

Comptroller of the Currency, Treasury

§ 174.2

§ 174.1 Scope of part.

The purpose of this part is to implement the provisions of the Change in Bank Control Act, 12 U.S.C. 1817(j) ("Control Act") relating to acquisitions and changes in control of Federal savings associations that are organized in stock form.

§ 174.2 Definitions.

As used in this part and in the forms under this part, the following definitions apply, unless the context otherwise requires:

(a) *Acquire* when used in connection with the acquisition of stock of a savings association means obtaining ownership, control, power to vote, or sole power of disposition of stock, directly or indirectly or through one or more transactions or subsidiaries, through purchase, assignment, transfer, exchange, succession, or other means, including:

(1) An increase in percentage ownership resulting from a redemption, repurchase, reverse stock split or a similar transaction involving other securities of the same class, and

(2) The acquisition of stock by a group of persons and/or companies acting in concert which shall be deemed to occur upon formation of such group: *Provided*, That an investment advisor shall not be deemed to acquire the voting stock of its advisee if the advisor:

(i) Votes the stock only upon instruction from the beneficial owner, and

(ii) Does not provide the beneficial owner with advice concerning the voting of such stock.

(b) *Acquiror* means a person or company.

(c) *Acting in concert* means:

(1) Knowing participation in a joint activity or interdependent conscious parallel action towards a common goal whether or not pursuant to an express agreement, or

(2) A combination or pooling of voting or other interests in the securities of an issuer for a common purpose pursuant to any contract, understanding, relationship, agreement or other arrangement, whether written or otherwise.

(3) A person or company which acts in concert with another person or company ("other party") shall also be

deemed to be acting in concert with any person or company who is also acting in concert with that other party, except that any tax-qualified employee stock benefit plan as defined in §192.25 of this chapter will not be deemed to be acting in concert with its trustee or a person who serves in a similar capacity solely for the purpose of determining whether stock held by the trustee and stock held by the plan will be aggregated.

(d) *Affiliate* means any person or company which controls, is controlled by or is under common control with a person, savings association or company.

(e) [Reserved]

(f) *Company* means any corporation, partnership, trust, association, joint venture, pool, syndicate, unincorporated organization, joint-stock company or similar organization, as defined in paragraph (r) of this section; but a company does not include:

(1) The Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the Office of the Comptroller of the Currency (OCC), or any Federal Home Loan Bank;

(2) Any company the majority of shares of which is owned by:

(i) The United States or any state;

(ii) An officer of the United States or any state in his or her official capacity; or

(iii) An instrumentality of the United States or any state; or

(3) A savings and loan holding company registered under section 10(b) of the Home Owners' Loan Act (Holding Company Act).

(g) *Controlling shareholder* means any person who directly or indirectly or acting in concert with one or more persons or companies, or together with members of his or her immediate family, owns, controls, or holds with power to vote 10 percent or more of the voting stock of a company or controls in any manner the election or appointment of a majority of the company's board of directors.

(h) *Comptroller* means the Comptroller of the Currency.

(i) [Reserved]

(j) *Immediate family* means a person's spouse, father, mother, children, brothers, sisters and grandchildren; the father, mother, brothers, and sisters of