bank. The preceding matters of supervisory interest are in addition to the concerns addressed in the OCC's standard analysis of the background and financial wherewithal of the individual(s) filing the change in control notice.

Concerns for the national bank that arise from a potential parallel-owned banking organization typically result in expanded application or notice requirements. The degree to which the OCC will expand requirements vary, reflecting the specific structure of the proposed transaction and resulting organization. Examples of possible additional information requirements may be found in the Appendix under Possible Additional Information Requests. The OCC may request commitments or representations to facilitate the supervision of parallel-owned banking organizations. See the [Appendix](#), Possible Representations or Commitments for specific examples.

Due to the complexity of proposals that would establish a parallel-owned banking organization and the case-by-case nature of their processing, potential applicants are strongly encouraged to meet with Licensing staff prior to submitting the notice.

## Notice Process

### General

Parties wishing to acquire control of a national bank must submit an original and five copies of responses to information requested by the [Interagency Notice of Change in Control](#) form and [Interagency Biographical and Financial Report](#). Parties filing by diskette need only submit a hard copy of the page(s) in the notice or attachments where a signature is required. The appropriate filing fee, in accordance with the current annual "Notice of the Comptroller of the Currency Fees," must accompany the notice. In addition, the acquiring party must publish an announcement of the proposed change in bank control (see the Publication and Comment Period discussion).

Upon receipt, the OCC reviews the change in bank control notice to determine whether it is technically complete. After the OCC determines that the notice is technically complete, the OCC makes a decision on the change in bank control notice within the time frames established in the statute (see the Time Frame discussion).

### Notice Contents

The OCC will consider the following factors before determining that a notice is technically complete:

- The acquiring person provided all information requested in the notice, including biographical and financial information.
- The acquiring person demonstrated the financial ability to consummate the transaction and service any debt, if the purchase is not transacted with cash.
- The acquiring person satisfactorily addressed lapses in employment history.
- Information submitted to shareholders in a tender offer, if applicable, is adequate and accurate.
- The appraiser acknowledged the independence of any appraisals used to support asset values, if applicable.
- If the acquiring person proposes to inject additional capital into the bank, the notice includes a realistic plan for providing a competitive return on investment.



- The acquiring person’s business plan or strategy adequately addresses strategic planning and growth strategies, capital, and financial and risk management, including applicable risk measurement, monitoring, and control processes.
- The acquirer(s) provided any additional information in such form as the OCC requested, such as a written agreement described in the Agreements section of this booklet.

## Publication and Comment Period

The acquiring party must publish in a newspaper generally circulated in the community in which the bank is located an [announcement](#) containing:

- The name of the affected national bank.<sup>1</sup>
- The identity of each party proposing to acquire the national bank.
- A statement that comments may be furnished to the appropriate district office within 20 days of publication and the identity of the office by name and address.
- A statement that the OCC will keep the information in the notice confidential until it has acted, except for certain information that may be released and made available for public inspection and copying under the Freedom of Information Act.

Within 10 days of the public notice, the person must provide the appropriate district office with a statement containing the date of publication, the name and address of the newspaper that published the public notice, a copy of the public notice, and any other required information (refer to “[Public Notice and Comments](#)” booklet).

Under certain circumstances, the OCC may:

- Waive or shorten the publication requirement.
- Delay the public announcement.
- Waive or shorten the public comment period in limited cases.
- Act on a notice prior to the expiration of the public comment period if an emergency exists.

Any interested person may participate in the OCC licensing process by commenting in writing on any corporate filing during the applicable public

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<sup>1</sup>If a bank is operating under more than one name or under a name not substantially similar to its legal name, the public notices of any application published in accordance with 12 CFR 5 must contain both the legal name of the bank and the name(s) the bank uses in the community in which the publication circulates.

comment period. For a discussion of how the public may participate, refer to the “Public Notice and Comments” booklet.

## Changes to Business Strategy or Corporate Structure

The Interagency Notice of Change in Control form asks the acquiring party to indicate any planned significant change to the bank’s business strategy or corporate structure. Persons with such intentions are expected to provide a thorough description of the changes. Examples of changes include, but are not limited to: intentions to increase significantly the rate of bank asset growth; a change in geographic market, such as from local to statewide; realignment of funding sources, such as from core deposits to brokered funds; changes in lines of business, such as adding commercial real estate lending where none was done previously or substantially reducing an existing product line.

If an acquiring person proposes significant or extensive changes to the bank’s overall business plan or plans to introduce new services and products, the OCC will require the filer to provide the business plan information consistent with the [Business Plan Guidelines](#) issued as part of the “[Charters](#)” booklet. Such business plans should clearly articulate the risks of the proposed changes and the systems and processes that will be used to measure, monitor, and control those risks. The OCC will rigorously analyze proposed business plans and strategies and may use agreements to impose substantive requirements equivalent to conditions and pre-opening requirements that apply to a *de novo* charter (See Agreements for additional discussion).

## Time Frame

The OCC has 60 calendar days to review the proposed transaction from the date the notice is deemed technically complete. The OCC has the discretion to extend the 60-day review period for 30 more days. The review period may be extended an additional two times, for not more than 45 days each, if the OCC determines that:

- An acquiring party did not furnish all of the information required.
- Any material information submitted is substantially inaccurate.
- It is unable to complete the investigation of an acquiring party, because of delay by, or inadequate cooperation of, the acquiring party.
- It requires additional time to decide that no acquiring party has a record of failing to comply with the requirements of the Bank Secrecy Act (31 USC 5311).

If the OCC fails to act within the relevant period, the acquiring party may consummate the acquisition.

The OCC may issue a no objection letter prior to receiving information on all of its background investigations. However, if adverse or previously withheld information is received subsequently, the OCC will consider available remedies under applicable statutes or regulations.

## Additional Information Request

When requesting additional information, the OCC will send a letter to the acquirer that includes a response due date. The OCC may determine that a notice is not technically complete or disapprove a notice if an acquirer fails to provide the requested information.

An acquiring party should contact the OCC as soon as possible if he or she cannot submit the additional information on or before the deadline. The OCC may consider the notice withdrawn if it does not receive the information requested by the response due date.

The OCC may require the acquiring party to file an amended Interagency Notice of Change in Control and restart the entire notification process if the additional information needed is substantial. In such instances, the OCC may require the acquirer to republish the notice of change in control and may require an additional filing fee.

## Appeals

The OCC's notice of disapproval to the acquiring party will describe the available appeal procedures. The process allows a disapproved person to seek review of the OCC's decision by filing a written request for a hearing within 10 days of receipt of the notice of disapproval. Failure to request a hearing in a timely fashion will result in the notice of disapproval constituting a final and unappealable order.

Upon receipt of a timely request for a hearing, the Comptroller's designee will issue a hearing order establishing the legal authority for the OCC's jurisdiction over the proceeding and addressing the request for hearing. The disapproved person must answer the hearing order within 20 days after service of the order. Generally, failure to file an answer constitutes a waiver of the person's right to appear and contest the allegations in the hearing order.

Any final order issued by the Comptroller based upon a person's failure to answer is deemed a consent order and, as a result, cannot be appealed. Upon issuance of the hearing order, an administrative law judge will be assigned to preside over the matter. If the OCC's disapproval stands after the administrative hearing and the entry of a final decision of the Comptroller, the person may seek judicial review of the Comptroller's decision.

## Consummation

Acquiring parties must consummate a change in control within six months from the OCC decision date. The OCC generally does not extend this time period. However, if extenuating circumstances exist, the OCC may consider extending the time period.

## Specific Requirements

### Director Qualifications

All persons who become bank directors after a change of control must comply with the requirements in 12 USC 72. Every national bank director must be a citizen of the United States throughout his/her term of service. The OCC, however, may waive this requirement for a minority of the total number of directors of any national bank (see the “Director Waivers” booklet).

A majority of a national bank’s directors must reside in the state in which the bank is located (that is, the state(s) in which the bank has its main office or branches) or within 100 miles of its main office for at least one year immediately preceding their election. The OCC has discretion to waive this residency requirement (see the [“Director Waivers”](#) booklet).

### Hart-Scott-Rodino Filing

Persons required to file a notice under the CBCA should consider the applicability of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR), 15 USC 18a, to their proposed acquisition. The HSR established premerger notification and waiting requirements for persons planning to consummate large mergers and acquisitions.

The Federal Trade Commission (FTC), by regulation, can exempt acquisitions subject to the CBCA from the HSR requirements. That exemption is available only if copies of all information and documentary materials filed with the OCC are filed simultaneously with the FTC and the Department of Justice (DOJ) at least 30 days prior to consummation of the proposed acquisition.

Only those transactions that meet certain threshold tests are subject to the HSR. Generally, those threshold tests relate to the asset size of the parties to the transaction and the purchase price of the transaction. The acquiring party and the target bank must determine the applicability of the HSR to the proposed transaction and, if required, file a copy of the CBCA notice with the FTC and the DOJ. The HSR authorizes the assessment of civil money penalties for failure to comply with its provisions.

An exemption from the HSR notice and waiting period is permitted if the change in control prevents a probable bank failure. In such situations, the

proposed acquirers must notify the FTC and the DOJ of their intent to rely on this exemption and request that the OCC act under the exemption.

## Pushdown Accounting

Pushdown accounting is required for financial reporting if an arms-length transaction results in a change in bank control of at least 95 percent of the bank's voting stock. Under pushdown accounting, when a bank is acquired yet retains its separate corporate existence, the assets and liabilities of the acquired bank are restated to their fair values as of the acquisition date. Those values, including any goodwill, are reflected in the financial statements of the parent and the acquired bank. With the OCC's approval, pushdown accounting may be used when more than 80 percent, but less than 95 percent, is acquired. Acquiring persons should include in the change in bank control notice a pro forma balance sheet for the bank when pushdown accounting is appropriate. Acquiring persons may refer to the OCC's Consolidated Reports of Condition and Income (call report) Instructions and Bank Accounting Advisory Series for guidance in preparing the pro forma balance sheet.

## Reporting of Stock Loans

Any foreign bank, or any affiliate of a foreign bank, must file a consolidated report if they have credit outstanding to any person or group of persons that is secured, directly or indirectly, by 25 percent or more of any class of voting securities of a national bank. Other reporting requirements may be applicable (12 CFR 5.50(h)).

## Tardy Notices

The OCC may prevent an unlawful acquisition or require divestiture if a bank is acquired in violation of the CBCA or OCC requirements. The agency may subpoena records and take testimony to determine if a party provided false information in a notice or otherwise violated those requirements. The OCC also may assess persons filing tardy notices civil money penalties. In addition, the OCC may publicize any remedial action taken against a person who has filed a tardy notice. Persons filing tardy notices should not vote shares acquired in violation of the CBCA or Part 5.50 until the OCC issues a non-objection decision.

In reviewing a tardy notice, the OCC uses the same procedures and analysis as it does in reviewing a timely notice. Specifically, the OCC advises acquiring person when the tardy notice is deemed technically complete and performs the same review, investigation, and verification procedures as for a notice filed prior to an acquisition.

## Tender Offers

The OCC must review and clear any tender offer to purchase national bank stock that will result in a change of control of a national bank with a class of

securities registered under the Securities Exchange Act of 1934 (Exchange Act). A copy of any tender offer must be provided with the notice. Stock purchase information in a tender offer that is also submitted must be summarized and incorporated by reference in the notice. Tender offer materials should be filed with the Securities and Corporate Practices Division of the OCC in Washington, D.C.

The OCC may treat confidentially notices filed in contemplation of a public tender offer that are subject to the requirements of the Exchange Act. The OCC may delay (but not waive) publication requirements for those notices up to 34 days after the notice is deemed technically complete. The public notice may be delayed at times out of concern that an acquiring party or bidder complying with the Exchange Act may be disadvantaged by the delays imposed under the notice review period. The OCC may delay publication requirements if:

- The acquiring party requests such treatment and states that a public announcement of the tender offer and the filing of appropriate forms with the OCC will occur within 34 days from the filing of the notice.
- The OCC determines that it is in the public interest to grant such treatment.

In each of those instances, the acquiring party must send proof of the publication of the announcement to the appropriate licensing manager within 10 days of the date of its publication.

