This handbook section provides guidance on applications filed by companies seeking to acquire control of a savings institution. It is important to note that the definition of savings institution includes a savings and loan holding company as defined at 12 C.F.R. § 574.2(q). This means that control of a savings institution can be acquired directly by acquisition of the institution's stock or indirectly through the acquisition of the stock of an existing savings and loan holding company. Office of Thrift Supervision (OTS) review is required for either type of acquisition.

Written approval from OTS is required prior to a company acquiring control of a savings institution. OTS has the authority to prevent a company with questionable financial and managerial strength from acquiring an institution. In reviewing the managerial resources of an applicant, OTS must consider the competence, experience and integrity of the officers, directors, and principal shareholders of the applicant.

In reviewing a holding company application, OTS must consider a potential acquiror's proposed plans for the operation of the institution, the competitive impact of an acquisition, and, in certain cases, the convenience and needs of the community to be served. OTS will also review a potential acquisition to determine whether it would be detrimental to the institution or to the insurance risk of the Federal Deposit Insurance Corporation (FDIC).

12 C.F.R. § 574.4 includes a list of the circumstances under which a company is deemed to acquire control of a savings institution. For the purposes of the control regulations and application requirements, control of an institution is divided into two categories: conclusive control and rebuttable control.

In general, a company is deemed to acquire conclusive control of a savings institution if it acquires more than 25 percent of a class of the institution's voting stock or controls the election of a majority of the directors of the institution. If a company proposes to acquire conclusive control, it must file a holding company application and receive approval from OTS prior to acquiring control.

Rebuttable control occurs when 10 percent of any class of voting stock, or 25 percent of any class of stock, is acquired and a control factor exists (e.g. acquiror is one of the two largest holders of any class of stock). A detailed discussion of other control and rebuttable control factors is provided in Section 320 of this handbook.

FILING REQUIREMENTS

Delegated Authority

Generally, applications filed under this section may be processed by the Regional Office under delegated authority. Applications that are not delegated to the Regional Office are those that include: a significant issue of law or policy; foreign acquirors, insurance companies, investment companies, pension funds, investment advisors and securities firms that have not been previously approved by OTS; relate to permission to organize, conversions of state-chartered trust companies and non-bank banks to federal savings banks, and mutual to stock conversion applications; approval of requested waivers of statutes, regulations, OTS policy or significant application requirements; subject to adverse comments and have formal meetings; involve hostile or contested acquisitions, opposition

proxy solicitations or other potential acquisitions where there is a competing acquiror; involve person(s) subject to a pending notice of charges or formal investigation; include qualified stock issuances filed under 12 C.F.R. § 574.8; raise significant competitive factor issues; or involve the approval of non-cash capital contributions. See Delegation Section 040 of the handbook for information on the delegation process.

Expedited and Standard Processing Procedures

This application is not subject to the expedited processing procedures set forth in 12 C.F.R. Part 516. Accordingly, the application will be processed utilizing the procedures set forth in 12 C.F.R. § 574.6.

Prefiling Meeting Requirements

It is the applicant's responsibility to contact the Regional Office in a reasonable time period in advance of filing the application, to discuss whether a prefiling meeting will be required. Holding company applications have been identified as the type that may necessitate a prefiling meeting. The purpose of the meeting is to permit OTS and the applicant to identify any legal or policy issues before submission of the application, and enable the applicant to address these issues early in the process. The Regional Office has the discretion to require a prefiling meeting, and will work with the applicant to determine a schedule and forum for a meeting. The forum for the meeting will usually be in person at the Regional Office, although the Regional Office may consider meetings by telephone or video conferencing at its discretion on a case-by-case basis. OTS may decide not to accept a submitted application until the prefiling meeting requirements in 12 C.F.R. Part 516 are met, leading to significant delays in processing the application.

When a meeting is required, the applicant should contact the Regional Office to determine which individuals should be present at the meeting. These individuals will be expected to discuss the salient aspects of the proposed transaction. The applicant must submit a draft business plan to the Regional Office prior to the meeting in a time frame in advance of the meeting acceptable to the Regional Office. At a minimum, the plan should:

- Describe clearly and completely the projected operations and activities;
- Provide financial projections for a three-year period;
- Discuss the associated risks and the impact of the additional business activities on the institution;
- Identify any additional directors and/or senior executive officers that will be appointed as a result of the proposed transaction, with documentation to support that these individuals have the required qualifications and experience to prudently oversee the resulting operations; and,
- Demonstrate how the charter will serve the credit and lending needs in its target market.

Information and Form Requirements

If delegated, all applications should be filed with the appropriate Regional Office in accordance with 12 C.F.R. Part 516. The applicant is required to file the original and two conformed copies of each application. If the applicant wishes to acquire a state-chartered institution, one additional copy should also be provided. All copies are to be clearly marked as to the type of filing, and should contain all exhibits and other pertinent documents. One copy must contain original signatures on all executed documents. For applications that are not delegated to the Regional Office, an additional three copies of the application should be filed with the Applications Filing Room in OTS-Washington.

Immediately upon receiving an application relating to the acquisition of control of a state-chartered institution, the Regional staff should forward a copy of the application and allow 30 days for the state authority to review and provide comments. OTS should consider the views and recommendations of federal and state agencies in determining whether to disapprove a holding company acquisition.

Companies must file an H-(e) application to acquire any savings institution or savings and loan holding company. If an individual seeks to obtain control, the appropriate filing is a change in control notice. All acquisitions by a company will fall into one of the following five categories: 1) H-(e)1; 2) H-(e)1-S; 3) H-(e)2; 4) H-(e)3; and 5) H-(e)4. While the requirements for each category of holding company acquisition are different, they are all set forth in one booklet of instructions, the Form H-(e) (OMB No. 1550-0015).

- An H-(e)1 application is required when a company, other than a savings and loan or bank holding company, seeks to acquire one savings institution (i.e., a new unitary holding company is created or a trust that is not excluded from the definition of a savings and loan holding company (12 C.F.R. § 574.2(q)) acquires control of a savings institution).
- An H-(e)1-S application must be filed in situations where a savings institution proposes a corporate reorganization involving the formation of a shell holding company. This type of application has a 45-day automatic approval provision. In order for a transaction to qualify for processing as an H-(e)1-S, the applicant must meet the following requirements:

    * The creation of the holding company is the sole transaction included in the application (other than the creation of an interim institution that will disappear upon consummation of the transaction). An H-(e)1-S, however, can be filed in conjunction with an institution's standard mutual to stock conversion;
    * The board of directors and executive officers of the holding company are individuals who, at the time of acquisition, are directors and executive officers of the institution;
    * The acquisition raises no significant issues of law or policy; and
    * The holding company agrees to comply with the conditions to be imposed in an approval of the transaction, pursuant to 12 C.F.R. § 574.7(a)(2)(F) and (G).

- An H-(e)2 application must be filed by: (1) a savings and loan holding company seeking to acquire and hold separately one or more savings institutions, or (2) any company, except a

bank holding company, or subsidiary thereof, seeking to acquire more than one savings institution and hold the thrifts as separate entities.

- An H-(e)3 application must be filed by: (1) a savings and loan holding company seeking to acquire through a merger, consolidation, or purchase of assets, a savings institution or uninsured institution or a savings and loan holding company; or (2) any company, other than a bank holding company, or subsidiary thereof, seeking to acquire through a merger, consolidation, or purchase of assets two or more savings institutions.

- An H-(e)4 application is an information filing that must be filed in connection with a claim that a reorganization is exempt from prior written OTS approval. Such reorganizations must involve solely the acquisition of control of a savings institution by a newly formed company that is controlled by the same acquirors that controlled the savings institution for the immediately preceding three years. To qualify for this type of filing, the transaction can involve no other transactions, such as an assumption of a current owner's debt by the newly formed company. The H-(e)4 filing must be accepted before the company acquires control of the institution.

Based upon the type of filing, the applicant will be required to submit certain documents and information set forth in the H-(e) Application Package. Please see the chart in the General Instructions section to determine what items are required to be addressed by each applicant. The application form address eight categories of information requirements:

- Proposed Transaction(s)
- General Background
- Financial Resources (Including a Three-year Business Plan)
- Managerial Resources
- Future Prospects
- Convenience and Needs of the Community
- Competitive Factors
- Voting Trusts and Corporate Trustees

If the holding company application involves a foreign holding company, the foreign holding company must submit a Foreign Holding Company Agreement. (See Exhibit A.)

