

granted only to a redesignation within the applicant's home state.

(c) *Expiration of approval.* Approval of an application expires if within 18 months after the approval date a branch has not commenced business or a relocation has not been completed.

§ 303.46 Delegation of authority.

(a) *Approval of applications.* (1) Where the applicant agrees in writing to comply with any conditions imposed by the delegate, other than the standard conditions defined in § 303.2(ff) which may be imposed without the applicant's written consent, authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve the following applications:

- (i) Establish a branch;
- (ii) Establish and operate a de novo branch in a state that is not the applicant's home state and in which the applicant does not maintain a branch;
- (iii) Relocate a main office (including an application to relocate a main office to another state and retain existing branches); and
- (iv) Relocate a branch.

(2) For the delegate to exercise this authority, the criteria in paragraphs (c)(1) through (c)(7) of this section must be satisfied.

(3) Where the applicant does not agree in writing to comply with any condition imposed by the delegate, authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director to approve the applications listed in paragraph (a)(1) of this section.

(b) *Denial of applications.* (1) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to deny an application to establish a temporary branch.

(2) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director to deny an application for consent to:

- (i) Establish a branch;

- (ii) Establish and operate a de novo branch in a state that is not the applicant's home state and in which the applicant does not maintain a branch;

- (iii) Relocate a main office (including an application to relocate a main office to another state and retain existing branches); and

- (iv) Relocate a branch.

(c) *Criteria for delegated authority.* The following criteria must be satisfied before the authority delegated in paragraph (a) of this section may be exercised:

(1) The factors set forth in section 6 of the FDI Act (12 U.S.C. 1816) have been considered and favorably resolved except that this criterion does not apply to applications to establish messenger services and temporary branches;

(2) The applicant meets the capital requirements set forth in 12 CFR part 325 and the FDIC "Statement of Policy on Capital Adequacy" (12 CFR part 325, appendix B) or agrees in writing to increase capital so as to be in compliance with the requirements of 12 CFR part 325 before or at the consummation of the transaction which is the subject of the filing, except that this criterion does not apply to applications to establish messenger services and temporary branches, or to relocate branches or main offices;

(3) Any financial arrangements which have been made in connection with the proposed branch or relocation and which involve the applicant's insiders are fair and reasonable in comparison to similar arrangements that could have been made with independent third parties;

(4) Compliance with the CRA, the NEPA, the NHPA, and any applicable related regulations, including 12 CFR part 345, has been considered and favorably resolved;

(5) No CRA protest as defined in § 303.2(l) has been filed which remains unresolved or, where such a protest has been filed and remains unresolved, the Director (DCA), Deputy Director (DCA), an associate director (DCA) or the appropriate regional director or deputy regional director (DCA) concurs that approval is consistent with the purposes of the CRA and the applicant

agrees in writing to any conditions imposed regarding the CRA;

(6) An applicant with one or more existing branches in a state other than the applicant's home state has not failed the credit needs test in a host state under section 109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (12 U.S.C. 1835a);

(7) Additionally, for applications submitted to establish and operate a de novo branch in a state that is not the applicant's home state and in which the applicant does not maintain a branch:

(i) Confirmation by the appropriate regional director (DOS) that the applicant has complied with that state's filing requirements and that the applicant also has submitted to the host state bank supervisor a copy of its FDIC filing to establish and operate a de novo branch;

(ii) Determination by the FDIC that the applicant is adequately capitalized as of the date of the filing and will continue to be adequately capitalized and adequately managed upon consummation of the transaction;

(iii) Confirmation that the host state has in effect a law that meets the requirements of section 18(d)(4)(A) of the FDI Act (12 U.S.C. 1828(d)(4)(A)); and

(iv) Compliance with section 44(b)(3) of the FDI Act (12 U.S.C. 1831u(b)(3)); and

(8) Additionally, for applications submitted to relocate a main office from one state to another where the applicant seeks to retain branches in the state where the applicant's main office exists prior to an interstate relocation of the main office, confirmation that the filing meets the requirements of section 18(d)(3)(B) of the FDI Act (12 U.S.C. 1828(d)(3)(B)).

Subpart D—Merger Transactions

§ 303.60 Scope.

This subpart sets forth the application requirements, procedures, and delegations of authority 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" (2 FDIC Law, Regula-

tions, Related Acts (FDIC) 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 between commonly-owned institutions, between an insured depository institution and its subsidiary, or between an insured depository institution and its holding company, provided that the merger transaction would have no effect on competition or otherwise have significance under the statutory standards set forth in section 18(c) of the FDI Act (12 U.S.C. 1828(c)). For purposes of this paragraph, institutions are commonly-owned if more than 50 percent of the voting stock of each of the institutions is owned by the same company, individual, or group of closely-related individuals acting in concert.

(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) *Optional conversion* (Oakar transaction) means a merger transaction in which an insured depository institution assumes deposit liabilities insured