

**STATE OF OHIO**  
**DEPARTMENT OF COMMERCE**  
**DIVISION OF FINANCIAL INSTITUTIONS**

"An Equal Opportunity Employer and Service Provider"

**NOTICE OF A CHANGE OF CONTROL**

**Who Must File This Notice**

A person ("the Applicant") wishing to acquire control of a state bank in Ohio must file a written notice ("the Notice") with the Division of Financial Institutions ("the Division") pursuant to Section 1115.06 of the Ohio Revised Code, which provides that no person, acting directly or indirectly or through or in concert with one or more other persons, shall acquire control of a state bank through a purchase, assignment, transfer, pledge, or other disposition of voting securities of a state bank unless the Superintendent of Financial Institutions ("the Superintendent") has been given sixty days' prior written notice of the proposed acquisition and, within that sixty-day period, the Superintendent has done neither of the following:

1. Disapproved the acquisition; or
2. Extended the time during which the Superintendent may disapprove the acquisition, as provided in Section 1115.06(B)(2).

Pursuant to Section 1115.06(A) of the Ohio Revised Code, "Control" of a state bank means either of the following:

1. The power, directly or indirectly, to direct the management or policies of a state bank; or
2. the ownership or control of, or power to vote twenty-five per cent or more of any class of voting securities of a state bank.

The statute defines "state bank" to include any bank holding company or other company that controls a state-chartered bank in Ohio.

**Preparation of Notice**

The Applicant should forward one originally executed copy of the Notice and all attachments to the Division. Within 10 business days of receipt of the information required to be filed under Section 1115.06, the Division will conduct a preliminary review to determine if it is sufficiently complete to be accepted for processing. Based on the results of this initial review, the Division will accept the Notice for processing, and inform Applicant of such acceptance in writing; request additional information to complete the Notice; or return the Notice to the Applicant as substantially incomplete. Within five business days of the receipt of any additional information required to complete the Notice, the Superintendent shall accept the Notice for processing, or return the Notice to the Applicant if it is still incomplete.

The Superintendent may extend the 60-day period during which the Superintendent may disapprove a proposed acquisition of control for an additional 30 days in the discretion of the Superintendent, and may also extend the time for two additional periods of not more than 45 days each if any of the following applies:

1. The Superintendent determines any acquiring party has not furnished all of the information required under division (C) of Section 1115.06;
2. In the Superintendent's judgment, any material information submitted is substantially inaccurate;

3. The Superintendent has been unable to complete the investigation of an acquiring person under division (E)(1) of Section 1115.06 because of any delay caused by, or the inadequate cooperation of, that acquiring person; or
4. The Superintendent determines 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.

The acquisition of control may be made prior to the expiration of the period during which the Superintendent may disapprove the proposed acquisition if the Superintendent advises the Applicant in writing of the Superintendent's intent not to disapprove the acquisition.

If the circumstances or assumptions under which the Notice was initially prepared change significantly during the processing of the Notice, such changes must be reported to the Division, and corrected or supplemental information must be submitted. All of the items listed below under "Notice" must be received by the Division before the Notice will be deemed complete. Furthermore, the Superintendent reserves the right to require additional information from the Applicant at any time during the Notice process. The Division does not charge a fee for processing a change of control Notice, but if an on-site examination is conducted in connection with the Notice, the actual costs of the examination will be charged to the Applicant in accordance with Section 1121.29 of the Ohio Revised Code.

Within three days after deciding to disapprove any proposed acquisition of control of a state bank, the Superintendent shall notify the Applicant in writing of the disapproval. The notice of disapproval shall provide a statement of the basis for the disapproval and a notice of opportunity for hearing on the denial pursuant to Chapter 119. of the Revised Code. Within ten days after receipt of a notice of disapproval, the Applicant may request a hearing on the proposed acquisition, to be conducted in accordance with Chapter 119.

Whenever a change in control of a state bank occurs, the state bank shall promptly report to the Superintendent any changes in or replacement of its chief executive officer or of any director that occurs in the next twelve-month period, and include in the report a statement of the past and current business and professional affiliations of the new chief executive officer or director.