Additional forms to supplement the H-(e) Application Package may be necessary, i.e., forms seeking approval for permission to organize, subsidiaries, trust powers, biographical and financial reports complete with supporting documentation, and business plan. These forms and instructions are available on the OTS Website.

Confidentiality

The applicant must submit in writing, concurrently with the submission of the application, any requests to keep specific portions of the application confidential. In accordance with the Freedom of Information Act, the request should discuss the justification for the requested treatment and should specifically demonstrate the harm (e.g., to competitive position, invasion of privacy) that would result from the public release of information. OTS will not treat as confidential the portion of an application describing the plan to meet the Community Reinvestment Act objectives.

Information for which confidential treatment is requested should be: (i) specifically identified in the public portion of the application by reference to the confidential section; (ii) separately bound; and (iii) labeled "confidential." The applicant should follow these same procedures when filing supplemental information to the application. OTS will determine whether information designated as confidential must be made available to the public under the Freedom of Information Act. OTS will advise the applicant before it makes information designated as confidential available to the public.

Special Considerations

Publication Requirements

The applicant shall publish notice of its intent to acquire a savings institution no earlier than three days before and no later than three days after filing the application, in accordance with the requirements of 12 C.F.R. § 574.6(d). For H-(e)3 applications, the applicant must also publish notice in accordance with the Bank Merger Act (BMA) (12 USC § 1828(c)(2)), as codified in 12 C.F.R. § 563.22(e). Notice must be published in a newspaper printed in the English language and having a general circulation in the community in which the home office of the institution is located. If the Regional Office determines that the primary language of a significant number of adult residents of the community is a language other than English, the applicant may also be required to publish notice simultaneously in the appropriate language(s).

OTS may require an applicant to publish a new public notice of the application in circumstances when an applicant submits a revision to the application, or submits new or additional information, or when a major issue of law or change in circumstance arises after filing the application. OTS has the discretion in these circumstances to require republication if it determines that the public has not had adequate notice and opportunity to comment on the application due to the substantial change. OTS will notify the applicant if a new public notice of a revised application must be published.

Additional public notice requirements may apply for transactions involving permission to organize or branch purchase applications filed pursuant to 12 C.F.R. §§ 543.2 and 563.22. Combined public notice may be published consistent with existing OTS policy. See Publication Forms Section 020 of the handbook for examples of publication language.

- Comment Procedures (H-(e)1, H-(e)1-S and H-(e)2 Applications)

  Any person may submit a written comment supporting or opposing the application within 20 days after the filing date of the application. Up to an additional 20 days to submit comments

may be obtained upon a showing of good cause, if a written request is received by OTS within the initial 20-day period. OTS will not consider any late filed comments unless: the commenter demonstrates good cause for why they could not submit a timely comment; or, OTS concludes that the comment addresses a significant concern and will assist in the disposition of the application. The duration of an extension request is subject to the discretion of OTS on a case-by-case basis, after consideration of the unique circumstances of each extension request.

The comment should recite relevant facts, including any economic or financial data supporting the commenter's position. If the commenter opposes the application, the comment should also: 1) address at least one reason for denial based upon regulatory criteria for denial; 2) support the reason for denial with relevant facts and supporting data; and, 3) address how the approval of the application is harmful to the community or the commenter.

- Comment Procedures (*H-(e)3 Application*)

Any person may submit a written comment to the Regional Office supporting or opposing an H-(e)3 application within 30 days after the filing date of the application. OTS will not consider any late filed comments unless: the commenter demonstrates good cause for why they could not submit a timely comment, or, OTS concludes that the comment addresses a significant regulatory concern and will assist in the disposition of the application. OTS can extend the 30-day comment period with demonstrated good cause for why a commenter was unable to submit a timely comment. The duration of an extension request is subject to the discretion of OTS on a case-by-case basis, after consideration of the unique circumstances of each extension request.

The comment should recite relevant facts, including any demographic economic or financial data supporting the commenter's position. If the commenter opposes the application, the comment should also: 1) address at least one reason for denial based upon regulatory criteria for denial; 2) support the reason for denial with relevant facts and supporting data; and 3) address how the approval of the application is harmful to the community or the commenter. While OTS will accept and consider all comments, including those that do not meet all of the content criteria, commenters are encouraged to include all relevant information and arguments. The commenter may also request an informal meeting pursuant to 12 C.F.R. §§ 516.120 and 516.170 with their comment, along with a description of the issues and facts to be discussed and justification for why written submissions are insufficient to adequately address those facts or issues.

If the commenter has filed a written request for a meeting and the request contains the required information set forth in 12 C.F.R. § 516.120(b), OTS will arrange a meeting. If an informal meeting is requested, the commenter must simultaneously send a copy of the written request to the applicant. OTS will generally provide an applicant an appropriate opportunity and period of time to respond to submitted comments.

OTS will facilitate the informal meeting between the applicant, the commenter(s) and any other interested person(s). OTS has discretion to determine the format of the meeting, including telephone conference or face-to-face meetings. OTS will inform the applicant and

commenters requesting an informal meeting of its decision on a request for a meeting, or of its decision to hold an informal meeting on its own initiative. OTS may also invite any other interested persons to attend. OTS will inform the participants of the date, time, location and format for the meeting in reasonable time in advance. OTS anticipates that informal meetings will be sufficient to facilitate the resolution of issues in most cases.

If an informal meeting fails to facilitate the resolution of issues to the satisfaction of any participant in an informal meeting, OTS may proceed to conduct a formal meeting before a presiding officer upon the filing of a request. Any participant requesting a formal meeting, pursuant to 12 C.F.R. §§ 516.170 and 516.180, should submit a request to OTS within three days after the informal meeting, and provide copies of its request to the other participants of the informal meeting. The request must describe the nature of the issues or facts to be presented, must demonstrate that material issues or facts have not been adequately addressed by the informal meeting, and that a formal meeting is necessary to develop a record sufficient to support a determination on those facts or issues. OTS will not arrange an informal meeting where a request is clearly frivolous or clearly lacking a factual basis. OTS may elect to hold a formal meeting on its own initiative if deemed necessary to assist in the disposition of the application or issues raised by the application.

OTS will issue a Notice of Formal Meeting if it decides to hold a formal meeting, and send the notice to the applicant, to any person requesting a formal meeting, and to any interested person, in its discretion, it desires to invite. Any person receiving the Notice of Formal Meeting must notify OTS within ten days of receipt of the notice of their intent to participate in the meeting. All participants in the formal meeting must provide the names of their presenters and copies of proposed exhibits to OTS, to the applicant, and to any other person designated by OTS, no later than five days before the date of the formal meeting. All presenters of documentary material must furnish copies of the material to OTS and to each other participant. OTS will arrange for a transcript of the meeting, with each participant bearing the cost of any copies of the transcript it requests for its use.

OTS anticipates that most formal meetings will follow an informal meeting. Accordingly, OTS will not grant a request for a formal meeting unless an informal meeting has occurred. However, OTS has the authority to conduct a formal meeting without holding an informal meeting if the meeting is beneficial to the review process and will facilitate a resolution of the issues raised by application.

If OTS has arranged an informal or formal meeting, the processing time frames for the application are suspended until OTS determines that a sufficient record has been developed to address the issues raised in the comments.

Bank Holding Company Acquisitions

Bank holding companies and their subsidiaries are not subject to the requirements of section 10 of the Home Owners' Loan Act. As a result, bank holding companies and their subsidiaries are not required to file holding company applications with OTS to acquire savings institutions. However, bank holding companies seeking to acquire a savings institution are required to submit an application, pursuant to section 4(c)(8) of Bank Holding Company Act, to the Federal Reserve Board (FRB). The

FRB will then forward a copy of the application to OTS for comments and recommendations. In general, OTS will have 30 days to provide comments to the FRB, but the FRB may shorten the period in the case of an emergency situation.

