

upon transfer or otherwise, are convertible into voting stock or exercisable to acquire voting stock where the holder of the stock, convertible security or right to acquire voting stock has the preponderant economic risk in the underlying voting stock. Securities immediately convertible into voting stock at the option of the holder without payment of additional consideration shall be deemed to constitute the voting stock into which they are convertible; other convertible securities and rights to acquire voting stock shall not be deemed to vest the holder with the preponderant economic risk in the underlying voting stock if the holder has paid less than 50 percent of the consideration required to directly acquire the voting stock and has no other economic interest in the underlying voting stock. For purposes of calculating the percentage of voting stock held by a particular acquiror, stock or other securities convertible into voting stock or exercisable to acquire voting stock which are deemed voting stock under this paragraph (u)(3) shall be included in calculating the amount of voting stock held by the acquiror and the total amount of stock outstanding only to the extent of the voting stock obtainable by such acquiror by such conversion or exercise of rights.

§ 174.3 Acquisition of control of Federal savings associations.

(a) [Reserved]

(b) *Acquisition by a person or company.* Unless a transaction is exempt from prior notice under paragraph (d) of this section, no person or company (other than certain persons affiliated with a savings and loan holding company who are subject to 10(e)(4) of the HOLA), shall acquire control, as defined in § 174.4 (a) and (b) of this part, of a Federal savings association until written notice has been provided to the appropriate OCC licensing office and the OCC indicates in writing its intent not to disapprove the proposed acquisition or 60 days (or such period of time as the OCC may specify if the review period has been extended under § 174.6(c)(3) of this part) have passed since receipt of a notice deemed sufficient under § 174.6(c)(2). Notwithstanding the foregoing, acquisitions by persons or com-

panies by means of a merger with an interim association are not subject to this part, but shall be subject to approval under § 163.22, and either § 152.13 or applicable state law.

(c) *Exempt Transactions.*

(1) [Reserved]

(2) The following transactions are exempt from the notice requirements of paragraph (b) of this section:

(i)(A) Control of a Federal savings association acquired by a bank holding company that is registered under and subject to, the Bank Holding Company Act of 1956, or any company controlled by such bank holding company;

(B) Control of a Federal savings association acquired solely as a result of a pledge or hypothecation of stock to secure a loan contracted for in good faith or the liquidation of a loan contracted for in good faith, in either case where such loan was made in the ordinary course of the business of the lender: *Provided, further,* That acquisition of control pursuant to such pledge, hypothecation or liquidation is reported to the OCC within 30 days, and *Provided, further,* That the acquiror shall not retain such control for more than one year from the date on which such control was acquired; however, the OCC may, upon application by an acquiror, extend such one-year period from year to year, for an additional period of time not exceeding three years, if the OCC finds such extension is warranted and would not be detrimental to the public interest;

(C) Control of a Federal savings association acquired through a percentage increase in stock ownership following a *pro rata* stock dividend or stock split, if the proportional interests of the recipients remain substantially the same;

(D) Acquisition of additional stock after a non-disapproval under § 174.7 of this part, or any predecessor provision, has been received: *Provided,* That such acquisition is consistent with any conditions imposed in connection with such non-disapproval and with the representations made by the acquiror in its notice; and

(E) Acquisitions of less than 25 percent (25%) of a class of stock by a tax-qualified employee stock benefit plan as defined in § 192.25.

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(ii) Transactions for which approval is required under the HOLA;

(iii) Transactions for which approval is required under part 146 or § 152.13 and § 163.22 of this chapter;

(iv) Transactions for which a change of control notice must be submitted to the Board of Governors of the Federal Reserve System pursuant to the Change in Bank Control Act, 12 U.S.C. 1817(j);

(v) Acquisition of additional stock of a Federal savings association by any person who:

(A) Has held power to vote 25 percent or more of any class of voting stock in such association continuously since March 9, 1979; or

(B) Has maintained control of the savings association continuously since acquiring control in compliance with the Control Act (or the Repealed Control Act) and the OCC's regulations thereunder then in effect: *Provided*, That such acquisition is consistent with any conditions imposed in connection with such acquisition of control and with the representations made by the acquiror in its notice; and

(vi) Acquisitions of stock of a *de novo* Federal savings association in connection with the organization of such association: *Provided*, That the OCC has considered the financial and managerial resources of the acquiror in granting the association its Federal savings association charter; and additional acquisitions of stock of such association, and *further provided*, that the acquisitions are consistent with any conditions imposed in connection with the approval of the association's charter and with representations made by the acquiror in its application for a Federal savings association charter, and that the OCC has no supervisory objection to the acquiror's additional acquisitions.

(3) An acquiror that would be considered to be in control of a Federal savings association pursuant to § 174.4 of this part on December 26, 1985, shall not be subject to this § 174.3 unless the acquiror acquires additional stock of the savings association or obtains a control factor with respect to such association after December 26, 1985: *Provided*, That an acquiror shall not be deemed to have acquired control of a

savings association on the basis of actions taken prior to December 26, 1985, or on the basis of actions taken after December 26, 1985, if such actions are pursuant to and consistent with a materially complete application under the Holding Company Act or notice under the Repealed Control Act filed prior to December 26, 1985, if such acquisition is made pursuant to an application approved under the Holding Company Act or a notice under the Repealed Control Act that was not disapproved.

(d) *Transactions exempt from prior notice.* (1) Subject to the conditions set forth in paragraph (d)(2) of this section, the following transactions are exempt from prior approval and prior notice under § 174.3: *Provided*, That the timing of the transaction was not within the control of the acquiror.

(i) Control of a savings association acquired through *bona fide* gift;

(ii) Control of a savings association acquired through liquidation of a loan contracted in good faith where the loan was not made in the ordinary course of business of the lender;

(iii) Control of a savings association acquired through a percentage increase in ownership following a stock split or redemption that was not *pro rata*;

(iv) Control determined pursuant to § 174.4 (a) or (b) as a result of actions by third parties that are not within the control of the acquiror;

(v) Control of a savings association acquired through testate or intestate succession: *Provided*, That the acquiror transmits written notification of the acquisition to the OCC within 60 days of the acquisition and provides such additional information as the OCC may specifically request.

(2) The exemptions provided by paragraphs (d)(1)(i) through (d)(1)(iv) of this section are subject to the following conditions:

(i) The acquiror shall file a notice or rebuttal, as appropriate, with the OCC within 90 days of acquisition of control;

(ii) The acquiror shall not take any action to direct the management or policies of the savings association or which are designed to effect a change in the business plan of the savings association other than voting on matters that may be presented to stockholders

by management of the savings association until the OCC has acted favorably upon the acquiror's notice or rebuttal, and the OCC may require that the acquiror take such steps as the OCC deems necessary to insure that control is not exercised; and

(iii) If the OCC disapproves the acquiror's notice or rebuttal, the acquiror shall divest such portion of the stock held by the acquiror so as to cause the acquiror not to be determined to be in control of the savings association under §174.4 of this part, within one year or such shorter period of time and in the manner that the OCC may order.

§174.4 Control.

(a) *Conclusive control.* (1) An acquiror shall be deemed to have acquired control of a Federal savings association if the acquiror directly or indirectly, through one or more subsidiaries or transactions or acting in concert with one or more persons or companies:

(i) Acquires 25 percent or more of any class of voting stock of the savings association;

(ii) Acquires irrevocable proxies representing 25 percent or more of any class of voting stock of the savings association; or

(iii) Acquires any combination of voting stock and irrevocable proxies representing 25 percent or more of any class of voting stock of a savings association.

(iv) [Reserved]

(2) [Reserved]

(3) [Reserved]

(4) A person or company shall be deemed to control a savings association if the OCC determines that such person has the power to direct the management or policies of the savings association.

(b) *Rebuttable control determinations.* (1) An acquiror shall be determined, subject to rebuttal, to have acquired control of a Federal savings association, if the acquiror directly or indirectly, or through one or more subsidiaries or transactions or acting in concert with one or more persons or companies:

(i) Acquires more than 10 percent of any class of voting stock of the savings association and is subject to any con-

trol factor, as defined in paragraph (c) of this section;

(ii) Acquires 25 percent or more of any class of stock of the savings association and is subject to any control factor, as defined in paragraph (c) of this section.

(2) An acquiror shall be determined, subject to rebuttal, to have acquired control of a savings association, if the acquiror directly or indirectly, or through one or more subsidiaries or transactions or acting in concert with one or more persons or companies, holds any combination of voting stock and revocable proxies, representing 25 percent or more of any class of voting stock of a savings association, excluding such proxies held in connection with a solicitation by, or in opposition to, a solicitation on behalf of management of the savings association, but including a solicitation in connection with an election of directors, and such proxies would enable the acquiror to:

(i) Elect one-third or more of the savings association's board of directors, including nominees or representatives of the acquiror currently serving on such board;

(ii) Cause the savings association's stockholders to approve the acquisition or corporate reorganization of the savings association; or

(iii) Exert a continuing influence on a material aspect of the business operations of the savings association.

(c) *Control factors.* For purposes of paragraph (b)(1) of this section, the following constitute control factors. References to the acquiror include actions taken directly or indirectly, or through one or more subsidiaries or transactions or acting in concert with one or more persons or companies:

(1) The acquiror would be one of the two largest holders of any class of voting stock of the Federal savings association.

(2) The acquiror would hold 25 percent or more of the total stockholders' equity of the Federal savings association.

(3) The acquiror would hold more than 35 percent of the combined debt securities and stockholders' equity of the Federal savings association.

(4) The acquiror is party to any agreement: