

Article 10.

Bank Holding Companies.

Part 1. Change in Control.

**§ 53C-10-101. Holding companies.**

Every holding company, as defined in G.S. 53C-1-4(39), that directly or indirectly controls a depository institution or nonbank subsidiary that has an office located in this State shall register with the Commissioner and maintain that registration on an annual basis in the form prescribed by the Commissioner. (2012-56, s. 4; 2017-165, s. 10.)

**§ 53C-10-102. Holding company control transaction.**

(a) Except as otherwise expressly permitted by this section, a person shall not engage in a control transaction to which a holding company formed under the laws of this State and having a bank as a subsidiary is a party without the prior approval of the Commissioner. A person may contract to engage in a control transaction with the consummation of the control transaction being subject to receipt of the approval of the Commissioner.

(b) The Commissioner may require a person who is obligated to file a notice or an application under this section to appoint an agent resident in this State for service of process upon the filing of the notice or application or as a condition to the acceptance of the notice or application for review. An application for approval shall be in a form required by the Commissioner and shall be accompanied by such fee as may be required by rule.

(c) The following transactions shall not constitute a control transaction under this section requiring the prior approval of the Commissioner:

- (1) The acquisition of control over voting securities by a person who has previously engaged in a control transaction with respect to the holding company after receiving the approval of the Commissioner under this Article, which approval permits the acquisition of control over additional voting securities, or any person who is an affiliate of the person previously engaging in the approved control transaction with such permission and who is identified in the application submitted for the approval, if the acquiring person files a notice with the Commissioner, in the form required by the Commissioner, describing the transaction at least 10 days before the acquiring person or affiliate thereof first votes or directs the voting of the voting securities.
- (2) An acquisition of control over voting securities by operation of law, will, or intestate succession, if the acquiring person files a notice with the Commissioner, in the form required by the Commissioner, describing the acquisition or transfer at least 10 days before the acquiring person first votes or directs the voting of the voting securities.
- (3) Bona fide gifts.
- (4) A transaction exempted by rules, orders, or declaratory rulings of the Commissioner, issued because approval of the transaction is not necessary to achieve the objectives of this Chapter.
- (5) An acquisition of control over voting shares exempt from the prior approval requirements set forth in section 3 of the Bank Holding Company Act, as amended (12 U.S.C. § 1842), pursuant to the exceptions described in items (A), (B), or (C) of subsection (a) of that section.

- (6) An acquisition of control over voting securities in a transaction subject to approval under section 3 of the Bank Holding Company Act, as amended (12 U.S.C. § 1842).

(d) Upon receipt of a notice described in subsection (c) of this section, the Commissioner may, before the 10th day following the receipt, notify the acquiring person of the Commissioner's objection to the exercise of control over the voting securities or may require the acquiring party to submit further information before exercising control over the voting securities. An acquiring person receiving a notice of objection shall be required to submit an application for approval of a control transaction. An acquiring person receiving a notice to submit further information may be required to provide any information that would be included in an application for approval of a control transaction. In the event such an acquiring person is comprised of a group of persons, the Commissioner may require each member of the group to submit relevant information.

(e) All voting securities over which control has been acquired by an acquiring person shall not be voted on any matter submitted to a vote of the holders of the outstanding voting securities of the holding company of a bank and shall be deemed authorized but unissued for purposes of determining the presence of a quorum of holders of voting securities until such time as follows:

- (1) The Commissioner has approved an application for approval of a control transaction with respect to the voting securities.
- (2) The transaction is one listed in subsection (c) of this section that does not require the filing of a notice with the Commissioner.
- (3) The transaction is one listed in subsection (c) of this section that requires a notice to be filed with the Commissioner and the Commissioner has not issued an objection to the notice and any requirement of the Commissioner for the filing of further information had been determined by the Commissioner to have been satisfied. (2012-56, s. 4; 2013-29, s. 20.)

### **§ 53C-10-103. Application regarding a control transaction.**

(a) A person seeking approval of a control transaction to which a holding company of a bank is a party under this Article shall file the following with the Commissioner:

- (1) An application in the form prescribed by the Commissioner.
- (2) All filing fees required by rule of the Commissioner.
- (3) Any other information required by a rule of the Commissioner or deemed by the Commissioner to achieve the objectives of this Chapter.

(b) In the event a person submitting an application is a group of persons, the Commissioner may require each member of the group to submit information relevant to the application.

(c) Notwithstanding any laws to the contrary, information about the character, competence, or experience of an acquiring person or its proposed management personnel or affiliates shall be deemed a confidential record of the Commissioner subject to G.S. 53C-2-7(b). (2012-56, s. 4.)

### **§ 53C-10-104. Public notice.**

A person filing an application for approval of a control transaction shall publish a public notice of the filing of the application not more than 30 days before nor more than 10 days after the filing of the application with the Commissioner. The public notice shall contain the following:

- (1) A statement that the application has been filed with the Commissioner.
- (2) The name of the applicable holding company and the address of its principal office.

- (3) A statement that any interested person may make written comment on the proposed control transaction and that comments received by the Commissioner within 14 days of the publication of the public notice shall be considered. The public notice shall provide the current mailing address of the Commissioner. (2012-56, s. 4.)

**§ 53C-10-105. Actions on control transaction applications.**

(a) The Commissioner shall examine the proposed control transaction, including the character, competence, and experience of the acquiring person and its proposed management personnel, to determine whether the financial stability of the holding company or the interests of the customers served by one or more bank subsidiaries of the holding company would be adversely affected by the proposed control transaction. Not later than the 60th day following receipt of a completed application for approval of a control transaction unless extraordinary circumstances require a longer period of review, the Commissioner shall approve or deny the application.

(b) The Commissioner may deny an application for approval of a control for any of the following reasons:

- (1) The financial condition of the person seeking approval of a control transaction could jeopardize the financial stability of the holding company, one or more bank subsidiaries of the holding company, or the financial interests of the bank's customers.
- (2) An examination of the character, competence, or experience of any acquiring person or of any of the proposed management personnel of the holding company shows that it would not be in the interest of the customers of one or more of the bank subsidiaries of the holding company or in the interest of the public to permit the person to control the holding company.
- (3) The plans or proposals of the person seeking approval with respect to exercising control over the holding company would not be in the best interests of the customers of one or more bank subsidiaries of the holding company.
- (4) Upon the effective date of the proposed control transaction, one or more of the bank subsidiaries of the holding company would not be solvent, have inadequate capital, or not be in compliance with this Chapter or rules of the Commissioner.
- (5) The application for approval is incomplete.
- (6) If the acquiring person solicits votes for the approval of or consents to the control transaction from the holders of the voting securities of the holding company, adequate and complete disclosures of all material information about the proposed control transaction, together with a prominent statement that neither the control transaction nor any solicitation of such holders' votes or consents has been approved by the Commissioner and that any representation to the contrary is a criminal offense, have not been made to the holders.

(c) If an application filed under this Part is approved by the Commissioner, the control transaction may become effective. All conditions to approval set forth in the order of the Commissioner shall be enforceable against the person, and each member of a group of persons, receiving the approval. (2012-56, s. 4.)

**§ 53C-10-106. Appeal.**

Any order of the Commissioner denying an application for approval of a control transaction may be appealed to the Commission by the person filing the application denied, as provided in G.S. 53C-2-6. (2012-56, s. 4.)

## Part 2. Combinations.

### **§ 53C-10-201. Combination authority.**

With the approval of the Commissioner, a holding company of a bank may combine with one or more other holding companies or other companies. The application for approval shall be in the form required by the Commissioner and shall be accompanied by such fee as may be required by rule. (2012-56, s. 4.)

### **§ 53C-10-202. Combination application and investigation.**

(a) A holding company of a bank seeking approval of a combination shall file with the Commissioner an application for approval, copies of the agreement under which the holding company proposes to effect the combination, and any additional information that the Commissioner shall require by rule or as is required by the Commissioner in connection with the application in order to achieve the objectives of this Chapter.

(b) A holding company filing an application for approval of a combination shall publish a public notice of the filing of the application not more than 30 days before nor more than 10 days after the filing of the application with the Commissioner. The public notice shall contain the following:

- (1) A statement that the application has been filed with the Commissioner.
- (2) The names of the parties to the proposed combination and the addresses of its principal offices.
- (3) A statement that any interested person may make written comment on the proposed combination and that comments received by the Commissioner within 14 days of the publication of the public notice shall be considered. The public notice shall provide the current mailing address of the Commissioner.

(c) The Commissioner shall examine the proposed combination, including the character, competency, and experience of the proposed directors and executive officers of the surviving party of the combination, to determine whether the interests of the customers and communities served by the banks controlled by the parties to the combination would be adversely affected by the proposed combination.

(d) Notwithstanding any laws to the contrary, information about the character, competence, and experience of the directors and executive officers of the parties to a combination received by the Commissioner shall be deemed a confidential record of the Commissioner subject to G.S. 53C-2-7(b). (2012-56, s. 4.)

### **§ 53C-10-203. Decision on application.**

Based on the application and the Commissioner's examination, the Commissioner shall enter an order approving or denying approval of the proposed combination not later than the 60th day following the date the Commissioner notifies the parties that the application is complete, unless extraordinary circumstances require a longer period of review. (2012-56, s. 4.)

### **§ 53C-10-204. Appeal.**

Any order of the Commissioner denying an application for approval of a combination may be appealed to the Commission by a party to the combination, as provided in G.S. 53C-2-6. (2012-56, s. 4.)

### Part 3. General Authority.

#### **§ 53C-10-301. Cease and desist order.**

Upon a finding that any action of a holding company subject to registration under this Article, or its nonbank affiliate, may be in violation of any banking laws, the Commissioner, after a reasonable notice to the holding company and an opportunity for it to be heard, shall have the authority to order it to cease and desist from such action. If the holding company fails to appeal the decision within 10 days of the date of the issuance of the order in accordance with G.S. 53C-2-6, and continues to engage in the action in violation of the Commissioner's order to cease and desist such action, it shall be subject to a civil money penalty of twenty thousand dollars (\$20,000) for each day it remains in violation of the order. The penalty provision of this section shall be in addition to and not in lieu of any other provision of law applicable to a holding company's failure to comply with an order of the Commissioner. The clear proceeds of the civil money penalty shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (2012-56, s. 4; 2013-29, s. 21.)

#### **§ 53C-10-302. Other control changes.**

Each holding company of a bank shall report to the Commissioner any changes in its directors, president, chief executive officer, or chief financial officer by the close of the second day on which the holding company is open for business following the change. (2012-56, s. 4.)

#### **§ 53C-10-303. Fees.**

A holding company subject to this Article shall pay the following fees:

- (1) An initial registration fee of one thousand dollars (\$1,000).
- (2) An annual registration fee of seven hundred fifty dollars (\$750.00).
- (3) A fee of fifty dollars (\$50.00) for the issuance of any certified copies of documents plus one dollar (\$1.00) per page over a number of pages specified by the Commissioner. (1983 (Reg. Sess., 1984), c. 1113, s. 1; 2017-165, s. 11.)