Background Checks

OTS policy requires background investigations of all applicants, their affiliates, current and proposed senior executive officers and directors of the applicant, and any individuals or groups acing in concert who own or control, directly or indirectly, ten percent or more of the applicant's stock. At a minimum, individuals must submit an Interagency Biographical and Financial form, FBI Fingerprint Card, and a Regulatory Bulletin (RB) 20 Certification Form. The RB-20 Certification Form should be submitted by the applicant and its affiliates in accordance with the bulletin. RB-20 authorizes OTS to request supplemental information from applicants if the information is useful in completing a thorough background investigation. Applicants can request a waiver from filing portions of this information by providing justification stating why this information is unduly burdensome or unnecessary. Waiver requests will only be granted in limited circumstances and consistent with current OTS policy. The Regional Office will conduct a background investigation in compliance with RB-20. If appropriate, the review may also require the Reviewing Analyst to contact other regulatory agencies to seek additional comments on the applicants, such as the functional regulator (i.e. state insurance regulator, SEC, NASD, etc.). Individuals must be fingerprinted by an independent third party unrelated to the individual or companies affiliated with the individual on fingerprint cards bearing the OTS identification number. Results of all background checks should be addressed in the Regional Office's digest.

Eligibility Examinations

In certain circumstances, OTS may have concerns regarding the qualifications of an acquirer to control a financial institution, related to existing operations that will become affiliated with the acquired institution, if issues involving the treatment of consumers, regulatory compliance, or other matters were identified during the background review. These types of circumstances may require OTS to perform an eligibility examination or to perform a review of parent or affiliated organizations. The examination procedures should be limited to those needed to assess the particular risks posed by the proposed transaction, or necessary to assess significant or novel issues relevant to the application.

The Regional Office should determine the need for an eligibility examination as early in the examination process as possible. The eligibility examination may include on- or off-site activities. Prior to commencing the on-site work, OTS will forward a Preliminary Examination Response Kit (PERK) requesting more detailed information that should be made available to the examiners upon their arrival. OTS does not normally charge a fee for its eligibility examination. However, OTS may impose an hourly fee if the examination encounters significant problems that require additional review beyond the scope of a standard eligibility examination.

Transactions With Affiliates

Sections 23A and 23B of the Federal Reserve Act, addressing transactions with affiliates, apply to savings institutions as if the savings institution were an FRB member bank. Implementing regulations are located at 12 C.F.R. §§ 563.41 and 563.42. These sections incorporate two special provisions, set forth at 12 U.S.C. § 1468(a)(1), that: 1) prohibit a savings institution from purchasing or investing in securities of an affiliate; and 2) allow loans to be made only to those affiliates engaged in activities permissible for bank holding companies.

Bank Merger Act

All applications filed under 12 C.F.R. Part 574 that involve mergers of savings institutions must also be reviewed and approved under the BMA. These filings include applications in which a savings and loan holding company proposes to acquire by merger, consolidation, or purchase of assets, a savings and loan institution and applications involving corporate reorganizations in which an interim institution is formed to facilitate the reorganization. Additionally, if an individual chooses to form an interim institution to accomplish an acquisition of control, the BMA, rather than the Change in Bank Control Act, would apply.

The BMA states that OTS may not approve (1) any proposed merger transaction that would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States; or (2) any merger transaction the effect of which, in any section of the country, may be to substantially lessen competition, tend to create a monopoly or, in any other manner, restrain trade, unless OTS finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served. Additionally, the BMA requires that OTS take into consideration the financial and managerial resources, future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served.

Applicants subject to the BMA are required to file four additional copies of the application with the Regional Director.

The Regional Director should request a competitive factors report from the Attorney General of the Department of Justice (DOJ), the Office of the Comptroller of the Currency, the FRB, and the Federal Deposit Insurance Corporation (FDIC) within five calendar days after the receipt of an application. The above agencies should provide the requested reports within 30 calendar days. See Bank Merger Act Transmittal Forms Section 030 of the handbook for the form letters.

OTS must immediately notify the Attorney General of any approval of a proposed merger transaction that is subject to the BMA. The Regional Office should send such notice on the day that the merger is approved (See Bank Merger Act Transmittal Forms Section 030 of the Handbook for the form letters).

Transactions requiring approval under the BMA may not be consummated prior to the 15th calendar day after the date of approval by OTS. The approval letter sent to the applicant should specify that consummation cannot take place before the appropriate date.

The DOJ has specified certain types of competitively neutral merger transactions that are subject to a streamlined processing procedure. These transactions include: (1) mergers between two or more savings institutions, if at least 50 percent of the voting stock of all of the institutions involved is controlled by the same company, person, or group of persons, or if one savings institution controls another; and (2) mergers between an interim savings institution and an existing savings institution to facilitate the formation of a unitary savings and loan holding company in a holding company reorganization.

Upon receipt of an application involving a competitively neutral merger, the Regional Director should forward a letter to the DOJ stating that the application has been granted "interim approval" for purposes of the BMA. The letter should also request confirmation that the proposed transaction is subject to streamlined processing (See Bank Merger Act Transmittal Forms Section 030 of the handbook for the form letter). If the DOJ does not object to the merger transaction within the 30-day period, the merger may be consummated immediately upon OTS approval of the transaction (provided that final approval is granted after passage of the 30 day period).

Prohibition on Offers to Acquire and Acquisitions of Stock for Three Years Following Conversion

If the target institution converted from the mutual to stock form of ownership within the previous three years, no person or company may, directly or indirectly, acquire or offer to acquire the beneficial ownership of more than ten percent of any class of the institution's equity securities without OTS prior written approval. If a person or company violates this prohibition, the institution may not permit the person or company to vote shares in excess of ten percent, and may not count these shares in any shareholder vote.

Certain exceptions to the regulations governing offers to acquire stock within three years of conversion, are set forth at 12 C.F.R. § 563b.3(i). OTS may deny an notice filed under 12 C.F.R. § 563b.3(i) if the proposed acquisition:

- Is contrary to the purposes of 12 C.F.R. Part 563b;
- Is manipulative or deceptive;
- Subverts the fairness of the conversion;
- Is likely to injure the institution;
- Is inconsistent with the institution's plan to meet the credit and lending needs of its proposed market area;
- Otherwise violates law or regulation; or
- Does not prudently deploy the institution's conversion proceeds.

The primary purposes of this rule are to provide a reasonable period of time for the institution to prudently deploy the new capital according to its business plan, for it to acclimate to operating as a public company, and to do both without the distraction of considering takeover proposals. OTS does

not believe acquisitions in the first three years following conversion are in the best interests of newly converted institutions, the communities the institutions serve, or the shareholders. In addition, OTS believes that the approval of friendly acquisitions may be inconsistent with the purposes of the conversion rules. As such, the standards for allowing such acquisitions are high and should not be approved unless there are significant risks to the institution operating on a stand-alone basis.

Exempt Transactions

The following transactions are exempt from the application filing requirements of 12 C.F.R. § 574.3(a):

- Control of a savings institution acquired under the terms of a will creating a trust that is excluded from the definition of a savings and loan holding company (12 C.F.R. § 574.2(q));
- A reorganization in which a company, person or group of persons that have controlled a savings institution for more than three years, seek to establish a newly formed holding company that is controlled by the same person or group. (An H-(e)4 notification is required for these types of transactions);
- Control of a savings institution acquired by a bank holding company that is registered under and subject to the Bank Holding Company Act of 1956, or any company controlled by such bank holding company;
- Control of a savings institution acquired solely as the result of a pledge or hypothecation of stock to secure a loan, or the liquidation of a loan, made in the ordinary course of business;
- Control of a savings institution acquired through a percentage increase in stock ownership following a pro rata stock dividend or stock split, if the proportional interests of the recipients remain substantially the same;
- The acquisition of additional stock by a person after approval has been received under 12 C.F.R. § 574.7, provided that the acquisition is consistent with any conditions or limitations imposed in connection with the approval and with the representations the acquiror made in the notice;
- The acquisition of up to 25 percent of a class of stock by certain tax-qualified employee stock benefit plans; and
- The acquisition of up to 15 percent of the voting stock of any savings institution by a savings and loan holding company pursuant to a qualified stock issuance (12 C.F.R. § 574.8(a)).

Prohibited Acquisitions

OTS is prohibited, pursuant to 12 U.S.C. § 1467a(e)(3) and 12 C.F.R. § 574.3(e), from approving the formation of a multiple, multi-state holding company structure if a savings institution will become an affiliate of another savings institution with which it was not previously affiliated, except in the following situations:

- The company, or a savings institution subsidiary of such company, is authorized to acquire control of a savings institution subsidiary, or to operate a home or branch office, in the additional state or states pursuant to Section 13(k) of the Federal Deposit Insurance Act;
- The company controls a savings institution subsidiary that operated a home or branch office in the additional state or states as of March 5, 1987; and
- The laws, of the state in which the institution to be acquired is located, permit a savings institution, chartered by such state, to be acquired by an institution chartered by the state where the acquiring holding company or institution is located, or by a holding company that controls such a state-chartered institution.

Waivers

In accordance with the provisions of 12 C.F.R. § 574.6(g), OTS may waive the publication, public comment, and disclosure requirements related to an application in a supervisory case.

REVIEW GUIDELINES

Processing Procedures and Time Frames

As noted in the Delegated Authority section, certain applications are not subject to delegated authority and are processed concurrently with OTS-Washington staff. As a general matter, correspondence from OTS regarding applications that are nondelegated will be transmitted from OTS-Washington. Correspondence on delegated applications will generally come from the Regional Office.

Within five business days of receipt of the application, by both OTS-Washington and the Regional Office, and the application fee, the Regional Office must notify the applicant of the application's receipt. The appropriate application fee must accompany each application in order for it to be considered filed.

For nondelegated applications that involve specialty areas, such as trust activities or CRA issues, a copy of the application must be provided to the corresponding OTS-Washington specialist.

Within 30 calendar days of receipt of a properly submitted application, OTS shall take the following actions.

- Deem the application complete;
- Request, in writing, any additional information necessary to deem the application complete; or
- Decline to further process the application if it is deemed by OTS to be materially deficient and/or substantially incomplete.

Failure by OTS to act within 30 calendar days of receipt of the application for processing shall result in the application being deemed complete, commencing the period for review.

OTS must review requests for a waiver of an application requirement that certain information be supplied, in a timely manner. Unless OTS requests, in writing, additional information about the waiver request, or denies the waiver request, the waiver request shall be deemed granted.

If additional information is requested, a response must be submitted within 30 calendar days of the letter requesting such information. The applicant may, in writing, request a brief extension of the 30-calendar day period for responding to a request for additional information, prior to the expiration of the 30-calendar day time period. OTS, at its option, may grant the applicant a limited extension of time in writing. Failure to respond to a written request for additional information within 30 calendar days of such request may be deemed to constitute withdrawal of the application or may be treated as grounds for denial or disapproval of the application.

After the timely filing any additional information in response to any initial or subsequent request by OTS for additional information, OTS has 15 calendar days to review the additional information for completeness or appropriateness and take one of the following actions.

- Request, in writing, any additional information necessary to deem the application complete;
- Deem the application complete; or
- Decline to further process the application if it is deemed by OTS to be materially deficient and/or substantially incomplete.

The 15-day review period commences when the OTS receives a response that purports to respond to all questions in the information request. OTS may extend the 15-day review period for an additional 15 calendar days, if OTS requires the additional time to review the response. OTS will notify the applicant that it has extended the period before the end of the initial 15-day period.

Failure by OTS to act within 15 calendar days of receipt of the additional information shall result in the filed application being deemed complete, commencing the period for review.

If an eligibility examination is conducted, the application will not be deemed complete until it concludes the examination. In addition, OTS may request additional information as a result of the eligibility examination that must be submitted in accordance with the time frames set forth in this section.

Once the application has been deemed complete, there is a 60-calendar day review period at which time OTS will take into consideration all factors present in the application and render a decision thereon. If, upon expiration of the 60-day review period, assuming no extension has been granted, OTS has failed to act, the notice is deemed approved automatically, and the applicant may thereafter consummate the transaction. If multiple applications are submitted in connection with one transaction, the applicable review period for all applications is the review period for the application with the longest review period, subject to statutory review periods.

During the review period, OTS may request additional information if the information is necessary to resolve or clarify the issues presented in the application. OTS may also notify the applicant that the

application is incomplete and require that the applicant submit additional information to complete the application. The review period can be extended an additional 30 calendar days if OTS determines that additional time will be required to analyze the proposed transaction. In such cases, OTS must notify an applicant prior to the expiration of the period for review. In situations in which an application presents a significant issue of law or policy, OTS may extend the applicable period for review of such application beyond the time period for review. In these cases, written notice shall be provided to an applicant no later than the expiration of the time period.

For purposes of calculating processing time frames, OTS does not include the day of the act or event, in determining the date the time period commences. In determining the conclusion of a time period, when the last day of the time period is a Saturday, Sunday, or a Federal holiday, the last day will become the next day that is not a Saturday, Sunday, or Federal holiday.

Under 12 C.F.R. § 516.290, if OTS has not acted on a pending application within two calendar years after the filing date, OTS may deem the application withdrawn unless OTS determines that the applicant is actively pursuing a final determination on the application. Applications that are subject to this withdrawal provision are those that have failed to timely take action such as filing required additional information, or OTS has suspended processing of an application based on circumstances that are, in whole or in part, within the applicant's control and have failed to take reasonable steps to resolve these circumstances.

H-(e)1-S Applications

An H-(e)1-S application is deemed to be approved 45 calendar days after the application is properly filed unless prior to such date: (i) OTS requests additional information in writing; (ii) notifies the applicant that the application is materially deficient and will not be processed; or (iii) denies the application prior to that time. It should be noted that these applications are still subject to the publication requirements of the other long-form H-(e) applications. If a request for additional information is necessary, the application converts to an H-(e)1 and the applicant may be required to remit the difference in application fees.

H-(e)4 Applications

With respect to an H-(e)4 information filing, the Regional Director, or his/her designee has 30 calendar days after the receipt of a filing to reject the assertion that a company qualifies for the exemption from filing an acquisition application. Although there is no publication requirement for these filings, OTS may request additional information in accordance with the time frames cited above for H-(e) applications. If OTS requests additional information, the 30-day review period will commence as of the date of receipt of a complete filing. Failure by OTS to notify applicants within the 30 day time period will result in the automatic acceptance of the exemption claim.

Regulatory Criteria

The authority of OTS to act on a holding company acquisition is found in 12 USC § 1467a(e) and, in a transaction involving a merger or combination of depository institutions, 12 USC § 1828(c)(2) (the BMA). The regulations promulgated pursuant to these statutes include 12 C.F.R. Part 574 and the

merger regulations, including 12 C.F.R. §§ 546.2, 552.13, and 563.22. OTS must consider the merger regulations in all H-(e)3 filings, as well as in all proposed acquisitions involving the merger of an interim institution and the target institution. Additionally, OTS must consider all holding company applications under the Community Reinvestment Act (CRA) of 1977, 12 USC §§ 2901-2905; as set forth in 12 C.F.R. Part 563e.

Specifically, 12 C.F.R. § 574.7(c) sets forth the basic criteria upon which OTS may deny a holding company acquisition application. Accordingly, OTS may deny an application:

- If OTS finds the financial and managerial resources and future prospects of the acquiror and the institution involved would be detrimental to the institution or to the insurance risk of the Savings Association Insurance Fund (SAIF) or Bank Insurance Fund (BIF). In the case of an H-(e)2 or H-(e)3 application, OTS must also consider the convenience and needs of the community; or
- If the applicant fails or refuses to furnish information requested by OTS.

OTS must deny a holding company application:

- If OTS finds the acquisition would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the savings and loan business in any part of the United States, or if the effect of the acquisition in any section of the country may be to substantially lessen competition, tend to create a monopoly, or in any other manner restrain trade, unless OTS finds that the effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of the acquisition in meeting the convenience and needs of the community to be served;
- If the acquiror fails to provide adequate assurances to OTS that it will make available such information on the operations of the company, or any affiliate, that OTS determines to be appropriate to determine and enforce compliance with the HOLA; or
- In the case of an application submitted by a foreign bank, if the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by appropriate authorities in the home country of the foreign bank.

In addition, applications subject to the Bank Merger Act will also be reviewed under the standards set forth in 12 C.F.R. § 563.22. While many standards are similar to those listed above, this section provides the standards under which OTS will review merger transactions, as well as certain information and filing requirements related to the transactions. Accordingly, OTS will also consider the following factors:

- The capital level of any resulting savings institution;
- The financial and managerial resources of the constituent institutions;
- The future prospects of the constituent institutions;
- The convenience and needs of the communities to be served;

- The conformity of the transaction to applicable law, regulation, and supervisory policies; and
- Factors relating to the fairness of and disclosure concerning the transaction.

With regard to the effect of the CRA on holding company applications, the proposed acquiror's record in meeting the credit needs of its entire community, consistent with safe and sound operations, is a consideration in the approval of an application.

The presumptive disqualifiers set forth in 12 C.F.R. § 574.7(g) must be considered with respect to holding company applications. 12 C.F.R. § 574.7(g) sets forth a list of presumptive disqualifiers that, if applicable, could result in the disapproval of a potential acquiror's application. The purpose of these regulatory provisions is to put potential acquirors on notice as to the grounds upon which an application may be disapproved, unless adequately refuted. The following factors give rise to a rebuttable presumptive disqualifier:

- During the ten year period immediately preceding filing of the application, criminal, civil, or administrative judgments, consents, or orders, and any indictments, formal investigations, examinations, or civil or administrative proceedings (excluding routine or customary audits, inspections and investigations) that terminated in any agreements, undertakings, consents or orders, issued against, entered into by, or involving the acquiror or affiliates of the acquiror by any Federal or state court, any department, agency, or commission of the U.S. Government, any state or municipality, any Federal Home Loan Bank, any self-regulatory trade or professional organization, or any foreign government or governmental entity, that involve:

  - Fraud, moral turpitude, dishonesty, breach of trust or fiduciary duties, organized crime, or racketeering;
  - Violation of securities or commodities laws or regulations;
  - Violation of depository institution laws or regulations;
  - Violation of housing authority laws or regulations; or
  - Violation of the rules, regulations, codes of conduct or ethics of self-regulatory trade, or professional organizations.

- Denial, or withdrawal after receipt of formal or informal notice of an intent to deny, by the acquiror or affiliates of the acquiror, of:

  - Any application relating to the organization of a financial institution;
  - An application to acquire any financial institution or holding company thereof under the Savings and Loan Holding Company Act or the Bank Holding Company Act;
  - A notice relating to a change in control of any of the foregoing under the Change in Savings and Loan Control Act or the Change in Bank Control Act; or
  - An application or notice under a state holding company or change in control statute.

- The acquiror or affiliate(s) of the acquiror were placed in receivership or conservatorship during the preceding ten years, or any management official of the acquiror was a management official or director (other than an official or director serving at the request of OTS, the FDIC, the former Resolution Trust Corporation, or the former Federal Savings and Loan Insurance Corporation) or controlling shareholder of a company or savings institution that was placed into receivership, conservatorship, or a management consignment program, or was liquidated during his or her tenure or control or within two years thereafter.
- Felony conviction of the acquiror, an affiliate of the acquiror, or a management official of the acquiror or its affiliate.
- Knowingly making any written or oral statement to OTS or any predecessor agency (or its delegate) in connection with an notice, notice or other filing under 12 C.F.R. Part 574 that is false or misleading with respect to a material fact or omits a material fact with respect to information furnished or requested in connection with such an application, notice, or other filing.
- Acquisition and retention of stock in the savings institution, at the time of submission of an application or notice, in violation of 12 C.F.R. § 574.3 or its predecessor sections.
- Liability for amounts of debt that, in the opinion of OTS, create excessive risks of default and pressure on the savings institution to be acquired.
- Acquisition of control would result in a significant change in the business strategy of the institution that would implement activities inconsistent with economical home financing.

The presence of any of these considerations may constitute grounds for disapproval of a proposed acquisition if not adequately addressed by the acquiror. In order to rebut a presumptive disqualifier on integrity grounds, an acquiror should submit materials proving that the conduct in question has ceased, has become irrelevant, or otherwise should not warrant a disapproval decision. With regard to financial factors, the submission of an acceptable business plan or the acquiror's commitment to raise additional capital (for the acquiror) may be sufficient to rebut a presumptive disqualifier.

Decision Guidelines

The statutory and regulatory requirements are designed to ensure the continued viability and safe and sound operation of the institution, following the acquisition. In general, OTS's analysis should conclude that the acquiror has sufficient capital to consummate the acquisition, has the ability to provide funding, should the institution need additional capital. In addition, OTS should conclude that resulting management has the necessary expertise and controls to implement the business plan. In addition, OTS should conclude that the community will be served and that the transaction will be consummated in compliance with applicable rules and regulations. If, based upon the review, OTS has determined that the acquisition will adversely affect or jeopardize the financial well being of the institution or be detrimental to the community; a denial recommendation may be the course of action. OTS should consider the following factors in analyzing the application to determine if the transaction satisfies the applicable statutory and regulatory criteria for approval:

- Did the applicant submit the following forms and information:

- Appropriate and properly executed H-(e) application;
- Each newly appointed director/trustee, senior officer and new controlling shareholder(s) must submit an OTS Form 1623 (Interagency Biographical and Financial Report), properly executed RB-20 Certification and FBI Fingerprint Card;
- Resume or description of the managing officer's qualifications and discussion of salary and benefits, if a change has incurred;
- Copies of proposed employment contracts and evidence of regulatory compliance;
- Description of any proposed stock option plans;
- Three-year business plan;
- Charter and bylaws;
- Copies of all proposed contracts with affiliates, all contracts not in the ordinary course of business or in excess of 15 percent of the proposed operating budget;
- CRA plan; and
- The latest audit report and annual report to shareholders.

- Financial Resources

  - Does the applicant propose to borrow funds to finance the acquisition of a savings institution? If so, evaluate all existing debt of the acquiror and all proposed acquisition debt to determine whether the applicant's aggregate indebtedness will place an undue burden on the institution to pay dividends, management fees or upstream money in other ways.
  - If funds are to be borrowed, the applicant should provide specific information concerning the terms of the debt, including servicing requirements.
  - Does the applicant propose to replace the equity of the institution with debt or non-cash assets?
  - If the applicant plans to contribute non-cash assets, the applicant should provide an appraisal acceptable to OTS to support the value of the assets.
  - Are the non-cash assets of an intangible nature? If so, the reviewer should analyze the amount and specific character of the assets, the predictability of the projected income streams associated with the assets, and the existence of a market for the assets.
  - Does the acquisition involve a cash-out merger that will diminish the capital and liquidity positions of the resulting institution?
  - Does the acquiror propose to infuse sufficient capital so that the institution will meet its capital requirements under 12 C.F.R. Part 567.2?
  - Does the proposed business plan demonstrate compliance with OTS capital requirements over the three-year projections?

- Does the acquiror have sufficient capital resources necessary to fund the additional operations and offset potential adverse changes in market conditions or poor operating performance?
- Is capital adequate based upon business philosophy or for institutions with specialized operations or higher risk profiles (i.e. internet based banking)?
- If the applicant has more than one class of common stock, does any of the stock have characteristics similar to debt or preferred stock?
- If the applicant has preferred stock outstanding, will the dividend requirements place an excessive burden on the institution's earnings or capital?
- Has the acquiror submitted realistic unconsolidated cash flow and income projections showing its ability to service the acquisition debt and maintain the institution's capital at required levels?
- Does the proposed capitalization of the holding company in a reorganization comply with the provisions of OTS capital distribution regulations (12 C.F.R. §§ 563.140 – 563.146)? Is such capitalization objectionable for supervisory reasons?
- Is the acquisition tax-free? If not, would the tax liability significantly affect the financial position of the institution or the acquiror?
- Are income-producing subsidiaries of the institution being moved or placed directly under the holding company? If so, verify that the financial condition of the institution will not be affected in a materially adverse manner, and consider implications with respect to future transactions with affiliates.

