

## I. INTRODUCTION

The Change in Bank Control Act of 1978 (CBC Act), Section 7(j) of the Federal Deposit Insurance Act (FDI Act), and Subpart E of Part 303 of the FDIC Rules and Regulations (Sections 303.80 – 303.88) generally prohibit any person, acting directly or indirectly or in concert with other persons, from acquiring control of a “covered institution” (as defined below), without providing at least 60 days prior written notice (Notice) to the FDIC. Subpart E sets forth the regulations applicable to the filing requirements and processing procedures for a Notice to acquire control of a covered institution. The notificant(s) may complete the proposed acquisition upon receipt of written notice that the FDIC does not disapprove of the acquisition or if the FDIC fails to act on a substantially complete Notice within the statutory time period. See *Time Frame for Processing*, Part X of this Section.

## II. DEFINITIONS UNDER SECTION 303.81 OF THE FDIC RULES AND REGULATIONS

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.

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. In addition, as described in Section 303.82 of the FDIC Rules and Regulations, the FDIC presumes that an acquisition of voting securities of a covered institution constitutes the acquisition of the power to direct the management or policies of that institution if, immediately after the transaction, the acquiring person will own, control, or hold with power to vote 10 percent or more of any class of voting securities of the institution, and if: (i) the institution has registered securities under Section 12 of the Securities Exchange Act of 1934; or (ii) 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.

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 subject to an exemption described in Section 303.84(a)(3) or (a)(8) of the FDIC Rules and Regulations).

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.

Person means an individual, corporation, limited liability company, 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.

## III. TRANSACTIONS THAT REQUIRE PRIOR WRITTEN NOTICE

Pursuant to Section 303.82 of the FDIC Rules and Regulations, unless exempted by the FDIC, a Notice is required prior to effecting an acquisition of control in the following instances:

1. The acquisition of voting securities of a covered institution if, immediately after the transaction, the acquiring person (or persons acting in concert) will own, control, or hold with power to vote, 25 percent or more of any class of voting securities of the covered institution.
2. The acquisition of the power, directly or indirectly, through ownership or otherwise, to direct the management or policies of a covered institution.
3. The acquisition of additional voting securities of a covered institution by a person who has previously been approved by the FDIC to acquire control of a covered institution and who has maintained that control, that would increase a person's ownership, control, or power to vote from less than 25 percent to 25 percent or more of any class of voting securities of the covered institution.
4. The acquisition of voting securities of a covered institution if, immediately after the transaction, the acquiring person will own, control, or hold with power to vote 10 percent or more of any class of voting securities of the institution, and if: (i) the institution has registered securities under Section 12 of the Securities Exchange Act of 1934; or (ii) 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.

#### Acquisition of Loans in Default

The acquisition of a defaulted loan secured by voting securities of a covered institution is considered to be an acquisition of the underlying securities. Before acquiring a defaulted loan in an amount that would, if the loan were foreclosed, provide the acquirer with the power to control the covered institution, the potential acquirer is required to provide the FDIC with prior written Notice.

#### Rebuttable Presumptions

The FDIC presumes that an acquisition of convertible securities, or options or warrants to acquire voting securities, constitutes the acquisition of voting securities for change in bank control purposes.

The FDIC presumes that an acquisition of voting securities of a covered institution constitutes the acquisition of the power to direct the management or policies of the covered institution if the acquiring person (or persons acting in concert) will own, control, or hold with the power to vote, 10 percent or more of any class of voting securities of the institution, and if:

- The institution has registered securities under Section 12 of the Securities Exchange Act of 1934; or 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. When no other shareholder owns or controls a greater percentage of that class of voting securities, if two or more persons, not acting in concert, will acquire equal percentages of 10 percent or more of the same class of voting securities of a covered institution, each person should file a prior Notice with the FDIC.

Certain relationships raise a rebuttable presumption of acting in concert, including:

- A company and a controlling shareholder or management official of the company;
- Persons who are immediate family;
- Companies under common control or a company and each company it controls;
- Two or more persons who have made, or propose to make, a joint filing related to the proposed acquisition under Sections 13 or 14 of the Securities Exchange Act of 1934;
- A person and any trust for which the person serves as trustee or any trust for which the person is a beneficiary; and
- Persons who are parties to any agreement or other arrangement, written or otherwise, regarding the acquisition, voting, or transfer of control of voting securities of a covered institution (other than certain revocable voting proxies).