# Procedures

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## Prefiling Meeting

### Licensing Staff

1. Refers acquiring party that requests instructions to the "[General Policies and Procedures](#)" booklet, the "[Background Investigations](#)" booklet, and this booklet of the *Comptroller's Licensing Manual*. Parties may also find the "[Directors Waivers](#)," "[Public Notice and Comments](#)," and "[Changes in Directors and Senior Executive Officers](#)" booklets useful.
2. Requests an optional prefiling meeting with the acquiring party to review procedures for change in bank control and factors that may influence the OCC's review of the notice. A prefiling meeting should be held when the transaction will result in a parallel-owned banking organization.
3. If any prefiling discussion or meetings reveal significant policy, legal, or supervisory issues, including creation of a parallel-owned banking organization or significant change to the bank's overall business plan, contacts Headquarters Licensing (HQ LIC) to decide whether specific issues should be carved out for headquarters action while the notice continues to be processed in the appropriate district office.
4. Prepares memoranda on all prefiling meetings and records pertinent information from telephone calls. Retains memoranda and other information in a pending file.

## Rebuttal of Control

### Acquiring Party

5. Submits a rebuttal of control letter to the appropriate licensing manager, if applicable.

### Licensing Staff

6. Notifies district counsel, the appropriate assistant deputy comptroller (ADC), and the ADC analyst of rebuttal of control letter. Forwards a copy and requests any comments by the 15<sup>th</sup> day after receipt.
7. Reviews rebuttal of control letter to determine if it successfully refutes the presumption of control.
  - If yes, notifies acquiring party that presumption of control has been successfully rebutted.
  - If no, notifies acquiring party to file notice, with appropriate filing fee and to publish notice.

8. Advises ADC and ADC analyst of determination. If warranted, provides a copy of any commitments made by the acquiring person for future compliance.

## Filing the Notice and Publication

### Acquiring Party

9. Submits notice (original and five copies), filing fee, and request for delay (in the case of a proposed tender offer) or waiver of publication, if applicable, to the appropriate licensing manager.
10. [Publishes notice](#) within 10 days of filing with the district office.

### Licensing Staff

11. Initiates and enters appropriate information into the Corporate Activities Information System (CAIS).
12. Establishes the official file to maintain all original documents.
13. Forwards the filing fee and the deposit memorandum (Form 6043-01) to the Comptroller of the Currency, P.O. Box 73150, Chicago, Illinois 60673-7150. Retains copy of the deposit memorandum. Contacts the acquiring person if the filing fee is not received or is inaccurate.
14. Within five business days of receipt:
  - Acknowledges receipt of filing, advises acquiring person that the notice is under review to determine whether or not it is technically complete, provides CAIS Control Number, and, if applicable, advises the acquiring person that he/she may not vote shares acquired in violation of the CBCA or Part 5.50 until the OCC issues a non-objection decision.
  - Notifies appropriate ADC and ADC analyst of receipt of notice and forwards a copy of the notice to them, requesting by the 15<sup>th</sup> day after receipt, any comments.
  - Sends copies of notice to other regulatory agencies, as appropriate, and requests comments.
  - If a legal issue has been identified, or a legal opinion has been submitted with the filing, forwards relevant materials to the Law Department and requests a response on whether a significant legal issue is present by the 15th day after the receipt date.



- If acquiring person has already acquired control of the bank, makes recommendation and forwards request to district counsel to determine if civil money penalties should be pursued (refer to PPM 5000-7 (Rev.) June 16, 1993).
15. Makes determination on request for delay or waiver of publication requirement, if applicable.
    - If yes, consults with HQ LIC and prepares approval waiver letter for signature by the appropriate delegated official.
    - If no, documents reasons that the filing does not qualify and sends a copy of the waiver request to HQ LIC.
  16. If Licensing staff determines at any time that the filing presents significant policy, legal, or supervisory issues, including Bank Secrecy Act compliance or systems integration concerns, contacts HQ LIC to decide if and when to forward:
    - The filing to HQ LIC for processing, or
    - Specific issues to HQ LIC for action (while continuing to process the filing in the appropriate district office).
  17. Together with the Supervisory Office and other OCC staff, as appropriate, determines what, if any, information is needed to determine that the notice is technically complete. Such necessary information may include written agreements that Licensing will develop with Legal and Supervisory Office staff, as appropriate.
  18. As appropriate:
    - Notifies the acquiring person that the notice is technically complete and specifies the latest date on which the OCC will issue its intent to disapprove, not disapprove, or extend the processing. (If technically complete, makes appropriate CAIS entries and goes to step 23); or
    - Requests additional information, notifying the acquiring person that the information is required for the notice to be technically complete and specifying a date by which the information should be received. Provides a copy of the request to the ADC and the ADC analyst.
  19. Makes appropriate CAIS entries.

## Acquiring Party

20. Prepares and submits additional information if requested. As appropriate, executes written agreement with the appropriate Supervisory Office staff.

## Licensing Staff

21. Receives and forwards additional information received from acquiring party to ADC and ADC analyst and, as appropriate, other OCC staff and other regulatory agencies.
22. Reviews additional information and goes to step 17.

## Investigation

### Licensing Staff

23. Conducts background investigations to assess competence, experience, and integrity of each acquiring party named in the notice. Also, analyzes financial ability (see the "[Background Investigations](#)" booklet).
24. Forwards completed fingerprint cards to HQ LIC for processing.
25. Completes the background investigation checklist to document responses received from the background checks and to comply with the statutory requirement that the investigation's findings be maintained as a record of the agency.
26. If applicable, notifies acquiring party of adverse information received from the background checks.

### Acquiring Party

27. If applicable, submits information to the licensing manager to complete, correct, or challenge adverse information received from background checks.

## Review

### Licensing Staff

28. If copies of the notice are requested, follows the guidance in the "[Public Notice and Comments](#)" booklet.
29. If public comments are filed, follows the procedures in the "Public Notice and Comments" booklet.
30. Reviews additional information received after determining that the notice is technically complete and extends, as necessary, the review period and notifies the acquiring person of the new target date for consummation.
31. Makes appropriate CAIS entries.

32. Reviews the file, prepares the [confidential memo](#) (including the background investigation checklist) and decision letter, recommending a decision to the delegated official. Forwards the official file to the appropriate official for decision.

## Decision

33. Decides notice under delegated authority or forwards the official file to HQ LIC for decision at least 14 days prior to the end of the 60-day review period or any extension thereof. If forwarded to HQ LIC, makes appropriate CAIS entries and skips steps 34 and 35.
34. If decision is not to object to the notice:
  - Issues a letter of no objection and forwards a Satisfaction Survey to the acquiring party.
  - Forwards a copy of the no-objection letter to the bank.
  - Notifies interested parties of decision.
  - Notifies appropriate ADC and ADC analyst of the decision by forwarding updated CAIS comments and a copy of the decision letter.
35. Makes appropriate CAIS entries.

## HQ LIC

36. Makes appropriate CAIS entries.
37. Reviews the file and all relevant information and solicits comments from other OCC divisions, as appropriate.
38. If disapproval will be recommended, forwards the draft transmittal letter to Enforcement and Compliance (E&C) for review prior to routing for decision.
39. Prepares confidential memo with recommendation and decision letter, and forwards the official file to the appropriate official for decision.
40. If acquiring person has already acquired control of a national bank, coordinates with Litigation and E&C for appropriate action, if disapproval is recommended.
41. Notifies licensing manager and acquiring person of the decision.
42. Notifies appropriate ADC and ADC analyst of the decision by forwarding updated CAIS comments and a copy of the decision letter.
43. Issues the decision letter and forwards a Customer Satisfaction Survey within three days of decision to the acquiring person.

44. Notifies all interested parties of the decision.
45. Notifies Washington personnel and other affected federal agencies, whenever appropriate, on a case-by-case basis (see PPM 6100-3 (Rev.), January 22, 1986).
46. Makes appropriate CAIS entries.
47. Returns official file to the district if additional processing is required.
48. For non-disapprovals where the acquiring person executed a written agreement with the OCC, sends copy of the confidential memorandum, the decision, decision letter, and a copy of the written agreement to the director, Licensing Policy and Systems.

## **Consummation and Close Out**

### **Acquiring Party**

49. Sends written notice of the consummation to the licensing manager within 10 days of consummation.

### **Licensing Staff**

50. If notification of consummation is not received within 180 days after the decision letter, contacts the acquiring party to determine whether the acquisition has been consummated. If contact is made by telephone, documents the content of the conversation for the official file.
51. Makes appropriate CAIS entries.
52. Forwards the official file to Central Records.

# Appendix

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## POSSIBLE REPRESENTATIONS OR COMMITMENTS

### For CHANGE IN BANK CONTROL NOTICES RESULTING in A PARALLEL-OWNED BANKING ORGANIZATION

1. Acquiring party agrees to provide all information, without regard to whether such information is located within or without the United States, when requested, relating to:
  - (a) Enforcement or possible enforcement of, or any proceeding under, any U.S. Law;
  - (b) The direct or indirect ownership or control of Bank [Bank Holding Company, if appropriate]; and
  - (c) The operations or activities of Bank [Bank Holding Company, if appropriate], or any IAP with respect to each thereof under the U.S. Law, including any unsafe or unsound practice or breach of fiduciary duty by Bank [Bank Holding Company, if appropriate], or by any IAP with respect to each thereof.
2. Acquiring party agrees to provide the OCC and its staff access, to permit the OCC and its staff to examine, and to provide the OCC and its staff with copies of, all books and records; access to electronic records that accurately reflect the information in the books and records; and any other information, of or concerning Bank, as requested by the OCC or its staff, without regard to whether such books and records or other information are located within or without the United States.
3. Based on the opinions of counsels in the foreign jurisdictions where acquiring party is a citizen, and where party resides, party understands and represents that there are no statutory or regulatory requirements of, or judicial interpretations in, these jurisdictions that would preclude or limit examination in such jurisdictions, or use in the United States, of the books and records of applicant by the OCC and its staff. In addition, based on these opinions of counsels, applicant understands and represents that there are no statutory or regulatory requirements of, or judicial interpretations in, these jurisdictions that otherwise would limit the ability of party to comply fully with commitments/ representations 1 and 2 above, except to the extent that waivers of confidentiality by acquiring person would be necessary to permit such examination or use of acquiring person's books and records, which waivers person hereby grants and agrees to grant on a continuing basis. Acquiring person understands and represents that there are no statutory or regulatory requirements of any jurisdiction that preclude, limit, or make ineffective in whole or in part any waiver of confidentiality as described in this commitment or representation.

4. Acquiring person consents and submits to the personal jurisdiction of any United States federal court of competent jurisdiction and of any Federal Banking Authority for purposes of any investigation or possible investigation, action, subpoena, examination, or proceeding by any Federal Banking Authority, the United States Department of Justice, or the United States Department of the Treasury, relating to the administration or enforcement of any U.S. Law or pursuant to any U.S. Law, including, in particular, section 8 of the Federal Deposit Insurance Act. For purposes of this commitment or representation, the acquiring person shall at all times maintain in the United States a designated agent, acceptable to the OCC, to accept service on the acquiring person's behalf, including service of any process, notice, order, or subpoena. The acquiring person, as of the date hereof, designates [Name of Agent], located at [Address, City, and State], as his agent to accept such service. The person will not change this designation without notice to, and consent of, the OCC or its staff.
5. The acquiring person agrees to submit the following documents to the OCC prior to the OCC's consideration of the proposal in connection with which these commitments/representations are submitted:
  - (a) A notarized and authenticated or certified document, designating the agent(s) specified in commitment or representation No. 4 above to accept service on behalf of the acquiring person;
  - (b) An opinion of independent counsel in the jurisdiction where applicant is a citizen and, if different, where applicant resides (i) that each of the commitments/representations is enforceable under the laws of the relevant jurisdiction, and (ii) that there are no statutory or regulatory requirements of, or judicial interpretations in, the relevant jurisdiction that would limit the ability of applicant to comply fully with commitments or representations 1 and 2 above, subject to the need for a waiver of confidentiality as provided in commitment or representation No. 3 above, or that would preclude, limit, or make ineffective in whole or in part any such waiver of confidentiality that is granted; and
  - (c) Properly executed written documentation to affect a full waiver of confidentiality under the law of the relevant jurisdiction, as provided in commitment or representation No. 3 above.
6. No later than the time of consummation of the transaction, applicant will provide to Bank a list of his or her "related interests" (as defined in section 215.2 of Regulation O, 12 CFR 215.2) and a list of Bank's affiliates (as defined in 12 USC 371c(b)(1)) to be maintained by Bank. Applicant will update these lists annually or more frequently as changes occur in "related interests" or affiliates. Applicant and each company that from time to time is controlled directly or indirectly by applicant, acting alone or in concert with one or more other persons, will be deemed to be "insiders" of Bank in all dealings with Bank for purposes of Regulation O (12 CFR 215).
7. [NOTE: The OCC will request one of the following commitments or

representations or a similar commitment or representation after considering such factors as the adequacy of foreign supervision, the ability and willingness of the foreign supervisors to cooperate and share information cross-border, and the condition of Bank and Foreign Bank.]

