

Federal Deposit Insurance Corporation

§ 303.62

the future, and is not designed for the purpose of profit-making; and

(d) Each program is conducted in a manner that is consistent with safe and sound banking practices and complies with applicable law.

[73 FR 35338, June 23, 2008]

§§ 303.47–303.59 [Reserved]

Subpart D—Merger Transactions

§ 303.60 Scope.

This subpart sets forth the application requirements and procedures for transactions subject to FDIC approval under the Bank Merger Act, section 18(c) of the FDI Act (12 U.S.C. 1828(c)). Additional guidance is contained in the FDIC “Statement of Policy on Bank Merger Transactions” (1 FDIC Law, Regulations, Related Acts 5145; see § 309.4(a) and (b) of this chapter for availability).

§ 303.61 Definitions.

For purposes of this subpart:

(a) *Merger transaction* includes any transaction:

(1) In which an insured depository institution merges or consolidates with any other insured depository institution or, either directly or indirectly, acquires the assets of, or assumes liability to pay any deposits made in, any other insured depository institution; or

(2) In which an insured depository institution merges or consolidates with any noninsured bank or institution or assumes liability to pay any deposits made in, or similar liabilities of, any noninsured bank or institution, or in which an insured depository institution transfers assets to any noninsured bank or institution in consideration of the assumption of any portion of the deposits made in the insured depository institution.

(b) *Corporate reorganization* means a merger transaction that involves solely an insured depository institution and one or more of its affiliates.

(c) *Interim merger transaction* means a merger transaction (other than a purchase and assumption transaction) between an operating depository institution and a newly-formed depository institution or corporation that will not

operate independently and that exists solely for the purpose of facilitating a corporate reorganization.

(d) *Resulting institution* refers to the acquiring, assuming or resulting institution in a merger transaction.

[67 FR 79247, Dec. 27, 2002, as amended at 71 FR 20526, Apr. 21, 2006; 73 FR 2145, Jan. 14, 2008]

§ 303.62 Transactions requiring prior approval.

(a) *Merger transactions.* The following merger transactions require the prior written approval of the FDIC under this subpart:

(1) Any merger transaction, including any corporate reorganization, interim merger transaction, or optional conversion, in which the resulting institution is to be an FDIC-supervised institution; and

(2) Any merger transaction, including any corporate reorganization, or interim merger transaction, that involves an uninsured bank or institution.

(b) *Related regulations.* Transactions covered by this subpart also may be subject to other regulations or application requirements, including the following:

(1) *Interstate merger transactions.* Merger transactions between insured banks that are chartered in different states are subject to the regulations of section 44 of the FDI Act (12 U.S.C. 1831u). In the case of a merger transaction that consists of the acquisition by an out of state bank of a branch without acquisition of the bank, the branch is treated for section 44 purposes as a bank whose home state is the state in which the branch is located.

(2) *Deposit insurance.* An application for deposit insurance will be required in connection with a merger transaction between a state-chartered interim institution and an insured depository institution if the related merger application is being acted upon by a Federal banking agency other than the FDIC. If the FDIC is the Federal banking agency responsible for acting on the related merger application, a separate application for deposit insurance is not necessary. Procedures for applying for deposit insurance are set forth

§ 303.63

in subpart B of this part. An application for deposit insurance will not be required in connection with a merger transaction (other than a purchase and assumption transaction) of a federally-chartered interim institution and an insured institution, even if the resulting institution is to operate under the charter of the Federal interim institution.

(3) *Branch closings.* Branch closings in connection with a merger transaction are subject to the notice requirements of section 42 of the FDI Act (12 U.S.C. 1831r-1), including requirements for notice to customers. These requirements are addressed in the “Interagency Policy Statement Concerning Branch Closings Notices and Policies” (1 FDIC Law, Regulations, Related Acts (FDIC) 5391; see § 309.4(a) and (b) of this chapter for availability).

(4) *Undercapitalized institutions.* Applications for a merger transaction by applicants subject to section 38 of the FDI Act (12 U.S.C. 1831o) should also provide the information required by § 303.204. Applications pursuant to sections 38 and 18(c) of the FDI Act (12 U.S.C. 1831o and 1828(c)) may be filed concurrently or as a single application.

