

§ 174.5

circumstances known to it or where the rebuttal does not clearly and convincingly refute the rebuttable determination of control or presumption of action in concert, and may determine to reject a submission solely on such bases.

(f) *Safe harbor.* Notwithstanding any other provision of this section, where an acquiror has no intention to participate in or to seek to exercise control over a Federal savings association's management or policies, the acquiror may seek to qualify for a safe harbor with respect to its ownership of stock of the savings association.

(1) In order to qualify for the safe harbor, an acquiror must submit a certification to the appropriate OCC licensing office that shall be signed by the acquiror or an authorized representative thereof and shall read as follows:

The undersigned makes this submission pursuant to §174.4(f) of the regulations of the Office of the Comptroller of the Currency ("OCC") with respect to [name of savings association] and hereby certifies to the OCC the following:

The undersigned is not in control of [name of savings association] under §174.4(a);

The undersigned is not subject to any control factor as enumerated in §174.4(c) with respect to the [name of savings association];

The undersigned will not solicit proxies relating to the voting stock of [name of savings association];

Before any change in status occurs that would bring the undersigned within the scope of §174.4(a) or (b), the undersigned will file and obtain approval of a rebuttal or non-disapproval of a notice or holding company application, as appropriate.

The undersigned has not acquired stock of [name of savings association] for the purpose or effect of changing or influencing the control of [name of savings association] or in connection with or as a participant in any transaction having such purpose or effect.

(2) An acquiror claiming safe-harbor status may vote freely and dissent with respect to its own stock. Certifications provided for in this paragraph must be filed with the appropriate OCC licens-

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ing office in accordance with §§116.30 and 116.40 of this chapter.

§ 174.5 Certifications of ownership.

(a) *Acquisition of stock.* (1) Upon the acquisition of beneficial ownership that exceeds, in the aggregate, 10 percent of any class of stock of a Federal savings association or additional stock above 10 percent of the stock of a savings association occurring after December 26, 1985, an acquiror shall file with the OCC a certification as described in this section.

(2) The certification filed pursuant to this section shall be signed by the acquiror or an authorized representative thereof and shall read as follows:

The undersigned is the beneficial owner of 10 percent or more of a class of stock of [name of savings association]. The undersigned is not in control of such association, as defined in 12 CFR 174.4(a), and is not subject to a rebuttable determination of control under §174.4(b), and will take no action that would result in a determination of control or a rebuttable determination of control without first filing and obtaining approval of an application under the Savings and Loan Holding Company Act, 12 U.S.C. 1467a, or notice under the Change in Bank Control Act, 12 U.S.C. 1817(j), or filing and obtaining acceptance by the Office of the Comptroller of the Currency of a rebuttal of the rebuttable determination of control.

(3) Notwithstanding anything contained in this paragraph (a), an acquiror is not required to file a certification if:

(i) The OCC has issued a notice of non-disapproval of the acquisition of the savings association; or

(ii) The acquiror has filed a materially complete notice pursuant to §174.3 of this part.

(b) *Privacy.* All certifications filed under this §174.5 shall be for the information of the OCC in connection with its examination functions and shall be provided confidential treatment by the OCC.

§ 174.6 Procedural requirements.

(a) *Form of notice.* A notice required by §174.3 of this part shall be filed on the form indicated below. An acquiror