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Change in Bank Control Act: What you need to know

By Steve Mumm

Federal Reserve Bank of Minneapolis applications staff frequently receive questions on what triggers the need for an existing or proposed shareholder to file a notice of change in control with the Federal Reserve System. This article discusses the circumstances when a filing (i.e., a notice of change in control) under the Change in Bank Control Act (CIBCA) is required to be submitted to the Federal Reserve and the factors we must consider in analyzing the filing.

Filing Requirements

Under CIBCA, the term “control” has a broader meaning than majority control. A person, or persons acting in concert, must give the Federal Reserve 60 days’ prior written notice before making an acquisition that would result in control of 25 percent or more of any class of voting securities of a bank holding company. A Fed Notes article by Dan Hanger that appeared in the winter 2012 edition of *Bank Owner* includes a discussion of when persons are deemed to be acting in concert. Examples of control would include, but are not limited to, outright ownership or the power to vote shares held in a trust. In addition, a prior notice of change in control filing would be required, by a person (or persons acting in concert) making an acquisition that would result in control of 10 percent or more of any class of voting securities of a bank holding company if: 1) the bank holding company is publicly traded or 2) no other person (does not include groups acting in concert) will control a greater percentage of that class of voting securities.

A “person” includes an individual, trust or any other form of entity. Please note that entities that are considered to be “companies” such as a corporation or business trust may be required to file under the Bank Holding Company Act rather than CIBCA to acquire control of a bank holding company. The term “acquisition” includes a purchase, assignment, transfer, pledge and an increase in percentage resulting from a stock redemption.

While the above discussion refers to “voting securities,” acquisitions of “nonvoting” shares also have the potential to trigger a filing requirement under CIBCA. For example, a notice of change in control may be required if voting rights are conferred on otherwise nonvoting shares by the

occurrence of certain conditions or the nonvoting shares are immediately convertible to voting shares.

Certain transactions are exempt from the prior notice filing requirements. Examples include:

- an acquisition by a person who has continuously controlled the bank holding company since it started business,
- an increase in ownership by a person previously authorized to control and who has continuously controlled the bank holding company (continuous control since earlier authorization),
- acquisitions subject to approval under the Bank Holding Company Act or Bank Merger Act,
- an acquisition of control via a revocable proxy for a meeting, or
- a stock dividend/split if the percentage stays substantially the same.

In addition, for some types of transactions a post notice is required within 90 calendar days of the acquisition of control rather than a prior notice. These transactions include acquisitions through inheritance, bona fide gift, or in satisfaction of a debt previously contracted in good faith.

Factors Considered

The factors the Federal Reserve must consider in acting on a notice of change in control include:

- the effect of proposed acquisition of control on competition
- the financial condition of the acquiring person(s)
- the future prospects of the bank holding company and its subsidiaries; and
- the competence, experience, and integrity of the acquiring person(s) and the proposed management personnel.

Our review of the notice of change in control may include conducting a name check on the acquiring person. A name check is a procedure whereby background information on an individual is requested from other regulatory and investigative authorities. We will determine whether a name check is necessary based on a review of the acquiring person's background, including their Interagency Biographical and Financial Report. This form is required to be completed along with the Interagency Notice of Change in Control form when filing a notice of change in control.

Fed Notes is provided through a partnership the Bank Holding Company Association shares with the Federal Reserve Bank of Minneapolis.