(5) *Certification of assumption of deposit liability.* Whenever all of the deposit liabilities of an insured depository institution are assumed by one or more insured depository institutions by merger, consolidation, other statutory assumption, or by contract, the transferring insured depository institution, or its legal successor, shall provide an accurate written certification to the FDIC that its deposit liabilities have been assumed, in accordance with 12 CFR part 307.

[85 FR 3243, Jan. 21, 2020]

§ 303.63 Filing procedures.

(a) *General.* Applications required under this subpart shall be filed with the appropriate FDIC office. The appropriate forms and instructions may be obtained upon request from any FDIC regional director.

(b) *Merger transactions.* Applications for approval of merger transactions shall be accompanied by copies of all agreements or proposed agreements relating to the merger transaction and

12 CFR Ch. III (1–1–23 Edition)

any other information requested by the FDIC.

(c) *Interim merger transactions.* Applications for approval of interim merger transactions and any related deposit insurance applications shall be made by filing the forms and other documents required by paragraphs (a) and (b) of this section and such other information as may be required by the FDIC for consideration of the request for deposit insurance.

[67 FR 79247, Dec. 27, 2002, as amended at 73 FR 2145, Jan. 14, 2008]

§ 303.64 Processing.

(a) *Expedited processing for eligible depository institutions—(1) General.* An application filed under this subpart by an eligible depository institution as defined in § 303.2(r) and which meets the additional criteria in paragraph (a)(4) of this section will be acknowledged by the FDIC in writing and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2).

(2) *Timing.* Under expedited processing, the FDIC will take action on an application by the date that is the latest of:

(i) 45 days after the date of the FDIC’s receipt of a substantially complete merger application; or

(ii) 10 days after the date of the last notice publication required under § 303.65 of this subpart; or

(iii) 5 days after receipt of the Attorney General’s report on the competitive factors involved in the proposed transaction; or

(iv) For an interstate merger transaction subject to the provisions of section 44 of the FDI Act (12 U.S.C. 1831u), 5 days after the FDIC receives confirmation from the host state (as defined in § 303.41(e)) that the applicant has both complied with the filing requirements of the host state and submitted a copy of the FDIC merger application to the host state’s bank supervisor.

(3) *No automatic approval.* Notwithstanding paragraph (a)(1) or (2) of this section, if the FDIC does not act within

the expedited processing period, it does not constitute an automatic or default approval.

(4) *Criteria.* The FDIC will process an application using expedited procedures if:

(i) Immediately following the merger transaction, the resulting institution will be “well-capitalized” pursuant to subpart H of part 324 of this chapter (12 CFR part 324), as applicable; and

(ii)(A) All parties to the merger transaction are eligible depository institutions as defined in § 303.2(r); or

(B) The acquiring party is an eligible depository institution as defined in § 303.2(r) and the amount of the total assets to be transferred does not exceed an amount equal to 10 percent of the acquiring institution’s total assets as reported in its report of condition for the quarter immediately preceding the filing of the merger application.

(b) *Standard processing.* For those applications not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action taken by the FDIC on the application when the decision is rendered.

(c) *Processing for State savings associations.* Notwithstanding paragraphs (a) and (b) of this section, the FDIC will approve or disapprove an application filed by a State savings association to acquire or be acquired by another insured depository institution that is required to be filed with the FDIC within 60 days after the date of the FDIC’s receipt of a substantially complete merger application, subject to the FDIC’s discretion to extend such period by an additional 30 days if any material information submitted is substantially inaccurate or incomplete.

(1) The FDIC shall notify an applicant that is a State savings association in writing of the date the application is deemed substantially complete. The FDIC may request additional information at any time.

(2) Notwithstanding this paragraph (c), if the FDIC does not approve or disapprove an application within the 60-day or extended processing period it does not constitute an automatic or default approval.

[85 FR 3244, Jan. 21, 2020]

§ 303.65 Public notice requirements.

(a) *General.* Except as provided in paragraph (b) of this section, an applicant for approval of a merger transaction must publish notice of the proposed transaction on at least three occasions at approximately equal intervals in a newspaper of general circulation in the community or communities where the main offices of the merging institutions are located or, if there is no such newspaper in the community, then in the newspaper of general circulation published nearest thereto.

