

**PROPOSED ADOPTION OF AMENDMENTS TO 7 TAC
CHAPTER 75, SUBCHAPTERS A, C, and E
Page 1 of 6**

*Title 7. Banking and Securities
Part 4. Texas Department of Savings
and Mortgage Lending
Chapter 75. Applications
Subchapter A. §75.1, and §75.3;
Subchapter C. §§75.32-75.33, and
§75.41; and,
Subchapter E. §75.121*

The Finance Commission of Texas (the "Commission") adopts amendments to Subchapter A, §75.1, concerning the application for permission to organize a state savings bank, and §75.3, concerning publication of notice of charter application; Subchapter C, §75.32, concerning types of additional offices, §75.33, concerning branch office applications, and §75.41, concerning offices and remote service units in other states or territories; and, Subchapter E, §75.121, concerning change of control, in conjunction with the Commission's review of Chapter 75.

Sections 75.1, 75.3, 75.32, 75.33, 75.41, and 75.121 are adopted without changes to the text as published in the August 22, 2008, issue of the *Texas Register* (33 TexReg 6659-6660), and will not be republished.

In general, the purpose of the amendments is to conform the rules to the Department's current practice, to eliminate obsolete provisions, and to add clarification. Section 75.1 has been revised to remove obsolete language and add clarification. Section 75.3 has been revised to provide clarification. Sections 75.32 and 75.33 add language to clarify a current practice. Section 75.41 has been revised to provide clarification and also to delete proposed repealed language. Section 75.121 has been

revised to correct the Department's name.

The 30-day comment period ended September 22, 2008, during which no comments were received on the proposed rule amendments.

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 92.

Subchapter A. Applications.

§75.1. Application for Permission to Organize a State Saving Bank.

(a) Applications for a state savings bank charter shall be filed with the commissioner on forms approved by the commissioner. The application and all required supporting information shall be executed by the proposed incorporators of the proposed savings bank which shall consist of at least five adult residents of this state and shall include all of the information required in the Texas Savings Bank Act, §92.051. The application shall include a request for a corporate title to be approved by the commissioner and included in the savings bank's charter. The application shall include the proposed principal office of the savings bank, the identity and qualifications of the proposed managing officer, and any additional information as may be required sufficiently detailed and comprehensive

**PROPOSED ADOPTION OF AMENDMENTS TO 7 TAC
CHAPTER 75, SUBCHAPTERS A, C, and E
Page 2 of 6**

to enable the commissioner to pass on matters set forth in the Texas Savings Bank Act, §92.058.

(b) The commissioner shall furnish approved forms of application and other information to aid in the filing of the application. The form is available from the department at 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705 and from the State Savings Bank Information section of the Department's website at www.sml.state.tx.us.

(c) No application to incorporate a savings bank shall be approved unless the application and evidence produced at a hearing satisfy the commissioner that the proposed savings bank has received subscriptions for capital stock and paid-in surplus in the case of a capital stock savings bank, or pledges for savings liability and expense fund in the case of a mutual savings bank, in the minimum amount of \$3 million. No savings bank with an approved charter shall open or do business as a savings bank until the commissioner certifies that he has received proof satisfactory to him that the amounts of capital stock and paid-in surplus, or the savings liability and expense fund, as set forth in this section, have been received by the savings bank in cash, free of encumbrance.

(d) After the application and its supporting data have been received by the commissioner, he shall make or cause to be made an investigation of the application.

§75.3. Publication of Notice of Charter Application. At least 20 days before the date of the hearing, the proposed

incorporators shall publish a notice, approved by the Commissioner, in a newspaper printed in the English language, and in general circulation in the county where the proposed savings bank will have its principal office.

Subchapter C. Additional Offices.

§75.32. Types of Additional Offices. Subject to the provisions of §§75.31-75.41 of this title (relating to Applications), the following types of additional offices may be established and maintained by a savings bank:

(1) branch offices at which the savings bank, through its regularly employed personnel, may transact any business that could be done in the home office;

(2) loan production offices at which the savings bank, through its regularly employed personnel, may receive and process applications for loans and contracts and manage or sell real estate owned by the institution but at which no other business of the savings bank is transacted;

(3) mobile facilities at which the savings bank, through its regularly employed personnel, may transact any business of the institution which could be done in the home office except that loans, other than loans to borrowers on the security of their savings account shall not be approved at such facility and a detailed record of the transactions at such facility shall be maintained;

(4) administrative offices at which the savings bank, through its regularly employed personnel, may

**PROPOSED ADOPTION OF AMENDMENTS TO 7 TAC
CHAPTER 75, SUBCHAPTERS A, C, and E
Page 3 of 6**

transact administrative functions of the institution. Such office may be located separate and apart from the location of any other facility of the savings bank. No savings deposits or loan applications may be accepted at an administrative office; and,

(5) courier/messenger service to transport items relevant to the bank's transactions with its customers, including courier services between financial institutions.

§75.33. Branch Office Applications.

a) Each application for permission to establish a branch office shall state the proposed location thereof; the personnel and office facilities to be provided; and the estimated cost and projected profits of such office. Each application for a branch office shall be set for hearing, notice given, hearing held, and decision reached in the same manner and within the time as provided in this chapter for new charter applications and the hearing may be dispensed with under the same conditions.

(b) All statements of fact tendered to the commissioner in connection with branch office application must be signed and sworn to.

(c) The commissioner may not approve an application for a branch office unless he shall have affirmatively found from the data furnished with the application, the evidence adduced at the hearing and his official records that:

(1) The operation and condition of the applying savings bank

affords no basis for supervisory objection.

(2) The character, responsibility and general fitness of the current management of the applicant are such as to warrant belief that the branch office will be operated in accordance with the Act.

(3) The financial effect of establishing and operating the proposed office will not adversely affect the safe and sound operation of the applying savings bank.

(d) The branch office facility will commence operation within a period of 12 months after the date of approval unless an extension is granted, in writing, by the commissioner. No more than one 12-month extension will be approved by the commissioner, unless good cause for such extension is shown. At the end of any approved extension, if the office has not been opened, the authority for such office shall be forfeited.

(e) A branch office application is also required if a state savings bank would like to establish and operate a courier/messenger service pursuant to §75.32(5) of this title (relating to Types of Additional Offices).

§75.41. Offices in Other States or Territories. To the extent permitted by the laws of the state or territory in question, and subject to this chapter, a savings bank may establish branch offices and loan production offices in any state or territory of the United States. Each application for permission to establish such a branch office or loan

**PROPOSED ADOPTION OF AMENDMENTS TO 7 TAC
CHAPTER 75, SUBCHAPTERS A, C, and E
Page 4 of 6**

production office shall comply with the applicable requirements of this chapter, and shall include a certified copy of an order from the appropriate state or territorial regulatory authority approving the office or unit, or other evidence satisfactory to the commissioner that all state or territorial regulatory requirements have been satisfied. Each such application shall be set for hearing, if applicable, notice given, hearing held, if applicable, and decision reached in the same manner and within the time provided in this chapter for similar applications for offices in this state. The commissioner may not approve such an application unless he shall have affirmatively found from the data furnished with the application, the evidence adduced at the hearing, if applicable, and his official records that all requirements of this chapter applicable to the office have been met, and that all applicable requirements of the laws of the state or territory in question have been met. To the extent permitted by the laws of the state or territory in question, and subject to this chapter, a savings bank may establish branch offices and loan production offices in any state or territory of the United States. Each application for permission to establish such a branch office or loan production office shall comply with the applicable requirements of this chapter, and shall include a certified copy of an order from the appropriate state or territorial regulatory authority approving the office or unit, or other evidence satisfactory to the commissioner that all state or territorial regulatory requirements have been satisfied. Each such application shall be set for hearing, if applicable, notice given, hearing held, if applicable, and

decision reached in the same manner and within the time provided in this chapter for similar applications for offices in this state. The commissioner may not approve such an application unless he shall have affirmatively found from the data furnished with the application, the evidence adduced at the hearing, if applicable, and his official records that all requirements of this chapter applicable to the office have been met, and that all applicable requirements of the laws of the state or territory in question have been met.

Subchapter E. Change of Control.

§75.121. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Affiliate--An affiliate of, or person affiliated with, a person that directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with, the person specified.

(2) Affiliated person--

(A) a director, officer, or controlling person of such savings bank;

(B) a spouse of a director, officer, or controlling person of such savings bank;

(C) a member of the immediate family of a director, officer, or controlling person of such savings bank who is a director or officer of any subsidiary of such savings bank or of

**PROPOSED ADOPTION OF AMENDMENTS TO 7 TAC
CHAPTER 75, SUBCHAPTERS A, C, and E
Page 5 of 6**

any holding company affiliate of such savings bank;

(D) any corporation or organization (other than the savings bank or a corporation or organization through which the savings bank operates) of which a director, officer, or controlling person of such savings bank:

(i) is an officer;

(ii) is a general

partner;

(iii) is a limited partner who, directly or indirectly, either alone or with his spouse and the members of his immediate family who are also affiliated persons of the savings bank, owns an interest of 10% or more in the partnership (based on the value of his contribution) or who, directly or indirectly with other directors, officers, and controlling persons of such savings bank and their spouses and their immediate family members who are also affiliated persons of the savings bank, owns an interest of 25% or more in the partnership; or

(iv) directly or indirectly, either alone or with his spouse and the members of his immediate family who are also affiliated persons of the savings banks, owns or controls 10% or more of any class of equity securities or owns or controls, with other directors, officers, and controlling persons of such savings bank and their spouses and their immediate family members who are also affiliated persons of the savings bank, 25% or more of any class of equity securities; and

(E) any trust or other estate in which a director, officer, or controlling person of such savings bank or the spouse of such person has a substantial beneficial interest or as to which such person or his spouse serves as trustee or in a similar fiduciary capacity.

(3) Commissioner--The Texas Savings and Mortgage Lending Commissioner.

(4) Control (including the terms controlling, controlled by, and under common control with)--The possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a savings bank by either direct or indirect means. Control shall be deemed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds irrevocable proxies representing 25% or more of the voting securities of a savings bank. The commissioner may determine, based upon specific written findings of fact to support such determination and an opportunity for public hearing, that control exists in fact, where a person exercises directly or indirectly, either alone or pursuant to an agreement with one or more other persons, such a controlling influence over the management or policies of a savings bank as to make it necessary or appropriate in the public interest and for the protection of the account holders of a savings bank that the person be deemed to control the savings bank. There shall be a presumption of control if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds irrevocable proxies representing 10% or more of the voting securities of a

**PROPOSED ADOPTION OF AMENDMENTS TO 7 TAC
CHAPTER 75, SUBCHAPTERS A, C, and E
Page 6 of 6**

savings bank. Such person may, by application to the commissioner, seek to rebut that control presumption.

(5) Issuer--The savings bank which has issued the security in question.

(6) Person--An individual, corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing acting in concert.

(7) Savings bank--Shall include all savings banks organized or chartered under the laws of this state. For purposes of this chapter, savings bank shall include any other person controlling a savings bank.

(8) Voting security--Shall include any security convertible into or evidencing a right to acquire a voting security.

Certification

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on October 17, 2008.

Jane Black

General Counsel

Department of Savings and Mortgage
Lending