

## Federal Deposit Insurance Corporation

## § 303.65

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: