

Article 7.

Control Transactions; Combinations; Conversions.

Part 1. Change in Control.

**§ 53C-7-101. Control transactions.**

(a) Except as otherwise expressly permitted by this section, a person shall not engage in a control transaction, as defined by G.S. 53C-1-4(22), involving a bank without the prior approval of the Commissioner. A person may contract to engage in a control transaction with the consummation of such control transaction being subject to receipt of the approval of the Commissioner.

(b) The Commissioner may require a person who is obligated to file an application under this Part to appoint an agent resident in this State for service of process upon the filing of such notice or as a condition to the acceptance of such application for review. The 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 requiring the prior approval of the Commissioner:

- (1) The acquisition of control over voting securities in connection with securing, collecting, or satisfying a debt previously contracted for in good faith and not for the purpose of acquiring control of the bank, if the acquiring person files a notice with the Commissioner, in the form required by the Commissioner, describing such transaction at least 10 days before the acquiring person first votes or directs the voting of the voting securities.
- (2) The acquisition of control over voting securities by a person who has previously engaged in a control transaction with respect to the bank 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 the 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.
- (3) 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.
- (4) Bona fide gifts.
- (5) A transaction exempted by rules, orders, or declaratory rulings of the Commissioner issued because approval of such a transaction is not necessary to achieve the objectives of this Chapter.
- (5a) 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), 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 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 has been determined by the Commissioner to have been satisfied. (2012-56, s. 4; 2013-29, s. 14.)

#### **§ 53C-7-102. Application regarding a control transaction.**

(a) A person seeking approval of a control transaction involving a bank 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 a rule of the Commissioner.
- (3) Such information as is required by a rule of the Commissioner or as is 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 record of the Commissioner and subject to G.S. 53C-2-7(b). (2012-56, s. 4; 2013-29, s. 15.)

#### **§ 53C-7-103. Public notice.**

A person filing an application for approval of a control application 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 bank 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 date 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-7-104. 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 interests of the customers and communities served by the bank 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 transaction 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 bank or the financial interests of its customers.
- (2) An examination of the character, competence, and experience of any acquiring person or of any of the proposed management personnel shows that it would not be in the interest of the depositors of the bank, or in the interest of the public, to permit the person to control the bank.
- (3) The plans or proposals of the person seeking approval with respect to exercising control over the bank would not be in the best interests of the bank's customers.
- (4) Upon the effective date of such proposed control transaction, the bank 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 bank, 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 the holders' votes or consents have 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-7-105. 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-7-201. Combination authority.**

With the approval of the Commissioner, a bank may combine with one or more depository institutions or non-depository institutions, provided that the bank is the surviving entity in any combination with a non-depository institution. The application for approval shall be in the form required by the Commissioner and shall be accompanied by a fee as set forth by rule. (2012-56, s. 4.)

### **§ 53C-7-202. Combination application and investigation.**

(a) A bank seeking approval of a combination shall file with the Commissioner an application for approval, copies of the agreement under which the bank proposes to effect the combination, and such additional information as 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 bank 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 their 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 date of the publication of the public notice shall be considered. The public notice shall contain 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 of and communities served 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, or experience of the directors and executive officers of the parties to a combination received by the Commissioner shall be subject to G.S. 53C-2-7(b). (2012-56, s. 4.)

### **§ 53C-7-203. 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-7-204. Interim banks.**

The Commissioner may approve an application to organize an interim bank solely for the purpose of effecting a combination under this Article. No interim bank shall transact any business except as is incidental and necessary to its organization and the combination. The Commissioner may set forth in the order approving the organization such additional conditions with respect to the interim bank as the Commissioner deems necessary. (2012-56, s. 4.)

**§ 53C-7-205. Fiduciary powers and liabilities in a combination or a transferring of assets and liabilities.**

Whenever any depository institution or any trust institution shall combine with or shall sell to and transfer its assets and liabilities to any other depository institution, trust institution, or other company, as provided by the laws of this State or the United States, all the then existing fiduciary rights, powers, duties, and liabilities of the combining or transferring institution, including the rights, powers, duties, and liabilities as executor, administrator, guardian, trustee, and/or any other fiduciary capacity, whether under appointment by order of court, will, deed, or other instrument, shall, upon the effective date of the combination or sale and transfer, vest in, devolve upon, and thereafter be performed by the surviving or transferee company, and such latter institution shall be deemed substituted for and shall have all the rights and powers of the transferring institution. (2012-56, s. 4; 2013-29, s. 16.)

**§ 53C-7-206. Combination with federally chartered institution.**

A combination by a bank with a federally chartered institution in which the federally chartered institution will be the surviving party shall be subject to approval by the chartering authority of the federally chartered institution in accordance with the laws of the United States. (2012-56, s. 4.)

**§ 53C-7-207. Combination with a nonbank subsidiary.**

(a) Except as provided in subsection (c) of this section, a bank proposing to do any of the following combinations shall give prior written notice to the Commissioner that provides the details of the proposed combination that are required by the Commissioner:

- (1) Combine with a nonbank subsidiary, if the bank is the resulting entity of the combination.
- (2) Combine a nonbank subsidiary with another company that is not a depository institution, if the nonbank subsidiary is the resulting entity.
- (3) Combine two or more nonbank subsidiaries of two or more banks under common control of the same holding company.

Unless the Commissioner, within 30 days of receiving the notice, notifies the bank or subsidiary that the Commissioner objects to the proposed combination, the bank or subsidiary may complete the combination. However, the Commissioner may extend the period to object to the proposed combination if the Commissioner determines that it raises issues that require additional information or additional time for analysis. While the objection period is so extended, the bank or subsidiary may not proceed with respect to the proposed combination.

(b) A bank may, pursuant to G.S. 53C-2-6, appeal an objection by the Commissioner.

(c) The prior written notice requirement of subsection (a) of this section is not required (i) for a combination of a nonbank subsidiary and another company that is not a depository institution, provided the nonbank subsidiary is not the resulting entity, (ii) for a combination of two or more

nonbank subsidiaries of the same bank, each of which shall be effected in accordance with applicable organizational law, or (iii) if all of the following apply:

- (1) The bank is well-capitalized and well-managed as demonstrated by the supervisory rating it received during its most recent examination.
- (2) The nonbank subsidiary with which the combination is to be made engages in either of the following activities:
  - a. One in which the bank is then engaged or has previously been engaged, directly or through a different subsidiary, and for which all necessary approvals of bank supervisory agencies and of the Commissioner have previously been obtained and remain in effect.
  - b. One for which no prior notice or application for approval to any federal bank supervisory authority is required.
- (3) The bank notifies the Commissioner in writing of the combination within 30 days thereafter. (2012-56, s. 4; 2013-29, s. 17; 2017-165, s. 9.)

**§ 53C-7-208:** Repealed by Session Laws 2013-29, s. 18, effective April 16, 2013.

**§ 53C-7-209. 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. Charter Conversion.

**§ 53C-7-301. Conversion to a North Carolina bank charter.**

(a) Any depository institution that is not a bank may apply to the Commissioner for permission to convert into a bank and for certification of related amendments to its organizational documents necessary to effect the conversion. The application for approval shall be in the form required by the Commissioner and shall be accompanied by a fee as set forth by rule.

(b) A plan of conversion shall be submitted as a part of the application filed with the Commissioner. The Commissioner may require amendment of the plan.

(c) The Commissioner shall approve the plan of conversion, as amended if applicable, if upon examination the Commissioner finds the following:

- (1) The resulting bank will commence operations in a safe, sound, and prudent manner with adequate capital, liquidity, reserves, asset composition, and earnings prospects.
- (2) The directors and officers of the converting institution are qualified by character, competency, and experience to control and operate the resulting bank in a legal and proper manner.
- (3) The interests of the converting institution's customers, creditors, and shareholders will not be materially and adversely affected by the proposed conversion.
- (4) The plan of conversion is not in violation of the converting institution's applicable organizational law.

(5) Adequate written disclosure of the material terms of the plan of conversion and other relevant material information has been or will be made to the converting institution's equity ownership interest holders as required by the converting institution's organizational law, including a statement in any such written disclosure that any materials used to solicit the votes of the holders have not been approved by the Commission or the Commissioner and that any representation to the contrary is a criminal offense.

(d) Following approval of the plan of conversion, the Commissioner shall supervise and monitor the conversion process in order to determine compliance by the converting institution with the plan of conversion and applicable law.

(e) The Commissioner shall authorize by order the consummation of the conversion, issue a charter, and permit the converting institution to file with the Secretary of State and other public officials such documents as are necessary to effect the conversion when the Commissioner determines the conversion process complied with the organizational law applicable to the converting institution and the plan of conversion was approved, if required by applicable organizational law, by such vote of the converting institution's equity ownership interest holders as is required under the organizational law.

(f) The Commissioner may provide in the order authorizing the consummation of conversion for the resulting bank to do the following:

(1) Wind up any activities legally engaged in by the converting institution at the time of conversion but not permitted to banks.

(2) Return any assets and deposit liabilities legally held by the converting institution at the time of the conversion but not permitted to be held by banks.

The length, terms, and conditions of the transitional periods described in this subsection shall be subject to the discretion of the Commissioner.

(g) Upon the effective date of the conversion, the converting institution shall continue in existence as a bank, and all rights, liabilities, and obligations of whatever kind of the converting institution shall continue and remain in its new form of organization. Except as may be authorized by the Commissioner pursuant to subsection (f) of this section, the bank shall have only those rights, powers, and duties authorized for or imposed upon banks by the laws of this State and the United States. All actions and proceedings to which the converting institution was party prior to conversion shall be unaffected by the conversion and shall proceed as if the conversion had not been effected. (2012-56, s. 4.)

### **§ 53C-7-302. Appeal.**

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

### **§ 53C-7-303. Conversion by North Carolina bank.**

(a) A bank may convert to another form of depository institution under the laws of this State, of another state, or the United States in accordance with applicable law.

(b) Upon the effective date of the conversion, the depository institution shall notify the Commissioner of the effective date and file with the Commissioner a copy of its authorization to

operate as a depository institution certified by the applicable federal regulator or financial institution regulator.

(c) Upon the effective date of the conversion, the resulting depository institution shall cease to be a bank.

(d) Upon the effective date of the conversion, all rights, liabilities, and obligations of whatever kind of the bank shall continue and remain in its new form of organization as a depository institution organized under the laws of this State, another state, or the United States. All actions and proceedings to which the bank was party prior to conversion shall be unaffected by the conversion and shall proceed as if the conversion had not been effected. (2012-56, s. 4.)