



## Ohio Administrative Code Rule 1301:1-4-06 Change in bank control.

Effective: November 22, 2019

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(A) As used in this rule:

- (1) "Acquisition" means a purchase, assignment, transfer, pledge or other disposition of voting shares, or an increase in percentage ownership of a state bank resulting from a redemption of voting shares.
- (2) "Acting in concert" means knowing participation in a joint activity or parallel action towards a common goal of acquiring control of a state bank, whether or not pursuant to an express agreement.
- (3) "Person" means an individual, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, and any other form of entity; and a voting trust, voting agreement, and any group of persons acting in concert.
- (4) "Securities" means all equity interests in a bank and includes rights, interests, and powers with respect thereto.

(B) For the purpose of section 1115.06 of the Revised Code, it is presumed, subject to rebuttal, that a person acquiring ownership, control of, or the power to vote ten per cent or more of any class of voting securities of a state bank constitutes the power to direct that bank's management or policies requiring prior notice to the superintendent if either of the following apply:

- (1) The state bank has registered securities under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78); or
- (2) No other person will own, control, or hold the power to vote a greater percentage of that class of voting securities immediately after the transaction. If two or more persons, not acting in concert, each propose to acquire simultaneously equal percentages of ten per cent or more of a class of voting securities of a state bank, each such person shall file prior notice with the superintendent.



Transactions other than those set forth in this paragraph resulting in a person's control of less than twenty-five per cent of a class of voting securities of a state bank are deemed not to constitute control requiring prior notice. A person may request an opportunity to rebut any presumption established by this paragraph with respect to a proposed transaction. In the event of such a request, the superintendent shall afford the person the opportunity to present the person's views in writing or where appropriate, orally before the superintendent or the superintendent's designated representatives either at informal conference discussions or at informal presentations of evidence.

(C) A notice required under division (B) of section 1115.06 of the Revised Code shall contain the following information:

(1) The identity, personal history, and business background and experience of each person by whom or on whose behalf the acquisition is to be made, including each person's material business activities and affiliations during the past five years; a description of any material pending legal or administrative proceedings in which each person is a party; and any criminal indictment or conviction of each person by a state or federal court;

(2) A statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year for each of the five years immediately preceding the date of the notice, together with related statements of income and source and application of funds for each of the fiscal years then concluded, all prepared in accordance with generally accepted accounting principles consistently applied; and an interim statement of the assets and liabilities for each person, together with related statements of income and source and application of funds, as of a date not more than ninety days prior to the date of the filing of the notice;

(3) The terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made;

(4) The identity, source, and amount of the funds or other consideration used or to be used in making the acquisition and, if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and any arrangements, agreements, or understandings with the parties;



(5) Any plans or proposals any acquiring person may have to liquidate the state bank, to sell its assets or merge it with any company, or to make any other major change in its business or corporate structure or management;

(6) The identification of any person employed, retained, or to be compensated by an acquiring person, or by any person on an acquiring person's behalf, to make solicitations or recommendations to shareholders for the purpose of assisting in the acquisition, and a brief description of the terms of the employment, retainer, or arrangement for compensation;

(7) Copies of all invitations or tenders or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition; and

(8) Any additional information in the form the superintendent may require by specific request in connection with any particular notice.

(D) To request the written consent of the superintendent to a proposed acquisition of control of a state bank:

(1) A person who is also required to file a notice or application with the federal deposit insurance corporation the federal reserve system in regard to the proposed transaction, pursuant to the Change of Bank Control Act (12 U.S.C. 1817(j)) or section 3 of the Bank Holding Company Act (12 U.S.C. 1842), shall file with the superintendent an originally executed copy of the notice or application.

(2) A person who is not required to file a notice or application with the federal deposit insurance corporation or the federal reserve system in regard to the proposed transaction shall notify the superintendent by letter of the proposed transaction, which letter shall include a summary of the proposed transaction and the reason the person is not required to file a notice or application in regard to the proposed transaction with the federal deposit insurance corporation or the federal reserve system. A person filing notice under this section shall submit the information set forth in division (C) of section 1115.06 of the Revised Code and any other information the superintendent requires.

(E) The sixty-day notice period specified in division (B) of section 1115.06 of the Revised Code



shall not commence until the superintendent has accepted the notice required in paragraph (D)(1) or (D)(2) of this rule for processing.

(F) Any person filing notice under this rule shall be required to publish, within ten days from receipt of the superintendent's acceptance for processing of information required to be filed under this rule, an announcement on the proposed acquisition in a newspaper of general circulation in the county in which the state bank has its principal place of business. In the case of information filed with the superintendent in contemplation of a tender offer, publication of the announcement required by this paragraph may be delayed until thirty days after the superintendent's acceptance of the information for processing. Whenever a person required to publish an announcement pursuant to this paragraph is also required by federal law or regulation to publish an announcement regarding the same transaction, the announcement published pursuant to federal law or regulation shall satisfy the publication requirement of this paragraph if the announcement includes all of the information required by this paragraph. The newspaper announcement shall include:

- (1) The name of the state bank and the name of each person identified in the information as a proposed acquiror and the proposed date of the acquisition of the securities;
- (2) A statement that interested persons may submit comments on the proposed acquisition to the superintendent at the superintendent's place of business for a period of twenty days from the date of publication of the announcement, along with the superintendent's address; and
- (3) A statement that the superintendent will consider all public comments received in writing within the twenty days following the required publication.

(G) The superintendent may do either of the following with respect to the newspaper publication requirement:

- (1) Permit delay of the publication if the superintendent determines, for good cause, that it is in the public interest to grant a delay; or
- (2) Shorten the public comment period, waive the public comment, waive the newspaper publication, or act on a notice before the expiration of a public comment period, if the superintendent determines



that either an emergency exists or disclosure of a proposed acquisition, solicitation of public comment, or delay of its action until expiration of the public comment period would seriously threaten the safety or soundness of a state bank.

(H) Any person who is required to file information with the superintendent pursuant to paragraph (E)(1) of this rule shall also file with the superintendent any additional information filed with the federal deposit insurance corporation or the federal reserve system in connection with a notice regarding the same proposed transaction together with a copy of any request from the federal deposit insurance corporation or federal reserve system in response to which such information was filed.

(I) A person acquiring control of a state bank is not required to provide prior notice to the superintendent, but is required to notify the superintendent within ninety days after control is acquired and to provide to the superintendent with any information requested, if the person has acquired control by any of the following means:

(1) Through testate or intestate succession;

(2) Through a bona fide gift;

(3) In satisfaction of a debt previously contracted in good faith, except that the acquiror of a defaulted loan secured by a controlling amount of bank voting shares shall file a notice before the loan is acquired:

(4) Redemption of voting shares by the issuing bank; or

(5) Sale of shares by any shareholder that is not within the control of the person resulting in that person becoming the largest shareholder.

(J) The following transactions do not require notice to the superintendent:

(1) A customary one-time proxy solicitation; and



(2) The receipt of voting securities through a pro rata stock dividend.