- (a) There will be no transactions between Bank and foreign affiliates.
  - (b) There will be no covered transactions under 12 USC 371c and no transactions covered by 12 USC 371c-1 between Bank and foreign affiliates.
  - (c) Applicant commits or represents that dealings between Bank and any company that is an "affiliate" of Bank, which may include certain companies in which applicant holds an interest, will be subject to the restrictions in 12 USC 371c and 371c-1. For purposes of this commitment or representation, an extension of credit also includes a deposit by Bank with an affiliate.
8. Applicant and Bank commit or represent that they will notify the OCC if Bank engages in the following types of affiliate transactions: (1) transactions that will materially affect Bank's capital, (2) transactions that will materially affect the affiliate's financial position, and (3) any back-to-back loan transactions between Bank and any person (including affiliates) that benefit Members of the Control Group.
9. Applicant or Bank will notify the OCC of any loan or deposit made by Bank to an affiliate that has deposited or loaned funds to Bank, provided the funding for the loan or deposit by Bank is directly or indirectly linked to the affiliate's funds on loan or deposit with Bank.
10. Applicant or Bank will notify the OCC of any increase in permanent capital when the capital funds invested were received from any person who has obtained a loan or a deposit from Bank or any affiliate, provided the funds for the increase in capital are directly or indirectly linked to the funds from the loan or deposit from Bank.
11. Applicant will notify the OCC of any loan received by a Member of the Control Group from any person who has obtained a loan or a deposit from Bank, provided the funding for the Control Group loan is directly or indirectly linked to the funds from the loan or deposit from Bank.
12. While a change in control notice is pending, the notificant will promptly notify the OCC of any changes or pending changes in affiliation.
13. Applicant and Bank commit or represent that Bank will not engage directly in the international transfer, remittance, or payment of customer or bank funds except through an unaffiliated correspondent bank. Approval of the OCC will be obtained before Bank begins to engage directly in the international transfer of funds.

Alternatively:

Applicant and Bank agree that Bank will not engage in the international transfer, remittance, or payment of customer or bank funds except in compliance with safe and sound formally adopted internal control procedures and operational safeguards, which shall include in all cases written documentation of all relevant information concerning each such transfer, remittance and payment, as adopted as a policy of Bank and in compliance with all laws, regulations, orders, and directives applicable to Bank and its officers, directors, and affiliates.

14. Applicant represents that the funds being used to establish or purchase Bank are not derived directly or indirectly from the Foreign Bank or its affiliates except to the extent that these funds are derived from usual profits and dividends from Foreign Bank or its affiliates obtained over the years.
15. Neither the applicant nor the Bank will incur any additional debt (other than small amounts incurred in the ordinary course of business) to any third party without the prior approval of the OCC.
16. None of the capital stock of debt of the Bank will be transferred or pledged to any third party without the prior approval of the OCC.
17. Applicant commits that the Bank will maintain total risk-based capital ratios so that the Bank is at all times considered well-capitalized under 12 CFR 6.



# Glossary

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An **acquisition** includes the purchase, assignment, transfer, pledge or other disposition of voting securities, or an increase in the percentage ownership of a bank resulting from a redemption of voting securities by another party.

**Acting in concert** means knowingly participating in a joint activity or parallel action toward a common goal of acquiring control whether or not pursuant to an express agreement. It also can mean combining voting or other interests for a common purpose pursuant to any contract, understanding, relationship, agreement, or other arrangement whether or not written.

A **beneficiary** includes the members, parties, or participants of a voting trust.

**Control** is the power, directly or indirectly, to direct the management or policies, or to vote 25 percent or more of any class of voting securities of a national bank.

**Good faith**, in the context of debt previously contracted, means that a person acquires control of a national bank by obtaining voting shares in satisfaction of a previously contracted debt, and that such debt was made or acquired without prior knowledge of any default.

A **national bank** means an insured or uninsured national banking association and any bank or trust company located in the District of Columbia operating under the OCC's supervision.

A **party or person** means an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, voting trust or voting agreements, or any other form of entity and includes any group of persons acting in concert.

A **parallel-owned banking organization** exists when at least one national bank and one foreign bank are controlled either directly or indirectly by the same person or group of persons who are closely associated in their business dealings or otherwise acting in concert. It does not include structures in which one depository institution is a subsidiary of the other, or the organization is controlled by a company subject to the Bank Holding Company Act, 12 USC 1841 et seq., or the Savings and Loan Holding Company Act, 12 USC 1467a.

A **technically complete notice** must contain personal and biographical information, detailed financial information, details of the proposed change in control, information on any structural or managerial changes contemplated for the national bank, and other relevant information required by the OCC.

A **trustee** is the person or persons designated by a voting trust to vote national bank stock subject to a voting trust agreement (also termed voting trustee or voting representative in the case of a voting agreement).

**Voting securities** mean shares of common or preferred stock, or similar interests, such as options, if the shares or interests, by statute, charter or, in any manner, allow the holder to vote for or select directors (or persons exercising similar functions) of the issuing national bank, or to vote on or to direct the conduct of the operations or other significant policies of the issuing national bank. (See section 5.50 for instances when preferred stock or similar interests will not be considered voting securities (12 CFR 5.50(d)(6)).

A **voting trust or agreement** includes any legally binding action by shareholders attempting to aggregate and control the voting of a national bank's stock subject to it.

# References

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| <b>Administrative Hearings</b><br>Regulations                                | 12 CFR 19.160-19.161  |
| <b>Background Investigations</b><br>Regulations                              | 28 CFR 16.34 and 50.12  |
| <b>Bank Holding Company Act</b><br>Laws                                      | 12 USC 1842-1850  |
| <b>Bank Secrecy Act (BSA)</b><br>Law<br>Regulation                           | 31 USC 5311<br>31 CFR 103   |
| <b>Capital Requirements</b><br>Laws<br>Regulation                            | 12 USC 51c, 56, and 59<br>12 CFR 3 and 6  |
| <b>Capital Stock</b><br>Law  | 12 USC 52   |
| <b>Capital Structure Change</b><br>Regulation                                | 12 CFR 5.46   |
| <b>Change in Bank Control</b><br>Laws<br>Regulation<br>Issuance              | 12 USC 93a and 1817(j)<br>12 CFR 5.50<br>Policies and Procedures<br>Manual (PPM) 6100-3<br>(Rev.) |
| <b>Civil Money Penalties</b><br>Laws<br>Issuance                             | 12 USC 504, 18 USC 1001<br>PPM-5000-7 (Rev.)  |
| <b>Depository Institution Management Interlocks Act</b><br>Law<br>Regulation | 12 USC 3201<br>12 CFR 26  |
| <b>Directors</b><br>Law  | 12 USC 71   |
| <i>Citizenship Waiver</i><br>Law   | 12 USC 72   |
| <i>Convicted of a Crime</i><br>Law   | 12 USC 1829   |
| <i>Engaged in Underwriting</i><br>Law  | 12 USC 78   |
| <i>Number</i><br>Law   | 12 USC 71a  |

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|---|-------------|------------------------|
| <i>Oath</i>   |             |                        |
|   | Law         | 12 USC 73              |
| <i>President</i>  |             |                        |
|   | Law         | 12 USC 76              |
| <i>Purchases and Sales</i>  |             |                        |
|   | Law         | 12 USC 375             |
| <i>Residency</i>  |             |                        |
|   | Law         | 12 USC 72              |
| <i>Qualifications</i>   |             |                        |
|   | Law         | 12 USC 72              |
|   | Regulation  | 12 CFR 7.2005          |
| <b>Exempt Transactions</b>  |             |                        |
| 1842  | Laws        | 12 USC 1467a, 1828(c), |
| <b>Filing Fees</b>  |             |                        |
|   | Regulation  | 12 CFR 5.5             |
| <b>Fraudulent Schemes</b>   |             |                        |
|   | Regulations | 16 CFR 801-2           |
| <b>Hart-Scott-Rodino Antitrust Improvements Act of 1976</b>       |             |                        |
|   | Law         | 15 USC 18a             |
|   | Regulation  | 16 CFR 800             |
| <b>Interagency Exchange and Coordination of Corrective Action</b> |             |                        |
|   | Issuance    | PPM 6100-3 (REV)       |
| <b>Proxy</b>  |             |                        |
|   | Regulation  | 12 CFR 11              |
| <b>Shareholders' List</b>   |             |                        |
|   | Law         | 12 USC 62              |
| <b>Voting Trust</b>   |             |                        |
|   | Regulation  | 12 CFR 7.2022          |