



DEPARTMENT of SAVINGS & MORTGAGE LENDING

Caroline C. Jones, Commissioner

NOTICE OF PRECOMMENT DRAFT AND STAKEHOLDER WEBINAR

SML Thrift Rule Review October 30, 2020 Pre-comment Draft

The Department of Savings and Mortgage Lending (SML or the Department) is considering amendments to 7 Texas Administrative Code (TAC), Chapter 75, and Chapter 76, affecting Texas-chartered savings banks. The amendments were identified during the Department's periodic review of its rules conducted pursuant to Government Code § 2001.039. This notice contains an overview of the amendments being considered, followed by the text of the amendments.

The Department will hold a stakeholder webinar on November 3, 2020 at 9:00 a.m. to discuss the pre-comment draft of the amendments.

The Department will also accept informal written pre-comments until November 10, 2020 at 5:00 p.m. The Department plans to present the rules for consideration by the Finance Commission at its December 11, 2020 meeting.

Participating in the Webinar

The webinar will take place utilizing the WebEx platform by Cisco.

Note: Participants need to pre-register for the webinar. While WebEx has the capability for participants to appear by video, participation by panelists and the attendees will be by audio only.

[Registration Link](#)

Submittal of Informal Pre-comments

Informal written pre-comments regarding the Department's draft rule amendments may be submitted by email to rules.comments@sml.texas.gov or by mail to Iain A. Berry, Associate General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294. **Informal pre-comments must be received by 5:00 p.m. on November 10, 2020.**

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Overview of Amendments: Chapter 75

- Activities Not Requiring an Approved Office. Current § 75.31, concerning Establishment and Operation of Additional Offices, governs the approval of additional offices of a savings bank. A new subsection (e) is added to create a list of activities that, when performed at a location other than the home or a branch office of a savings bank, is deemed by rule not to constitute an additional office of a savings bank requiring preapproval of the Department's commissioner under existing rule requirements. Current § 75.32, concerning Types of Additional Offices, describes the types of additional offices other than the home or a branch office, the opening of which requires the approval of the Department's commissioner. Subsection (a) is amended to eliminate loan production offices, administrative offices, and deposit production offices as additional offices for purposes of the Texas Savings Bank Act, to correspond with the activities typically performed at these offices becoming sanctioned to be performed at a location other than a home or branch office, as provided by amended § 75.31. Other sanctioned activities in new subsection (e) of § 75.31 include the operation of automated or remote banking equipment such as ATMs, advertising, the operation of information technology (IT) equipment, participation at trade association and community events, and the provision of customer service ancillary to banking functions, such as assisting customers in using the savings bank's website, or a software application.
- Closing an Office. § 75.31 is further amended to require a savings bank seeking to close an office to comply with the notice requirements of federal law and provide the Department with a copy of such notice. § 75.31 is also amended to clarify that upon closure of the office, any prior approval to have opened such office is revoked and a savings bank desiring to reopen such office must seek new approval in order to do so.
- Selling Assets. § 75.81, concerning Reorganization, Merger, Consolidation or Purchase and Assumption Transaction, is amended such that the selling of assets is no longer considered to constitute a transaction requiring an application and the prior approval of the Department's commissioner.
- Application Procedures. The amendments make various changes governing how applications are filed with and considered by the Department. The amendments create a new Subchapter F in Chapter 75, concerning General Provisions, designed to contain requirements of general applicability in the chapter, including definitions and requirements for filing an application with the Department. The current rules in Chapter 75 provide that, for many application types, the applicant must publish a notice of the application in a newspaper of general circulation in the

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county or counties affected by the relief sought by the application. A new § 75.203 is added to create uniform procedures for making such notices, contained in new Chapter 75, Subchapter F. The rules for each application type are also amended to clarify and set forth the Department's procedures concerning the counties where the notice must be published.

- Definition of Managing Officer. The definitions contained in new Subchapter F are largely those found in current § 75.121, proposed for repeal in the amendments. However, the definitions do contain a new definition for “managing officer” as that term is used in Tex. Fin. Code § 92.055.
- Hearings on Applications Generally. The amendments make various changes to more closely align the rule requirements in Chapter 75 concerning adjudicative hearings (contested cases) with the administrative rules adopted by the Finance Commission of Texas governing such contested cases (7 TAC Ch. 9), and the requirements of Government Code Chapter 2001 (Administrative Procedure Act).
- Hearings on Change of Name Applications. Current § 75.10, concerning Change of Name Application, provides that an application to change the name of the savings bank is to be made and considered in the same fashion as an application for a savings bank charter. The amendments create procedural requirements specific to this application type, including clarifying the current requirement that a protest or other request for a hearing on the application must be made within the same time period as that required for a hearing on a charter application (10 days), as provided by Tex. Fin. Code § 92.057(d). § 75.10 is further amended to clarify when a person might be affected by an application for change of name so as to require a hearing on the application requested by such person.
- Hearings on Branch Office Applications. Current § 75.33, concerning Branch Office Applications, provides that an application to establish a branch office of the savings bank is to be made and considered in the same fashion as an application for a savings bank charter. The amendments create procedural requirements specific to this application type, including clarifying the current requirement that a protest or other request for a hearing on the application must be made within the same time period as that required for a hearing on a charter application (10 days), as provided by Tex. Fin. Code § 92.057(d).
- Hearings on Mobile Facilities Applications. Current § 75.35, concerning Mobile Facilities, provides that an application to establish a mobile facility of the savings bank is to be made and considered in the same fashion as an application for a savings bank charter. The amendments create procedural requirements specific to this application type, including clarifying the current requirement that a protest or other request for a hearing on the application must be made within the same

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time period as that required for a hearing on a charter application (10 days), as provided by Tex. Fin. Code § 92.057(d).

- Hearings on Change of Home or Branch Office Applications. Current § 75.38, concerning Change of Home or Branch Office Location, provides that an application to change the location of the home or a branch office of the savings bank is to be made and considered in the same fashion as an application for a savings bank charter. The amendments create procedural requirements specific to this application type, including clarifying the current requirement that a protest or other request for a hearing on the application must be made within the same time period as that required for a hearing on a charter application (10 days), as provided by Tex. Fin. Code § 92.057(d).
- Hearings on Reorganization, Merger, or Consolidation Applications. Current § 75.83, concerning Notice and Hearing, provides that an application for reorganization, merger, or consolidation made under Finance Code Subchapter H is to be made and considered in the same fashion as an application for a savings bank charter. The amendments create procedural requirements specific to this application type, including clarifying the current requirement that a protest or other request for a hearing on the application must be made within the same time period as that required on a charter application (10 days), as provided by Tex. Fin. Code § 92.057(d).
- Other Modernization and Update Changes. The amendments make changes to modernize and update the rules including: adding and replacing language for clarity and to improve readability; removing unnecessary or duplicative provisions; and updating terminology.

Overview of Amendments: Chapter 76

- Notice to Consumers. Current § 76.122, concerning Savings Bank Complaint Notices, requires savings banks to make a disclosure to consumers concerning the Department's regulatory oversight and the ability to file complaints with the Department. The amendments clarify the current requirement for a savings bank to make a disclosure on its website by clarifying that the requirement applies only to websites accessible by the public and further clarifies how to conspicuously display such notice on a website.
- Books and Records. § 76.1, concerning Location of Books and Records, is amended to require that books and records be kept in a manner which complies with the applicable requirements of federal law, and in accordance with established best practices of the Federal Financial Institution Examination Council. Amendments to § 76.1 further clarify that, while a savings bank may store its

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records at a location other than the home office, it must ensure a complete set of its records is readily accessible at the home office so as to facilitate examination by the Department's commissioner. § 76.3, which also addresses books and records requirements, is repealed and its subject matter consolidated in amended § 76.1.

- Reports from a Holding Company. § 76.42, concerning Reports, is amended to clarify that a holding company need not file with the Department reports it has filed with the appropriate federal banking agency to the extent that such reports are publicly available.
- Fee for Change of Control Application. § 76.101, concerning Fee for Change of Control, is amended to lower the fee for filing a change of control application from \$10,000 to \$5,000.
- Hearings on Applications. The amendments make various changes to more closely align the rule requirements in Chapter 76 concerning adjudicative hearings (contested cases) with the rules in amended Chapter 75, primarily by repealing such requirements in Chapter 76 so that they may be consolidated in amended Chapter 75.
- Other Modernization and Update Changes. The amendments make changes to modernize and update the rules including: adding and replacing language for clarity and to improve readability; removing unnecessary or duplicative provisions; and updating terminology.

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TITLE 7 BANKING AND SECURITIES

PART 4 DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 75 APPLICATIONS

SUBCHAPTER A CHARTER APPLICATIONS

§75.1 Application for [~~Permission to Organize a State~~] Savings Bank Charter

(a) [~~Applications for a state savings bank charter shall be filed with the commissioner on forms approved by the commissioner.~~] The charter application and all required supporting information must [~~shall~~] be executed by the proposed incorporators of the proposed savings bank which must [~~shall~~] consist of at least five adult residents of this state and must [~~shall~~] include all of the information required by Tex. Fin. Code [~~in the Texas Savings Bank Act,~~] §92.051. The application must [~~shall~~] include a request for a corporate name

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[title] to be approved by the Commissioner [~~commissioner and included in the savings bank's charter~~]. The application must [~~shall~~] include the proposed home [~~principal~~] office of the savings bank, the identity and qualifications of the proposed managing officer(s) [~~officer~~], and any additional information the Commissioner deems to be necessary or prudent [~~as may be required sufficiently detailed and comprehensive~~] to enable the Commissioner [~~commissioner~~] to determine the [~~pass-on~~] matters set forth in Tex. Fin. Code [~~the Texas Savings Bank Act,~~] §92.058.

(b) [~~The commissioner shall furnish approved forms of application and other information to aid in the filing of the application. The form is available from the department at 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705 and from the State Savings Bank Information section of the Department's website at www.sml.texas.gov.~~]

[(e)] No application to incorporate a savings bank will [~~shall~~] be approved unless the application and evidence produced at a hearing, if one is required, satisfy the Commissioner [~~commissioner~~] that the proposed savings bank has received subscriptions for capital stock and paid-in surplus in the case of a capital stock savings bank, or pledges for savings liability and expense fund in the case of a mutual savings bank, in an amount not less than the greater of the amount required to obtain insurance of deposit accounts by the FDIC [~~Federal Deposit Insurance Corporation~~] or the amount required of a national bank. No savings bank with an approved charter may [~~shall~~] open or do business as a savings bank until the Commissioner [~~commissioner~~] certifies that the Commissioner [~~commissioner~~] has received satisfactory proof that the amounts of capital stock and additional paid-in capital, or the savings liability and expense fund, as set forth in this section, have been received by the savings bank in cash, free of encumbrance.

[(d) ~~After the application and its supporting data have been received by the commissioner, the commissioner shall make or cause to be made an investigation of the application.~~]

§75.2 Hearing on Charter Application

If a charter application is protested or a hearing on the application is otherwise requested, the Commissioner will set a hearing on the application within 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title.

[(a) ~~Within 10 days after receiving any statement of intention to appear in person or by attorney to protest the application and required fee, the commissioner shall set a date for a hearing on the application, which date shall not be more than 60 days after the date the statement and fee are received. When requested by the proposed incorporators, a hearing shall be held on the application even though there are no persons who have indicated a desire to be heard against it. A hearing is not required if the proposed incorporators have not requested a hearing and no party has expressed intent to protest.~~]

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~~Should a hearing be required, notice will be provided to interested parties in accordance with applicable laws and regulations.~~

~~(b) The purpose of the hearing shall be to accumulate a record of all pertinent information, testimony, records, reports, and other data in favor of, or opposed to, the application upon which the commissioner shall make a determination of whether the application should be granted or denied. The commissioner may, using personal discretion, make an independent investigation of matters raised in the hearing and, in the event the commissioner desires to base a decision on any evidence disclosed by such investigation which is not a part of the official record, the commissioner shall make the results of such investigation a part of the official record of the hearing and permit all parties to the hearing an opportunity to be heard in respect thereto by reopening the hearing, if necessary. This shall be done within 30 days after the date of the original hearing.~~

~~(c) If any material change occurs in the facts set forth in, or if the applicant files any amendment of, the application filed with the commissioner under the provisions of this chapter, the amendment setting forth such change, together with copies of documents or other material relevant to such change shall be filed with the commissioner prior to the publication of the notice of charter application. Any amendment filed thereafter shall be accepted only at the discretion of the commissioner. The commissioner may require additional publication of the amendment to the application.]~~

§75.3 Publication of Notice of Charter Application

A charter application is deemed to be a complete application for purposes of Tex. Fin. Code §92.057 at the time the Department notifies the applicant that the application is complete and has been accepted for filing, as provided by §75.202 of this title (relating to Application Filing Requirements). Upon receipt of such notice, the proposed incorporators must publish a public notice of the charter application, as provided by §75.203 of this title (relating to Public Notice of Application), which must be published in the county where the proposed savings bank will have its home office. Such notice, when properly effected, is deemed to be the Commissioner's public notice of the application for purposes of Tex. Fin. Code §92.057.

~~[Within 15 days of receipt of the notice issued pursuant to §75.9 of this chapter, the proposed incorporators shall publish a notice, approved by the Commissioner, in a newspaper printed in the English language, and in general circulation in the county where the proposed savings bank will have its principal office. In cases where this section applies to a reorganization, merger, consolidation, conversion, purchase and assumption, acquisition, or branch application, publication shall occur in the county in which the savings bank has its principal office and in the county in which each proposed branch location will exist.]~~

{{Section 75.5 will be repealed}}

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[§75.5 Filing of Proof of Publication]

~~[Within 10 days of publication, the proposed incorporators shall file proof of publication in the manner provided in §75.3 of this title with the commissioner.]~~

§75.6 Time of Decision on Charter Application

To the extent a hearing on the charter application is required, the Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. Only then will the hearing be deemed to have ended for purposes of Tex. Fin. Code §92.058. If a hearing on the charter application is not required, the Commissioner will render a decision within 30 days after the time period for protesting or requesting a hearing on the application lapsed, as provided by Tex. Fin. Code §92.057.

~~[The commissioner shall render a decision within 30 calendar days after the final ruling is issued if the hearing was held in accordance with §75.2 of this title, or 30 calendar days after the date the application is deemed substantially complete if the hearing is dispensed with, as the case may be.]~~

{{Section 75.7 will be repealed}}

[§75.7 Motions for Rehearing]

~~[In the event a motion for rehearing is filed pursuant to the Texas Savings Bank Act, §91.006, as a condition precedent thereto, copies of such motion shall be sent to all parties who have appeared and participated in the hearing, and certification of such fact shall be made to the commissioner at the time of filing said motion; replies to such motions for rehearing must be filed with the commissioner within 25 days after the day the decision or order is entered, and the commissioner's action upon such motion for rehearing shall be taken within 45 days after the date of the original order or decision. If the commissioner's action is not taken within the 45-day period, the motion for rehearing is overruled by operation of law 45 days after the date of rendition of the original order or decision.]~~

§75.8 Identification of Office Site; Temporary Location and Community

(a) In connection with any application for a charter or for an additional office, the proposed office site must ~~[shall]~~ be identified with such particularity so as to exactly locate it within the community to be served.

(b) The Commissioner ~~[commissioner]~~ may approve opening and operating a temporary facility for an approved charter or additional office, provided that such facility is within the 1/2-mile radius of the approved permanent site and, further, provided that the operation of the temporary facility will cease immediately upon the permanent facility being

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completed for occupancy, but in any event no longer than 18 months, unless extended in writing by the Commissioner [~~commissioner~~].

(c) In connection with any application for a charter or for an additional office, the term "community" as used in the Texas Savings Bank Act means the [~~shall be considered to mean that~~] geographical area surrounding the [~~so situated with respect to the~~] proposed location within which persons would be reasonably anticipated to [~~that persons residing in such area could~~] patronize the proposed office in the ordinary course of their business.

{{Section 75.9 will be repealed}}

§75.9 Notice to Applicants

~~[Within 30 days of receipt of an application for any form of authorization to be granted by the commissioner pursuant to this title, and for which a filing fee is charged pursuant to Chapter 76, Subchapter F of this title (relating to Fees and Charges), the commissioner shall issue a written notice to the applicant informing the applicant either that the application is complete and accepted for filing, or that the application is deficient and that specific additional information is required.]~~

§75.10 Change of Name Application

(a) Application for Change of Name. A savings bank may not change its name without the prior approval of the Commissioner [~~commissioner~~], and a savings bank may not operate under any name which has not been approved by the Commissioner [~~commissioner~~]. The Commissioner [~~commissioner~~] may not approve an application by a savings bank to change its name unless the Commissioner [~~commissioner~~] finds from the information [~~data~~] furnished with the application, the evidence produced [~~adduced~~] at the hearing, if one is required, and Department [~~department~~] records that the proposed change of name meets the applicable requirements of the Texas Savings Bank Act and this chapter, and does not violate other applicable law.

(b) Public Notice. An applicant seeking to change its name must publish a public notice of the application as provided by §75.203 of this title (relating to Public Notice of Application), which must be published in the county where the savings bank has its home office.

~~[(b) As provided for new charter applications, notice must be given for change of name application. If protested, the commissioner shall consider the protest and may in the exercise of discretion set the application for hearing to consider the facts or obtain additional information.]~~

(c) Request for Hearing; Deadline to Protest. A person affected by the proposed name change may protest or otherwise request a hearing on the change of name application, as provided by Tex. Fin. Code §92.063. Any person affected by the proposed name change and desiring to protest the application or otherwise request a hearing on the

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application must file a written protest with the Department within 10 days from the date the public notice was made as provided by subsection (b) of this section, otherwise, any right or opportunity by such person to protest or have a hearing on the application under Tex. Fin. Code §92.063 is deemed to be waived.

(d) Persons Affected by the Change of Name. A person is affected by a change of name for purposes of Tex. Fin. Code §92.063 only if the requested name change, if granted, would result in the savings bank's name being substantially or deceptively similar to the party alleged to be affected, or is otherwise reasonably anticipated to create confusion in the marketplace involving the party alleged to be affected. A person requesting a hearing on a change of name application must allege and provide information in support of their request indicating they are a person that might be affected by the proposed name change as provided by this section. The Commissioner in his or her sole discretion will review the request for hearing and determine if the person might be affected so as to require a hearing under Tex. Fin. Code §92.063.

(e) Hearing. If a hearing is required, the Commissioner will set a hearing on the application within 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title.

(f) Time of Decision. To the extent a hearing on the application is required, the Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without a hearings officer amending the proposal for decision. If a hearing on the application is not required, the Commissioner will render a decision within 30 days after the time period for protesting or requesting a hearing on the application lapsed, as provided by subsection (c) of this section.

SUBCHAPTER B EXPEDITED APPLICATIONS

§75.25 Eligible Institution

An eligible institution is a financial institution that:

- (1) is well capitalized as defined by 12 C.F.R. §324.403 [~~in 12 CFR §325.403~~];
- (2) received a composite rating of either 1 or 2 as defined by the Uniform Financial Institutions Rating System (CAMELS) at the most recent examination by the Department [~~department~~] or federal regulatory agencies, and management is rated either 1 or 2;
- (3) received a CRA and compliance rating of satisfactory or above at the savings bank's most recent inspection by the appropriate federal banking [~~regulatory~~] agency;
- (4) is not operating in violation of a regulatory condition or directive imposed by the state or federal banking regulatory agency; and,

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(5) is not operating under a supervisory action of, or a plan for remedial or corrective action imposed by, [memorandum of understanding, order to cease and desist, or other state or federal supervisory enforcement order issued by] a state or federal banking ~~[regulatory]~~ agency.

§75.26 Expedited Applications

(a) An eligible institution as defined in §75.25 of this title (relating to Eligible Institution) may file an expedited filing in lieu of an application required pursuant to §75.33 of this title (relating to Branch Office Applications), §75.35 of this title (relating to Mobile Facilities), §75.38 of this title (relating to Change of Home or Branch Office Location), or §75.81 of this title (relating to Reorganization, Merger, Consolidation or Purchase and Assumption Transaction), and simultaneously tender the required filing fee pursuant to Chapter 76, §§76.91 - 76.110 ~~[76.99]~~ of this title (relating to Fees and Charges).

(b) An expedited filing must include the following items, unless waived in writing by the Commissioner ~~[commissioner]~~:

(1) a detailed description of the transaction;

(2) a pro forma balance sheet and income statement for all parties to the transaction, including adjustments, reflecting the proposed transaction as of the most recent quarter ended immediately prior to the filing of the application, demonstrating that the resulting state savings bank is well capitalized as defined by 12 C.F.R. §324.403, including pro forma financials for the first four quarters after the effective date of the transaction ~~[in 12 CFR §325.103]~~;

(3) a certified resolution of the board and, if required, shareholders approving the proposed transaction;

(4) copies of all other required regulatory notices or filings submitted concerning the transaction; and

(5) evidence satisfactory to the Commissioner that a public notice of the application has been published and effected as provided by §75.203 of this title (relating to Public Notice of Application), published in each county where a non-expedited application is required to be published ~~[a copy of the public notice published in conformity with the section of this subsection that would apply had the applicant not filed an expedited filing].~~

(c) The Commissioner will render a decision on the expedited application within [commissioner shall approve or deny an expedited filing on or before a date that is] 30 days after the date the expedited filing is [deemed] complete and has been accepted for filing, as provided by §75.202 of this title (Relating to Application Filing Requirements). The foregoing notwithstanding, the Commissioner may, at any time before the time period to render a decision on the application has expired, elect to refer the expedited application to a hearing, at which point consideration of the application will proceed in the same

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fashion as a non-expedited application [~~commissioner may, in the exercise of discretion, before the expiration of the period for decision, give the applicant written notice that the commissioner will convene a hearing to obtain evidence related to the application, and the decision will thereafter be made in accordance with §§76.71 – 76.73 of this title (relating to Hearings)].~~

(d) The applicant bears the burden to supply all material information necessary to enable the Commissioner [~~commissioner~~] to make a fully informed decision regarding the expedited filing, including but not limited to, the applicant's eligibility to make the application on an expedited basis in accordance with §75.25 of this title (relating to Eligible Institution).

§75.27 Denial of Expedited Treatment

(a) The Commissioner [~~commissioner~~] may deny expedited filing treatment to an otherwise eligible applicant if the Commissioner determines within his or her sole discretion [~~applicant, in the exercise of discretion, if the [commissioner finds]~~] that the proposed transaction involves significant policy, supervisory, or legal issues; is contingent upon other statutory or regulatory approval; results in an entity that is not a financial institution; or involves an entity that is not domiciled in Texas.

(b) The Commissioner will [~~commissioner shall~~] provide written notification to the applicant within 15 days after the date the expedited filing is complete and has been accepted for filing, as provided by §75.202 of this title (relating to Application Filing Requirements) [~~receipt of the application~~] if expedited filing treatment is denied, indicating the reason for denial. [~~Notification is effective when mailed by the commissioner and is not subject to appeal.~~]

(c) A decision of the Commissioner to deny expedited treatment is final and may not be appealed.

SUBCHAPTER C ADDITIONAL OFFICES

§75.31 [~~Establishment and Operation of~~] Additional Offices; Activities Not Requiring an Approved Office

(a) Approval of Additional Office. No savings bank may [~~shall~~] establish, maintain or relocate its home office or a branch office without the prior written approval of the Commissioner [~~commissioner~~]. A savings bank's home office is [~~shall be~~] the place where a savings bank has its headquarters and from which [~~where~~] all of its operations are directed.

(b) Ancillary Facilities. An authorized or approved office of a savings bank is [~~shall be~~] the place where the business of the savings bank is conducted, and with the prior written consent of the Commissioner [~~commissioner~~] may include facilities ancillary thereto for the extension of the savings bank's services to the public. Any authorized or approved

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office of a savings bank [~~shall~~] also means [~~mean~~], with the prior written consent of the Commissioner [~~commissioner~~], separate quarters or facilities to be used by the savings bank for the purpose of performing service functions in the efficient conduct of its business.

(c) Notice of Home Office. All offices of a savings bank which are located outside the county of the domicile of its home office must [~~shall~~] display a sign which is suitable to advise the public of the type of additional office which is located therein and the location of the home office of such savings bank.

(d) Closing an Office. Before closing an approved branch or other office, a savings bank must comply with the notice requirements of federal law, and provide the Commissioner with a copy of the closing notice filed with the appropriate federal banking agency upon filing such notice. A savings bank must provide the Commissioner with confirmation within 10 days after the actual closing date. Once closed, prior written approval from the Commissioner to operate a branch or other office is deemed revoked, and a savings bank may not reopen the branch or other office without seeking new approval from the Commissioner.

(e) Activities Not Requiring an Approved Office. The following activities of a savings bank may be performed at a location other than the home or a branch office and such location does not constitute an “additional office” requiring notice to or the prior approval of the Commissioner for purposes of Tex. Fin. Code §92.063:

(1) Automated or remote activities. A savings bank may engage in limited banking activities through infrastructure and equipment by automated or remote means, including use of an automated teller machine (ATM), automated loan machine, automated device for receiving deposits (remote deposit capture), or other remote service unit.

(2) Loan production activities. A savings bank may engage in loan production activities including taking loan applications, approving or making a credit decision, accepting payments on loans, or managing or selling real estate owned by the institution in connection with such loans, unless such activity conflicts with applicable state or federal law.

(3) Administrative activities (administrative offices). A savings bank may establish or maintain administrative offices to perform the internal operations of the bank, provided the savings bank does not conduct banking activities.

(4) Advertising and Marketing. A savings bank may advertise and market itself to the public including soliciting deposits, providing information about the financial products of the savings bank, and assisting persons in completing application forms to open a deposit account, provided the savings bank does not conduct banking activities.

(5) Trade association participation; community events and engagement. A savings bank may participate in trade association events promoting the banking or financial

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services industry broadly. A savings bank may also host, attend, or otherwise participate in community events, provided the savings bank does not conduct banking activities at such event.

(6) Information technology (IT) infrastructure. A savings bank may operate information technology infrastructure or equipment including the placement of IT infrastructure in a data center, the hosting or processing of a website or data by a third party IT service provider, or such other physical presence tied to the IT infrastructure of the savings bank.

(7) Ancillary customer service activities. A savings bank may engage in customer service activities ancillary to its banking functions including relating to accessing or using its website or a software application.

§75.32 Types of Additional Offices

Subject to the provisions of §§75.31 - 75.33, 75.35, 75.36, 75.38, 75.39, 75.41 of this chapter, the following types of additional offices may be established and maintained by a savings bank:

(1) branch offices at which the savings bank may transact any business that could be done in the home office;

~~[(2) loan production offices (loan offices) at which the savings bank, may transact business, as provided by §75.34(a) of this chapter, but at which no other business of the savings bank is transacted;]~~

(2) [(3)] mobile facilities at which the savings bank may transact any business of the institution which could be done in the home office. A detailed record of the transactions at such facility shall be maintained; and

~~[(4) administrative offices at which the savings bank may transact administrative functions of the institution, as provided by §75.34(b) of this chapter. Such office may be located separate and apart from the location of any other facility of the savings bank;]~~

(3) [(5)] courier/messenger service to transport items relevant to the bank's transactions with its customers, including courier services between financial institutions; [and]

~~[(6) deposit production offices at which the savings bank may transact business, as provided by §75.34(c) of this chapter, but at which no other business of the savings bank is transacted.]~~

§75.33 Branch Office Applications

(a) Each application for permission to establish a branch office must ~~[shall]~~ state the proposed location thereof; the personnel and office facilities to be provided; and the estimated cost and projected profits of such office. ~~[Each application for a branch office shall be set for hearing, notice given, hearing held, and decision reached in the same~~

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~~manner and within the time as provided in this chapter for new charter applications and the hearing may be dispensed with under the same conditions.]~~

(b) All statements of fact tendered to the Commissioner [~~commissioner~~] in connection with branch office application must be subscribed and sworn to before a notary [~~signed and sworn to~~].

(c) The Commissioner [~~commissioner~~] may not approve an application for a branch office unless the Commissioner determines [~~commissioner shall have affirmatively found~~] from the information [~~data~~] furnished with the application, the evidence produced [~~adduced~~] at the hearing, if one is required, and Department [~~department~~] records that:

(1) The operation and condition of the applying savings bank affords no basis for supervisory objection.

(2) The character, responsibility and general fitness of the current management of the applicant are such as to warrant belief that the branch office will be operated in accordance with the Act.

(3) The financial effect of establishing and operating the proposed office will not adversely affect the safe and sound operation of the applying savings bank.

(d) The branch office facility will commence operation within a period of 12 months after the date of approval unless an extension is granted, in writing, by the Commissioner [~~commissioner~~]. No more than one 12-month extension will be approved by the commissioner, unless good cause for such extension is shown. At the end of any approved extension, if the office has not been opened, the approval [~~authority~~] for such office is deemed revoked and a new application must be made [~~shall be forfeited~~].

(e) A branch office application is also required if a state savings bank would like to establish and operate a courier/messenger service pursuant to §75.32(3) [~~§75.32(5)~~]-of this title (relating to Types of Additional Offices).

(f) Public Notice. An applicant seeking to establish a branch office must publish a public notice of the application as provided by §75.203 of this title (relating to Public Notice of Application), which must be published both in the county where the proposed branch office is to be located and in the county where the savings bank has its home office.

(g) Request for Hearing; Deadline to Protest. A person affected by the proposed establishment of a branch office may protest or otherwise request a hearing on the branch office application, as provided by Tex. Fin. Code §92.063. Any person affected by the proposed establishment of a branch office and desiring to protest the application or otherwise request a hearing on the application must file a written protest within the Department within 10 days from the date the public notice was made as provided by subsection (f) of this section, otherwise any right or opportunity by such person to protest

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or have a hearing on the application under Tex. Fin. Code §92.063 is deemed to be waived.

(h) Hearing. If a hearing is required, the Commissioner will set a hearing on the application within 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title.

(i) Time of Decision. To the extent a hearing on the application is required, the Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exception has lapsed without the hearings officer amending the proposal for decision. If a hearing on the application is not required, the Commissioner will render a decision within 30 days after the time period for protesting or requesting a hearing on the application lapsed, as provided by subsection (g) of this section.

{{Section 75.34 will be repealed}}

~~§75.34 Loan Production Offices (Loan Offices), Administrative Offices, and Deposit Production Offices~~

~~[(a) Loan Production Offices (Loan Offices). A savings bank may, to the extent authorized by its board of directors, establish or maintain loan offices or loan production offices with the authority to take loan applications; originate; approve or make a credit decision; accept payments on loans; or manage or sell real estate owned by the institution, unless such activity conflicts with state or federal law. A savings bank shall notify the commissioner in writing prior to the opening or closing of a loan office or loan production office. Upon receipt of written consent from the commissioner, the establishment of such office shall be deemed an approved loan office or loan production office of the bank. A loan office or loan production office is not a branch.~~

~~(b) Administrative Offices. A savings bank may, to the extent authorized by its board of directors, establish or maintain administrative offices of the bank. No savings deposits or loan applications may be accepted at an administrative office. A savings bank shall notify the commissioner in writing prior to the opening or closing of an administrative office. Upon receipt of written consent from the commissioner, the establishment of such office shall be deemed an approved administrative office of the bank.~~

~~(c) Deposit Production Offices. A savings bank may, to the extent authorized by its board of directors, establish or maintain a deposit production office of the bank. Such an office may solicit deposits, provide information about deposit products, and assist persons in completing application forms and related documents to open a deposit account. However, the deposit production office may not receive deposits or pay withdrawals, or make loans to a savings bank customer, and all such deposit or withdrawal activity must be performed~~

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~~by the savings bank customer either in person at the main office, branch office, or by mail, electronic transfer, or similar transfer method. A savings bank shall notify the commissioner in writing prior to the opening or closing of a deposit production office. Upon receipt of written consent from the commissioner, the establishment of such office shall be deemed an approved deposit production office of the bank. A deposit production office is not a branch.]~~

§75.35 Mobile Facilities

(a) Each application for permission to establish a mobile facility must ~~[shall]~~ state the proposed location(s) at and times during ~~[at]~~ which the facility will operate; the need therefor; the personnel and office facilities to be provided and the estimated expense of such facility. ~~[Each application for a mobile facility shall be set for hearing, notice given, hearing held, and decision reached in the same manner and within the time as herein provided for new charter applications and the hearing may be dispensed with under the same conditions.]~~ An application for permission to establish a mobile facility may not be approved unless the Commissioner determines ~~[commissioner shall have affirmatively found]~~ from the information ~~[data]~~ furnished with the application, the evidence produced ~~[adduced]~~ at the hearing, if one is required, and Department ~~[department]~~ records, all requirements ~~[of the findings necessary]~~ for approval of a branch office have been met.

