

COMPTROLLER'S LICENSING MANUAL

Change in Bank Control



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Introduction

Persons who wish to acquire control of a national bank or federal savings association (FSA) through the purchase, assignment, transfer, pledge, exchange, succession, or other disposition of voting stock must file a notice with the Office of the Comptroller of the Currency (OCC) and submit the information requested by the “Interagency Notice of Change in Control” form. Throughout this booklet, national banks and FSAs are collectively referred to as banks unless it is necessary to distinguish between the two types of charter.

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

This booklet provides the following:

- Detailed guidance, instructions, policies, and procedures for persons submitting a notice of change in bank control.
- Information on time frames for filing the notice.
- Statutory factors the OCC considers in reaching a decision.
- Information about the notice process, including
 - the prefiling process,
 - filing the notice,
 - determining when the notice is technically complete,
 - processing time frames, and
 - other specific requirements.
- Step-by-step procedures for an acquiring person to follow.
- A glossary of terms.
- A references section that includes statutory and regulatory citations.

This booklet provides hyperlinks to forms, such as the [“Interagency Notice of Change in Control”](#) and [“Interagency Biographical and Financial Report,”](#) and other information that an acquiring person may find useful when filing a change in bank control notice. Acquiring persons should review the [“General Policies and Procedures”](#) booklet of the *Comptroller’s Licensing Manual* for additional filing instructions before completing the notice.

Corporations, partnerships, certain trusts, associations, and other similar organizations that propose to acquire control of a bank may be required to obtain approval from the Board of Governors of the Federal Reserve System (Federal Reserve Board) under the Bank Holding Company Act (BHCA) or the Home Owners’ Loan Act (HOLA), rather than OCC nondisapproval under the Change in Bank Control Act (CBCA).

Who Must File

Under the CBCA (12 USC 1817(j)) and the OCC's regulation implementing the CBCA (12 CFR 5.50), any person seeking to acquire the power to vote 25 percent or more of a class of a bank's voting securities or the power to direct the bank's management or policies must give notice to the OCC at least 60 days before the acquisition (refer to the "Time Frame" section of this booklet for a discussion of timing aspects of the review process). As noted in the "Exemptions" section of this booklet, there are some exceptions to this requirement.

Persons who are acting in concert to acquire control of a bank must file a joint prior notice with the OCC, because the OCC considers these persons' interests in the bank collectively (see the "Glossary" and the "Key Policies" sections of this booklet).

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. The OCC presumes, unless rebutted, that a person or persons acting in concert who acquire 10 percent or more of a bank's voting securities will have the power to direct the bank's management or policies if

- the securities to be acquired by the person are subject to the registration requirements of section 12 of the Securities Exchange Act of 1934 (15 USC 781) (these securities are generally widely held); or
- immediately after the acquisition, no other person will own or have the power to vote a greater proportion of that class of voting securities.

If two or more persons, not acting in concert, each propose to acquire simultaneously equal percentages of 10 percent or more of a class of a bank's voting securities, each of the acquiring persons shall either file a notice or rebut the presumption of control if either

- the acquisitions are of a class of securities subject to the registration requirements of section 12 of the Securities Exchange Act of 1934 (15 USC 781); or
- immediately after the transaction, no other shareholder of the bank would own or have the power to vote a greater percentage of the class.

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, are subject to the notice requirements of 12 CFR 5.50.

Corporations, partnerships, certain trusts, associations, and similar organizations that are not required to obtain Federal Reserve Board approval under the BHCA to acquire a national bank are also subject to the notice requirements of 12 CFR 5.50. Refer to 12 CFR 5.50(e)(2).

Exemptions

Filing Exemptions

The following transactions are exempt from the notice requirements of 12 CFR 5.50:

- Acquisition of additional shares by a person who
 - has, continuously since March 9, 1979 (or since the bank commenced business, if later), 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, unless the OCC has otherwise specified notice requirements in writing. When an acquiring person has less than a majority interest when the original notice is filed, the nondisapproval letter for that acquisition generally states that a future CBCA notice will be required if and when the acquiring person becomes the majority shareholder.
- Transactions subject to approval under
 - section 3 of the BHCA (12 USC 1842), when a filing with the Federal Reserve Board is required for a company or entity to acquire control of a national bank.
 - section 18 of the Federal Deposit Insurance Act (12 USC 1828(c)), when the appropriate federal banking regulator reviews a filing for a business combination such as a merger, consolidation, or purchase and assumption.
 - section 10 of the HOLA (12 USC 1467a), when a filing with the Federal Reserve Board is required for a company or entity to acquire control of an FSA.
- Certain transactions described in the BHCA under
 - 12 USC 1841(a)(5), when a bank or company holds shares of a bank solely in a fiduciary capacity, with certain exceptions noted in the statute.
 - 12 USC 1842(a)(A) and (B), when a bank acquires shares in good faith in a fiduciary capacity or in the regular course of securing or collecting debts previously contracted in good faith with certain exceptions noted in the statute; or when additional shares are acquired by a bank holding company (BHC) in a bank in which said BHC owned or controlled a majority of the voting shares before said acquisition.
- 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 nevertheless require the filing of a notice within 90 days after they occur. Transactions exempt from prior notice are acquisitions of control resulting from

