

*** DRAFT - NOT YET FILED ***

1301:1-4-06

Change in bank control.

(A) As used in this rule

- (1) Acquisition means a purchase, assignment, transfer, pledge or other disposition of voting shares, or an increase in percentage ownership of a state bank resulting from a redemption of voting shares.
- (2) Acting in concert means knowing participation in a joint activity or parallel action towards a common goal of acquiring control of a state bank, whether or not pursuant to an express agreement.
- (3) Control means:
 - (a) The power, directly or indirectly, to direct the management or policies of a state bank; or
 - (b) Ownership, control of, or the power to vote twenty-five per cent or more of any class of voting securities of a state bank.
- (4) Person means an individual, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, and any other form of entity; and a voting trust, voting agreement, and any group of persons acting in concert.
- (5) "State bank" means any state-chartered bank and includes any bank holding company that has control of any such state bank. and any other company that controls a state bank.
- (6) "Securities" means all equity interests in a bank and includes rights, interests, and powers with respect thereto.

(B) Any person, acting directly or indirectly or through or in concert with one or more persons, shall give the superintendent of financial institutions sixty days prior written notice before acquiring control of any state bank through a purchase, assignment, transfer, pledge, or other disposition of voting securities of such bank, or through any other transaction used in lieu of such a purchase, assignment, transfer, pledge, or other disposition of voting securities of such bank.

- (1) It is presumed, subject to rebuttal, that a person acquiring ownership, control of,

or the power to vote ten per cent or more of any class of voting securities of a state bank constitutes the power to direct that bank's management or policies requiring prior notice to the superintendent if either of the following apply:

- (a) The state bank has registered securities under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78); or
 - (b) No other person will own, control, or hold the power to vote a greater percentage of that class of voting securities immediately after the transaction. 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 voting securities of a state bank, each such person shall file prior notice with the superintendent.
- (2) Transactions other than those set forth in paragraph (B)(1) of this rule resulting in a person's control of less than 25 percent of a class of voting securities of a state bank are deemed not to constitute control requiring prior notice.
- (3) A person may request an opportunity to rebut any presumption established by paragraph (B)(1) of this rule with respect to a proposed transaction. The superintendent shall afford the person the opportunity to present views in writing or where appropriate, orally before the superintendent or the superintendent's designated representatives either at informal conference discussions or at informal presentations of evidence.
- (C) To request the written consent of the superintendent to a proposed acquisition of control of a state bank:
- (1) A person who is also required to file a notice or application with the federal deposit insurance ~~corporation~~ corporation or the federal reserve system in regard to the proposed transaction, pursuant to the Change of Bank Control Act (12 U.S.C. 1817(j)) or section 3 of the Bank Holding Company Act (12 U.S.C. 1842), shall file with the superintendent an originally executed copy of the notice or application.
 - (2) A person who is not required to file a notice or application with the federal deposit insurance corporation or the federal reserve system in regard to the proposed transaction shall notify the superintendent by letter of the proposed transaction, which letter shall include a summary of the proposed transaction and the reason the person is not required to file a notice or application in regard to the proposed transaction with the federal deposit insurance corporation or the federal reserve system. A person filing notice under this section shall submit the information set forth in division (C) of Revised Code

section 1115.06 and any other information the superintendent requires.

- (D) The sixty day notice period specified in paragraph (B) shall not commence until the superintendent has accepted the notice required in paragraph (C)(1) or (C)(2) for processing.
- (E) The proposed acquisition of control may be made within sixty days of the superintendent's acceptance of the notice for processing unless the superintendent has done either of the following:
- (1) Disapproved the proposed acquisition of control; or
 - (2) Extended the time during which the superintendent may disapprove a proposed acquisition of control as follows:
 - (a) For an additional thirty days in the discretion of the superintendent; or
 - (b) For two additional extensions of not more than forty-five days each if any of the following applies:
 - (i) The superintendent determines that any acquiring person has not furnished all of the information required under either this rule or division (C) of Revised Code section 1115.06;
 - (ii) In the superintendent's judgment, any material information filed is substantially inaccurate;
 - (iii) The superintendent has been unable to complete the investigation of an acquiring person because of any delay caused by, or the inadequate cooperation of, that acquiring person;
 - (iv) The superintendent determines that additional time is needed to investigate and determine whether any acquiring person has a record of failing to comply with the requirements of subchapter II of chapter 53 of subtitle IV of Title 31 of the United States Code.
- (F) Any person filing notice under this rule shall be required to publish, within ten days from receipt of the superintendent's acceptance for processing of information required to be filed under this rule, an announcement on the proposed acquisition in a newspaper of general circulation in the community in which the state bank has its principal place of business. In the case of information filed with the superintendent

in contemplation of a tender offer, publication of the announcement required by this paragraph may be delayed until thirty days after the superintendent's acceptance of the information for processing. Whenever a person required to publish an announcement pursuant to this paragraph is also required by federal law or regulation to publish an announcement regarding the same transaction, the announcement published pursuant to federal law or regulation shall satisfy the publication requirement of this paragraph if the announcement includes all of the information required by this paragraph. The newspaper announcement shall include:

- (1) The name of the state bank and the name of each person identified in the information as a proposed acquiror and the proposed date of the acquisition of the securities;
 - (2) A statement that interested persons may submit comments on the proposed acquisition to the superintendent at the superintendent's place of business for a period of twenty days from the date of publication of the announcement, along with the superintendent's address; and
 - (3) A statement that the superintendent will consider all public comments received in writing within the twenty days following the required publication.
- (G) The Superintendent may do either of the following with respect to the newspaper publication requirement:
- (1) Permit delay of the publication if the superintendent determines, for good cause, that it is in the public interest to grant a delay; or
 - (2) Shorten the public comment period, waive the public comment, waive the newspaper publication, or act on a notice before the expiration of a public comment period, if the superintendent determines that either an emergency exists or disclosure of a proposed acquisition, solicitation of public comment, or delay of its action until expiration of the public comment period would seriously threaten the safety or soundness of a state bank.
- (H) Any person who is required to file information with the superintendent pursuant to paragraph (C)(1) of this rule shall also file with the superintendent any additional information filed with the federal deposit insurance corporation or the federal reserve system in connection with a notice regarding the same proposed transaction together with a copy of any request from the federal deposit insurance corporation or federal reserve system in response to which such information was filed.

- (I) An acquisition of control may be made prior to the expiration of the denial period, or any extension thereof, if the superintendent issues written consent to the acquisition.
- (J) The superintendent may deny consent to a proposed acquisition of a controlling interest in a bank if:
- (1) The proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of this state or any markets served by the state bank;
 - (2) The effect of the proposed acquisition of control in any part of this state and any markets served by the state bank may be substantially to lessen competition, tend to create a monopoly, or in any other manner restrain trade, and the anticompetitive effects of the proposed acquisition of control are not 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;
 - (3) The financial condition of any acquiring person might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the state bank;
 - (4) The competence, experience, and integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the state bank, or in the interest of the public, to permit such person to control the state bank;
 - (5) Any acquiring person neglects, fails, or refuses to furnish the superintendent all the information required by the superintendent; or
 - (6) The superintendent determines the proposed acquisition would have an adverse effect on the bank insurance fund or the savings association insurance fund administered by the federal deposit insurance corporation.
- (K) Within three days after deciding to disapprove any proposed acquisition of control of a state bank, the superintendent shall notify the acquiring person in writing of the disapproval. The notice of disapproval shall provide a statement of the basis for the disapproval.
- (L) Whenever a change in control of a state bank occurs, the state bank shall promptly

report to the superintendent any changes or replacement of its chief executive officer or of any director occurring in the next twelve-month period, including in its report a statement of the past and current business and professional affiliations of the new chief executive officer or directors.

(M) A person acquiring control of a state bank is not required to provide prior notice to the superintendent, but is required to notify the superintendent within ninety days after control is acquired and to provide to the superintendent with any information requested, if the person has acquired control by any of the following means:

- (1) Through testate or intestate succession;
- (2) Through a bona fide gift;
- (3) In satisfaction of a debt previously contracted in good faith, except that the acquiror of a defaulted loan secured by a controlling amount of bank voting shares shall file a notice before the loan is acquired:
- (4) Redemption of voting shares by the issuing bank; or
- (5) Sale of shares by any shareholder that is not within the control of the person resulting in that person becoming the largest shareholder.

(N) The following transactions do not require notice to the superintendent:

- (1) A customary one-time proxy solicitation; and
- (2) The receipt of voting securities through a pro rata stock dividend.

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Certification

Date

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