

§ 174.7

12 CFR Ch. I (1–1–12 Edition)

(j) *Additional procedures for acquisitions of recently converted savings associations.* Notices and rebuttals involving acquisitions of the stock of a recently converted savings association under §192.3(i)(3) of this chapter shall also address the criteria for approval set forth at §192.3(i)(5) of this chapter.

§ 174.7 Determination by the OCC.

(a) (1) [Reserved]

(2) [Reserved]

(3) [Reserved]

(b) [Reserved]

(c) [Reserved]

(d) *Notice criteria.* In making its determination whether to disapprove a notice, the OCC may disapprove any proposed acquisition, if the OCC determines that:

(1) The proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the banking business in any part of the United States;

(2) The effect of the proposed acquisition of control in any section of the country may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any other manner be in restraint of trade, and the anti-competitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(3) The financial condition of any acquiring person or company or the future prospects of the institution is such as might jeopardize the financial stability of the association or prejudice the interests of the depositors of the association;

(4) The competence, experience, or integrity of the acquiring person or any of the proposed management personnel indicates that it would not be in the interests of the depositors of the association, the OCC, or the public to permit such person to control the association;

(5) The acquiring person fails or refuses to furnish information requested by the OCC; or

(6) The OCC determines that the proposed acquisition would have an adverse effect on the Deposit Insurance Fund.

(e) *Failure to disapprove a notice.* If, upon expiration of the 60-day review period of any notice deemed to be sufficient filed pursuant to §174.6(c), or extension thereof, the OCC has failed to disapprove such notice, the proposed acquisition may take place: *Provided*, That it is consummated within one year and in accordance with the terms and representations in the notice and that there is no material change in circumstances prior to the acquisition.

(f) [Reserved]

(g) *Presumptive disqualifiers—(1) Integrity factors.* The following factors shall give rise to a rebuttable presumption that an acquiror may fail to satisfy the integrity test of paragraph (d)(4) of this section:

(i) During the 10-year period immediately preceding filing of the notice, criminal, civil or administrative judgments, consents or orders, and any indictments, formal investigations, examinations, or civil or administrative proceedings (excluding routine or customary audits, inspections and investigations) that terminated in any agreements, undertakings, consents or orders, issued against, entered into by, or involving the acquiror or affiliates of the acquiror by any Federal or state court, any department, agency, or commission of the U.S. Government, any state or municipality, any Federal Home Loan Bank, any self-regulatory trade or professional organization, or any foreign government or governmental entity, which involve:

(A) Fraud, moral turpitude, dishonesty, breach of trust or fiduciary duties, organized crime or racketeering;

(B) Violation of securities or commodities laws or regulations;

(C) Violation of depository institution laws or regulations;

(D) Violation of housing authority laws or regulations; or

(E) Violation of the rules, regulations, codes of conduct or ethics of a self-regulatory trade or professional organization;

(ii) Denial, or withdrawal after receipt of formal or informal notice of an

intent to deny, by the acquiror or affiliates of the acquiror, of

(A) Any application relating to the organization of a financial institution,

(B) An application to acquire any financial institution or holding company thereof under the Savings and Loan Holding Company Act or the Bank Holding Company Act or otherwise,

(C) A notice relating to a change in control of any of the foregoing under the Control Act or

(D) An application or notice under a state holding company or change in control statute;

(iii) The acquiror or affiliates of the acquiror were placed in receivership or conservatorship during the preceding 10 years, or any management official of the acquiror was a management official or director (other than an official or director serving at the request of the OCC, the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, or the former Federal Savings and Loan Insurance Corporation) or controlling shareholder of a company or savings association that was placed into receivership, conservatorship, or a management consignment program, or was liquidated during his or her tenure or control or within two years thereafter;

(iv) Felony conviction of the acquiror, an affiliate of the acquiror or a management official of the acquiror or an affiliate of the acquiror;

(v) Knowingly making any written or oral statement to the OCC or any predecessor agency (or its delegate) in connection with a notice or other filing under this part that is false or misleading with respect to a material fact or omits to state a material fact with respect to information furnished or requested in connection with such a notice or other filing;

(vi) Acquisition and retention at the time of submission of a notice, of stock in the savings association by the acquiror in violation of §174.3 or its predecessor sections.

(2) *Financial factors.* The following shall give rise to a rebuttable presumption that an acquiror may fail to satisfy the financial condition test of paragraph (d)(3) of this section:

(i) Liability for amounts of debt which, in the opinion of the OCC, cre-

ate excessive risks of default and pressure on the savings association to be acquired; or

(ii) Failure to furnish a business plan or furnishing a business plan projecting activities which are inconsistent with economical home financing.

§ 174.8 [Reserved]

APPENDIX A TO PART 174—REBUTTAL OF CONTROL AGREEMENT

Agreement

Rebuttal of Rebuttable Determination of Control Under Part 174

I. WHEREAS

A. [] is the owner of [] shares (the “Shares”) of the [] stock (the “Stock”) of [name and address of association], which Shares represent [] percent of a class of “voting stock” of [] as defined under the Acquisition of Control Regulations (“Regulations”) of the Office of the Comptroller of the Currency (“OCC”), 12 CFR part 174 (“Voting Stock”);

B. [] is a “savings association” within the meaning of the Regulations;

C. [] seeks to acquire additional shares of stock of [] (“Additional Shares”), such that []’s ownership thereof will exceed 10 percent of a class of Voting Stock but will be less than 25 percent of a class of Voting Stock of []; [and/or] [] seeks to [], which would constitute the acquisition of a “control factor” as defined in the Regulations (“Control Factor”);

D. [] does not seek to acquire the [Additional Shares or Control Factor] for the purpose or effect of changing the control of [] or in connection with or as a participant in any transaction having such purpose or effect;

E. The Regulations require a company or a person who intends to hold 10 percent or more but less than 25 percent of any class of Voting Stock of a savings association or holding company thereof and that also would possess any of the Control Factors specified in the Regulations, to file and obtain clearance of a notice (“Notice”) under the Change in Control Act (“Control Act”), 12 U.S.C. 1817(j), prior to acquiring such amount of stock and a Control Factor unless the rebuttable determination of control has been rebutted.

F. Under the Regulations, [] would be determined to be in control, subject to rebuttal, of [] upon acquisition of the [Additional Shares or Control Factor];

G. [] has no intention to manage or control, directly or indirectly, [];

H. [] has filed on [], a written statement seeking to rebut the determination of