- acquisition of voting shares through testate or intestate succession. For example, a controlling shareholder dies and a testamentary trust takes control. The trustees of the trust, and controlling beneficiaries, would then be required to provide notice.
- acquisition of voting shares as a bona fide gift.
- an increase in a person's percentage ownership of voting shares as a result of a redemption of voting securities.
- actions by third parties that are not within the control of the affected person. 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 notice of change in control or rebut the presumption of control (refer to the "Rebuttal of Control" section of this booklet).
- acquisition of voting shares in satisfaction of a debt previously contracted in good faith. A person or persons acting in concert who purchase a previously defaulted loan secured by bank stock, or a loan that has a substantial likelihood of default, cannot rely on this prior notice exemption to foreclose on the loan, seize or purchase the underlying collateral, or otherwise acquire control of the bank.

Rebuttal of Control

The following situations create a rebuttable presumption of control where any person proposes to acquire 10 percent or more, but less than 25 percent, of a 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).
- Immediately after the transaction, no other person owns a greater proportion of that class of voting securities.

In these cases, the acquiring person must either file a notice of change in control or rebut the presumption of control. If the acquiring person chooses to rebut the presumption, the rebuttal must provide facts sufficient to show that the acquiring person will not control the bank after an acquisition that falls within the parameters of the presumption.

A presumption of control cannot be rebutted if the total equity investment by the acquiring person, including 15 percent or more of any class of voting securities, equals or exceeds one-third of the total equity of the bank.

Generally, the OCC will consider a control presumption to be rebutted if the acquiring person makes the following written commitments:

- Any acquisition of shares equal to or in excess of 10 percent of a class of voting securities will be exclusively for investment purposes.
- Not to serve on the board of directors and to have no more than one representative on the board.
- To have only limited contacts with bank management that are customary for interested shareholders.
- To engage only in normal and customary banking transactions with the bank.
- Not to pledge the shares acquired to secure a loan with any financial institution.
- To grant management a proxy for all shares to be owned by the acquiring person equal to or in excess of 10 percent of the bank's shares. The shares covered by the proxy will be voted in the same proportion as all other shares voted by all other shareholders.
- To agree that in the event any of the commitments are not strictly adhered to, the acquiring person will have intentionally exercised a controlling interest in the bank and, therefore, will be subject to administrative action.
- To file a notice or otherwise receive a written opinion from the OCC that a notice need not be filed, if the acquiring person wishes to deviate from any commitments (refer to Interpretive Letter No. 621, February 1, 1993, Fed. Bank. L. Rep. (CCH) 83503).

Any person seeking to rebut the presumption of control should contact the appropriate OCC licensing office for further information.

Key Policies

Acting in Concert

Persons act in concert when they knowingly participate in a joint activity or parallel action toward a common goal of acquiring control of a bank, whether or not pursuant to an express agreement; or when there is a combination or pooling of voting or other interests in the securities of an issuer for a common purpose pursuant to any contract, understanding, relationship, agreement, or other arrangement, whether written or otherwise.

The statutory and regulatory requirements are designed to ensure that persons acting in concert have their interests in a bank considered collectively. The relationships among persons with interests in a bank are relevant to a determination of whether those persons are acting in concert. When a person proposes to acquire a bank's stock, the OCC evaluates the facts and circumstances and determines whether that person is acting in concert with others. Thus, if potential acquirers do not intend to act in concert, either with other potential or preexisting acquirers, they should make a complete showing in their notice of change in control or rebuttal of the specific facts demonstrating that they are not acting in concert (i.e., provide a rebuttal of concerted action).

The following persons shall be presumed to be acting in concert for the purposes of a change in bank control:

- A company and any controlling shareholder, partner, trustee, or management official of such company, if both the company and the person own stock in the affected bank.
- A person and members of the person's immediate family (refer to the "Glossary" section of this booklet).
- Companies under common control.
- Persons who have made, or propose to make, a joint filing under section 13 or 14 of the Securities Exchange Act of 1934 and applicable U.S. Securities and Exchange Commission rules.
- A person or company and any trust for which the company or person is a trustee. Certain exceptions exist for trustees of tax-qualified employee stock benefit plans.
- Persons who are parties to any agreement, contract, understanding, relationship, or other arrangement, whether written or otherwise, regarding the acquisition, voting, or transfer of control of a bank's voting securities. Routine proxy solicitations to conduct business at regular or special shareholder meetings are not covered, if the proxy terminates in a reasonable period of time.

Potential acquiring persons should contact the appropriate OCC licensing office with any acting in concert questions or concerns.

Decision Criteria

The CBCA and the OCC's control regulations provide that the OCC may disapprove a notice of change in control if it finds that any of the following factors exist:

- The proposed acquisition of control would result in a monopoly, or would further any monopoly or conspiracy to monopolize or to attempt to monopolize, the business of banking in any part of the United States.
- The effect of the proposed acquisition in any part of the country may be to substantially lessen competition, or tend to create a monopoly, or would in any other manner restrain trade, and the anticompetitive effects are not 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.
- Either the financial condition of any acquiring person or the future prospects of the bank is such as might jeopardize the financial stability of the bank or prejudice the interests of its depositors.
- The competence, experience, or integrity of any acquiring person or of the proposed management personnel indicates that it would not be in the interests of the depositors or the public to permit that person to control the bank.
- The acquiring person does not provide the OCC with all required information.
- The proposal would result in an adverse effect on the Federal Deposit Insurance Fund.

Background Investigations

The OCC investigates the competence, experience, integrity, and financial ability of each person named in a notice of change in bank control, unless the OCC waives this requirement. The OCC independently verifies the accuracy and completeness of information submitted for each person. The [“Background Investigations”](#) booklet of the *Comptroller's Licensing Manual* provides more information about this review process, the OCC's authority to object to an acquiring person, and actions that the OCC may take if the materials submitted contain a misrepresentation or omission that could be misleading. Intentionally misleading statements or material omissions may result in legal sanctions against the person. The agency may subpoena records and take testimony to determine if an acquiring person provided false information in a notice.

If the OCC receives adverse information on a person named in a notice to acquire control of a bank, the OCC notifies the person and allows the person to complete, correct, or challenge the information before the OCC makes a decision.

Consideration of Integrity and Financial Criteria

The following factors, if present, raise significant concerns as to whether the acquiring person meets the integrity or financial requirements under the CBCA and the OCC's implementing regulations:

- The acquiring person has been subject to one or more actions that fulfill the following criteria:
 - The action takes the form of any of the following:
 - A criminal, civil, or administrative judgment.
 - A consent, order, or indictment.
 - A formal investigation or examination.
 - A civil or administrative proceeding.
 - The action terminated in one or more agreements, undertakings, consents or orders, issued against, entered into by, or involving the acquiring person or affiliates of the acquiring person.
 - The action was taken 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.
 - The action addresses conduct by the acquiring person or an affiliate of the acquiring person involving fraud, moral turpitude, dishonesty, breach of trust or fiduciary duties, organized crime, racketeering, or violations of laws or regulations pertaining to depository institutions, securities or commodities, housing, or violation of the rules, codes of conduct, or ethics of a self-regulatory trade or professional organization.¹
- The acquiring person, or affiliates of the acquiring person, was placed in receivership or conservatorship.
- The acquiring person, or affiliates of the acquiring person, was a management official, director, or controlling shareholder of a company or bank that was placed into receivership, conservatorship, or a management consignment program.
- The acquiring person, or affiliates of the acquiring person, was a management official, director, or controlling shareholder of a company or bank that was liquidated during his or her tenure or control or within two years thereafter.
- The acquiring person’s financial statements indicate liability for amounts of debt that, in the judgment of the OCC, create excessive risks of default and pressure on the bank to be acquired.

To address integrity concerns, the acquiring person should submit materials to the OCC 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 acquiring person’s commitment to raise additional capital (for the acquiring person) may be sufficient to address concerns.

Conditions and Agreements

In certain situations, the OCC may impose conditions in writing on its actions not to disapprove a notice of change in bank control, including conditions to address a supervisory,

¹ The OCC also considers violations of other types of laws or regulations in its review of a person’s integrity. Violations of the types of laws and regulations described in this section, however, raise special concerns because they relate more directly to the activities of depository institutions.

safety and soundness, or compliance concern. These conditions are imposed to address factors that otherwise could result in disapproval under the CBCA or the OCC's change in bank control regulation, and are enforceable under 12 USC 1818. The conditions may require the acquiring person 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. When the OCC has concerns regarding the future prospects of the target bank, it may require the acquiring company to enter into an agreement to provide ongoing capital and liquidity support to the target bank. The OCC may also condition its nondisapproval of a notice on the acquirer using his or her best efforts to cause the target bank to maintain safe and sound operations. For example, where the acquirer seeks to change the operations or direction of the target bank (or in other appropriate circumstances), the OCC may condition nondisapproval by, among other things, requiring the acquirer to use his or her best efforts (e.g., voting his or her shares or exercising influence as a member of the board or management of the target bank) to cause the target bank to enter into an enforceable written operating agreement with the OCC to maintain capital or liquidity at certain levels or to address supervisory, policy, or legal concerns.

Parallel-Owned Banking Organizations

Parallel-owned banking organizations are created when a person who owns a foreign bank acquires a domestic bank. Processing a notice of change in control that creates a parallel-owned banking organization generally requires increased scrutiny. The OCC needs to fully understand how the overall strategy and management of the parallel-owned banking organization will affect the domestic 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 domestic 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 resources of the individual filing the notice of change in control.

Concerns for the domestic bank that arise from a potential parallel-owned banking organization typically result in expanded notice requirements. The degree to which the OCC will expand requirements varies, reflecting the specific structure of the proposed transaction and resulting organization. Examples of possible additional information requirements that the OCC might request to facilitate the supervision of parallel-owned banking organizations are provided in the appendix of this booklet.

Because of the complexity of proposals that would establish a parallel-owned banking organization and the case-by-case nature of their processing, potential acquiring persons are strongly encouraged to meet with the appropriate OCC licensing staff before submitting the notice.

Notice Process

General

Persons wishing to acquire control of a bank must submit information requested by the “[Interagency Notice of Change in Control](#)” form and “[Interagency Biographical and Financial Report](#).” The acquiring person must publish an announcement of the proposed change in bank control (refer to the “Publication and Comment Period” section of this booklet).

The OCC reviews the notice of change in control upon receipt to determine whether it is technically complete. If the OCC determines that a notice is technically complete, the OCC makes a decision on the notice within the time frames established in the CBCA or 12 CFR 5.50 (refer to the “Time Frame” section of this booklet).

Notice Contents

The OCC considers certain factors before determining that a notice is technically complete. These factors include, but are not limited to, whether the

- acquiring person provided all information requested in the notice, including biographical and financial information.
- acquiring person provides information showing the financial ability to consummate the transaction and service any debt, if the purchase is not transacted with cash.
- acquiring person satisfactorily addressed lapses in employment history.
- information to be submitted to shareholders in a tender offer, if applicable, is adequate and accurate.
- appraiser acknowledged the independence of any appraisals used to support asset values, if applicable.
- 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.
- acquiring person provided, and the OCC accepted, any additional information in such form as the OCC requested, such as written agreements previously described in the “Conditions and Agreements” section of this booklet.

Publication and Comment Period

Within 10 days of filing a notice, the acquiring person must publish an announcement in a newspaper of general circulation in the community where the target bank is located.

After publication, the acquiring person should promptly provide the appropriate OCC licensing office with a statement containing the date of publication, the name and address of the newspaper that published the public announcement, a copy of the public announcement,

and any other required information. Refer to the “[Public Notice and Comments](#)” booklet of the *Comptroller’s Licensing Manual* for procedural information. A [form of public notice](#) may be found on the OCC website.

Under certain circumstances when the OCC has determined that an emergency exists, and that the publication requirement may seriously threaten the safety and soundness of the bank to be acquired, the OCC may

- waive the publication requirement.
- delay the public announcement.
- waive or shorten the public comment period.
- act on a notice before the expiration of the public comment period.

The OCC may require a new public notice if the acquiring person submits a revised filing or additional information related to the filing, a major issue of law or change in circumstances arises after the filing, or the OCC determines that a new public notice is appropriate.

Any interested person may submit comments in writing on any corporate filing during the applicable public 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 requests the acquiring person to indicate any planned significant change to the bank’s business strategy or corporate structure. Persons with such intentions must provide a thorough description of the changes. Examples of changes include, but are not limited to, a significant change in 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; and 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 person should provide the information consistent with the [Business Plan Guidelines](#) issued as part of the “[Charters](#)” booklet of the *Comptroller’s Licensing Manual*. 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 rigorously analyzes proposed business plans and strategies. The OCC may use written agreements to impose substantive requirements equivalent to conditions and pre-opening requirements that apply to a de novo charter (refer to the “[Conditions and Agreements](#)” section of this booklet for additional discussion). The OCC also may conduct an examination or field investigation to address or evaluate the supervisory implications of the proposal. The OCC will notify the acquiring person whether the agency will charge for the examination or investigation. For a detailed discussion of field investigations, refer to the “[Charters](#)” booklet.

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 person did not furnish all of the information required.
- in the OCC's judgment, any material information submitted is substantially inaccurate.
- it is unable to complete the investigation of an acquiring person, because of delay by, or inadequate cooperation of, the acquiring person.
- it requires additional time
 - to investigate and determine that no acquiring person has a record of failing to comply with the requirements of the Bank Secrecy Act (31 USC 5311) or
 - to analyze the safety and soundness of any plans or proposals to engage in certain transactions described in 12 USC 1817(j)(6)(E) or the future prospects of the bank.

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

The OCC may issue a nondisapproval letter before receiving information on all of its background investigations. If adverse or previously withheld information is received subsequently, however, the OCC will consider available remedies under applicable statutes or regulations.

Additional Information Request

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

An acquiring person should contact the OCC as soon as possible if he or she cannot submit the additional information by the response due date. 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 person to file an amended "Interagency Notice of Change in Control" form and restart the entire notification process if the additional information needed is substantial. In such instances, the OCC may require the acquiring person to republish the notice of change in control.

Appeals

If the OCC disapproves the transaction, the proposed acquiring person may request a hearing before the OCC within 10 days of receiving the OCC's written disapproval. A hearing is

presided over by an administrative judge, who recommends a decision to the Comptroller. If the OCC's disapproval stands after the hearing and entry of a final decision by the Comptroller, further review by the courts is available.²

Consummation

Upon issuing a nondisapproval to a change in control, the OCC generally requires that acquiring persons consummate the change in control within six months of the decision date, unless the OCC approves an extension of time.³ The date of consummation of the change in control must be provided to the OCC within 10 days after consummation.

² Hearing initiation procedures are outlined in 12 CFR 19, subpart H.

³ Refer to 12 CFR 5.13(g).

Specific Requirements

Director Qualifications

All persons who become bank directors after a change of control must meet the following qualifications.

National Banks

Each national bank director must meet the qualification requirements found in 12 USC 72, unless a residency or citizenship waiver request is submitted to and approved by the OCC (refer to the “[National Bank Director Waivers](#)” booklet of the *Comptroller’s Licensing Manual*). Specifically, each national bank director must

- hold a minimum \$1,000 par value or fair market value of stock in his or her own right in the bank or an equivalent interest in the parent company that controls the national bank.
- be a U.S. citizen throughout his or her term of service, although the OCC may waive this requirement for a minority of the total number of directors.

At least a majority of the directors of a national bank must have resided in the state, territory, or district in which the bank is located (that is, the state or states in which the bank has its main office or branches), or within 100 miles of the bank’s location, for at least one year immediately preceding election as directors, unless the OCC grants a residency waiver. The directors must continue to meet this requirement for their entire terms of service unless the OCC grants a residency waiver.

Federal Savings Associations

A director of an FSA need not be a stockholder of the association unless the bylaws so require. Each director of a federal mutual savings association shall, however, be a member of the association.

An FSA’s board of directors is not subject to citizenship and residency requirements. The composition of the board is, however, subject to the following requirements of 12 CFR 163.33:

- A majority of the directors must not be salaried officers or employees of the FSA or of any subsidiary thereof.
- Not more than two of the directors may be members of the same immediate family.
- Not more than one director may be an attorney with a particular law firm.

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.

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 acquiring person must notify the Federal Trade Commission and the U.S. Department of Justice of the intent to rely on this exemption and request that the OCC act under the exemption.

Accounting

A bank should account for a change in control in accordance with generally accepted accounting principles and the call report instructions. When a change in bank control meets the definition of a business combination as set forth in Accounting Standards Codification (ASC) Topic 805, “Business Combinations,” the acquirer accounts for the transaction using the acquisition method. Pushdown accounting may be elected when an acquirer obtains a controlling financial interest in the acquiree, as defined by ASC 810-10, “Consolidation.” A controlling financial interest typically requires ownership of more than 50 percent of the voting rights of an acquired entity. Pushdown accounting is when the acquiring entity’s basis of accounting is “pushed down” to the acquired entity’s financial statements.

Reporting of Stock Loans

Any foreign bank, or any affiliate of a foreign bank, must file a consolidated report with the appropriate OCC supervisory office of the national bank or FSA if the foreign bank or any affiliate thereof has credit outstanding to any person or group of persons, in the aggregate, that is secured, directly or indirectly, by 25 percent or more of any class of voting securities of the same national bank or FSA. Other reporting requirements may be applicable (12 CFR 5.50(i)).

Late Notices and After-the-Fact Notices

The OCC may require divestiture if a controlling interest in the voting stock of a bank is acquired in violation of the CBCA or OCC requirements. The OCC also may assess civil money penalties on persons who fail to file notices or who file late notices. In addition, the OCC may publicize any remedial action taken against a person who has filed a late notice. Persons filing late or after-the-fact notices should not vote shares acquired in violation of the CBCA or 12 CFR 5.50 until the OCC issues a nondisapproval decision.

In reviewing a late or after-the-fact notice, the OCC uses the same procedures and analysis as it does in reviewing a timely notice. Specifically, the OCC advises an acquiring person when the late or after-the-fact notice is deemed technically complete, and the OCC performs the

same review, investigation, and verification procedures as for a notice filed in accordance with 12 CFR 5.50.

Tender Offers

The OCC must review and clear any tender offer to purchase bank stock that will result in a change in control of a bank with a class of securities registered under the Securities Exchange Act of 1934. A copy of any such tender offer must be provided with the notice. Stock purchase information included in a tender offer must be summarized and incorporated by reference in the notice. Tender offer materials should be filed with the OCC's Securities and Corporate Practices Division in Washington, D.C.

Voting Trusts

A voting trust or voting agreement (voting trust) is a trust or agreement that includes any legally binding action by shareholders attempting to aggregate and control the voting of a bank's stock. The OCC generally considers voting trusts as potential control persons under the CBCA.

A voting trust may be considered a "company" under the BHCA or HOLA and subject to the Federal Reserve Board's regulations and examination. A number of factors, such as the trust's duration, scope of the trust's activities and assets, and the existence of similar arrangements between the parties that relate to other business entities, may affect this determination. Because Congress has charged the Federal Reserve Board with administering the BHCA and HOLA holding company provisions, the Federal Reserve Board should be consulted for such a determination.

Initial Filing

A voting trust that is not otherwise subject to the BHCA or HOLA and that is seeking to acquire control of a bank must file a prior notice with the OCC. The notice should identify all trustees and beneficiaries and include a copy of the voting trust or agreement. Generally, all trustees and beneficiaries of a voting trust are deemed to be acting in concert, must join the filing, and must submit complete personal [biographical and financial information](#). The filers must comply with the applicable publication requirements of 12 CFR 5.50(g).

Subsequent Filings

If there are changes in the trustees or beneficiaries of a voting trust that controls a bank, a new notice must be submitted. Generally, persons filing the new notice must follow the guidance for initial filings and must submit personal biographical and financial information.

Expansion of Assets or Activities

In reviewing the decision criteria required under the CBCA, the OCC considers the appropriateness of permitting an acquisition of control that would result in a substantive change in the assets or activities of a bank. Any such significant changes in the asset composition of a bank may require the OCC's approval pursuant to 12 CFR 5.53,⁴ in addition to a determination under the CBCA.

⁴ 12 CFR 5.53 generally requires a bank to obtain the OCC's prior approval before expanding or reducing its total assets by 25 percent or more within one year, or by other size parameters as determined by the OCC. The regulation gives more specific examples and exceptions to this requirement.

Procedures

The acquiring person takes the following steps to submit a notice of change in control.

1. Contacts the appropriate OCC licensing office for guidance on filing a notice of change in control. Acquiring persons can refer to the [“General Policies and Procedures”](#) booklet of the *Comptroller’s Licensing Manual* for general guidance; specific guidance is available in this [“Change in Bank Control”](#) booklet and the [“Background Investigations”](#) booklet. Acquiring persons may also find the [“National Bank Director Waivers,”](#) [“Public Notice and Comments,”](#) and [“Changes in Directors and Senior Executive Officers”](#) booklets useful.
2. Considers whether to request an optional prefiling meeting with the OCC to review procedures for filing a notice of change in control and factors that may influence the OCC’s review of the notice, such as plans for a significant change to the bank’s business plan or corporate structure, or a transaction that will result in a parallel-owned banking organization.
3. If the acquiring person thinks the presumption of control can be rebutted, or if the person believes he or she is not acting in concert with others, submits a letter and supporting documents to the OCC outlining the rationale for this assertion.
4. Submits a notice of change in control to the appropriate OCC licensing office. The notice and any attachments should be as detailed as possible. Incomplete or incorrect documents may affect the OCC’s decision. The filing should include the following:
 - [“Interagency Notice of Change in Control”](#)
 - [“Interagency Biographical and Financial Report”](#)
 - [IRS tax check waiver form](#)
 - [Consent form for background investigations](#)
 - Completed fingerprint cards (may be obtained from the appropriate OCC licensing office)
 - Other supporting documents as applicable (e.g., tender offers, business plans, and voting trust agreements)
5. Publishes the required announcement in a newspaper of general circulation in the community where the bank is located within 10 days of filing the notice.
6. Prepares and submits additional information if requested by the OCC. As appropriate, executes written agreements or commitments to the OCC.
7. If applicable, submits information to the appropriate OCC licensing office to complete, correct, or challenge adverse information received from background checks.

8. If the OCC's decision is not to disapprove, and the acquisition of control is made, sends written notice of the consummation to the appropriate licensing office within 10 days of consummation.
9. If the OCC's decision is to disapprove, the acquiring person may request a hearing by the OCC within 10 days of notification of the disapproval (refer to 12 CFR 19, subpart H, for hearing initiation procedures).

Appendix

POSSIBLE REPRESENTATIONS OR COMMITMENTS FOR CHANGE IN BANK CONTROL NOTICES RESULTING IN A PARALLEL-OWNED BANKING ORGANIZATION

1. Acquiring person 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 the bank [Bank Holding Company, if appropriate], or any institution-affiliated parties (IAP) regarding each thereof under 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 person 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 person is a citizen, and where person resides, person 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 the acquiring person by the OCC and its staff. In addition, based on these opinions of counsels, acquiring person 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 person to comply fully with commitment or representation Nos. 1 and 2 above, except to the extent that waivers of confidentiality by the acquiring person would be necessary to permit such examination or use of the 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 U.S. federal court of competent jurisdiction and of any Federal Banking Authority⁵ for purposes of any investigation or possible investigation, action, subpoena, examination, or proceeding by any Federal Banking Authority, the U.S. Department of Justice, or the U.S. 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 this date, designates [Name of Agent], located at [Address, City, and State], as 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 or 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 the acquiring person is a U.S. citizen and, if different, where the acquiring person resides (i) that each of the commitments or 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 acquiring person to comply fully with commitments or representations Nos. 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, acquiring person 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. Acquiring person will update these lists annually or more frequently as changes occur in "related interests" or affiliates. Acquiring person and each company that from time to time is controlled directly or indirectly by the acquiring person, 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).

⁵ A Federal Banking Authority includes the OCC, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.

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 or Regulation W, 12 CFR 223, between bank and foreign affiliates.
 - (c) Acquiring person commits or represents that dealings between bank and any company that is an “affiliate” of bank, which may include certain companies in which the acquiring person holds an interest, will be subject to the restrictions in 12 USC 371c and 371c-1 as implemented by Regulation W. For purposes of this commitment or representation, an extension of credit also includes a deposit by bank with an affiliate.
8. Acquiring person 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. Acquiring person 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. Acquiring person 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. Acquiring person 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 acquiring person will promptly notify the OCC of any changes or pending changes in affiliation.
13. Acquiring person 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:

Acquiring person 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. Acquiring person 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 acquiring person 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 or debt of the bank will be transferred or pledged to any third party without the prior approval of the OCC.
17. Acquiring person 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

Acquire: When used in connection with the acquisition of stock of a bank, means obtaining ownership, control, power to vote, or sole power of disposition of stock, directly or indirectly or through one or more transactions or subsidiaries, through purchase, assignment, transfer, pledge, exchange, succession, or other disposition of voting stock, including

- an increase in percentage ownership resulting from a redemption, repurchase, reverse stock split, or a similar transaction involving other securities of the same class, and
- the acquisition of stock or voting securities by a group of persons and/or companies acting in concert, which shall be deemed to occur upon formation of such group.

Acting in concert: Knowing participation in a joint activity or parallel action toward a common goal of acquiring control whether or not pursuant to an express agreement. The term also can mean combining or pooling voting or other interests for a common purpose pursuant to any contract, understanding, relationship, agreement, or other arrangement whether or not written.

Affiliate: Any company that controls, is controlled by, or is under common control with another company (12 USC 1841(k)).

Beneficiary: A person or organization for whom a trust is created and who receives the benefit of the trust.

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

Controlling shareholder: Any person who directly or indirectly or acting in concert with one or more persons or companies, or together with members of his or her immediate family, owns, controls, or holds with power to vote 10 percent or more of the voting stock of a company or controls in any manner the election or appointment of a majority of the company's board of directors.

Federal savings association: A federal savings association or federal savings bank chartered pursuant to section 5 of HOLA (12 USC 1464).

Good faith: In the context of debt previously contracted, means that a person must make, renew, or acquire a loan secured by voting securities of a bank in advance of any knowledge of default or of the substantial likelihood that a default is forthcoming.

Immediate family: Includes a person's spouse, father, mother, stepfather, stepmother, brother, sister, stepbrother, stepsister, children, stepchildren, grandparent, grandchildren, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, and daughter-in-law, and the spouse of any of the foregoing.

