

1301:2-4-03

Change in control.

(A) As used in this rule:

- (1) "Acquisition" means a purchase, assignment, transfer, exchange, pledge, or other disposition of voting shares, or an increase in percentage ownership of a state savings and loan association resulting from redemption of voting shares, or a similar transaction.
- (2) "Acting in concert" means knowing participation in a joint activity or parallel action towards a common goal of acquiring control of a state savings and loan association, whether or not pursuant to an express agreement.
- (3) "Control" means:
 - (a) The power, directly or indirectly, to direct the management or policies of a state savings and loan association or
 - (b) Ownership, control of, or the power to vote twenty-five per cent or more of any class of voting securities of a state savings and loan association.
- (4) "Immediate family" means a person's father, mother, stepfather, stepmother, brother, sister, stepbrother, stepsister, son, daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, father-in-law, mother-in-law, the spouse of any of the foregoing, and the person's spouse.
- (5) "Person" means an individual, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, and any other form of entity; and a voting trust, voting agreement, and any group of persons acting in concert.
- (6) "State savings and loan association" means a savings and loan association chartered under the laws of Ohio and includes any savings and loan holding company that has control of any such state savings and loan association, and any other company that controls a state savings and loan association.
- (7) "Securities" means all equity interests in a savings and loan association and includes rights, interests, and powers with respect thereto.

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

- (1) It is presumed, subject to rebuttal, that a person acquiring ownership, control of, or the power to vote ten per cent or more of any class of voting securities of a state savings and loan association constitutes the power to direct that savings and loan association's management or policies requiring prior notice to the No other person will own, control, or hold the power to vote a greater percentage of that class of voting securities immediately after the transaction. If two or more persons, not acting in concert, each propose to acquire simultaneously equal percentages of 10 percent or more of a class of voting securities of a state savings and loan association, each such person shall file prior notice with the superintendent if either of the following apply:
- (a) The state savings and loan association has registered securities under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78); or
- (b) No other person will own, control, or hold the power to vote a greater percentage of that class of voting securities immediately after the transaction. If two or more persons, not acting in concert, each propose to acquire simultaneously equal percentages of 10 percent or more of a class of voting securities of a state savings and loan association, each such person shall file prior notice with the superintendent.
- (2) It is presumed, subject to rebuttal, that a person is acting in concert with members of the person's immediate family.
- (3) Transactions other than those set forth in paragraph (B)(1) of this rule resulting in a person's control of less than 25 percent of a class of voting securities of a state savings and loan association are deemed not to constitute control requiring prior notice.
- (4) A person may request an opportunity to rebut any presumption established by paragraph (B)(1) and (B)(2) of this rule with respect to a proposed transaction. The superintendent shall afford the person the opportunity to present views in writing or where appropriate, orally before the superintendent or the superintendent's designated representatives either at informal conference discussions or at informal presentations of evidence. A person rebutting concerted action with a federal regulator may file the information to rebut the presumption filed with the federal regulator with the superintendent.
- (C) To request the written consent of the superintendent to a proposed acquisition of control of a state savings and loan association:
- (1) A person who is also required to file a notice or application with the office of thrift Supervision 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 Savings and Loan Holding Company Act (12 U.S.C. 1467a), shall file with the

superintendent an originally executed copy of the notice or application.

(2) A person who is not required to file a notice or application with the office of thrift supervision in regard to the proposed transaction shall notify the superintendent by letter of the proposed transaction, which letter shall include a summary of the proposed transaction and the reason the person is not required to file a notice or application in regard to the proposed transaction with the federal deposit insurance corporation or the federal reserve system. A person filing notice under this section shall submit the following information:

(a) 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 material 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.

(b) 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 the fiscal year for each of the five 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.

(c) The terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made.

(d) 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.

(e) 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 or corporate structure or management.

(f) The identification of any person employed, retained, or to be compensated

by an acquiring person, or by any person on an acquiring person's behalf, 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.

(g) 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.

(h) Any additional relevant information in the form the superintendent may require by rule or by specific request in connection with any particular notice.

(i) Any other information the superintendent requires.

(D) The sixty day notice period specified in paragraph (B) shall not commence until the superintendent has accepted the notice required in paragraph (C)(1) or (C)(2) for processing.

(E) The proposed acquisition of control may be made within sixty days of the superintendent's acceptance of the notice for processing unless the superintendent has done either of the following:

(1) Disapproved the proposed acquisition of control; or

(2) Extended the time during which the superintendent may disapprove a proposed acquisition of control as follows:

(a) For an additional thirty days in the discretion of the superintendent; or

(b) For two additional extensions of not more than forty-five days each if any of the following applies:

(i) The superintendent determines that any acquiring person has not furnished all of the information required under this rule;

(ii) In the superintendent's judgment, any material information filed is substantially inaccurate;

(iii) The superintendent has been unable to complete the investigation of an acquiring person because of any delay caused by, or the inadequate cooperation of, that acquiring person;

(iv) The superintendent determines that additional time is needed to investigate and determine whether any acquiring person has a record of failing to comply with the requirements of subchapter II of chapter 53 of subtitle IV of Title 31 of the United States Code.

(F) Any person filing notice under this rule shall be required to publish, within ten days from receipt of the superintendent's acceptance for processing of information required to be filed under this rule, an announcement on the proposed acquisition in a newspaper of general circulation in the community in which the state savings and loan association has its principal place of business. In the case of information filed with the superintendent in contemplation of a tender offer, publication of the announcement required by this paragraph may be delayed until thirty days after the superintendent's acceptance of the information for processing. Whenever a person required to publish an announcement pursuant to this paragraph is also required by federal law or regulation to publish an announcement regarding the same transaction, the announcement published pursuant to federal law or regulation shall satisfy the publication requirement of this paragraph if the announcement includes all of the information required by this paragraph. The newspaper announcement shall include:

- (1) The name of the state savings and loan association and the name of each person identified in the information as a proposed acquirer and the proposed date of the acquisition of the securities;
- (2) A statement that interested persons may submit comments on the proposed acquisition to the superintendent at the superintendent's place of business for a period of twenty days from the date of publication of the announcement, along with the superintendent's address; and
- (3) A statement that the superintendent will consider all public comments received in writing within the twenty days following the required publication.

(G) The Superintendent may do either of the following with respect to the newspaper publication requirement:

- (1) Permit delay of the publication if the superintendent determines, for good cause, that it is in the public interest to grant a delay; or
- (2) Shorten the public comment period, waive the public comment, waive the newspaper publication, or act on a notice before the expiration of the a public comment period, if the superintendent determines that either an emergency exists or disclosure of a proposed acquisition, solicitation of the public comment, or delay of its action until expiration of the public comment period would seriously threaten the safety or soundness of a state savings and loan association.

(H) Any person who is required to file information with the superintendent pursuant to paragraph (C)(1) of this rule shall also file with the superintendent any additional information filed with the federal deposit insurance corporation or the office of thrift supervision in connection with a notice regarding the same proposed transaction together with a copy of any request from the federal deposit insurance

corporation or office of thrift supervision in response to which such information was filed.

(I) An acquisition of control may be made prior to the expiration of the denial period, or any extension thereof, if the superintendent issues written consent to the acquisition.

(J) The superintendent may deny consent to a proposed acquisition of a controlling interest in a savings and loan association if:

(1) The proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of savings and loan association in any part of this state or any markets served by the state savings and loan association;

(2) The effect of the proposed acquisition of control in any part of this state and any markets served by the state savings and loan association may be substantially to lessen competition, tend to create a monopoly, or in any other manner restrain trade, and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the acquisition in meeting the convenience and needs of the community to be served;

(3) The financial condition of any acquiring person might jeopardize the financial stability of the savings and loan association or prejudice the interests of the depositors of the state savings and loan association;

(4) The competence, experience, and integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the state savings and loan association, or in the interest of the public to permit such person to control the state savings and loan association; or

(5) Any acquiring person neglects, fails, or refuses to furnish the superintendent all the information required by the superintendent; or

(6) The superintendent determines the proposed acquisition would have an adverse effect on the savings association insurance fund administered by the federal deposit insurance corporation.

(K) Within three days after deciding to disapprove any proposed acquisition of control of a state savings and loan association, the superintendent shall notify the acquiring person in writing of the disapproval. The notice of disapproval shall provide a statement of the basis for the disapproval.

(L) Whenever a change in control of a state savings and loan association occurs, the state savings and loan association shall promptly report to the superintendent any

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

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

(1) Through testate or intestate succession;

(2) Through a bona fide gift;

(3) In satisfaction of a debt previously contracted in good faith, except that the acquirer of a defaulted loan secured by a controlling amount of savings and loan association voting shares shall file a notice before the loan is acquired;

(4) Redemption of voting shares by the issuing savings and loan association; or

(5) Sale of shares by any shareholder that is not within the control of the person resulting in that person becoming the largest shareholder.

(N) The following transactions do not require a person proposing to acquire control in a state savings and loan association to obtain the prior written consent of the superintendent:

(1) A customary one-time proxy solicitation; and

(2) The receipt of voting securities through a pro rata stock dividend.

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