The prior written consent of the Superintendent shall not be required for any acquisition of a controlling interest in a state bank when such controlling interest is acquired in satisfaction of a debt previously contracted in good faith or through testate or intestate succession or bona fide gift; provided that the acquiring person or entity advises the Superintendent within thirty days after the acquisition and provides such information as the Superintendent requests. No person or entity proposing to acquire a controlling interest in a bank shall be required to comply with Section 1115.06 of the Ohio Revised Code to obtain the prior written consent of the Superintendent if the transaction by which such controlling interest would be acquired is also subject to the approval of the Superintendent under any other provisions of Chapters 1101. to 1127. of the Revised Code or under any rule adopted by the Superintendent if the Superintendent determines that the regulatory concerns addressed by such other provision or rule are the primary regulatory concerns regarding the transaction.

**Please note:** The Applicant will be bound by, and will be expected to comply in all material respects with, all oral and written representations and commitments made in or in connection with the Notice. Further, all representations and commitments made by or on behalf of the Applicant with regard to the proposed acquisition of control and relied on by the Superintendent in reaching a decision on the Notice are conditions imposed in writing by the Superintendent in conjunction with the findings and decision and may be enforced under Section 1121.32, 1121.33 and 1121.35 of the Ohio Revised Code and other statutory provisions for addressing violations of conditions imposed by the Superintendent in writing.

## **Publication**

Under Section 1115.06(D) of the Ohio Revised Code, unless the Superintendent determines an emergency exists or disclosure of a proposed acquisition of control would seriously threaten the safety or soundness of the state bank, the Applicant must publish an announcement of the proposed acquisition of control within a reasonable time after receiving written confirmation that the Superintendent has accepted the Notice for processing. The Applicant must publish the announcement once in a newspaper of general circulation in the community in which the state bank to be acquired maintains its principal place of business. The publication must state the name of the state bank in which a controlling interest is proposed to be acquired; the name of each person by or for whom the acquisition is to be made; a statement that interested persons, and particularly persons in the geographic area where the bank is located, may submit comments to the Superintendent on the proposed acquisition and the address to which such comments should be directed; and a statement that such comments will be considered by the Superintendent to the extent that they are relevant to the bases on which the Superintendent may deny consent to the proposed acquisition.

The Applicant shall submit a copy of the announcement and the publisher's affidavit of publication to the Superintendent within 30 days of publication. If the Applicant 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 state law if the announcement includes all of the required information as outlined in the preceding paragraph.

## **Name Reservation**

If the name of the state bank to be acquired is expected to change as a result of the change of control, it is suggested that the Applicant secure the exclusive use of the proposed name by submitting a letter and the appropriate filing fee to the Division requesting that the name be reserved pursuant to Section 1103.07 of the Ohio Revised Code. Upon receipt of the reservation request, the Division will determine if the name is misleading or already in use or reserved by another financial institution in Ohio. If the name is available for use, the Superintendent will approve the name reservation, forward it to the Ohio Secretary of State for filing along with the filing fee of \$5.00, and notify the Applicant by letter that the name has been reserved. The name reservation is effective for a period of 180 days after it is filed by the Secretary of State, and may be renewed for up to one year.

## **Confidentiality**

Under the provisions of Section 149.43 of the Ohio Revised Code, once the Notice is filed, it becomes a public document and must be made available to the public for review upon request. However, the Applicant may submit a written request that certain information in the Notice be given confidential treatment pursuant to Section 1121.25 of the Ohio Revised Code. A request for confidential treatment must be submitted in writing along with the Notice and must provide detailed justification for such treatment for each item for which confidentiality is requested. The permissible reasons for granting confidential treatment are set forth in Section 1121.25(A) of the Revised Code. The Applicant's reasons for requesting confidentiality should specifically state the harm that would result from release of the information to the public.

Information for which confidential treatment is requested should be specifically noted in the public portion of the Notice (by reference to the confidential section), separately bound, and labeled "Confidential." The Applicant should follow this same procedure on confidentiality with regard to filing any supplemental information to the Notice. Upon receipt of the Notice, the Superintendent will initially review any information submitted as confidential solely to determine whether the requested confidential treatment is justified and in compliance with Section 1121.25, and will advise the Applicant in writing of the decision on confidentiality. Should the Superintendent determine that any such information will not be granted confidential treatment, the Applicant may withdraw the information by written request within 10 days of receiving the decision. If the Applicant fails to withdraw the information within that 10-day period, the Applicant will be

deemed to have waived their right to withdraw, and the information will become part of the public portion of the Notice.

The above notwithstanding, it should be understood that, without prior notice to the Applicant, the Superintendent may disclose or comment on any of the contents of the Notice, including information previously determined to be confidential, in any order, statement, or opinion issued by the Superintendent in connection with the Superintendent's decision on the Notice.