National bank: An insured or uninsured national banking association chartered pursuant to 12 USC 21.

Parallel-owned banking organization: A relationship that exists when at least one domestic 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. A parallel-owned banking organization 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 BHCA (12 USC 1841 et seq.) or the Savings and Loan Holding Company Act (12 USC 1467a).

Person: An individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, voting trust or voting agreement, or any other form of entity, including any group of persons acting in concert.

Technically complete notice: A change in control notice for which the information provided is responsive to every item listed in the notice form. Refer to 12 CFR 5.50(f)(3)(i).

Trustee: The person or persons designated by a trust to vote bank stock subject to a trust (also termed voting trustee or voting representative in the case of a voting agreement).

Voting securities: Shares of common or preferred stock, general or limited partnership shares or interests, 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 bank, or to vote on or to direct the conduct of the operations or other significant policies of the issuing bank. (For instances when preferred stock or similar interests are not considered voting securities, refer to 12 CFR 5.50(d)(14)(i).) Voting securities also include securities, other instruments, or similar interests that are immediately convertible, at the option of the owner or holder, into voting securities.

Voting trust or agreement: A trust agreement or any other agreement that includes a legally binding action by shareholders attempting to aggregate and control the voting of a bank's stock subject to the agreement.

References

In this section, “NB” denotes that the referenced law, regulation, or issuance applies to national banks, and “FSA” denotes that the reference applies to federal savings associations.

Administrative Hearings

Regulation 12 CFR 19.160–19.161 (NB and FSA)

Asset Composition

Regulation 12 CFR 5.53 (NB and FSA)

Background Investigations

Regulation 28 CFR 16.34 (NB and FSA)
28 CFR 50.12 (NB and FSA)

Comptroller’s Licensing Manual, “[Background Investigations](#)” (NB and FSA)

Bank Holding Company Act

Law 12 USC 1841 et seq. (NB)

Bank Secrecy Act

Law 31 USC 5311 (NB and FSA)
Regulation 31 CFR 103 (NB and FSA)

Capital Requirements

Law 12 USC 51c, 56, and 59 (NB),
12 USC 1464(s) and (t) (FSA),
12 USC 3907 (NB and FSA)
Regulation 12 CFR 3 and 6 (NB and FSA)

Capital Stock

Law 12 USC 51a, 51b, 51c, 52, and 55 (NB)
Regulation 12 CFR 5.22 (FSA), 12 CFR 7.2016, 7.2017,
7.2018, and 7.2023 (NB)

Capital Structure Change

Law 12 USC 56, 57, and 59 (NB)
Regulation 12 CFR 5.45 and 5.55 (FSA)
12 CFR 5.46 and 7.2020 (NB)

Change in Bank Control

Law 12 USC 1817(j) (NB and FSA)
Regulation 12 CFR 5.50 (NB and FSA)

Civil Money Penalties

Law 12 USC 1817(j)(16) (NB and FSA),
18 USC 1001 (NB and FSA)

Policies and Procedures Manual 5000-7 (REV), “Civil Money Penalties” (NB and FSA)

Conditions

Law 12 USC 1818 (NB and FSA)

Directors

Law 12 USC 71 (NB)

Regulation 12 CFR 163.33 (FSA)

Citizenship Waiver

Law 12 USC 72 (NB)

Convicted of a Crime

Law 12 USC 1829 (NB and FSA)

Number

Law 12 USC 71 and 71a (NB)

Regulation 12 CFR 5.21 and 5.22 (FSA)

Oath

Law 12 USC 73 (NB)

Regulation 12 CFR 7.2008 (NB)

President

Law 12 USC 76 (NB)

Regulation 12 CFR 7.2012 (NB)

Purchases and Sales of Assets

Law 12 USC 1828(z) (NB and FSA)

Qualifications

Law 12 USC 72 (NB)

Regulation 12 CFR 163.22 (FSA), 12 CFR 7.2005 (NB)

Residency

Law 12 USC 72 (NB)

Exempt Transactions

Law 12 USC 1467a (FSA), 12 USC 1842 (NB),
12 USC 1828(c) (NB and FSA)

Financial Services Regulatory Relief Act of 2006

Law

Public Law No. 109-351,
October 13, 2006 (NB and FSA)

Hart–Scott–Rodino Antitrust Improvements Act of 1976

Law

15 USC 18a (NB and FSA)

Proxy

Regulation

12 CFR 11 (NB and FSA)

Shareholders List

Law

12 USC 62 (NB)

Voting Trust

Regulation

12 CFR 7.2022 (NB)