- Managerial Resources

  - Have any of the officers or directors of the holding company or any proposed management officials of the institution served as management officials or been controlling persons of another depository institution, or depository institution holding company? If so, have the appropriate regulatory agencies been contacted for comment on these individuals?
  - Did the background investigation indicate whether any of the officers, directors or management officials had been subject to any enforcement, criminal or questionable actions? If so, would these actions preclude any of these individuals from serving at the institution?
  - Have the directors, major officers, and controlling persons of the applicant (and any affiliates) submitted Interagency Biographical and Financial Reports and executed Attachment A to RB-20?
  - Was any adverse information found in the background reviews not disclosed by any individual in their RB-20 Certification or on OTS Form 1623?
  - Does the background information, provided with regard to the expertise of proposed management officials, indicate competence and sufficient relevant management experience to handle the duties and responsibilities to be assumed?

- Do any proposed employment agreements include the provisions required pursuant to 12 C.F.R. § 563.39, and is executive compensation overall in compliance with the guidelines set forth in RB-27a?
- Does the applicant have a plan for management succession at the institution?
- Will the board of directors have sufficient independence from its parent holding company to ensure that the institution will continue to operate without undue influence from its parent company and affiliates?
- Will the applicant and the institution comply with the Depository Institutions Management Interlocks Act, as implemented by 12 C.F.R. Part 563f, upon consummation of the proposed transaction?

- Future Prospects

  The reviewer should conduct a thorough review of the business plan provided by the applicant. At a minimum, the reviewer should review the following items:

  - What are the applicant's plans for the operations of the institution?
  - Does the proposed business plan satisfy OTS requirements?
  - Are the institution's new business plan and its underlying assumptions reasonable?
  - Is there a need for the additional products and services in the institution's market area?
  - Can the additional operations be established without undue injury to other local thrift and home financing institutions?
  - Do the proposed savings and lending services appear reasonable? Will the new activity increase the risk to the institution or to the SAIF or BIF?
  - Will the change in the business plan cause the institution to rely on the excessive use of brokered deposits?
  - Do any new activities present unusually high elements of risk, such as a significant volume of sub-prime loans, speculative lending, or credit card activity?
  - Will the proposed balance sheet and business strategy comply with the lending and investment limitations of Section 5(c) of HOLA and 12 C.F.R. Part 560?
  - Does the acquiror have adequate managerial and financial resources to carry out its business plan proposals for the institution?
  - Does the application or business plan disclose recent changes in population, retail sales, employment, office absorption rates, housing vacancy rates and major industry in the institution's market that could have a detrimental effect on the institution?

- Competitive Effects

  If an application filed under 12 C.F.R. Part 574 is subject to the Bank Merger Act, the reviewer should request from the DOJ and the banking regulatory agencies a report on the competitive effects of the transaction (see the Bank Merger Act section of these guidelines). If a savings and loan holding company is acquiring an additional institution in a transaction that does not implicate the Bank Merger Act, the reviewer must request from the DOJ (but not the other banking regulatory agencies) a report on the competitive factors of the transaction.

  * Do the competitive factors contained in the proposed acquisition exceed those found in 12 C.F.R. § 563.22(f)(5-10)? Have reports from the other agencies been received that would indicate that the proposed transaction may have an anti-competitive effect? If so, the application becomes nondelegated and OTS-Washington will provide further analysis regarding the competitive effects of the proposal.

- Convenience and Needs of the Community (H-(e)2, H-(e)3 or H-(e)1 where a thrift holding company is acquiring a thrift)

  * Does the application substantiate that the proposed acquisition would maintain or improve the lending and deposit services offered to the community?
  * Does the application discuss any contemplated changes regarding physical facilities or hours of operation?
  * Does the acquisition appear to be consistent with evolving economic changes and growth in the community to be served by the institution?

- Miscellaneous Guidelines

  * Did the background review of the acquiror and its affiliates disclose any enforcement, criminal or questionable actions? Did the review disclose violations that were considered systemic that could adversely impact the institution's operations?
  * Did the other regulators, including other functional regulators provide any adverse comments?
  * Has the acquiror published notification of the filing within the time frames specified in 12 C.F.R. § 574.6(d)?
  * If the target institution was recently converted, has the acquiror filed and received approval of an application under 12 C.F.R. § 563b.3(i) prior to filing the notice?
  * Is the applicant currently in compliance with the provisions of 12 C.F.R. Part 574? Violations of 12 C.F.R. Part 574 must be addressed before OTS acts on an application.
  * Have all appropriate companies and individuals joined in the filing? Ascertain whether any person or company controls the acquiror. Also determine whether the company

filing the application would be deemed to be acting in concert with another company or an individual who has not filed an application.

* Is the applicant engaged in any activities that would be impermissible for a savings and loan holding company? Section 10(c)(9)(A) of the HOLA provides that no company may directly or indirectly acquire control of a savings institution after May 4, 1999, unless the company is engaged directly or indirectly (including through a subsidiary other than a savings institution) only in activities that are permitted: (i) under section 10(c)(1)(C) or 10(c)(2) of the HOLA, or (ii) under section 4(k) of the Bank Holding Company Act. Companies that were savings and loan holding companies on May 4, 1999 (or became savings and loan holding companies pursuant to an application pending with OTS on or before that date are not subject to section 10(c)(9)(A) or 10(c)(9)(B) of the HOLA, provided that they meet the requirement of sections 10(c)(9)(C)(i) and (ii) of the HOLA.
* Does the application specify the amount of stock to be acquired?
* If the target institution converted within the previous three years, the applicant must address and consider the criteria for approval set forth at 12 C.F.R. § 563b.3(i)(5).
* If the target is a stock institution that maintains a liquidation account pursuant to 12 C.F.R. § 563b.3(f), the acquiror must maintain the liquidation account.
* Has the applicant failed to fulfill any commitments to or any conditions imposed by OTS in connection with a prior application?
* Does the transaction involve the formation of a multiple, multi-state holding company structure? If so, is the structure permissible pursuant to 12 C.F.R. § 574.3(e)?
* Will the target institution pay excessive fees in connection with its acquisition in comparison with those fees paid by the acquiring entity?
* Does the applicant own or control a business in which the institution may engage? If so, will a condition be imposed on the approval of the acquisition requiring the applicant to develop a conflict of interest statement?
* Are any of the presumptive disqualifiers relating to integrity or financial factors as set forth in 12 C.F.R. §§ 574.7(g)(1) and 574(g)(2) present? If so, has the applicant successfully rebutted these presumptions?
* If the institution will begin Internet operations, will the Internet banking activities be conducted in compliance with OTS and Interagency policy?
* Has the target institution received satisfactory CRA ratings? If not, has action been taken to correct the CRA deficiencies?
* Will the proposed acquisition require an amendment to the target institution's CRA statement? For example, will the acquisition result in a change in the number or location of branch sites? Will the applicant need to revise the “local community” delineation?
* If a proposed acquisition involves the merger of two or more operating institutions, has the applicant submitted a new CRA statement for the resulting institution?

* Has the public submitted any CRA comments in connection with the subject application or in the recent past?

Conditions

Standard Conditions

Listed below are the standard conditions of approval for this application type. If OTS imposes any additional or different conditions, they must be justified in the supporting documentation.