### **Notice**

The Notice shall contain the following information:

1. Provide the identity, personal history, and business background and experience of each person by whom or on whose behalf the acquisition is to be made, including each person's business activities and affiliations during the past five years; a description of any material pending legal or administrative proceedings in which each person is a party; and any criminal indictment or conviction of each person by a state or federal court.
2. Include a statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made, as of the end of each of the five fiscal years immediately preceding the date of the Notice, together with related statements of income and source and application of funds for each of the fiscal years then concluded, all prepared in accordance with generally accepted accounting principles consistently applied; and an interim statement of the assets and liabilities for each person, together with related statements of income and source and application of funds, as of a date not more than ninety days prior to the date of the filing of the Notice.
3. Discuss the terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made, including the total price and the price per share to be paid to the shareholders of the bank and how that price was established. Describe any written or verbal agreements regarding any cash or other compensation to be paid to any shareholder, director, or officer of the state bank to be acquired as a result of the reorganization, other than that set forth in the stock purchase agreement. Provide a copy of any executed stock purchase agreement.
4. Provide the identity, source, and amount of the funds or other consideration used or to be used in making the acquisition and, if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and any arrangements, agreements, or understandings with the parties.
5. Discuss any plans or proposals any acquiring person may have to liquidate the state bank, to sell its assets or merge it with any company, or to make any other major change in its business, products and services, capital structure, corporate structure, or management.
6. Identify any person employed, retained, or to be compensated by an acquiring person, or by any person on behalf of an acquiring person, to make solicitations or recommendations to shareholders for the purpose of assisting in the acquisition, and a brief description of the terms of the employment, retainer, or arrangement for compensation.
7. Provide copies of all invitations or tenders or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition.
8. Discuss the current market price of the shares of the state bank proposed to be acquired. If no market has been established, indicate the current book value of the shares and the dates, number of shares traded and price paid (if known) for the last three stock transactions.

9. Provide a listing of all purchases and sales of stock of the state bank to be acquired by directors, officers and other employees, attorneys, auditors, and holders of 10 per cent or more of the outstanding shares of the bank during the two-year period preceding the filing of the Notice. The listing should include the individual's name and position, percentage of ownership, whether the transaction was a purchase or sale, trade date, number of shares traded, and price.
10. Discuss any material changes that have occurred in the financial condition of the state bank to be acquired since the most recent regulatory examination.
11. Describe any plans to raise additional equity capital or issue subordinated debentures or other long-term debt by the state bank to be acquired following the acquisition. Fully describe how any such debt will be serviced.
12. Discuss the effects of the proposed acquisition of the state bank on existing or potential competition in the bank's market area(s). Provide evidence that the economic and demographic characteristics of the area(s) are sufficient to support a continuing competitive environment after the acquisition. The Applicant may be required to provide additional information if the Superintendent determines that the proposal conflicts with existing competitive guidelines.
13. If the state bank to be acquired is currently authorized to conduct trust business, describe how the acquisition of control will affect these activities.
14. If applicable, provide a certified copy of the resolution adopted by the board of directors of the state bank to be acquired approving the terms of the acquisition.
15. Provide a copy of the notice of approval/denial of the proposed acquisition of the state bank by the Federal Deposit Insurance Corporation and/or Federal Reserve Bank of Cleveland. The Applicant shall also file with the Superintendent any additional information filed with the Federal Deposit Insurance Corporation or Federal Reserve System in connection with the proposed acquisition of a controlling interest in a state bank, together with a copy of any request from the federal agency for such information.

A person or entity that is required to file notice of a proposed change of control with the Superintendent pursuant to Section 1115.06 of the Ohio Revised Code and is also required to file a notice or application with the Federal Deposit Insurance Corporation or the Federal Reserve System in connection with the same 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) may comply with Section 1115.06 by filing with the Superintendent an originally executed copy of the notice or application filed with the appropriate federal agency, together with a copy of the written confirmation that such notice or application has been accepted for processing by that agency, provided said notice or application contains all of the information required by division (C) of Section 1115.06. Any person or entity that files with the Superintendent a copy of the federal notice or application shall also file with the Superintendent any additional information submitted to the Federal Deposit Insurance Corporation or the Federal Reserve System in connection with the notice or application, together with a copy of any request by such federal agency for such additional information.

