

§ 574.5

Before any change in status occurs that would bring the undersigned within the scope of § 574.4 (a) or (b), the undersigned will file and obtain approval of a rebuttal, notice or application, as appropriate.

The undersigned has not acquired stock of [name of savings association] for the purpose or effect of changing or influencing the control of [name of savings association] or in connection with or as a participant in any transaction having such purpose or effect.

(2) An acquiror claiming safe-harbor status may vote freely and dissent with respect to its own stock. Certifications provided for in this paragraph shall be submitted to the Office in accordance with § 516.1(c) of this chapter.

[54 FR 49690, Nov. 30, 1989, as amended at 57 FR 14349, Apr. 20, 1992; 60 FR 66720, Dec. 26, 1995]

§ 574.5 Certifications of ownership.

(a) *Acquisition of stock.* (1) Upon the acquisition of beneficial ownership that exceeds, in the aggregate, 10 percent of any class of stock of a savings association or additional stock above 10 percent of the stock of a savings association occurring after December 26, 1985, an acquiror shall file with the OTS a certification as described in this section.

(2) The certification filed pursuant to this section shall be signed by the acquiror or an authorized representative thereof and shall read as follows:

The undersigned is the beneficial owner of 10 percent or more of a class of stock of [name of savings association or holding company]. The undersigned is not in control of such association or company, as defined in 12 CFR 574.4(a), and is not subject to a rebuttable determination of control under § 574.4(b), and will take no action that would result in a determination of control or a rebuttable determination of control without first filing and obtaining approval of an application under the Savings and Loan Holding Company Act, 12 U.S.C. 1467a, or notice under the Change in Bank Control Act, 12 U.S.C. 1817(j), or filing and obtaining acceptance by the Office of Thrift Supervision of a rebuttal of the rebuttable determination of control.

(3) Notwithstanding anything contained in this paragraph (a), an acquiror is not required to file a certification if (i) the Office has approved the acquisition of the savings association or (ii) the acquiror has filed a materially complete application or notice pursuant to § 574.3 of this part.

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(b) *Privacy.* All certifications filed under this § 574.5 shall be for the information of the Office in connection with its examination functions and shall be provided confidential treatment by the Office.

[54 FR 49690, Nov. 30, 1989, as amended at 57 FR 14349, Apr. 20, 1992; 59 FR 53571, Oct. 25, 1994]

§ 574.6 Procedural requirements.

(a) *Form of application or notice.* An application, notice, or informational filing required by § 574.3 of this part shall be filed on the Application/Information Filing H-(e) _____ form. (As specified in the form's instructions, the blank line following the H-(e) should be filled in by applicants with the appropriate "1", "1-S", "2", "3", or "4" depending on the type of application.) The specific application requirements for each type of filing are indicated on the form. An acquiror may request confidential treatment of portions of an application or notice only by complying with the requirements of paragraph (f) of this section. In the case of an application involving a merger (including a merger with an interim association) the Application/Information Filing H-(e) _____ form shall be used in lieu of an application that otherwise would be required for such merger under §§ 546.2, 552.13, and 563.22 of this chapter.

(1) *H-(e)1.* This application type shall be filed under § 574.3(a) of this part by a company, other than a savings and loan holding company, for approval to acquire direct or indirect control of one savings association.

(2) *H-(e)1-S.* This application type shall be filed under § 574.3(a) of this part by a savings association for approval to reorganize into a holding company structure, provided that the proposed transaction satisfies each of the conditions for automatic approval specified in § 574.7 (a)(2) and (a)(3) of this part.

(3) *H-(e)2.* (i) This application type shall be filed under § 574.3(a) of this part:

(A) By a savings and loan holding company for approval to acquire and hold separately one or more savings associations;

(B) By any other company for approval to acquire and hold separately more than one savings association;

(C) By a savings and loan holding company for approval of an acquisition of shares issued by a savings association in a qualified stock issuance pursuant to § 574.8 of this part; or

(D) By any director, officer, or any individual who owns, controls, or holds with power to vote (or holds proxies representing) more than 25 percent of the voting shares of a savings and loan holding company for approval of an acquisition of one or more savings associations.

(ii) The OTS may determine as a general matter or on a case-by-case basis not to require application information not relevant to transactions described in paragraphs (a)(3)(i) (C) and (D) of this section.

(4) *H-(e)3*. This application shall be used for all applications filed under § 574.3(a) of this part:

(i) By a savings and loan holding company for approval of acquisitions by a merger, consolidation, or purchase of assets of a savings association or uninsured institution or a savings and loan holding company; or

(ii) By any company for approval of acquisitions by a merger, consolidation, or purchase of assets of two or more savings associations.

(5) *H-(e)4*. This information filing shall be used to claim that a reorganization is exempt from prior written approval of the OTS under § 574.3(c)(1)(ii) of this part.

(6) *Notice Form 1393, parts A and B*. This form shall be used for all notices filed under § 574.3(b) of this part regarding the acquisition of control of a savings association by any person or persons not constituting a company except as provided in paragraph (a)(3) of this section.

(b) *Filing requirements—(1) Applications, notices, and rebuttals*. (i) Complete copies including exhibits and all other pertinent documents of applications, notices, and rebuttal submissions shall be filed with the Region in which the savings association or associations involved in the transaction have their home office or offices. Unsigned copies shall be conformed. Each copy shall in-

clude a summary of the proposed transaction.

(ii) Any person or company may amend an application, notice or rebuttal submission, or file additional information, upon request of the OTS or, in the case of the party filing an application, notice, or rebuttal, upon such party's own initiative.

(2) *H-(e)4 Information filing*. Any information filing required to be made to claim that a reorganization is exempt from prior written approval of the OTS under § 574.3(c)(1)(ii) of this part shall be clearly labeled "H-(e)4 Information Filing".

(c) *Sufficiency and waiver*. (1) Except as provided in § 574.6(c)(5), an application or notice filed pursuant to § 574.3 (a) or (b) shall not be deemed sufficient unless it includes all of the information required by the form prescribed by the Office and this part, including a complete description of the acquiror's proposed plan for acquisition of control whether pursuant to one or more transactions, and any additional relevant information as the Office may require by written request to the applicant. Unless an application or notice specifically indicates otherwise, the application or notice shall be considered to pertain to acquisition of 100 percent of a savings association's voting stock. Where an application or notice pertains to a lesser amount of stock, the Office may condition its approval or non-disapproval to apply only to such amount, in which case additional acquisitions may be made only by amendment to the acquiror's application or notice and the Office's approval or non-disapproval thereof. Failure by an applicant to respond completely to a written request by the Office for additional information within 30 calendar days of the date of such request may be deemed to constitute withdrawal of the application, notice, or rebuttal filing or may be treated as grounds for denial of an application, issuance of a notice of disapproval of a notice, or rejection of a rebuttal.

(2) The period for the Office's review of any proposed acquisition will commence upon receipt by the Office of a notice or application deemed sufficient under paragraph (c)(1) of this section. The Office shall notify an acquiror in

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writing within 30 calendar days after proper filing of an application or notice as to whether an application or notice—

(i) Is sufficient;

(ii) Is insufficient, and what additional information is requested in order to render the application or notice sufficient; or

(iii) Is materially deficient and will not be processed: *Provided*, That if the public comment period specified in paragraph (e) of this section is extended, the 30 day period shall be extended for the same number of days the public comment period is extended. The Office also shall notify an acquiror in writing within 15 calendar days after proper filing of any additional information furnished in response to a specific request by the Office as to whether the application or notice is thereby deemed to be sufficient. If the Office fails to so notify an acquiror within such times, the application or notice shall be deemed to be sufficient as of the expiration of the applicable period.

(3) After additional information has been requested and supplied, the Office may request additional information only with respect to matters derived from or prompted by information already furnished, or information of a material nature that was not reasonably available from the acquiror, was concealed, or pertains to developments subsequent to the time of the Office's initial request for additional information. With regard to information of a material nature that was not reasonably available from the acquiror or was concealed at the time an application or notice was deemed to be sufficient or which pertains to developments subsequent to the time an application or notice was deemed to be sufficient, the Office, at its option, may request such additional information as it considers necessary, or may deem the application or notice not to be sufficient until such additional information is furnished and cause the review period to commence again in its entirety upon receipt of such additional information.

(i) The 60-day period for the Office's review of an application or notice deemed to be sufficient also may be extended by the Office for up to an additional 30 days.

(ii) The period for the Office's review of a notice may be further extended not to exceed two additional times for not more than 45 days each time if—

(A) The Office determines that any acquiring party has not furnished all the information required under this part;

(B) In the Office's judgment, any material information submitted is substantially inaccurate;

(C) The Office has been unable to complete an investigation of each acquiror because of any delay caused by, or the inadequate cooperation of, such acquiror; or

(D) The Office determines that additional time is needed to investigate and determine that no acquiring party has a record of failing to comply with the requirements of subchapter II of chapter 53 of title 31 of the United States Code.

(4) With respect to an H-(e)4 information filing, the Chief Counsel or his or her designee shall have 30 days after receipt of a filing deemed sufficient to disapprove the assertion that the company qualifies for the exemption provided in § 574.3(c)(1)(ii). After the expiration of such 30-day period without response from the Chief Counsel, the filing shall be deemed to be approved.

(5) The Office may waive any requirements of this paragraph (c) determined to be unnecessary by the Office, upon its own initiative, upon the written request of an acquiring person, or in a supervisory case.

(d) *Publication.* (1) An acquiror shall publish a notification as provided in this section no earlier than three calendar days before and no later than three calendar days after filing an application under § 574.3(a) or 574.8 or notice under § 574.3(b) and shall mail a copy of the notification to the association whose stock is sought to be acquired. Publication shall be made in the business section of a newspaper printed in the English language in:

(i) The community in which the home office of the savings association is located; and

(ii) If applicable, the community in which the home office of the largest subsidiary savings association of the acquiror is located.

If it is determined that the primary language of a significant number of adult residents of either community is a language other than English, the acquiror may be required to publish the notification simultaneously in the appropriate language(s).

(2) Notice published pursuant to paragraph (d) of this section shall be published in a manner that is conspicuous to the average reader and shall be made in substantially the following form:

NOTICE OF FILING OF APPLICATION OR
NOTICE FOR ACQUISITION OF A SAVINGS
ASSOCIATION

This is to inform the public that under § 574.3 of the Regulations of the Office of Thrift Supervision ("OTS") for Acquisitions of Savings Associations [Acquiror] [has filed/intends to file] an [application/notice] with OTS, for permission to [acquire control of/purchase a qualified stock issuance of] savings association, located in [location], on [date, or intended date of filing].

Anyone may write in favor of or protest against the [application/notice] and in so doing may submit such information as he or she deems relevant. Three copies of all submissions must be sent to OTS [give Region name and address] within 20 calendar days of the filing of the [application/notice]. Up to an additional 20 calendar days to submit comments may be obtained upon a showing of good cause, if a written request is received by the OTS within the initial 20-day period.

You may inspect the non-confidential portion of the [application/notice] and non-confidential portions of all comments filed with the OTS by contacting [give name and address.] If you have any questions concerning these procedures, contact the OTS Regional Office at () _____.

(3) Promptly after publication, the acquiror shall transmit copies of each notice, and a publisher's affidavit of publication in the same manner as the original filing in accordance with § 574.6(b)(1).

(4) Notice shall be provided to the appropriate state supervisor and to persons whose request for announcements

under § 563e.6 of this chapter have been received in time for such notification; these notices shall be in addition to legal notification as set forth in paragraph (d)(1) of this section. Any other persons who might have an interest in the application or notice may also be notified.

(5) Disclosure of any part of an application or notice shall be made only in compliance with paragraph (f) of this section.

(e) *Public comment.* Comments by the public shall be submitted only as provided in this paragraph (e) or as requested by the Office. Within 20 calendar days of the date of filing (or up to 40 calendar days after such date if an extension is requested in writing within the initial 20-day period) anyone may file comments in favor of or in protest of the application or notice and in so doing may submit such information as he or she deems relevant. Comments received after the comment period, unverified accusations, or materials pertaining to an application, notice, other filing or public comment which the commenter is unwilling to have disclosed to the party making such submission, shall not be part of the record and need not be considered by the Office. Comments shall be filed in the manner and in the locations provided in paragraph (b) of this section for the application or notice to which the comments pertain.

(f) *Disclosure.* (1) Any application, notice, other filings, public comment, or portion thereof, made pursuant to this part for which confidential treatment is not requested in accordance with this paragraph (f), shall be immediately available to the public and not subject to the procedures set forth herein. Public disclosure shall be made of other portions of an application, notice, other filing or public comment in accordance with paragraph (f)(2) of this section, the provisions of the Freedom of Information Act (5 U.S.C. 552a) and parts 503 and 505 of this chapter. Applicants and other submitters should provide confidential and non-confidential versions of their filings, as described in § 574.6(f) (2) and (3) in order to facilitate this process.

(2) Any person who submits any information or causes or permits any information to be submitted to the Office pursuant to this part may request that the Office afford confidential treatment under the Freedom of Information Act to such information for reasons of personal privacy or business confidentiality, which shall include such information that would be deemed to result in the commencement of a tender offer under § 240.14d-2 of title 17 of the Code of Federal Regulations, or for any other reason permitted by Federal law. Such request for confidentiality must be made and justified in accordance with paragraph (f)(5) of this section at the time of filing, and must, to the extent practicable, identify with specificity the information for which confidential treatment may be available and not merely indicate portions of documents or entire documents in which such information is contained. Failure to specifically identify information for which confidential treatment is requested, failure to specifically justify the bases upon which confidentiality is claimed in accordance with paragraph (f)(5) of this section, or overbroad and indiscriminate claims for confidential treatment, may be bases for denial of the request. In addition, the filing party should take all steps reasonably necessary to ensure, as nearly as practicable, that at the time the information is first received by the Office (i) it is supplied segregated from information for which confidential treatment is not being requested, (ii) it is appropriately marked as confidential, and (iii) it is accompanied by a written request for confidential treatment which identifies with specificity the information as to which confidential treatment is requested. Any such request must be substantiated in accordance with paragraph (f)(5) of this section.

(3) All documents which contain information for which a request for confidential treatment is made or the appropriate segregable portions thereof shall be marked by the person submitting the records with a prominent stamp, typed legend, or other suitable form of notice on each page or segregable portion of each page, stating “Confidential Treatment Requested by

[name].” If such marking is impracticable under the circumstances, a cover sheet prominently marked “Confidential Treatment Requested by [name]” should be securely attached to each group of records submitted for which confidential treatment is requested. Each of the records transmitted in this manner should be individually marked with an identifying number and code so that they are separately identifiable.

(4) A determination as to the validity of any request for confidential treatment may be made when a request for disclosure of the information under the Freedom of Information Act is received, or at any time prior thereto. Five business days notice will be provided to the filing party if the Office receives a request for the information under the Freedom of Information Act and determines to disclose material for which confidential treatment has been requested.

(5) Substantiation of a request for confidential treatment shall consist of a statement setting forth, to the extent appropriate or necessary for the determination of the request for confidential treatment, the following information regarding the request:

(i) The reasons, concisely stated and referring to specific exemptive provisions of the Freedom of Information Act, why the information should be withheld from access under the Freedom of Information Act;

(ii) The applicability of any specific statutory or regulatory provisions which govern or may govern the treatment of the information;

(iii) The existence and applicability of any prior determination by the Office, other Federal agencies, or a court, concerning confidential treatment of the information;

(iv) The adverse consequences to a business enterprise, financial or otherwise, that would result from disclosure of confidential commercial or financial information, including any adverse effect on the business’ competitive position;

(v) The measures taken by the business to protect the confidentiality of

the commercial or financial information in question and of similar information, prior to, and after, its submission to the Office;

(vi) The ease or difficulty of a competitor's obtaining or compiling the commercial or financial information;

(vii) Whether commercial or financial information was voluntarily submitted to the Office, and, if so, whether and how disclosure of the information would tend to impede the availability of similar information to the Office;

(viii) The extent, if any, to which portions of the substantiation of the request for confidential treatment should be afforded confidential treatment;

(ix) The amount of time after the consummation of the proposed acquisition for which the information should remain confidential and a justification thereof;

(x) Such additional facts and such legal and other authorities as the requesting person may consider appropriate.

(6) Any person requesting access to an application, notice, other filing, or public comment made pursuant to this part for purposes of commenting on a pending submission may prominently label such request: "Request for Disclosure of Filing(s) Made Under part 574/ Priority Treatment Requested."

(g) *Supervisory cases.* The provisions of paragraphs (d), (e) and (f) of this section may be waived by the Office in connection with a transaction approved by the Office for supervisory reasons.

(h) *Notification of State supervisor.* Upon receiving a notice relating to an acquisition of control of a state-chartered savings association, the Office shall forward a copy of the notice to the appropriate state savings and loan association supervisory agency, and shall allow 30 days within which the views and recommendations of such state supervisory agency may be submitted. The Office shall give due consideration to the views and recommendations of such state agency in determining whether to disapprove any proposed acquisition. Notwithstanding the provisions of this paragraph (h), if the Office determines that it must act immediately upon any notice of a pro-

posed acquisition in order to prevent the default of the association involved in the proposed acquisition, the Office may dispense with the requirement of this paragraph (h) or, if a copy of the notice is forwarded to the state supervisory agency, the Office may request that the views and recommendations of such state supervisory agency be submitted immediately in any form or by any means acceptable to the Office.

(i) *Additional procedures for acquisitions involving mergers.* Acquisitions of control involving mergers (including mergers with an interim association) shall also be subject to the procedures set forth in § 563.22 of this chapter to the extent applicable, except as provided in paragraph (a) of this section.

(j) *Additional procedures for acquisitions of recently converted savings associations.* Applications, notices and rebuttals involving acquisitions of the stock of a recently converted savings association under § 563b.3(i)(3) of this chapter shall also address the criteria for approval set forth at § 563b.3(i)(5) of this chapter.

[54 FR 49690, Nov. 30, 1989, as amended at 55 FR 13517, Apr. 11, 1990; 57 FR 14349, Apr. 20, 1992; 59 FR 28470, June 2, 1994; 60 FR 66720, Dec. 26, 1995; 61 FR 65179, Dec. 11, 1996]

§ 574.7 Determination by the OTS.

(a) *Acquisition by a company.* (1) The Office shall approve an application by any company other than a savings and loan holding company to acquire control of one savings association unless it determines that the criteria set forth in paragraph (c) of this section are not met. Acquisitions involving mergers with an interim association shall also be subject to §§ 546.2, 552.13, and 563.22 of this chapter.

(2) Subject to compliance with the requirements of §§ 546.2, 552.13 and 563.22, as applicable, an application filed pursuant to § 574.6(a)(2) by a savings association solely for the purpose of obtaining approval for the creation of a savings and loan holding company by such savings association, and related applications for permission to organize an interim federal association, and for merger with such interim association, shall be deemed to be approved 45 calendar days after such applications are properly filed in accordance with