- The applicant must receive all required regulatory and shareholder approvals for the proposed transaction and submit copies of all such approvals to the Regional Director prior to consummation of the proposed transaction;
- The applicant must consummate the proposed transaction within one hundred and twenty (120) calendar days from the date of the approval, unless the Regional Director, or his/her designee, grants and extension for good cause;
- **(For applicants subject to the BMA.)** The proposed merger must not be consummated prior to 15 calendar days after the date of approval;
- On the business day prior to the date of consummation of the proposed transaction, the chief financial officers of the proposed holding company and the institution must certify in writing to the Regional Director that no material adverse events or material adverse changes have occurred with respect to the financial condition or operation of the holding company and the institution as disclosed in the applications. If additional information having an adverse bearing on any feature of the applications are brought to the attention of the holding company, the institution, or OTS since the date of the financial statements submitted with the applications, the transaction must not be consummated unless the information is presented to the Regional Director, and the Regional Director provides written non-objection to consummation of the transaction;
- The holding company must advise the Regional Director in writing within 5 calendar days after the effective date of the proposed transaction: (a) of the effective date of the proposed transaction; and (b) that the transaction was consummated in accordance with all applicable laws and regulations, the applications, and this Order;
- **(For applicants subject to the BMA.)** The holding company must advise, in writing, all depositors whose accounts increase above $100,000 as a result of the transaction, of the effect of the transaction on their insurance coverage within 30 calendar days of the effective date of the proposed transaction;
- **(If the application involves a potential tax liability and a certification has not been provided.)** Prior to consummation of the acquisition, the Applicant must file with the Regional Director either a ruling from the Internal Revenue Service or an opinion of tax counsel acceptable to the Regional Director that states that the proposed transaction will not result in any significant tax liability to the institution; and
- **(Acquisition of a converting or recently converted institution.)** In the case of a holding company reorganization involving a converting or recently converted institution, approval is

conditioned on the applicant being subject to 12 C.F.R. §§ 563b.3(c)(9), (c)(17), (c)(18), (c)(19), (g)(1), (g)(4) and (i) to the same extent as the institution would be, and the applicant not taking any action that would prevent its shares from being listed from a National or Regional Securities Exchange or quoted or reported on the NASDAQ system.

If an interim institution is formed to facilitate the acquisition, the following conditions are imposed with regard to the interim:

- The organization of interim must be completed pursuant to 12 C.F.R. § 552.2-1(h);
- Upon completion of the organization of interim, the board of directors of interim and the institution must ratify the Agreement and Plan of Reorganization;
- The proposed merger must be effective within 120 calendar days of the date of the approval resolution;
- No later than 5 calendar days after the date of consummation of the merger (of interim and institution), the institution must submit a certification of legal counsel stating the effective date of the merger and that the merger has been consummated in accordance with the Agreement and Plan of Reorganization; and
- Interim must not open for business.

Nonstandard Conditions

It is not unusual for the approval of a holding company application to contain nonstandard conditions of approval. Additional conditions may be warranted in circumstances where the proposed acquisition is integrated with services or activities involving affiliates, where securities affiliates exist, where anti-tying issues are present, or due to unique characteristics or the risk profile of the resulting institution. All nonstandard conditions of approval must be supported with justification in the recommendation memorandum related to approval of the application. Listed below are examples of frequently seen nonstandard conditions:

- The institution must operate within the parameters of its business plan. The holding company and the institution must submit any proposed major deviations or material changes from the plan (including changes resulting from decisions made by the holding company), and in particular, those pertaining to cross-marketing by the institution and its affiliates, for the prior written non-objection of the Regional Director. The request for change must be submitted a minimum of 60 calendar days before the proposed change is implemented with a copy sent to the FDIC Regional Office. The institution must submit to the Regional Office quarterly variance reports on the business plan for the first three years of its operations.
- The institution must submit annual independent audit reports to the Regional Director for its first three fiscal years. These reports must be in compliance with the audit rules set forth at 12 C.F.R. § 562.4.
- (**Applied on a case-by-case basis, customarily used for holding company structures in which there is expected to be significant reliance on affiliates for certain services**.) At least 40 percent of the institution's board of directors must be individuals who are not officers

or employees of the Applicants or affiliates thereof and have not otherwise been determined by the Regional Director to lack sufficient independence, and at least one member of the institution's board of directors must be an individual who is not an officer, director or employee of the Applicants or any affiliate and who is not an officer or employee of the institution and has not otherwise been determined by the Regional Director to lack sufficient independence. At least 50 percent of the audit **(OPTIONAL LANGUAGE (for trust only applicants): trust and investment)** committee established by the institution must be directors who are not officers or employees of the institution, the Applicants or any affiliates and have not otherwise been determined by the Regional Director to lack sufficient independence. If compliance with this condition involves the selection of additional directors, each director must receive the prior written approval of the Regional Director.

- Within the first year of its operation, the proposed appointment of any permanent executive officers or directors of the institution is subject to the prior review and non-objection of the Regional Director.
- For the first eighteen months of operation, any contracts or agreements pertaining to transactions with affiliates, not yet submitted to the OTS for review, must be provided to the Regional Director at least 30 calendar days prior to execution and must receive his written non-objection prior to implementation.
- **(If the Applicant utilizes purchase or push down accounting.)** Within 120 calendar days from the date of consummation of the acquisition, the applicant must submit an opinion from its independent auditor, satisfactory to the Regional Director, that (i) indicates that the applicant consummated the transaction in accordance with generally accepted accounting principles; (ii) specifically describes, as of the effective date of the acquisition, any intangible assets, including goodwill, and discount of assets arising from the assets to be recorded; and (iii) substantiates the reasonableness of amounts attributed to intangible assets and the related amortization periods and methods.
- **(For institutions that will market its products through its affiliates or cross-market products.)** The holding company, its affiliates and the institution must comply with the anti-tying restrictions of 12 U.S.C. §§ 1464(q) and 1467a(n) and must develop written procedures to effect such compliance. The procedures must be submitted for the review and non-objection of the Regional Office at least 30 calendar days prior to the commencement of the cross-marketing activity.
- **(For institutions that have "securities affiliate(s)", as defined below, the following two conditions must be included.)** A majority of the institution's board of directors must not be comprised of individuals who are directors or employees of any affiliate of the institution that engages in securities brokerage, securities dealing, investment company, or investment advisor activities (Securities Affiliate(s)).
- The institution is prohibited from sharing common officers with any Securities Affiliate unless prior written approval is obtained from the Regional Director, which shall be based on criteria such as regulatory compliance, experience, character, integrity and the ability to perform both duties.

Any nonstandard conditions incorporated into the approval letter must be summarized in the National Applications Tracking System record for the application. This requirement helps OTS to provide the public a complete listing of all applications approved with nonstandard conditions of approval.

Note: An H-(e)4 filing is not subject to conditional approval. The only action taken with respect to such filings is a legal determination as to whether the proposed reorganization qualifies for exempt status under 12 C.F.R. Part 574. If so, the company does not need to file any further information with OTS.

RECORDKEEPING REQUIREMENTS

OTS is required to consolidate all correspondence related to the processing of the application into a file copy to be sent to a central file. Both the Regional Office and OTS-Washington will maintain a separate file copy for nondelegated filings. The file copy must include a copy of the original filing including all exhibits, all amendments, all internal and external correspondence between interested parties, all documentation associated with the review and analysis of the filing, and all decision, recommendation memorandum, and compliance material. The file copy must be organized and separated into public and confidential material, and clearly identified as such. The public and confidential sections must be arranged in chronological order.

MONITORING AND CONTROL

The approval order or letter will generally include conditions of approval. The Regional Office will monitor compliance with all conditions imposed in connection with an application's approval. The applicant must submit evidence of satisfaction of the conditions included in the approval order or letter to the Regional Office within the stated time frames.

OTS should notify the appropriate staff responsible for the supervision and examination of the institution regarding the action taken on an application. In addition, OTS should provide the appropriate staff with copies of the approval order or letter. If an application is approved, the first examination of the institution following the approval should include a review of compliance with all conditions of approval and any changes in operations as a result of the transaction.

A review of the application file should be made after all compliance material is received to ensure that the file is complete. Any deficiencies should be corrected before the file is sent to storage.

OTS-Washington may conduct a post audit review of the application in the Regional Office, including a review of the documentation maintained in the application file.

INFORMATION SOURCES

Statutes

12 U.S.C. § 1467a	Savings and Loan Holding Company Act
12 U.S.C. § 1817(j)	Change in Bank Control Act
12 U.S.C. § 1828(c)	Bank Merger Act

12 U.S.C. §§ 1843(c), 1843(k)	Bank Holding Company Act
12 U.S.C. §§ 2901, et seq.	Community Reinvestment Act
12 U.S.C. §§ 3201, et seq.	Depository Institution Management Interlocks Act

Regulations

12 C.F.R. Part 516	Applications Processing Guidelines
12 C.F.R. § 541.18	Interim Federal Institution
12 C.F.R. §§ 546, 552.13	Merger and Transfers of Assets and Liabilities and 563.22
12 C.F.R. § 563.39	Employment Contracts
12 C.F.R. § 563.41	Loans and other transactions with affiliates and subsidiaries
12 C.F.R. § 563.42	Additional standards applicable to transactions with affiliates and subsidiaries
12 C.F.R. § 563.43	Restrictions on Loans and Other Investments Involving Affiliated Persons
12 C.F.R. §§ 563.140, et seq.	Capital Distributions
12 C.F.R. § 563b.3(i)(3)	Offers to Acquire Recently Converted Institutions
12 C.F.R. Part 563e	Community Reinvestment Act
12 C.F.R. Part 563f	Management Interlocks
12 C.F.R. Part 567	Capital Requirements
12 C.F.R. Part 574	Acquisition of Control of Savings Institutions
12 C.F.R. Part 584	Savings and Loan Holding Companies

OTS Bulletins

RB-20	Guidelines on Proper Investigation of Applicants and Increased Communications Between OTS and Other Financial Institution Regulatory Agencies
RB-27a	Executive Compensation
Thrift Bulletin 48-(current)	Fees and Assessments
23A and 23B of the Federal Reserve Act	Transactions with Affiliates
Legal Alert	Application of the Bank Merger Act to Merger Memorandum No. 10 and Purchase and Assumption Transactions Involving Savings Institutions (12/08/89)
Legal Alert Memorandum No. 17	Public Notice and Comment Period Under the Bank Merger Act (10/26/90)

Other

Comment Rulings	
Paragraph 11,467	Bank Merger Transactions: FDIC Statement of Policy

Forms

OTS H-(e) Application Package	
OTS Business Plan Guidelines	
OTS Form 1623	Interagency Biographical and Financial Report

Exhibit A

FOREIGN HOLDING COMPANY AGREEMENT

This Agreement is made by and among _____ (Non-Domestic Applicant), and (Applicant U.S.A., or collectively referred to as the Applicants), and the Office of Thrift Supervision (the OTS).

WHEREAS, Non-Domestic Applicant is a corporation duly organized under the law of the _____;

WHEREAS, Applicant U.S.A. is a company duly organized under the laws of the State of _____;

WHEREAS, the Non-Domestic Applicant and the Applicant U.S.A. jointly have submitted an application ("Application") to the OTS for approval of the acquisition of the voting stock of _____ ("Bancorp"), the holding company for _____ ("Savings Bank"), under the provisions of Section 10(e) of the Home Owners' Loan Act, (the "Act"), and 12 C.F.R. Part 574 (the "Regulations");

WHEREAS, the Act requires the Director to deny a holding company application if the acquiring company fails to provide adequate assurances to the Director that the company will make available to the Director such information on the operations or activities of the company, and any affiliate of the company, as the Director determines to be appropriate to determine and enforce compliance with the Act and any other statute or regulation administered by the OTS as now or hereafter in effect and applicable to the undersigned in its capacity as a savings and loan holding company; and

WHEREAS, the OTS has approved the Application, subject to certain stated conditions, including execution of this Agreement;

NOW THEREFORE, in consideration of the approval of the Application by the OTS, the parties do hereby agree as follows:

1. The Non-Domestic Applicant shall permit the OTS to examine it to such extent as the OTS may from time to time prescribe.

2. If for any reason the OTS is unable to perform the examinations referred to in 1. above, the Non-Domestic Applicant, at the request of the OTS, shall maintain at the home office of the Applicant U.S.A. such books, records and other information concerning the operation of the Non-Domestic Applicant as may be requested by the OTS. Such information shall be transmitted promptly after being requested by the OTS and shall be in such form and for such periods, and shall contain such methods of verification, as the OTS may direct without requiring the creation of records exclusively for this purpose.

3. The Non-Domestic Applicant shall transmit to the OTS such periodic reports as may from time to time be requested by the OTS or the Regional Director of the appropriate Regional Office and as required by the applicable OTS regulations now or hereafter in effect. The Non-Domestic Applicant shall not be required to create records exclusively for this purpose. Such reports shall be transmitted promptly after request by the OTS and shall be in such form and for such periods, and shall contain such methods of verification, as the OTS may direct.

4. The Non-Domestic Applicant shall take all reasonable steps to permit the OTS to have access to any information or report with respect to any examination of it conducted by a federal or _____ regulatory agency or other foreign authority, so long as such access is not objected to by such authority, and provided further, that, consistent with U.S. law, the OTS will accord the same level of confidentiality to such reports as that accorded by the foreign authority.

5. The Non-Domestic Applicant shall execute within 30 days from the date of the approval of the Application and file with the OTS through its Regional Office, an irrevocable appointment, in form satisfactory to the OTS, of the President and/or any other officer of the Applicant U.S.A. as its agent for service of process. The Non-Domestic Applicant shall maintain an agent for service of process until the earlier of (i) the agreement of the OTS to termination of the appointment, or (ii) ten years after the release by OTS of the Non-Domestic Applicant from registration as a savings and loan holding company as provided in Section 10(b)(6) of the Act. If the agent for service of process is replaced, the new appointment shall be executed as described herein within 30 days.

6. Within 30 days of the date of the approval of the Application, the chief executive officer, the chief financial officer, the senior executive vice president and the secretary, or their equivalents, of the Non-Domestic Applicant shall individually execute and file with the OTS through its Regional Office, irrevocable appointments, in form satisfactory to the OTS, of the President and/or any other officer of the Applicant U.S.A. as their agent for service of process for the purpose of any proceedings under the Act or the Federal Deposit Insurance Act and the rules and regulations promulgated pursuant thereto by the OTS and any other statute or regulation administered by the OTS as now or hereafter in effect, and applicable to such persons as officials of a savings and loan holding company, for so long as they serve in such capacity. The Non-Domestic Applicant shall notify the OTS of any changes in the individual holders of their listed offices, and any new holder of such office shall execute an appointment as herein prescribed within 30 days. If an agent for service of process is replaced, a new appointment shall be executed as herein prescribed within 30 days. Each appointment shall expire at such time as a particular officer of the Non-Domestic Applicant, as described above, leaves such office, unless such appointment is required to be maintained by statute.

7. The Non-Domestic Applicant agrees to cause the Applicant U.S.A. not to sell, pledge, hypothecate, or otherwise encumber or dispose of any shares of the outstanding capital stock of Bancorp, the Savings Bank or any subsidiary companies thereof, owned by the Applicant U.S.A. without the prior written approval of the OTS.

8. The Non-Domestic Applicant consents to be bound by all applicable provisions of the Act; the Federal Deposit Insurance Act; and the rules and regulations promulgated pursuant thereto by the OTS and any other statute or regulation administered by the OTS as now or hereafter in effect and applicable to the undersigned in its capacity as a savings and loan holding company for so long as the Non-Domestic Applicant is a savings and loan holding company.

9. The Non-Domestic Applicant agrees that at any time during which it controls, directly or indirectly, the Savings Bank, the stock of such Savings Bank shall be held in the name of a savings and loan holding company which is organized under the laws of a state of the United States.

10. This Agreement shall be effective and binding upon the parties hereto and any assignee or successor in interest to any of said parties. Applicant U.S.A. agrees to take all reasonable steps within its power to secure compliance with the provisions of this Agreement by the Non-Domestic Applicant. As used in this Agreement, the terms "savings association," "subsidiary," "savings and loan holding company," "affiliate," "control," and other terms listed in Section 10(a) of the Act shall have the meanings ascribed to said terms in that section, and the regulations of the OTS thereunder.

12. This Agreement is being required by the OTS as a condition of approving the Application filed by the Applicants. The provisions of this Agreement are intended to supplement and are not in derogation of, nor do they in any way limit or restrict, the rights and powers of the OTS under the Act, the Federal Deposit Insurance Act, and any other statute or regulation, as now or hereafter in effect, administered by the OTS.

IN WITNESS WHEREOF, the parties hereto, by the persons duly authorized whose signatures appear below, have respectively executed this Agreement in duplicate originals on the dates respectively set forth below, the date of this Agreement being the last of said dates.

Certified copies or appropriate resolutions of the respective boards of directors of the parties of the first part authorizing the execution of this Agreement are attached hereto and made a part hereof.

Date:_____ (Company Name)

By: (Name, Title)

_____

Date:_____ _____

Director
Office of Thrift Supervision