The FDIC will afford any party seeking to rebut a presumption regarding control; acting in concert; or acquisition of convertible securities, options, or warrants an opportunity to present its views in writing.

Case Managers, after conferring with Regional Office (RO) management and RO Legal, must consult Washington Office (WO) Legal regarding the receipt and review of a request to rebut a presumption regarding control or acting in concert, including any proposed passivity agreements. Authority has not been delegated to the RO to make determinations on requests to execute passivity agreements related to requests regarding control. Such requests must be closely reviewed to ensure that no concerns or other problematic issues exist. As appropriate, such reviews should also be coordinated with staff from the Board of Governors of the Federal Reserve System (FRS) and other banking agencies which may have received related filings.

#### Notices Involving the Qualifications for Acquisition of Failed Insured Depository Institutions

The RO must immediately contact the WO upon receipt of any Notice which involves the acquisition of control of a bank or savings association for the purpose of acquiring the deposits and/or assets of failed insured depository institutions (IDIs). In conjunction with the review of the statutory factors of the CBC Act, the FDIC will consider whether the proposed acquisition of control includes an acceptable business plan, readily available capital, and a satisfactory management team. Investors that are interested in acquiring control of an institution as a vehicle for ultimately acquiring failed IDIs must obtain the requisite approvals or clearances from other applicable regulatory agencies and satisfy any other criteria established by the FDIC, including with respect to the *Final Statement of Policy on Qualifications for Failed Bank Acquisitions*, dated August 26, 2009.

#### Changes in Control of Holding Companies Requiring FDIC Non-Objection

The acquisition of control of a holding company that controls an insured state nonmember bank or insured state savings association may require the filing of a Notice with the FDIC if (a) the transaction is not subject to approval under Section 3 of the Bank Holding Company Act (BHC Act) or Section 10 of the Home Owners' Loan Act (HOLA), and (b) the FRS does not review a Notice for the acquisition under the CBC Act. Refer to Sections 303.84(a)(3) and (8) of the FDIC Rules and Regulations.

#### **IV. TRANSACTIONS THAT REQUIRE NOTICE, BUT NOT PRIOR NOTICE**

Pursuant to Section 303.83(a) of the FDIC Rules and Regulations, the following acquisitions of voting securities of a covered institution, which would otherwise require prior Notice, instead

require the acquiring person to provide Notice to the appropriate RO within 90 calendar days after the acquisition:

- The acquisition of voting securities as a bona fide gift;
- The acquisition of voting securities in satisfaction of a debt previously contracted in good faith, except that the acquisition of a defaulted loan secured by a controlling amount of a covered institution's voting securities requires the filing of a prior Notice as described earlier; and
- The acquisition of voting securities through inheritance.

Pursuant to Section 303.83(b) of the FDIC Rules and Regulations the following acquisitions of control of a covered institution, which otherwise would require prior Notice, instead require the person acquiring control to provide Notice to the appropriate RO within 90 calendar days after receiving notice of the event giving rise to the acquisition of control:

- Acquisition of control resulting from redemption of voting securities by the issuing covered institution; and
- Acquisition of control as the result of any event or action (including the sale of securities) by any third party that is not within the control of the person acquiring control.

The relevant information that the FDIC may require for a post-acquisition Notice includes all information and documents routinely required for a prior Notice. If the FDIC disapproves a post-acquisition Notice, the notificant(s) must divest control in a manner and within such time period that the FDIC determines.

## **V. TRANSACTIONS THAT DO NOT REQUIRE NOTICE**

Pursuant to Section 303.84 of the FDIC Rules and Regulations, a Notice is not required for the following acquisitions of voting securities:

1. Acquisition of additional voting securities of a covered institution by a person who:
  - Held the power to vote 25 percent or more of any class of voting securities of the institution continuously since the later of March 9, 1979, or the date that the institution commenced business; or
  - Is presumed to have controlled the institution continuously since March 9, 1979, if the aggregate amount of voting securities held does not exceed 25 percent or more of any class of voting securities, or in other cases in which the FDIC determines that the person has continuously controlled the institution since March 9, 1979.
2. Acquisition of additional voting securities of a covered institution by any person who has lawfully acquired and maintained control of the institution after complying with the

procedures of the CBC Act and the FDIC Rules and Regulations or other procedures then in effect.<sup>1</sup>

3. Acquisitions of voting securities subject to approval under Section 3 of the BHC Act, Section 18(c) of the FDI Act, or Section 10 of HOLA.
4. Any transaction described in Sections 2(a)(5), 3(a)(A), or 3(a)(B) of the BHC Act by a person described in those provisions.
5. A customary, one-time solicitation of a revocable proxy.
6. The receipt of voting securities of a covered institution through a pro rata stock dividend or stock split if the proportionate interests of the recipients remain substantially the same.
7. Acquisition of voting securities in a foreign bank that has an insured branch in the U.S.<sup>2</sup>
8. Acquisition of voting securities of a bank holding company or a savings and loan holding company for which the FRS reviews a Notice filed pursuant to the CBC Act.

## VI. FORM OF NOTICE

The Interagency Notice of Change in Control Form (Notice Form) generally is used for any Notice. Section 7(j)(6) of the FDI Act sets forth specific requirements for the content of any Notice, which can generally be met with the submission of the Notice Form and an Interagency Biographical and Financial Report (IBFR) for each person named in the Notice. Use of the IBFR is not mandatory; however, all of the information required by the form must be submitted. When the acquiring person is an individual, the requirement to provide personal financial data may be satisfied by a current statement of assets and liabilities and an income summary, together with a statement of any material changes since the date of the statement or summary. Each notificant must also submit an FBI Fingerprint Card and a Consent for Release of Information.

Additional information may be requested by the FDIC, as appropriate. The Division of Risk Management Supervision (RMS) Director may waive any of the Notice informational requirements, if it is determined that such waiver is in the public interest. The notificant(s) should notify the appropriate RO immediately of any material changes in any Notice submitted, including changes in financial or other conditions. The Notice Form and the IBFR are available in the Forms section of the FDIC's public website at: <https://www.fdic.gov/regulations/laws/forms/notices.html>

## VII. ACCEPTING AND PROCESSING THE NOTICE

Case Managers should process all Notices using the steps below. In many cases, it will be helpful to discuss filing requirements and other relevant matters during a pre-filing meeting

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<sup>1</sup> A Notice is required if the person's ownership, control, or power to vote would increase from less than 25 percent to 25 percent or more of any class of voting securities of the covered institution. However, the FDIC may waive this Notice requirement. Refer to Section 303.82(a)(2) of the FDIC Rules and Regulations.

<sup>2</sup> This exemption does not extend to the reports and information required under paragraphs 9, 10, and 12 of the CBC Act (Sections 7(j)(9),(10) and (12) of the FDI Act).

among the notificant(s) and the appropriate regulatory agencies. Refer to *Applications Overview*, Section 1.1 of these Procedures, for general information regarding receipt and acceptance of applications.<sup>3</sup>

1. Establish the record under CHGCON - Change of Control in the appropriate internal database. All Notices should be entered into the system of record within three business days of receipt. In all cases, dates and comments in the record should be updated regularly to reflect the current status of the Notice.
2. Initially review all materials for completeness, and request additional information if necessary. If related filings are involved, the Case Manager should coordinate with the notificant(s) and the other agencies to ensure that all information submissions are promptly provided to the FDIC.

A substantially complete Notice will consist of complete and informative responses, with attachments if necessary, to items 1 through 15 of the Notice Form with the original signature of each notificant, as well as a completed and signed IBFR or other financial documents as previously described, an FBI Fingerprint Card, and a Consent for Release of Information for each notificant.

Note that the Interagency Notice of Change of Control form requires the applicant to discuss the proposal, including the purpose, terms, and conditions of the acquisition, and the manner in which the acquisition will be made. The applicant is also directed to describe in detail any plans or proposals that any acquirer may have to: (a) liquidate the depository institution or holding company to be acquired, (b) sell its assets, (c) merge it with any company, or (d) make any other significant change in its business strategy or corporate structure. The Case Manager should carefully review the answers to these questions and ensure that significant changes in business strategy or corporate structure are fully supported by comprehensive business plans. If not, the extension provisions of Section 7(j)(1) of the CBC Act should be invoked. See *Time Frame for Processing*, Part X of this Section, for additional information.

The Financial Services Regulatory Relief Act of 2006 amended the CBC Act to allow the federal banking agencies time to extend the time for review of change-in-control notices to analyze the safety and soundness of the proposed business plans and the institution's future prospects. In addition, the amendment also permits the federal banking agencies to disapprove a change-in-control if the institution's future prospects are unsatisfactory. Prior use of stripped charters as a way to gain deposit insurance was one reason for the amendment.

A stripped charter is essentially a charter for a depository institution that has federal deposit insurance, but that does not have any significant, ongoing business operations. Such stripped charters may result from a purchase and assumption transaction where all or virtually all of the assets and liabilities of an insured depository institution are transferred to another depository institution, but the charter for the transferring insured depository institution is not cancelled. They may also result from an insured depository institution winding down its operations by disposing of all or substantially all of its assets

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<sup>3</sup> Case Managers should also read and follow the general guidance and expectations for all applications regarding receipt and acceptance, recordkeeping responsibilities, WO action or input, delegations, etc., in *Applications Overview*, Section 1.1 of these Procedures.

and liabilities over time. In some instances, stripped charters have been purchased and used in connection with the establishment of new financial institution operations, as an alternative to de novo charter and deposit insurance applications.

The FDIC has long held the view that organizing groups or individuals seeking to use a stripped charter as a means of gaining deposit insurance should be required to provide the information required in the Interagency Charter and Federal Deposit Insurance Application, and the FDIC should be an active participant in the consideration of the application. A change of control of a relatively small institution could be viewed similarly. Accordingly, Case Managers should give careful attention to all Notices of Change of Control, including those forwarded by other agencies for FDIC comment.

If the preliminary review indicates that the Notice will require WO action or input, RO staff should consult with WO staff before accepting the Notice. For those cases where the RO does not have delegated authority, the RO should not formally accept the application until concurrence from the WO has been received. When the Notice is considered substantially complete, an acceptance letter should be prepared and sent to the notificant(s).

3. Failure to act on a Notice within the statutory time frames will result in an automatic approval effective as of the date the processing period expires. Action on the Notice must be completed within 60 days after the date the Notice is accepted as substantially complete, unless the FDIC notifies the notificant(s) in writing that the disapproval period has been extended. The FDIC can extend the disapproval period for 30 days at its discretion. The FDIC can extend the processing period for two additional times not to exceed 45 days each for any of the reasons detailed in Section 7(j)(1) of FDI Act. The record should be updated to reflect any extension and describe why the review period is being extended in the RO/FO Comments section.

Note: Extension of the processing period for the discretionary 30 days should be considered if the Notice is being forwarded to the WO for action or input.

4. Letters requesting comments from the OCC, the FRS, and the appropriate state authority should be prepared when the Notice is considered substantially complete and sent promptly to allow those authorities a 30-day period to provide comments. A copy of the Notice, including the IBFR or other personal financial data, must accompany the request for comment.
5. Verify that the publication requirements for the Notice are met (refer to *Publication*, Part XI of this Section, for further details).
6. Request name checks through the background investigation database and route fingerprint cards to the Cyber Fraud and Financial Crimes (CFFC) Section to be forwarded to the FBI. Refer to *Background Investigations*, Section 1.5 of these Procedures, for additional information.
7. Thoroughly analyze the Notice and any supporting exhibits and materials (e.g., agreements or contracts related to the proposed acquisition, business plan, financial projections, supporting assumptions/exhibits, organizational structure, affiliate-related information, etc.). The Case Manager should verify the source of the funding and validate the likelihood of the availability of the funds. As necessary, promptly

communicate any follow-up questions, issues, and information requests to the notificant(s) and the other applicable regulators.

8. Complete the appropriate Summary of Investigation form.<sup>4</sup> The SOI narrative should detail the nature of the request, relevant background information regarding the notificant(s), financial and supervisory information regarding the covered institution, any pertinent legal analysis, and comments from other regulators, as applicable. The SOI narrative should address each of the statutory factors set forth in Section 7(j)(7) of the FDI Act and listed in *Statutory Factors*, Part IX of this Section. Retrieve the Application Summary Statement from the appropriate internal database, and attach it to the SOI.
9. If a non-objection is recommended, prepare a draft non-objection letter. The letter should include all applicable standard conditions and any recommended non-standard conditions. The Case Manager should obtain the applicant's written agreement to any non-standard conditions prior to submitting the approval documents for signature. Refer to *Standard and Non-standard Conditions*, Section 1.11 of these Procedures, for further instruction. If the RO has delegated authority, distribute the non-objection letter to the notificant(s), with copies to the appropriate regulatory agencies. The letter should state that the transaction can proceed immediately, provided the 20-day public comment period has elapsed.
10. If non-objection appears warranted, but the RO does not have delegated authority, send the SOI and the draft non-objection letter to the WO for final action. Refer to *Applications Overview*, Section 1.1 of these Procedures, for additional instructions regarding filings that require WO action or input. The WO will complete the FDIC's review of the Notice and distribute the final documents.
11. If an objection appears warranted, RO Legal and WO Risk Management and Applications Section (RMAS) and Legal should be consulted as soon as possible for an assessment of the basis for recommending the objection. ROs do not have delegated authority to disapprove a CBC Act filing. A letter extending the disapproval period should be considered if the period is not already exhausted. Refer to *Denials and Disapprovals*, Section 1.3 of these Procedures, for further information. If RMS takes an adverse action against a notificant based, in whole or in part, on information presented in a consumer credit report, RMS must contact and provide certain information to the notificant. Refer to *Background Investigations*, Section 1.5 of these Procedures, for information regarding the Fair Credit Reporting Act.

Note: For any Notice that presents significant concerns or deficiencies that may result in an objection, the RO should advise the notificant(s) of the concerns or deficiencies and provide the notificant(s) an opportunity to submit additional information or explanations. Such communication may be delayed until the WO concurs.

12. If Legal concurs that the recommendation for objection is warranted, send the SOI and a draft objection letter to the WO for final action. The draft letter should include the basis for disapproval and advise the notificant(s) of the appeal rights under Part 308 of the FDIC Rules and Regulations. At the FDIC's discretion applicants may be offered the opportunity to withdraw the filing.

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<sup>4</sup> Case Managers should be familiar with and follow the general instructions and SOI requirements for all types of applications located in *Summary of Investigation*, Section 1.2, as well as the specific instruction in this Section.

13. Update the appropriate internal database to reflect the date forwarded to the WO, if applicable, the final action, the date of the action, the expiration date, hours devoted to the Notice, and any other required information.

#### Notices Involving Foreign Ownership<sup>5</sup>

If the Notice indicates that 25 percent or more of the voting securities of the target institution are under foreign control or the institution will be controlled by foreign owners, the Case Manager should consult with WO RMAS and Legal. In addition, the International Affairs Branch of the Division of Insurance and Research (IAB) is available to assist in the application review, and may assist in facilitating requests for information and communication with foreign regulatory agencies. RMAS and Legal, in coordination with IAB, will provide language for any non-standard conditions related to foreign ownership.

#### *Parallel-owned banking organizations (PBO) and foreign banking organizations (FBO)<sup>6</sup>*

A PBO is created when at least one U.S. depository institution and one foreign bank are controlled either directly or indirectly by the same person or group of persons who are closely associated in their business dealings or otherwise acting in concert. It does not include structures in which one depository institution is a subsidiary of the other, or the organization is controlled by a company subject to the Bank Holding Company Act or the Savings and Loan Holding Company Act.

In contrast, a foreign banking organization is created when a foreign bank operates a branch (insured or uninsured), agency, or commercial lending company subsidiary in the United States; controls a depository institution in the United States; or controls an Edge corporation; *and* encompasses any company of which the foreign bank is a subsidiary.

RMS does not have delegated authority to act on any Notice involving an institution that will be part of a PBO. The RO also does not have delegated authority to act on a Notice by which an institution will be subject to foreign ownership (25 percent or more in the aggregate) or control, and will *not* be part of an FBO. In determining whether a Notice involves a PBO or FBO, Case Managers should consult with the WO RMAS and Legal after forwarding a copy of the Notice and related materials.

After receiving a Notice involving foreign controlling ownership, the Case Manager should contact the notificant(s) and explain that the FDIC requires controlling persons or entities to execute an agreement appointing a designated agent in the U.S. to receive service of process on behalf of the foreign controlling person or entity for banking law matters and consenting to the jurisdiction of the U.S. courts, the federal banking agencies, and the U.S. Departments of Treasury and Justice for such matters. Such an agreement, referred to as a “consent to jurisdiction and agreement to maintain agent for service of process,” essentially enables the respective authorities to exercise legal jurisdiction over a foreign controlling person or entity for

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<sup>5</sup> Foreign ownership includes ownership by a foreign non-banking entity, a foreign bank, or a person who is not a U.S. citizen.

<sup>6</sup> Foreign banks that conduct operations in the U.S. are known as FBO. FBOs generally have a longstanding presence in the U.S. and their activities can generally be divided into four main categories: branches, agencies, foreign-owned U.S. bank subsidiaries, and representative offices.

purposes of enforcement or other banking-related legal proceedings. The Case Manager should consult with WO RMAS and Legal in the development and execution of the agreement. The agreement must state that each agreement will be updated as circumstances warrant. The Case Manager will send the agreement to the notificant(s) for execution.

The Case Manager should request that the notificant(s) execute and return the agreement as quickly as possible, but within a specific stated deadline to be determined based on the timeline for the specific Notice.

- If the agreement is signed outside the U.S., the foreign person or designated agent must appear in person at a U.S. Embassy or Consulate, sign the agreement in the presence of the consular official, and obtain the consular official's authentication of execution.
- If the agreement is signed within the U.S., the signature of the foreign person or the designated agent must be properly notarized under state law.

Generally, the RO should receive the original, signed agreement before sending the Notice to the WO for final action.

Following consultation with the WO RMAS and Legal, the FDIC may determine to not pursue a "consent to jurisdiction and agreement to maintain agent for service of process" if it is determined that the Primary Federal Regulator is taking similar action as a result of a concurrent Notice or application, and nothing would be served by the FDIC's companion agreement.

## VIII. AFTER-THE-FACT NOTICES

Regarding *Transactions That Require Prior Written Notice* as discussed in Part III of this Section, if a change in control has occurred without the required filing of the 60-day advance Notice, or regarding *Transactions That Require Notice, But Not Prior Notice* as discussed in Part IV of this Section, if the required Notice is not filed within 90 days, the Regional Director should require a Notice to be filed and should consider appropriate enforcement action.<sup>7</sup> The consideration of appropriate enforcement action, decision, and factors leading to the decision should be summarized in the SOI.

Processing of an after-the-fact Notice will be substantially similar to the procedures noted in *Accepting and Processing the Notice*, Part VII of this Section. If the transaction is to be approved, the non-objection letter should use the phrase "we do not object to the acquisition which has previously occurred." Publication will be required unless disclosure of the Notice or solicitation of public comment would seriously threaten the safety and soundness of the institution. See *Publication*, Part XI of this Section, for additional information. The time limitations imposed by Section 7(j) of the FDI Act for prior Notices are not applicable in the case of an after-the-fact Notice.

In the case of an after-the-fact Notice for which it appears likely the FDIC would issue an objection, and following consultation with RMS management, Legal, and, as appropriate, WO staff (RMAS and Legal), the notificant should be instructed to submit a plan acceptable to the

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<sup>7</sup> The FDIC's specific investigative and enforcement authority for violations of the change of control Notice requirements are specified in Section 7(j)(15) of the FDI Act. Violations of the CBC Act or the FDIC's implementing regulations may result in the requirement for divestiture (or other equitable relief), temporary or permanent injunction, or the issuance of restraining orders. The FDIC also may assess civil money penalties as set forth in Section 7(j)(16) of the FDI Act.

FDIC to terminate, reverse, and/or divest within a prescribed period of time. The notificant's plan should include a reasonable timeframe and appropriate milestones to achieve full implementation. To the extent the plan is unsupported or incomplete, the notificant should be informed of the deficiencies and required to submit additional information. If the FDIC determines the submitted plan is unacceptable, the notificant should be instructed to modify the plan and resubmit to the FDIC. After receipt of an acceptable plan, the notificant should be instructed to fully implement the plan within a prescribed timeframe. Depending on the facts and circumstances of the activity, and if sufficient supervisory concerns are identified, the notificant may be required to immediately reverse, terminate, or divest. The Case Manager should refer to *Applications Overview*, Section 1.1 of these Procedures, for further expectations regarding after-the-fact filings.

## IX. STATUTORY FACTORS

The statutory factors considered in evaluating Notices are detailed in Section 7(j)(7) of the FDI Act. A proposed acquisition of control may be disapproved by the FDIC if:

- The proposed acquisition of control would result in a monopoly or aid an attempt to monopolize banking in any part of the U.S.;
- The effect of the proposed acquisition of control in any section of the country may be to substantially lessen competition or tend to create a monopoly or would in any other manner be in restraint of trade, and the anticompetitive effects are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community;
- The financial condition of any acquiring person or the future prospects of the institution might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank;
- The competence, experience, or 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 bank, or in the interest of the public to permit such person to control the bank;
- Any acquiring person neglects, fails, or refuses to furnish all the information required by the FDIC; or
- The FDIC determines the transaction would result in an adverse effect on the Deposit Insurance Fund.

## X. TIME FRAME FOR PROCESSING

Statutory: The notificant(s) may proceed with the proposed acquisition following the expiration of the 60-day period after a substantially complete Notice is accepted by the FDIC, unless the FDIC issues a notice of disapproval or extends the time period for disapproval. The FDIC may extend the review period for 30 days at its discretion. In addition, the review period may be extended for two additional periods for no more than 45 days each if:

- The FDIC determines that any notificant has not furnished all the information required

under Paragraph 6 of the CBC Act (Section 7(j)(6) of the FDI Act);

- In the FDIC's judgment, any material information submitted is substantially inaccurate;
- The FDIC has been unable to complete the investigation of any notificant due to any delay caused by, or the inadequate cooperation of, the notificant; or
- The FDIC determines that additional time is needed to:
  - investigate and determine whether any notificant has a record of failing to comply with the requirements of Subchapter II of Chapter 53 of Title 31, U.S.C. (Monetary Transactions);
  - analyze the safety and soundness of any plans or proposals which the notificant(s) may have to liquidate the bank, sell its assets, merge it with any other company, or make any major change in its business, corporate structure, or management; or
  - analyze the future prospects of the institution.

Note: Failure to act on a substantially complete Notice within these timeframes constitutes approval.

RO Processing Guideline: 45 days from receipt of a substantially complete Notice.

## **XI. PUBLICATION**

Any person filing a Notice must publish an announcement seeking public comment on the proposed acquisition conforming to the requirements of Section 303.7 of the FDIC Rules and Regulations. The announcement must appear in a newspaper of general circulation in the community in which the home office of the covered institution is located. The announcement should be published as close as practical to the date the Notice is filed with the appropriate Regional Director, but no more than 10 calendar days before or after the filing date.

The FDIC may permit a delay in publication if the FDIC determines, for good cause, it is in the public interest to grant such a delay. WO staff must be consulted before permitting a delay in publication.

The FDIC may shorten the public comment period to a period of not less than 10 days, or waive the public comment or newspaper publication requirements, or act on a Notice before the expiration of a public comment period, if it determines in writing either that an emergency exists or that disclosure of the Notice, solicitation of public comment, or delay until expiration of the public comment period would seriously threaten the safety or soundness of the institution to be acquired. WO staff must be consulted before determining to delay or waive publication, or shorten or waive public comment, or act before the close of the comment period.

Whenever a Notice is not filed in accordance with the CBC Act and FDIC regulations, the acquiring person(s) should publish a newspaper announcement of the acquisition of control within 10 days after being directed by the FDIC. The newspaper announcement should contain, in addition to the information required in Section 303.7 of the FDIC Rules and Regulations, the date of the acquisition and a statement indicating that the FDIC is currently reviewing the acquisition of control.

Public comments must be submitted to the FDIC within 20 days following the required newspaper publication, or, if the FDIC has shortened the comment period, within such shorter

time period. Section 303.9 of the FDIC Rules and Regulations provides that the FDIC may extend or reopen a comment period under certain circumstances, including when good cause exists. Refer to *Applications Overview*, Section 1.1 of these Procedures, for further instruction.

## **XII. DELEGATED AUTHORITY**

Delegations of authority regarding applications, notices and other filings are discussed in *Applications Overview*, Section 1.1 of these Procedures. Case Managers should be aware of the special circumstances that affect the delegation of actions pertaining to Notices and follow the appropriate processing procedures. Among other special circumstances, the FDIC Board retains authority to accept and act on any Notice in which the acquiring, assuming, or resulting institution would be an ILC.

## **XIII. REFERENCES**

*Section 7(j) of the FDI Act (12 U.S.C. §1817(j))*

*Sections 303.7 and 303.9, 303.80 – 303.88, and 308.110-308.114 of the FDIC Rules and Regulations*

*Risk Management Manual of Examination Policies*

*Final FDIC Statement of Policy on Qualifications for Failed Bank Acquisitions*