### **1301:1-4-06 Acquisition of controlling interest in a bank.**

- (A) As used in this rule:
- (1) "Controlling interest" means the power, directly or indirectly, to direct the management or policies of a bank or to vote twenty-five per cent or more of any class of voting securities of a bank. The ownership, control, or power to vote ten per cent or more of any class of voting securities of a bank shall be presumed, subject to rebuttal, to be the power to direct that bank's management or policies if either of the following apply:
    - (a) The bank has issued any class of securities subject to the registration requirements of section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 781); or
    - (b) Immediately after the transaction, no other person will own a greater portion of that class of voting securities.
  - (2) "Bank" means any state-chartered bank and includes any bank holding company that has control of any such bank.
  - (3) "Securities" means all equity interests in a bank and includes rights, interests, and powers with respect thereto.
- (B) No person or entity, acting directly or indirectly or through or in concert with one or more persons or entities, shall acquire a controlling interest in any 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 for the purpose of assuring one hundred per cent ownership of such bank or its successor in interest, without the prior written consent of the superintendent of banks.
- (C) To obtain the written consent of the superintendent to a proposed acquisition of a controlling interest in a bank:
- (1) A person or entity who is also required to file a notice or application with the federal deposit insurance 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 so filed together with a copy of the written confirmation that such notice or application has been accepted for processing.
  - (2) A person or entity 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 or entity is not required to file a notice or ap-

plication in regard to the proposed transaction with the federal deposit insurance corporation or the federal reserve system. Within ten business days of the receipt of a letter pursuant to this paragraph, the superintendent shall, in writing:

- (a) Consent to the proposed transaction; or
  - (b) Notify the person or entity of the information required to be filed for the consideration of the proposed transaction.
- (D) Within ten business days of receipt of information required to be filed under paragraph (C)(1) or (C)(2)(b) of this rule, the superintendent shall:
- (1) Accept the information for processing;
  - (2) Request additional information to complete the information required to be filed; or
  - (3) Return the information as substantially incomplete.
- (E) Within five business days of the receipt of information required pursuant to paragraph (d)(2) of this rule, the superintendent shall:
- (1) Accept the information for processing; or
  - (2) Return all information filed if it is still incomplete.
- (F) Within sixty days of acceptance of information for processing pursuant to paragraph (D) or (E) of this rule, the superintendent shall:
- (1) Consent to the proposed acquisition of a controlling interest;
  - (2) Deny consent to the proposed acquisition of a controlling interest; or
  - (3) Extend the period during which a denial of consent to the proposed acquisition of a controlling interest may issue for an additional thirty days. Such period may be further extended not more than two additional times for not more than forty-five days each if:
    - (a) The superintendent determines that all of the information required has not been filed;
    - (b) In the superintendent's judgment, any material information filed is substantially inaccurate;
    - (c) The superintendent has been unable to complete the necessary investigation because of any delay caused by, or the inadequate cooperation of, the person or entity proposing to acquire a controlling interest in a bank; or
    - (d) The federal deposit insurance corporation or the federal reserve system has extended the period during which a

disapproval of a notice or application in regard to the same transaction may be issued.

- (G) Any person or entity 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 or application 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.
- (H) Any proposed acquisition of a controlling interest in a bank in regard to which information is required to be filed with the superintendent pursuant to this rule shall be deemed to have the consent of the superintendent if the superintendent has not issued a denial of consent within the period during which such denial may issue, as established in paragraph (F) of this rule, or any extension thereof. An acquisition of a controlling interest may be made prior to the expiration of the denial period, or any extension thereof, if the superintendent issues written consent to the acquisition.
- (I) The superintendent may deny consent to a proposed acquisition of a controlling interest in a bank if:
  - (1) The proposed acquisition of a controlling interest 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 this state;
  - (2) The effect of the proposed acquisition of a controlling interest in any section of this state may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of a controlling interest would in any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of a controlling interest 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;
  - (3) The financial condition of any acquiring person or entity is such as might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank;
  - (4) The competence, experience, and integrity of any acquiring person or entity or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the bank, or in the interest of the public to permit such person or entity to control the bank; or
  - (5) Any acquiring person neglects, fails, or refuses to furnish the superintendent all the information required by the superintendent.
- (J) Within three days after a decision to deny consent to a proposed acquisition of a controlling interest, the superintendent shall notify the person or entity proposing the acquisition in writing of the denial. Such



notice shall provide a statement of the basis for the denial and a notice of opportunity for hearing on the denial pursuant to Chapter 119. of the Revised Code.

- (K) Whenever such a change in control occurs, each bank shall report promptly 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.
- (L) A person or entity may request an opportunity to rebut any presumption established by paragraph (a)(1) of this rule with respect to a proposed transaction. The superintendent shall afford the person or entity an 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.
- (M) The prior written consent of the superintendent shall not be required for any acquisition of a controlling interest in a bank when such controlling interest is acquired in satisfaction of a debt previously contracted in good faith or through testate or intestate succession or bona fide gift; provided that the acquiring person or entity advises the superintendent within thirty days after the acquisition and provides such information as the superintendent requests.
- (N) No person or entity proposing to acquire a controlling interest in a bank shall be required to comply with this rule to obtain the prior written consent of the superintendent if:
  - (1) The transaction by which such controlling interest would be acquired is also subject to the approval of the superintendent under any other provisions of Chapters 1101. to 1129. of the Revised Code other than section 1125.18 of the Revised Code or under any other rule adopted by the superintendent; and
  - (2) The superintendent determines that the regulatory concerns addressed by such other provision or rule are the primary regulatory concerns regarding the transaction.
- (O) Whenever a bank makes a loan or loans, secured, or to be secured, by twenty-five per cent or more of the outstanding voting securities of a bank, the president or other chief executive officer of the lending bank shall promptly report such fact to the superintendent upon obtaining knowledge of such loan or loans, except that no report need be made in those cases where the borrower has been the owner of record of the stock for a period of one year or more or where the stock is that of a newly organized bank prior to its opening. Such chief executive officer shall also report such other relevant information as the superintendent requests.
- (P) Within ten days from receipt of the superintendent's acceptance for processing of information required to be filed under this rule, the person or entity having filed such information shall publish an announcement in a

newspaper of general circulation in the community in which the bank has its principal place of business. The announcement shall include:

- (1) The name of each person identified in the information as a proposed acquiror;
  - (2) The name of the bank in which a controlling interest is proposed to be acquired;
  - (3) A statement that interested persons may submit comments on the proposed acquisition to the superintendent for a period of twenty days from the date of publication of the announcement;
  - (4) The address to which comments should be directed; and
  - (5) A statement that such comments will be considered by the superintendent to the extent that they are relevant to the bases on which the superintendent may deny consent to the proposed acquisition.
  - (6) Whenever a person or entity 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.
  - (7) 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.
  - (8) The superintendent may shorten the public comment period, waive the announcement and solicitation of public comments, or act upon the information prior to the expiration of the public comment period if not doing so would seriously threaten the safety and soundness of the bank.
  - (9) Any person or entity required by this paragraph to publish an announcement pursuant to this paragraph shall submit a copy of the announcement and the publisher's affidavit of publication to the superintendent.
- (Q) If a person or entity required to file or report information pursuant to this rule is of the opinion that disclosure of commercial or financial information would likely result in substantial harm to its competitive position or that of its subsidiaries, or that disclosure of information of a personal nature would result in a clearly unwarranted invasion of personal privacy, or if information filed or reported was contained in, is related to, or was derived from examinations, operating or condition reports, agreements, orders, or actions prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, or if information filed or reported has been filed with a governmental agency and has not

yet been approved for release, confidential treatment of such information may be requested. this request for confidential treatment must be submitted in writing concurrently with the filing or reporting of the information, and must discuss in detail the justification for confidential treatment. Such justification must be provided for each item for which confidential treatment in the public portion of the filing or report is requested. The reasons for requesting confidential treatment should demonstrate specifically the harm that would result from public release of the information. Information for which confidential treatment is requested should be specifically identified in the public portion of the filing or report by reference to the confidential section, separately bound and labeled "CONFIDENTIAL."

The superintendent of banks shall review information so designated solely to determine whether it will be accorded confidential treatment and shall provide the applicant with notice by mail of the decision on confidentiality. If the decision is to designate the materials not confidential, the person or entity may withdraw the information by written notice within ten days of the receipt of the decision. If the person or entity fails to withdraw the information within the ten-day period, the person or entity shall have waived confidential treatment of the information. until confidential treatment has been waived as herein provided, information filed or reported under confidential designation shall be accorded confidential treatment.

It shall be understood that, without prior notice to the person or entity, the superintendent may disclose or comment on any of the contents of the report or filing in any action by the superintendent in connection with the superintendent's consideration of the filing or report.

Effective Date: 9-9-88