(1) *First publication.* The first publication of the notice should be as close as practicable to the date on which the application is filed with the FDIC, but no more than 5 days prior to the filing date.

(2) *Last publication.* The last publication of the notice shall be on the 25th day after the first publication or, if the newspaper does not publish on the 25th day, on the newspaper’s publication date that is closest to the 25th day.

(b) *Exceptions—(1) Emergency requiring expeditious action.* If the FDIC determines that an emergency exists requiring expeditious action, notice shall be published twice. The first notice shall be published as soon as possible after the FDIC notifies the applicant of such determination. The second notice shall be published on the 7th day after the first publication or, if the newspaper does not publish on the 7th day, on the newspaper’s publication date that is closest to the 7th day.

(2) *Probable failure.* If the FDIC determines that it must act immediately to prevent the probable failure of one of the institutions involved in a proposed merger transaction, publication is not required.

(c) *Content of notice—(1) General.* The notice shall conform to the public notice requirements set forth in § 303.7.

(2) *Branches.* If it is contemplated that the resulting institution will operate offices of the other institution(s) as branches, the following statement shall be included in the notice required in § 303.7(b):

It is contemplated that all offices of the above-named institutions will continue to be operated (with the exception of [insert identity and location of each office that will not be operated]).

(3) *Emergency requiring expeditious action.* If the FDIC determines that an emergency exists requiring expeditious action, the notice shall specify as the closing date of the public comment period the date that is the 10th day after the date of the first publication.

(d) *Public comments.* Comments must be received by the appropriate FDIC office within 30 days after the first publication of the notice, unless the comment period has been extended or reopened in accordance with §303.9(b)(2). If the FDIC has determined that an emergency exists requiring expeditious action, comments must be received by the appropriate FDIC office within 10 days after the first publication.

§§ 303.66–303.79 [Reserved]

Subpart E—Change in Bank Control

SOURCE: 80 FR 65899, Oct. 28, 2015, unless otherwise noted.

§ 303.80 Scope.

This subpart implements the provisions of the Change in Bank Control Act of 1978, section 7(j) of the FDI Act (12 U.S.C. 1817(j)) (CBCA), and sets forth the filing requirements and processing procedures for a notice of change in control with respect to the acquisition of control of a State nonmember bank, a State savings association, or certain parent companies of either a State nonmember bank or a State savings association.

§ 303.81 Definitions.

For purposes of this subpart:

(a) *Acting in concert* means knowing participation in a joint activity or parallel action towards a common goal of acquiring control of a covered institution whether or not pursuant to an express agreement.

(b) *Company* means a company as defined in section 2 of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*) and any person that is not an individual including for example, a limited liability company.

(c) *Control* means the power, directly or indirectly, to direct the management or policies of a covered institution or to vote 25 percent or more of

any class of voting securities of a covered institution.

(d) *Convertible securities* mean debt or equity interests that may be converted into voting securities.

(e) *Covered institution* means an insured State nonmember bank, an insured State savings association, and any company that controls, directly or indirectly, an insured State nonmember bank or an insured State savings association other than a holding company that is the subject of an exemption described in either section 303.84(a)(3) or (a)(8).

(f) *Immediate family* means a person's parents, mother-in-law, father-in-law, children, step-children, siblings, step-siblings, brothers-in-law, sisters-in-law, grandparents, and grandchildren, whether biological, adoptive, adjudicated, contractual, or *de facto*; the spouse of any of the foregoing; and the person's spouse.

(g) *Person* means an individual, corporation, limited liability company (LLC), partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, voting trust, or any other form of entity; and includes each party to a voting agreement and any group of persons acting in concert.

(h) *Management official* means any officer, LLC manager, director, partner, or trustee of an entity, or other person with similar functions and powers with respect to a company.

(i)(1) *Voting securities* means shares of common or preferred stock, general or limited partnership shares or interests, membership interests, or similar interests if the shares or interests, by statute, charter, or in any manner, entitle the holder:

(i) To vote for, or to select, directors, trustees, managers of an LLC, partners, or other persons exercising similar functions of the issuing entity; or

(ii) To vote on, or to direct, the conduct of the operations or significant policies of the issuing entity.

(2) Nonvoting shares: Shares of common or preferred stock, limited partnership shares or interests, membership interests, or similar interests are not "voting securities" if: