

(b) *Exceptions*—(1) *Emergency requiring expeditious action.* If the FDIC determines that an emergency exists requiring expeditious action, notice shall be published twice. The first notice shall be published as soon as possible after the FDIC notifies the applicant of such determination. The second notice shall be published on the 7th day after the first publication or, if the newspaper does not publish on the 7th day, on the newspaper’s publication date that is closest to the 7th day.

(2) *Probable failure.* If the FDIC determines that it must act immediately to prevent the probable failure of one of the institutions involved in a proposed merger transaction, publication is not required.

(c) *Content of notice*—(1) *General.* The notice shall conform to the public notice requirements set forth in § 303.7.

(2) *Branches.* If it is contemplated that the resulting institution will operate offices of the other institution(s) as branches, the following statement shall be included in the notice required in § 303.7(b):

It is contemplated that all offices of the above-named institutions will continue to be operated (with the exception of [insert identity and location of each office that will not be operated]).

(3) *Emergency requiring expeditious action.* If the FDIC determines that an emergency exists requiring expeditious action, the notice shall specify as the closing date of the public comment period the date that is the 10th day after the date of the first publication.

(d) *Public comments.* Comments must be received by the appropriate FDIC office within 30 days after the first publication of the notice, unless the comment period has been extended or reopened in accordance with § 303.9(b)(2). If the FDIC has determined that an emergency exists requiring expeditious action, comments must be received by the appropriate FDIC office within 10 days after the first publication.

§§ 303.66–303.79 [Reserved]

Subpart E—Change in Bank Control

§ 303.80 Scope.

This subpart sets forth the procedures for submitting a notice to acquire control of an insured state nonmember bank or a parent company of an insured state nonmember bank pursuant to the Change in Bank Control Act of 1978, section 7(j) of the FDI Act (12 U.S.C. 1817(j)).

[68 FR 50459, Aug. 21, 2003]

§ 303.81 Definitions.

For purposes of this subpart:

(a) *Acquisition* includes a purchase, assignment, transfer, pledge or other disposition of voting shares, or an increase in percentage ownership resulting from a redemption of voting shares of an insured state nonmember bank or a parent company.

(b) *Acting in concert* means knowing participation in a joint activity or parallel action towards a common goal of acquiring control of an insured state nonmember bank or a parent company, whether or not pursuant to an express agreement.

(c) *Control* means the power, directly or indirectly, to direct the management or policies of an insured bank or a parent company or to vote 25 percent or more of any class of voting shares of an insured bank or a parent company.

(d) *Parent Company* means any company that controls, directly or indirectly, an insured state nonmember bank.

(e) *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.

[68 FR 50459, Aug. 21, 2003]

§ 303.82 Transactions requiring prior notice.

(a) *Prior notice requirement.* Any person acting directly or indirectly, or through or in concert with one or more persons, shall give the FDIC 60 days

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prior written notice, as specified in § 303.84, before acquiring control of an insured state nonmember bank or any parent company, unless the acquisition is exempt under § 303.83.

(b) *Acquisition requiring prior notice—*

(1) *Acquisition of control.* The acquisition of control, unless exempted, requires prior notice to the FDIC.

(2) *Rebuttable presumption of control.* The FDIC presumes that an acquisition of voting shares of an insured state nonmember bank or a parent company constitutes the acquisition of the power to direct the management or policies of an insured bank or a parent company requiring prior notice to the FDIC, if, immediately after the transaction, the acquiring person (or persons acting in concert) will own, control, or hold with power to vote 10 percent or more of any class of voting shares of the institution, and if:

(i) The institution has registered shares under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l); or

(ii) No other person will own, control or hold the power to vote a greater percentage of that class of voting shares 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 shares of an insured state nonmember bank or a parent company, each such person shall file prior notice with the FDIC.

(c) *Acquisition of loans in default.* The FDIC presumes an acquisition of a loan in default that is secured by voting shares of an insured state nonmember bank or a parent company to be an acquisition of the underlying shares for purposes of this section.

(d) *Other transactions.* Acquisitions other than those set forth in paragraph (b)(2) of this section resulting in a person's control of less than 25 percent of a class of voting shares of an insured state nonmember bank or a parent company are not deemed by the FDIC to constitute control for purposes of the Change in Bank Control Act.

(e) *Rebuttal of presumptions.* Prior notice to the FDIC is not required for any acquisition of voting shares under the presumption of control set forth in this section, if the FDIC finds that the ac-

quisition will not result in control. The FDIC will afford any person seeking to rebut a presumption in this section an opportunity to present views in writing or, if appropriate, orally before its designated representatives at an informal meeting.

[67 FR 79247, Dec. 27, 2002, as amended at 68 FR 50460, Aug. 21, 2003]

§ 303.83 Transactions not requiring prior notice.

(a) *Exempt transactions.* The following transactions do not require notice to the FDIC under this subpart:

(1) The acquisition of additional voting shares of an insured state nonmember bank or a parent company by a person who:

(i) Held the power to vote 25 percent or more of any class of voting shares of the institution continuously since the later of March 9, 1979, or the date that the institution commenced business as an insured state nonmember bank or a parent company; or

(ii) Is presumed, under § 303.82(b)(2), to have controlled the institution continuously since March 9, 1979, if the aggregate amount of voting shares held does not exceed 25 percent or more of any class of voting shares of the institution or, in other cases, where the FDIC determines that the person has controlled the institution continuously since March 9, 1979;

(2) The acquisition of additional shares of a class of voting shares of an insured state nonmember bank or a parent company by any person (or persons acting in concert) who has lawfully acquired and maintained control of the institution (for purposes of § 303.82) after complying with the procedures of the Change in Bank Control Act to acquire voting shares of the institution under this subpart;

(3) Acquisitions of voting shares subject to approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842(a)), section 18(c) of the FDI Act (12 U.S.C. 1828(c)), or section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a);

(4) Transactions exempt under the Bank Holding Company Act: foreclosures by institutional lenders, fiduciary acquisitions by banks, and increases of majority holdings by bank