

Federal Deposit Insurance Corporation

§ 391.46

(x) Such additional facts and such legal and other authorities as the requesting person may consider appropriate.

(6) Any person requesting access to a notice, other filing, or public comment made pursuant to this subpart for purposes of commenting on a pending submission may prominently label such request: "Request for Disclosure of Filing(s) Made Under Subpart E of Part 391/Priority Treatment Requested."

(g) *Supervisory cases.* The provisions of paragraphs (d), (e), and (f) of this section may be waived by the FDIC in connection with a transaction approved by the FDIC for supervisory reasons.

(h) *Notification of State supervisor.* Upon receiving a notice relating to an acquisition of control of a State savings association, the FDIC shall forward a copy of the notice to the appropriate state savings and loan association supervisory agency, and shall allow 30 days within which the views and recommendations of such state supervisory agency may be submitted. The FDIC shall give due consideration to the views and recommendations of such state agency in determining whether to disapprove any proposed acquisition. Notwithstanding the provisions of this paragraph (h), if the FDIC determines that it must act immediately upon any notice of a proposed acquisition in order to prevent the default of the association involved in the proposed acquisition, the FDIC may dispense with the requirement of this paragraph (h) or, if a copy of the notice is forwarded to the state supervisory agency, the FDIC may request that the views and recommendations of such state supervisory agency be submitted immediately in any form or by any means acceptable to the FDIC.

(i) *Additional procedures for acquisitions involving mergers.* Acquisitions of control involving mergers (including mergers with an interim association) shall also be subject to the procedures set forth in §390.332 to the extent applicable, except as provided in paragraph (a) of this section.

(j) *Additional procedures for acquisitions of recently converted State savings associations.* Notices and rebuttals involving acquisitions of the stock of a

recently converted State savings association under 12 CFR 192.3(i)(3) shall also address the criteria for approval set forth at 12 CFR 192.3(i)(5).

§ 391.46 Determination by the FDIC.

(a)–(c) [Reserved]

(d) *Notice criteria.* In making its determination whether to disapprove a notice, the FDIC may disapprove any proposed acquisition, if the FDIC 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 the acquiring person is such as might jeopardize the financial stability of the association or prejudice the interests of the depositors of the State savings 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 State savings association, the FDIC, or the public to permit such person to control the State savings association;

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

(6) The FDIC 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 §391.45(c), or extension thereof, the FDIC 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 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 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 the Repealed 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 FDIC, the former 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 FDIC or any predecessor agency (or its delegate) in connection with a notice or other filing under this subpart 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 notice or other filing;

(vi) Acquisition and retention at the time of submission of a notice, of stock in the State savings association by the acquiror in violation of § 391.42 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 FDIC, create excessive risks of default and pressure on the State 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.