(b) Public Notice. An applicant seeking to establish a mobile facility must publish a public notice of the application as provided by §75.203 of this title (relating to Public Notice of Application), which must be published in the county or counties where the proposed mobile facility is to be operating and in the county where the savings bank has its home office.

~~[(b) Mobile facilities must be operated consistent with the following requirements:~~

~~(1) Such facility shall be operated only at locations approved by the commissioner, each of which shall at all times be appropriately identified at the site and on the facility, within 100 miles of the institution's home office.~~

~~(2) Each applicant shall show that adequate safeguards exist for the security of such mobile facility and its content. The commissioner may require further safeguards, if in the commissioner's opinion the proposed safeguards are inadequate.]~~

(c) Request for a Hearing; Deadline to Protest. A person affected by the proposed establishment of a mobile facility may protest or otherwise request a hearing on the mobile facility application, as provided by Tex. Fin. Code §92.063. Any person affected by the proposed establishment of a mobile facility and desiring to protest the application or otherwise request a hearing on the application must file a written protest with the Department within 10 days from the date the public notice was made as provided by subsection (b) of this section, otherwise any right or opportunity by such person to protest

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or have a hearing on the application under Tex. Fin. Code §92.063 is deemed to be waived.

(d) Hearing. If a hearing is required, the Commissioner will set a hearing on the application within 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title.

(e) Time of Decision. To the extent a hearing on the application is required, the Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. If a hearing on the application is not required, the Commissioner will render a decision within 30 days after the time period for protesting or requesting a hearing on the application lapsed, as provided by subsection (c) of this section.

(f) Operation of a Mobile Facility. Mobile facilities must be operated consistent with the following requirements:

(1) Such facility may be operated only at locations approved by the Commissioner, each of which must at all times be appropriately identified at the site and on the facility, within 100 miles of the institution's home office or a branch office.

(2) Each application must show that adequate safeguards exist for the security of such mobile facility and its contents. The Commissioner may require additional safeguards, if in the Commissioner's opinion the proposed safeguards are inadequate.

§75.36 [~~Designation as and~~] Exemption for Supervisory Sale

(a) Designation as a Supervisory Sale [~~supervisory sale~~]. The Commissioner [~~commissioner~~] may designate a purchase of additional offices and/or assets by a savings bank from another financial institution to be a supervisory purchase when:

(1) the Commissioner [~~commissioner~~] has placed the selling institution under voluntary supervisory control or under conservatorship; or

(2) the Commissioner [~~commissioner~~] has determined that the selling institution is in an unsafe condition; or

(3) the FDIC [~~Federal Deposit Insurance Corporation~~] has determined, and notified the Commissioner [~~commissioner~~], that one or more of the grounds specified in the Federal Deposit Insurance Act, for appointment of a conservator or receiver, exist with respect to the selling institution, or the proposed transaction is necessary to prevent the failure or possible failure of the selling institution. For purposes of this section, the term "unsafe condition" means [~~shall mean~~] that the selling institution is insolvent or is in imminent danger of insolvency, or that there has been a substantial dissipation of assets or earnings

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due to any violation or violations of applicable law, rules, or regulations, or to any unsafe or unsound condition to transact business in that there has been a substantial reduction of its capital; or that the institution and its directors and officers have violated any material condition of its charter or bylaws, the terms of any order issued by the Commissioner [~~commissioner~~] or any agreement between the institution and the Commissioner [~~commissioner~~]; or that the institution, its directors, or officers have concealed or refused to permit examination of the books, papers, accounts, records, and affairs of the institution by the Commissioner [~~commissioner~~] or other duly authorized personnel of the department; or any other conditions affecting the institution which the Commissioner [~~commissioner~~] and the board of directors of the institution agree place the institution in an unsafe condition.

(b) Exemption for a supervisory sale. Whenever the Commissioner [~~commissioner~~] designates the purchase of additional offices and/or assets by a savings bank from another financial institution to be a supervisory purchase, the sections relating to the contents of applications for additional offices and the findings necessary for approval, §§75.31 – 75.33, 75.35, 75.36, 75.38, 75.39 and 75.41 of this title (relating to Additional Offices), are not [~~shall not be~~] applicable, and such purchase shall be effected in accordance with this section.

§75.38 Change of Home or Branch Office Location

(a) A savings bank may not move its home office or any branch office beyond its immediate vicinity without prior approval of the Commissioner [~~commissioner~~]. Immediate vicinity is the area included within a radius or distance of one mile from the present location of such office. Any relocation within the immediate vicinity as defined in this section will require the approval of the Commissioner [~~commissioner~~], if the office to be relocated has not been open for business at its present location for more than two years. If the existing office has been opened for more than two years, prior written notice must [~~shall~~] be provided to the Commissioner [~~commissioner~~] asserting the relocation is in the immediate vicinity.

(b) Notwithstanding subsection (a) of this section, a savings bank may retain its existing home office as a branch office and relocate its home office to another established branch office by providing the Commissioner [~~commissioner~~] with prior written notice. Upon such notification, the establishment of such office is [~~shall be~~] deemed to be an approved branch [~~administrative~~] office of the savings bank.

(c) Each application for prior approval, or prior written notice, whichever is applicable, must [~~shall~~] provide, the existing and new branch location's address; a description of the land and building to be built or leased and terms thereof; estimates of the cost of removal to and maintenance of the new location; whether any affiliated parties are involved in transactions regarding the purchase, sale, construction, or lease of the new proposed

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office; evidence of the bank board's approval of the relocation; and any other information as deemed necessary by the Commissioner [~~commissioner~~].

~~[(d) An application to move an office location shall be set for hearing by the commissioner and notice given as provided for new charter applications, and the hearing may be dispensed with by the commissioner under the same conditions.]~~

(d) [~~(e)~~] The Commissioner [~~commissioner~~] may not approve an application to move or relocate any office of a savings bank, unless the Commissioner determines [~~commissioner finds~~] from the information [~~data~~] furnished with the application, the evidence produced [~~adduced~~] at the hearing, if one is required, and Department [~~department~~] records, all requirements [~~of the findings necessary~~] for approval of a branch office have been met.

(e) Public Notice. An applicant seeking to change the location of the home office must publish a public notice of the application as provided by §75.203 of this title (relating to Public Notice of Application), which must be published in the county where the office is presently located, the county where the proposed new location is to be located, and the county where the savings bank has its home office.

(f) Request for Hearing; Deadline to Protest. A person affected by the proposed change in home or branch office location may protest or otherwise request a hearing on the branch office application, as provided by Tex. Fin. Code §92.063. Any person affected by the proposed change in home or branch office location and desiring to protest the application or otherwise request a hearing on the application must file a written protest with the Department within 10 days from the date the public notice was made as provided by subsection (e) of this section, otherwise any right or opportunity by such person to protest or have a hearing on the application under Tex. Fin. Code §92.063 is deemed to be waived.

(g) Hearing. If a hearing is required, the Commissioner will set a hearing on the application within 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title.

(h) Time of Decision. To the extent a hearing on the application is required, the Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal or decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. If a hearing on the application is not required, the Commissioner will render a decision within 30 calendar days after the time period for protesting or requesting a hearing on the application lapsed, as provided by subsection (f) of this section.

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§75.39 Temporary Closing of Additional Offices

In the event a savings bank closes any additional office of any type on a temporary basis, said office must be reopened within 12 months or less, unless otherwise extended by written authorization of the Commissioner. In the event such office is not reopened within the allotted 12-month period, or the longer period established by the Commissioner, if applicable, such authorization for the office is deemed ~~[shall be]~~ forfeited. Written notice of any temporary closing must ~~[shall]~~ be furnished to the Commissioner ~~[commissioner]~~ within 10 days of such closing, and no additional office may reopen ~~[shall be deemed to have reopened]~~ until the commissioner receives written notification within 10 days of such reopening. The permanent closing of an office must comply with the requirements of §75.31(d) of this title (relating to Additional Offices; Activities Not Requiring an Approved Office).

§75.41 Offices in Other States or Territories

To the extent permitted by the laws of the state or territory in question, and subject to this chapter, a savings bank may establish branch offices ~~[and loan production offices]~~ in any state or territory of the United States. Each application for permission to establish such a branch office must ~~[or loan production office shall]~~ comply with the applicable requirements of this chapter, and must ~~[shall]~~ include a certified copy of an order from the appropriate state or territorial regulatory authority approving the office or unit, or other evidence satisfactory to the Commissioner ~~[commissioner]~~ that all state or territorial regulatory requirements have been satisfied. Each such application must ~~[shall]~~ be set for hearing, if applicable, notice given, hearing held, if applicable, and decision reached in the same manner and within the time provided by §75.33 (relating to Branch Office Applications) ~~[in this chapter for similar applications for offices in this state]~~. The Commissioner ~~[commissioner]~~ may not approve such an application unless the Commissioner determines ~~[commissioner finds]~~ from the information ~~[data]~~ furnished with the application, the evidence produced ~~[adduced]~~ at the hearing, if one is required ~~[applicable]~~, and Department ~~[department]~~ records that all requirements of this chapter applicable to the office have been met, and that all applicable requirements of the laws of the state or territory in question have been met.

SUBCHAPTER D REORGANIZATION, MERGER, CONSOLIDATION, CONVERSION, PURCHASE^[,] AND ASSUMPTION OR ~~[AND]~~ ACQUISITION

§75.81 Reorganization, Merger, Consolidation or Purchase and Assumption Transaction

(a) Reorganization, merger or conversion of a state savings bank into another type of financial institution charter is governed by the ~~[shall be exclusively subject to the]~~ provisions of §75.89 of this title (relating to Reorganization, Merger or Conversion to Another Financial Institution Charter), and not the requirements of this section. ~~[Such a~~

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~~transaction shall not be subject to the procedures and requirements set forth in this section.]~~

(b) Any savings bank seeking to reorganize, merge, and/or consolidate or to engage in a purchase and assumption transaction in which the resulting institution will be a state savings bank must ~~[shall]~~ do so pursuant to a plan adopted by the board of directors and filed with the Commissioner ~~[commissioner]~~ as a part of an application for approval. Purchase and assumption transactions include purchases ~~[or sales]~~ of assets, deposit accounts or other liabilities in bulk not made in the ordinary course of business.

§75.82 Form and Content of Application

~~[(a)]~~ The application for approval of the plan must ~~[shall be titled "Application to Reorganize, Merge and/or Consolidate" and shall]~~ contain: proof that the plan was adopted by the board of directors of each institution involved; documentation showing that the plan has been approved by each institution by a majority of the total vote the members or shareholders of each are entitled to cast; a statement that the corporate continuity of the resulting institution will ~~[shall]~~ possess the same incidents as that of a savings bank which has converted in accordance with the Texas Savings Bank Act; and a statement identifying the home office of the resulting institution. A true copy of the plan, as adopted, must ~~[shall]~~ be filed as part of the application. All documents and their contents must be subscribed and sworn to before a notary ~~[shall be subscribed and sworn to by an officer of each institution involved under the sanction of an oath, or such affirmation as is by law equivalent to an oath, made before an officer authorized to administer oaths].~~

~~[(b)]~~ ~~The commissioner shall furnish approved forms of application. The forms are available from the department at 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.]~~

§75.83 Notice and Hearing

(a) Public Notice. An applicant seeking reorganization, merger, consolidation, conversion, purchase and assumption or acquisition must publish a public notice of the plan and application as provided by §75.203 of this title (relating to Public Notice of Application), which must be published in each county in which a financial institution participating in the plan has its home office. Such notice, when properly effected, is deemed to be the Commissioner's public notice of the plan and application for purposes of Tex. Fin. Code §92.352.

(b) Request for Hearing; Deadline to Protest. Any interested person desiring to protest the plan and application or otherwise request a hearing on the plan and application must file a written protest with the Department within 10 days from the date the public notice was made, as provided by subsection (a) of this section, otherwise any right or opportunity

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by such person to protest or have a hearing on the application under Tex. Fin. Code §92.352 is deemed to be waived.

(c) Hearing. If a hearing is required, the Commissioner will set a hearing on the plan and application within 60 days after the date the protest or request for hearing and the required fee are received, unless the Commissioner determines that the provision set forth in §75.87 of this title apply, and the merger is designated as a supervisory merger for purposes of Tex. Fin. Code §92.352(e). The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 2001 of the Government Code and Chapter 9 of this title.

(d) Time of Decision. To the extent a hearing on the plan and application is required, the Commissioner will render a decision within 30 days after the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. If a hearing on the plan and application is not required, the Commissioner will render a decision within 30 days after the time period for requesting a hearing on the plan and application lapsed, as provided by subsection (b) of this section, unless the Commissioner establishes a longer time period, with written notice to the applicant.

~~[Each application for reorganization, merger, consolidation, conversion, purchase and assumption, or acquisition will be set for hearing, notice given, and hearing held in the same manner and within the time as provided in this chapter for new charter applications and the hearing may be dispensed with under the same conditions.]~~

{{Section 75.84 will be repealed}}

[§75.84 Publication]

~~[Publication of notice of application for reorganization, merger, consolidation, conversion, purchase and assumption, or acquisition shall be subject to the same requirements as provided in this chapter for new charter applications.]~~

{{Section 75.85 will be repealed}}

[§75.85 Time of Decision]

~~[The commissioner shall render a decision in the same manner and within the time as provided in this chapter for new charter applications.]~~

{{Section 75.86 will be repealed}}

[§75.86 Appeal]

~~[Any appeal of an order or action of the commissioner shall be made pursuant Chapter 2001 of the Texas Government Code, and the Texas Savings Bank Act, §§91.004 – 91.006.]~~

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§75.87 Designation as and Exemption for Supervisory Merger

(a) The Commissioner [~~commissioner~~] may designate a merger to be a supervisory merger when:

(1) the Commissioner [~~commissioner~~] has placed one or more of the savings banks involved under voluntary supervisory control or under conservatorship pursuant to the Texas Savings Bank Act; or

(2) the Commissioner [~~commissioner~~] has determined that one or more of the savings banks involved is in an unsafe condition; or

(3) the Federal Deposit Insurance Corporation has determined, and certified to the commissioner, that the merger of one or more of the institutions involved is necessary to prevent the failure or possible failure of the said institution.

(b) For purposes of this section, unsafe condition means [~~shall mean~~] that the savings bank (or savings banks) is insolvent or is in imminent danger of insolvency, or that there has been a substantial dissipation of assets or earnings due to any violation or violations of applicable law, rules, or regulations, or to any unsafe or unsound practice or practices; or that the savings bank is in an unsafe and unsound condition to transact business in that there has been a substantial reduction of its capital; or that the savings bank and its directors and officers have violated any material conditions of its charter or bylaws, the terms of any order issued by the Commissioner [~~commissioner~~], or any agreement between the savings bank and the Commissioner [~~commissioner~~]; or that the savings bank, its directors, and officers have concealed or refused to permit examination of the books, papers, accounts, records, and affairs, of the savings bank by the Commissioner [~~commissioner~~] or other duly authorized personnel of the Department [~~department~~]; or any other condition affecting the savings bank which the Commissioner [~~commissioner~~] and the board of directors of the savings bank agree place the savings bank in an unsafe condition.

(c) When the Commissioner [~~commissioner~~] designates a merger to be a supervisory merger, the provisions of this chapter relating to reorganization, merger, [~~and/or~~] consolidation or purchase and assumption, §§75.81 - 75.83 [~~75.86~~] of this title (relating to Reorganization, Merger, Consolidation or Purchase and Assumption Transaction [~~Filing of Plan~~]; Form and Content of Application; and Notice and Hearing[; ~~Publication~~; ~~Time of Decision~~; and ~~Appeal~~]) are not [~~shall not be~~] applicable, and the merger will instead [~~shall~~] be effected pursuant to this section.

§75.88 Acquisitions Involving Financial Institutions in Other States or Territories

To the extent permitted by the laws of the state or territory in question, and subject to this chapter, a savings bank may acquire, by merger or purchase of stock, a financial institution incorporated under the laws of another state. Each such application must [~~shall~~] comply with the applicable requirements of this chapter, and must [~~shall~~] include a

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certified copy of an order from the appropriate state regulatory authority approving the merger or acquisition, or other evidence satisfactory to the Commissioner [~~commissioner~~] that all state regulatory requirements have been satisfied. Each such application must [~~shall~~] be set for hearing, if applicable, notice given, hearing held, if applicable, and decision reached in the same manner and within the time provided by §75.83 (relating to Notice and Hearing) [~~in this chapter for a similar application involving another savings bank in this state~~]. The Commissioner may not [~~commissioner shall~~] approve such an application unless the Commissioner determines [~~if the commissioner finds~~] from the information [~~data~~] furnished with the application, the evidence produced [~~adduced~~] at the hearing, if one is required, and Department [~~department~~] records, that all requirements of this chapter applicable to the proposed merger or acquisition have been met, and that all applicable requirements of the laws of the state or territory in question have been met.

§75.89 Reorganization, Merger or Conversion to Another Financial Institution Charter

(a) A savings bank is authorized to reorganize, merge, or convert into another type of financial institution charter subject to applicable law and regulation relating to the type of charter which will [~~shall~~] be held by the resulting institution.

(b) The Commissioner must [~~commissioner shall~~] be given written notice of the intention of the savings bank to reorganize, merge or convert no less than 30 days prior to the proposed transaction.

(c) The savings bank must [~~shall~~] file with the Commissioner [~~commissioner~~]:

(1) a copy of the application filed with the appropriate banking agency having jurisdiction over the surviving financial institution;

(2) a certified copy of all minutes of meetings of the board of directors, shareholders or members;

(3) a publisher's certificate certifying the publication of the notice required to be published by the appropriate banking agency; and

(4) evidence to ensure that no undue harm will [~~shall~~] be caused to the public interest or to any other existing financial institution.

(d) The Commissioner is [~~Upon the receipt of all of the preceding information and any required filing fee, the commissioner shall be~~] deemed to have consented to the reorganization, merger or conversion into another type of financial institution charter at the time the Department notifies the savings bank that the filing made in accordance with this section is complete and has been accepted for filing, as provided by §75.202 of this title (relating to Application Filing Requirements). Upon compliance with the provisions of this section and the granting of a successor charter by the appropriate banking agency, a copy of which must [~~shall~~] be filed with the Commissioner [~~commissioner~~], the savings

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bank receiving the new charter ceases to exist as a savings bank and will no longer be subject to the jurisdiction of the Commissioner [~~commissioner~~]. The foregoing notwithstanding, the Commissioner must receive the original charter certificate or a certified affidavit of lost certificate in order to be released from the requirement to pay annual assessments, as provided by §76.98 of this title (relating to Annual Assessments.)

§75.90 Conversion into a Savings Bank

(a) The Commissioner [~~commissioner~~] may authorize any financial institution to convert itself into a savings bank in a manner consistent with the provisions of applicable law and regulations of the institution.

(b) Plan and Application. In order to obtain such authorization, the converting institution's [~~savings bank must by a two-thirds vote of the savings bank's~~] board of directors must approve [~~the conversion plan~~] and authorize the filing of a conversion plan and application. Upon approval of the conversion plan, the plan must [~~shall~~] be approved by a majority vote of the members or shareholders of the financial institution entitled to vote at any annual or special meeting called to consider such conversion, a resolution declaring that the savings bank will [~~shall~~] be so converted, which resolution, verified by affidavit of the secretary or an assistant secretary, must [~~shall~~] be filed with the Commissioner [~~commissioner~~] and mailed to the appropriate banking agency within 10 days after the date of its adoption. At the meeting to vote on a conversion to a domestic savings bank, the members or stockholders must [~~shall~~] also vote on the directors of the savings bank. The proposed directors must [~~shall~~] execute [~~two copies of~~] an application for savings bank charter [~~certificate of incorporation~~] as provided by Finance Code Chapter 92 [~~in the Texas Savings Bank Act,~~] Chapter 92, Subchapter B, and §75.1 of this title (relating to Application for Savings Bank Charter). [~~Each proposed director shall sign and acknowledge the application for certificate of incorporation as a subscriber to the savings bank and shall sign and acknowledge the proposed bylaws as an incorporator of the savings bank.~~]

(c) Review by Commissioner; Approval. The Commissioner, [~~commissioner~~] on receipt of the application and verified copy of the minutes, will [~~shall~~] conduct an examination of the financial institution seeking conversion. Following the examination, the Commissioner will [~~commissioner shall~~] approve the conversion without a hearing if the Commissioner [~~commissioner~~] determines that the converting financial institution is in sound condition and meets all standards, conditions, and requirements of Finance Code [~~the Texas Savings Bank Act,~~] Chapter 92, Subchapter B, and §§75.1 - 75.3 and 75.6 of this title (relating to Application for Savings Bank Charter; Hearing on Charter Application; Publication of Notice of Charter Application; and Time of Decision on Charter Application) [~~or relevant rules adopted by the commissioner and the finance commission~~]. On approval of the conversion, the saving bank's charter is deemed to include a paragraph [~~there shall be inserted a paragraph preceding the testimonium clause in the certificate of~~

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~~incorporation]~~ stating that the savings bank is incorporated by conversion from another financial institution, as required by Tex. Fin. Code §92.303(c).

(d) Review by Commissioner; Approval. An applicant is entitled to a hearing under the Chapter 2001 of the Texas Government Code if the Commissioner ~~[commissioner]~~ denies an application to convert and a written request for a hearing is delivered to the Commissioner ~~[commissioner]~~ within 10 days after the date of denial. A hearings officer designated by the Commissioner will ~~[commissioner shall]~~ hold the hearing. The Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. Only then will the hearing be deemed to be completed for purposes of Tex. Fin. Code §92.304 ~~[Within 30 days after the date the hearing is completed, the commissioner shall enter a final order either approving or denying the application. An applicant has the right to appeal a final order to a district court of Travis County with the commissioner named as defendant. The commissioner is not required to file an appeal bond in any cause arising under this section. Filing an appeal under this section does not stay an order of the commissioner].~~

§75.91 Mutual to Stock Conversion

(a) ~~[Applications for conversion from a mutual to stock form of ownership shall be filed with the commissioner on forms approved by the commissioner.]~~ The application for mutual to stock conversion must ~~[shall]~~ include:

- (1) a plan of conversion;
- (2) amendments to the savings bank's certificate of formation ~~[articles of incorporation]~~ and bylaws;
- (3) a copy of the proxy and soliciting materials to be used; and
- (4) such other information the Commissioner ~~[commissioner]~~ may require.

(b) The plan of conversion must ~~[shall]~~ provide:

- (1) a comprehensive description of the nontransferable subscription rights received each eligible accountholder, including details on oversubscriptions;
- (2) that the shares of the converting savings bank be offered to persons with subscription rights and management, in that order, and that any remaining shares will ~~[shall]~~ be sold either in a public offering through an underwriter or directly by the converting savings bank in a direct community offering;
- (3) that a direct community offering by the converting savings bank will ~~[shall]~~ give a preference to natural persons residing in the counties in which the savings bank has an office;

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(4) that the sale price of the shares of capital stock to be sold in the conversion will ~~[shall]~~ be a uniform price determined in accordance with paragraph (1) of this subsection, and ~~[shall]~~ specify the underwriting and/or other marketing arrangements to be made;

(5) that the conversion must be completed within 24 months from the date the savings bank members approve the plan of conversion;

(6) that each savings accountholder of the converting savings bank shall receive, without payment, a withdrawable savings account or accounts in the converted savings bank equal in withdrawable amount to the withdrawal value of such accountholder's savings account or accounts in the converting savings bank;

(7) for an eligibility record date;

(8) that expenses incurred in the conversion are ~~[shall be]~~ reasonable;

(9) that the converting savings bank may ~~[shall]~~ not loan funds or otherwise extend credit to any person to purchase the capital stock of the savings bank;

(10) that the proxies held with respect to voting rights in the savings bank will not be voted regarding the conversion, and that new proxies will be solicited for voting on the proposed plan of conversion; and

(11) the amount of the deposit of an accountholder will ~~[shall]~~ be the total of the deposit balances in the accountholder's savings accounts in the converting savings bank as of the close of business on the eligibility record date. The plan of conversion may provide that the total deposit balances of less than \$50 (or any lesser amounts) will ~~[shall]~~ not be considered for purposes of paragraph (6) of this subsection.

(c) A plan of conversion must ~~[shall]~~ be adopted by not less than two-thirds of the savings bank's board of directors.

(d) Upon determining that an application for conversion is properly executed and is not materially incomplete, the Commissioner ~~[commissioner]~~ will advise the savings bank, in writing, to publish a notice of the filing of the application. Promptly after receipt of the advice, the savings bank must ~~[shall]~~ prominently post the notice in each of its offices and publish the notice in a newspaper printed in the English language and having general circulation in each community in which an office of the savings bank is located, as follows.

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(e) Promptly after publication of the notice or notices prescribed in subsection (d) of this section, the savings bank must ~~[shall]~~ file one copy of the notice together with an affidavit of publication from each publisher with the commissioner.

(f) Following approval of the application for conversion by the Commissioner ~~[commissioner]~~, the plan of conversion must ~~[shall]~~ be submitted to the members at an

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annual or special meeting and the plan must ~~[shall]~~ be approved, in person or by proxy, by at least a majority of the total outstanding votes of the members of the savings bank.

(g) No offer to sell securities of a savings bank pursuant to a plan of conversion may be made prior to Commissioner's ~~[commissioner's]~~ approval of the:

(1) application for conversion;

(2) proxy statement; and

(3) offering circular.

(h) Within 45 days:

(1) of the date of the mailing of the subscription form, the subscription rights must be exercised;

(2) after the last day of the subscription period, the sale of all shares of capital stock of the converting savings bank to be made under the plan of conversion, including any sale in a public offering or direct community marketing, must ~~[shall]~~ be completed.

(i) The converting savings bank shall pay interest at not less than the savings account interest rate on all amounts paid in cash or by check or money order to the savings bank to purchase shares of capital stock in the subscription offering or direct community offering from the date payment is received by the savings bank until the conversion is completed or terminated.

(j) For the purpose of this rule, the public offering and a direct community offering shall be deemed to commence upon the declaration of effectiveness by the Commissioner ~~[commissioner]~~ of the final offering circular.

(k) The Commissioner ~~[commissioner]~~ may grant a written waiver from any requirement of ~~[for]~~ this rule.

(l) For the purposes of this rule:

(1) the term "control" means the possession, directly or indirectly, of the power to direct or cause direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise;

(2) the term "person" includes an individual, a group acting in concert, a corporation, a partnership, a savings bank, a trust, any unincorporated organization, or a government or political subdivision thereof.

SUBCHAPTER E CHANGE OF CONTROL

{{Section 75.121 will be repealed}}

~~§75.121 Definitions~~

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~~[The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.~~

~~(1) Affiliate—An affiliate of, or person affiliated with, a person that directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with, the person specified.~~

~~(2) Affiliated person—~~

~~(A) a director, officer, or controlling person of such savings bank;~~

~~(B) a spouse of a director, officer, or controlling person of such savings bank;~~

~~(C) a member of the immediate family of a director, officer, or controlling person of such savings bank who is a director or officer of any subsidiary of such savings bank or of any holding company affiliate of such savings bank;~~

~~(D) any corporation or organization (other than the savings bank or a corporation or organization through which the savings bank operates) of which a director, officer, or controlling person of such savings bank:~~

~~(i) is an officer;~~

~~(ii) is a general partner;~~

~~(iii) is a limited partner who, directly or indirectly, either alone or with their spouse and the members of their immediate family who are also affiliated persons of the savings bank, owns an interest of 10% or more in the partnership (based on the value of their contribution) or who, directly or indirectly with other directors, officers, and controlling persons of such savings bank and their spouses and their immediate family members who are also affiliated persons of the savings bank, owns an interest of 25% or more in the partnership; or~~

~~(iv) directly or indirectly, either alone or with their spouse and the members of their immediate family who are also affiliated persons of the savings banks, owns or controls 10% or more of any class of equity securities or owns or controls, with other directors, officers, and controlling persons of such savings bank and their spouses and their immediate family members who are also affiliated persons of the savings bank, 25% or more of any class of equity securities; and~~

~~(E) any trust or other estate in which a director, officer, or controlling person of such savings bank or the spouse of such person has a substantial beneficial interest or as to which such person or their spouse serves as trustee or in a similar fiduciary capacity.~~

~~(3) Commissioner—The Texas Savings and Mortgage Lending Commissioner.~~

~~(4) Control (including the terms controlling, controlled by, and under common control with)—The possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a savings bank by either direct or indirect means. Control~~

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~~shall be deemed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds irrevocable proxies representing 25% or more of the voting securities of a savings bank. The commissioner may determine, based upon specific written findings of fact to support such determination and an opportunity for public hearing, that control exists in fact, where a person exercises directly or indirectly, either alone or pursuant to an agreement with one or more other persons, such a controlling influence over the management or policies of a savings bank as to make it necessary or appropriate in the public interest and for the protection of the account holders of a savings bank that the person be deemed to control the savings bank. There shall be a presumption of control if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds irrevocable proxies representing 10% or more of the voting securities of a savings bank. Such person may, by application to the commissioner, seek to rebut that control presumption.~~

~~(5) Issuer—The savings bank which has issued the security in question.~~

~~(6) Person—An individual, corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing acting in concert.~~

~~(7) Savings bank—Shall include all savings banks organized or chartered under the laws of this state. For purposes of this chapter, savings bank shall include any other person controlling a savings bank.~~

~~(8) Voting security—Shall include any security convertible into or evidencing a right to acquire a voting security.]~~

§75.122 Acquisition of a Savings Bank

The following procedures must ~~[shall]~~ be followed when a person desires to acquire control of a savings bank.

(1) No person other than the issuer may ~~[shall]~~ make a public tender offer for, solicitation or a request or invitation for tenders of, or enter into and consummate any agreement to exchange securities for, seek to acquire, or acquire in the open market or by means of a privately negotiated agreement or contract, any voting security or any security convertible into a voting security of a savings bank if, after the consummation thereof, such person would directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such savings bank, unless such person has filed with the Commissioner ~~[commissioner]~~ all of the following information on an application form approved by the Commissioner ~~[commissioner]~~ and which application form is deemed by the Commissioner ~~[commissioner]~~ to be complete and has received a written order from the Commissioner ~~[commissioner]~~ approving such acquisition or change of control:

(A) the background and identity of the applicant, if said applicant and any affiliate is an individual, or all persons who are directors, executive officers, or owners of 10% or more

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of the voting securities of the applicant if the applicant is not an individual. Said filing must [~~shall~~] contain the following information:

(i) name and address;

(ii) present principal business activity, occupation, or employment including position and office held and the name, principal business, and address of any corporation or other organization in which such employment is carried on;

(iii) material occupations, positions, offices, or employments previously held by the individual, giving the starting and ending dates of each and the name, principal business, and address of any business corporation or other organization in which each such occupation, position, office, or employment was carried on, indicating if any such occupation, position, office, or employment required licensing by or registration with any federal, state, or municipal governmental agency;

(iv) whether such individual is presently charged with or has ever been convicted of a violation of law in a criminal proceeding (excluding minor traffic violations) and, if so, giving the date, nature of conviction, name and location of the court, and penalty imposed or other disposition of the case;

(v) whether such individual has been or is a party to any federal, state, or municipal court lawsuit in which such individual is or was alleged to have violated any federal or state statutes or regulation, and, if so, giving the date, style of the suit, case number, court location, and disposition of the suit;

(vi) whether any such individual has been or is a party to any federal, state, or municipal governmental agency administrative actions in which such individual was or is alleged to be in violation of any governmental agency statute or regulation, and, if so, giving the date, nature of the action, name and location of the governmental agency, and disposition of the case; and any other relevant information requested by the Commissioner [~~commissioner~~];

(B) if the applicant is not an individual, the nature of its business operations for the past five years or for such lesser period as such applicant and any predecessors thereof [~~shall~~] have been in existence;

(C) description of the interrelationships between the applicant and all affiliates of the applicant;

(D) nature, identity, source, and amount of funds or other consideration used or to be used in effecting the acquisition of control, and, if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained, there must [~~shall~~] be a description of the transaction, the names of the parties, and all arrangements, or other understanding with such parties, including all arrangements, agreements, or understandings in regard to repayment of the funds;

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(E) any plans or proposals which the applicant may have to declare dividends to liquidate such savings banks, to sell its assets, or to merge it with any person or persons or to make any other material change in its business operations or corporate structure or management, including modifications in or plans to enter into any management contracts, and any financial or employment guarantees given to present and contemplated management;

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

(G) the number of shares of the savings bank's voting securities (including securities convertible or evidencing rights to acquire voting securities) which the applicant, its affiliates, affiliated persons, and any other related person plans to acquire, and the terms of the offer, request, invitation, agreement, or acquisition;

(H) a description of any contracts, arrangements, or understandings with respect to any voting security of the savings bank in which the applicant, its affiliates, or any related person is involved;

(I) copies of any contracts, agreements, or other documents which the Commissioner ~~[commissioner]~~ determines are relevant to the review of the application; and

(J) any other relevant information requested by the Commissioner ~~[commissioner]~~.

(2) If the person required to file the information referred to in this section is a partnership, limited partnership, syndicate, trust, or other group, the Commissioner ~~[commissioner]~~ may require that the information must ~~[shall]~~ be given ~~[with respect]~~ to:

(A) each partner of such partnership or limited partnership;

(B) each member of such syndicate or group; and

(C) each person who controls such partner or member.

(3) If the person required to file the information referred to in this section is a corporation, the Commissioner ~~[commissioner]~~ may require that the information called for must ~~[shall]~~ be given with respect to such corporation and each officer and director of such corporation and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of such corporation.

(4) The transaction for acquisition of control of a savings bank may not be consummated until the commissioner approves the application for acquisition of control. The application will be processed and considered in accordance with Tex. Fin. Code §92.556 and §92.557. ~~[The commissioner shall render a decision within 60 days after the application required by paragraph (1) of this section has been filed with and deemed complete by the commissioner. The commissioner shall deny an application for acquisition of control of a savings bank if the commissioner finds any of the following:~~

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~~(A) the acquisition would substantially lessen competition or would in any manner be in restraint of trade and would result in a monopoly or would be in furtherance of a combination or conspiracy to monopolize or attempt to monopolize the savings and loan or the savings bank industry in any part of the state, unless the commissioner also finds that the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of acquisition in meeting the convenience and needs of the community to be served and that the proposed acquisition is not a violation of any law of this state or the United States;~~

~~(B) the poor financial condition of any acquiring party might jeopardize the financial stability of the savings bank being acquired;~~

~~(C) plans or proposals to liquidate or sell the savings bank or its assets are not in the best interest of the savings bank;~~

~~(D) the experience, ability, standing, competence, trustworthiness, or integrity of the applicant is such that the acquisition would not be in the best interest of the savings bank;~~

~~(E) the savings bank will not be solvent, have adequate capital structure, or be in compliance with the laws of this state after the acquisition;~~

~~(F) the applicant has failed to furnish all of the information pertinent to the application reasonably requested by the commissioner;~~

~~(G) the acquisition would result in the violation of any law or regulation or it has been evidenced that the applicant, affiliates, or affiliated persons may cause to be abused the fiduciary responsibility held by the savings bank or other demonstration or untrustworthiness of the applicant, affiliates, or affiliated persons which would affect the savings bank has been evidenced; or~~

~~(H) the applicant is not acting in good faith.~~

~~(5) If any material change occurs in the facts set forth in the application and any documents filed with the department, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner within three business days after the person learns of such change.]~~

§75.123 Notice and Hearing [Hearings]

(a) Public Notice. An applicant timely requesting a hearing on the Commissioner's decision to deny the application must publish a public notice of the application as provided by §75.203 of this title (relating to Public Notice of Application), which must be published in the county where the savings bank has its home office. Such notice, when properly effected is deemed to be the Commissioner's public notice of the application for purposes of Tex. Fin. Code §92.557.

(b) Hearing. If a hearing is required, the Commissioner will set a hearing on the denial within 60 days after the date the request for a hearing on the denial was received. The

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hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title.

(c) Time of Decision. To the extent a hearing on the Commissioner's decision to deny the application is required, the Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision, unless the Commissioner establishes a longer time period, with written notice to the applicant.

~~[(a) The commissioner may, by using personal discretion, set and hold a hearing on an application for acquisition of control of a savings bank if the commissioner deems it desirable to accumulate a complete record of pertinent information and data in support of approval or denial of the application. If the commissioner issues a written order denying an application for acquisition of control, the disapproved applicant is entitled to a public hearing on such application.~~

~~(b) Proceedings for a hearing on a disapproved application shall be instituted by the applicant's filing a written petition for hearing before the 31st day after the notice of intent to deny is mailed to the proposed transferee.~~

~~(c) The commissioner shall provide the applicant notice of not less than ten days specifying the time, date, and place of the hearing.~~

~~(d) Opportunity shall be afforded the applicant to present evidence and argument on those issues involved.~~

~~(e) The record of the hearing shall consist of:~~

~~(1) all pleading, motions, and intermediate rulings;~~

~~(2) the application for acquisition of control and all accompanying documents;~~

~~(3) all evidence received and considered;~~

~~(4) a statement of those matters officially noticed;~~

~~(5) a written transcript of the proceedings, the cost of which shall be assessed to the applicant; and~~

~~(6) any other matters or documents required by statute or regulation.~~

~~(f) The final decision or order of the commissioner shall be rendered within 30 days after the date the hearing is finally closed. The commissioner may prescribe a longer period of time within which the final decision or order shall be issued, and such extension shall be announced at the conclusion of the hearing.]~~

§75.124 Retention of Control

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(a) The following conditions affecting any controlled savings bank, regardless of when or how such control has been acquired, are grounds for the Commissioner [~~commissioner~~] to investigate, seek to enjoin, or set aside any change of control of a savings bank, if the Commissioner [~~commissioner~~] deems the transfer to be against the public interest:

(1) the violation of any law, these regulations, abuse of the fiduciary responsibility held by a savings bank, or other demonstration of untrustworthiness by the savings bank, its holding company, or any controlling person, affiliates, affiliated persons, or any of the officers or directors which would affect the savings bank; or

(2) the violation of any antitrust law of this state by the savings bank, the holding company, or any affiliate.

(b) The Commissioner [~~commissioner~~] may require the submission of such information as necessary to determine whether any retention of control complies with the law of this state, as a condition of approval of such retention of control.

(c) The Commissioner [~~commissioner~~] may, when it appears that a change of control may have taken place without prior approval, call a hearing to determine whether there has been in fact a change of control or whether any unauthorized person, or persons, having no apparent ownership interest in the savings bank, acting alone or in concert with others, effectively have indirect controlling or dominating influence over the management or policies of a savings bank. If the Commissioner [~~commissioner~~] finds that such unauthorized control exists, the Commissioner [~~commissioner~~] may, after notice and hearing, issue an order requiring immediate divestiture by certain persons or unapproved or indirect control, or the Commissioner [~~commissioner~~] may issue any other supervisory order the Commissioner [~~commissioner~~] deems appropriate.

{{Section 75.125 will be repealed}}

~~§75.125 Application for Approval of the Acquisition of Control of a Savings Bank~~

~~[The commissioner shall furnish approved forms for acquisition of control of a savings bank. The form is available from the department, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.]~~

§75.126 Abeyance of Other Applications

When an application for approval of acquisition of control of a savings bank has been received by the Commissioner [~~commissioner~~] and the savings bank also has other applications on file with the commissioner, such applications may, at the Commissioner's [~~commissioner's~~] discretion, be held in abeyance until the change of control application has been disposed of [~~by the commissioner~~].

§75.127 Exempt Transactions

The following transactions are exempt from the application requirements of Chapter 75, Subchapter E of this title (relating to Change of Control [~~this section~~]:

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(1) control of an insured institution acquired solely as a result of foreclosure on the stock of a savings bank which secures a loan contracted for in good faith, where such loan was made in the ordinary course of business of the lender, provided that the acquisition of control pursuant to such foreclosure is reported to the Commissioner [~~commissioner~~] within 30 days and provided further that the acquiror may [~~shall~~] not retain such control for more than one year from the date on which such control was acquired. The Commissioner [~~commissioner~~] may, upon application by the acquiror, extend such one-year period from year to year for an additional period of time, not to exceed three years, if the Commissioner [~~commissioner~~] finds such extension is warranted and would not be detrimental to the public interest. Nothing in this subsection prevents [~~shall prevent~~] such acquiror from filing an application pursuant to this chapter for permanent approval of the acquisition of control;

(2) control of an insured institution acquired through a percentage increase in stock ownership following a pro-rata stock dividend or stock split, if the proportional interest of the recipients remains substantially the same;

(3) acquisition of additional stock of a savings bank by any person who has held power to vote 25% or more of any class of voting stock in such savings bank continuously for the three-year period preceding such acquisition, or has maintained control of the savings bank continuously since acquiring control in compliance with the provisions of law or regulation then in effect provided that such acquisition is consistent with any conditions imposed in connection with such acquisition of control and with the representations made by the acquiror in its application.

Subchapter F. General Provisions

§75.201 Definitions.

The following words and terms, when used in this chapter, are assigned the following meanings, unless the context clearly indicates otherwise.

(1) Affiliate--An affiliate of, or person affiliated with, a person that directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with, the person specified.

(2) Affiliated person--

(A) a director, officer, or controlling person of such savings bank;

(B) a spouse of a director, officer, or controlling person of such savings bank;

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(C) a member of the immediate family of a director, officer, or controlling person of such savings bank who is a director or officer of any subsidiary of such savings bank or of any holding company affiliate of such savings bank;

(D) any corporation or organization (other than the savings bank or a corporation or organization through which the savings bank operates) of which a director, officer, or controlling person of such savings bank: (i) is an officer; (ii) is a general partner; (iii) is a limited partner who, directly or indirectly, either alone or with their spouse and the members of their immediate family who are also affiliated persons of the savings bank, owns an interest of 10% or more in the partnership (based on the value of their contribution) or who, directly or indirectly with other directors, officers, and controlling persons of such savings bank and their spouses and their immediate family members who are also affiliated persons of the savings bank, owns an interest of 25% or more in the partnership; or (iv) directly or indirectly, either alone or with their spouse and the members of their immediate family who are also affiliated persons of the savings banks, owns or controls 10% or more of any class of equity securities or owns or controls, with other directors, officers, and controlling persons of such savings bank and their spouses and their immediate family members who are also affiliated persons of the savings bank, 25% or more of any class of equity securities; and

(E) any trust or other estate in which a director, officer, or controlling person of such savings bank or the spouse of such person has a substantial beneficial interest or as to which such person or their spouse serves as trustee or in a similar fiduciary capacity.

(3) Commissioner--The Savings and Mortgage Lending Commissioner appointed under Finance Code, Chapter 13.

(4) Control (including the terms controlling, controlled by, and under common control with)--The possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a savings bank by either direct or indirect means. Control is deemed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds irrevocable proxies representing 25% or more of the voting securities of a savings bank.

(5) FDIC--The Federal Deposit Insurance Corporation.

(6) Issuer--The savings bank which has issued the security in question.

(7) Managing officer--An individual designated by the board of directors as being responsible for, and having the authority to direct, the day-to-day operations of the savings bank. The managing officer must have sufficient banking experience, ability, standing, competence,

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trustworthiness, and integrity to justify a belief that, under the management and supervision of the managing officer, the savings bank will operate in compliance with applicable law and that success of the savings bank is probable.

(8) Person--An individual, corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing acting in concert.

(9) Savings bank-- includes all savings banks organized or chartered under the laws of this state. For purposes of this chapter, savings bank shall include any other person controlling a savings bank.

(10) Voting security-- includes any security convertible into or evidencing a right to acquire a voting security.

§75.202. Application Filing Requirements.

- (a) **Scope; Application. Applications and other filings submitted to the Department must comply with the requirements of this section.**
- (b) **Application Forms. All applications must be made on the current form for the application prescribed by the Commissioner.**
- (c) **Incomplete Filings; Notice of Submittal; Deemed Withdrawal. An application or other filing with the Department will only be deemed submitted if it is complete. An application or other filing is complete only if all required information and supporting documentation is included and all required fees have been received. Within 30 days of receipt of an application or other filing requesting authorization or other relief from the Commissioner pursuant to this title, and for which a filing fee is charged pursuant to Chapter 76, Subchapter F of this title (relating to Fees and Charges), the Commissioner or the Commissioner's designee will issue a written notice to the applicant or filer informing them either that the application is complete and accepted for filing, or that the application or filing is incomplete and specifying the information required to render the application or filing complete. The application or filing may be deemed withdrawn and the applicable fee forfeited if, within 30 days of being notified the application or filing was incomplete, the applicant or filer fails to provide to the Department the supplemental information or supporting documentation necessary to render the application or filing complete.**
- (d) **Duty to Supplement. Even after being notified of the filing being complete, the applicant has a continuing obligation and duty to supplement the filing with any information or other supporting documentation the Commissioner determines to be necessary to render a decision on the application, upon written request. The**

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applicant must provide to the Department any information or supporting documentation submitted to the appropriate federal banking regulator in connection with the relief sought by the application not previously provided to the Department.

- (e) Duty to Amend. If a material change occurs in the facts contained in or information furnished in support of the application, the applicant must file an amended application or otherwise supplement the application to address the material change. The applicant must endeavor to resolve any potential changes or amendments to the application prior to publishing public notice of the application, as provided by subsection (e) of this section. Amendments made after publication of such notice may require the notice to be re-published, as determined in the sole discretion of the Commissioner, with written notice to the applicant.

§ 75.203. Public Notice of Application. An application for which notice to the public is required to be published must comply with the requirements of this section. The notice must be made using language and content preapproved by the Commissioner prior to publishing. The notice must be submitted to the publisher for publication within 15 days after the date the applicant receives notice that the application is complete and accepted for filing, as provided by §75.202(c) of this title (relating to Application Filing Requirements). The notice must be published in an English language newspaper of general circulation in each county required by the rule(s) governing such application. The applicant must, within 10 days after publishing the notice, provide the Commissioner with a publisher's affidavit evidencing that the notice was properly published in conformity with this section. The notice is deemed properly effected when the appropriate notice has been published in conformity with this section, and more than 10 days have elapsed.

§ 75.204. Motions for Rehearing. A motion for rehearing pursuant to Tex. Fin. Code §91.006 must be filed not later than the 14th day after the date the decision or order that is the subject of the motion is signed. A copy of the motion for rehearing must be served on all parties who made an appearance or otherwise submitted a filing in the proceeding, and the motion must include a certificate of service reciting the parties served and the method of service. A party must file a reply to the motion for rehearing, if any, not later than the 20th day after the date the decision or order that is the subject of the motion is signed. The Commissioner must act on the motion for hearing not later than the 45th day after the date the decision or order that is the subject of the motion for rehearing is signed or the motion for rehearing is deemed overruled by operation of law.

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TITLE 7 BANKING AND SECURITIES

PART 4 DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 76 MISCELLANEOUS

SUBCHAPTER A BOOKS, RECORDS, ACCOUNTING PRACTICES, FINANCIAL STATEMENTS AND RESERVES

§76.1 [~~Location of~~] Books and Records

A savings bank must create and maintain books and records of its operations, including complete minutes of the meetings of its members and the board of directors, and actions taken by written consent in lieu of such meetings. Records must be maintained in compliance with the applicable requirements of the appropriate federal banking agency and established industry best practices promoted by the Federal Financial Institution Examination Counsel. Records must be accurate, complete, current, legible, readily accessible, and readily sortable. A state savings bank may store original records or copies of records at a location other than the home office; however, a savings bank must ensure that a complete set of its books and records is readily accessible at the home office at all times so as to facilitate the examination of the savings bank by the Commissioner at the home office. A savings bank may maintain copies of its books and records in an electronic, digital, or magnetic format. A true and correct copy of an original record stored in an electronic, digital, or magnetic format is deemed to be an original record.

~~[Unless otherwise authorized by the commissioner, a savings bank shall keep at its home office correct and complete books of account and minutes of the meeting of members and directors. Complete records of all business transacted at the home office shall be maintained at the home office. Records of business transacted at any branch or agency office may be kept at such branch or agency office; provided, that control records of all business transacted at any branch or agency office shall be kept at the home office. A savings bank may keep duplicate electronic records offsite as a part of its business continuity planning if done in a manner meets applicable regulatory requirements, including those provided by the Federal Deposit Insurance Corporation and the Federal Financial Institution Examination Council.]~~

§76.2 Accounting Practices

Every savings bank must [~~shall~~] use such forms and observe such accounting principles and practices as the Commissioner [~~commissioner~~] may require from time to time.

{{Section 76.3 will be repealed}}

~~§76.3 Reproduction and Destruction of Records~~

~~[Any savings bank may cause any or all records kept by such institution to be copied or reproduced by any photostatic, photographic, electronic, or microfilming process which correctly and permanently copies, reproduces, or forms a medium for copying or~~

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~~reproducing the original record on a film or other durable material, and such savings bank may thereafter dispose of the original record. Any such copy or reproduction shall be deemed to be an original record. A facsimile, exemplification, or certified copy shall, for all purposes, be deemed a facsimile, exemplification, or certified copy of the original record.]~~

§76.4 Financial Statements; Annual Reports; Audits

For safety and soundness purposes, within 90 days of its fiscal year end, each savings bank[, regardless of asset size,] is required to submit to the Department the results and findings of an independent audit of its financial statements and all correspondence reasonably related to the audit. The audit is to be performed in accordance with generally accepted auditing standards and the provisions of the FDIC set forth in 12 C.F.R. §363.2 and §363.3 [12 CFR], with the exception of any matters specifically addressed by this section, the Texas Savings Bank Act, or its related rules.

§76.5 Misdescription of Transactions

No savings bank may ~~[by any system of account or any device of bookkeeping shall]~~, either directly or indirectly, knowingly make any entry on ~~[upon]~~ its books that is not accurate or otherwise fails to appropriately describe the transaction, or withholds information material to the transaction ~~[truly descriptive of the transaction which causes the entry]~~.

§76.6 Charging Off or Setting Up Reserves against Bad Debts

The Commissioner ~~[commissioner]~~, after a determination of value, may order that assets in the aggregate, to the extent that such assets have depreciated in value, or to the extent the value of such assets, including loans, are overstated in value for any reason, be charged off, or that a special reserve or reserves equal to such depreciation or overstated value be established in accordance with Generally Accepted Accounting Principles (GAAP).

§76.7 Examinations

(a) The Commissioner will ~~[commissioner shall]~~ examine every state savings bank once in each year, or more frequently if the commissioner determines that the condition of the savings bank justifies more frequent attention to enforce the Texas Savings Bank Act. The Commissioner ~~[commissioner]~~ may defer an examination for not more than six months if the commissioner considers the deferment appropriate to the efficient enforcement of the Texas Savings Bank Act and consistent with the safe and sound operation of the institution.

(b) An examination under this section may be performed jointly or in conjunction with an examination by the saving bank's appropriate federal banking agency. The Commissioner ~~[Federal Deposit Insurance Corporation or any other federal depository institutions]~~

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~~regulatory agency having jurisdiction over a savings bank, and/or the commissioner]~~ may accept an examination made by such federal banking agency in lieu of an examination pursuant to this section.

§76.12 Bylaws

(a) The bylaws of a ~~[state]~~ savings bank must ~~[shall]~~ contain sufficient provisions to govern the institution in accordance with the Texas Savings Bank Act, the Texas Business Organizations Code, and other applicable laws, rules and regulations, or the certificate of formation ~~[articles of incorporation]~~. Bylaws may contain a provision which permits such bylaws to be adopted, amended, or repealed by either a majority of the shareholders or a majority of the board of directors of the savings bank. Bylaw amendments may not take effect before being filed with and approved by the Commissioner ~~[commissioner]~~.

(b) A ~~[state]~~ savings bank is specifically authorized to adopt in its bylaws a provision which limits the liability of directors as contained in the Texas Business Organizations Code to the same extent permitted under state law for banks and savings and loan associations. Such bylaw provision is optional and within the discretion of the ~~[state]~~ savings bank.

(c) Other optional bylaws may be adopted by a state savings bank with the approval of the commissioner.

SUBCHAPTER B CAPITAL AND CAPITAL OBLIGATIONS

§76.21 Capital Requirements

(a) Unless the context clearly indicates otherwise, when used in this chapter, "Capital" for a savings bank includes (as applicable) the amount of its issued and outstanding common stock, preferred stock (to the extent such preferred stock may be considered a part of the savings bank's capital under Generally Accepted Accounting Principles) plus any retained earnings and additional paid-in capital as well as such other items as the Commissioner ~~[commissioner]~~ may approve in writing for inclusion as capital.

(b) Minimum capital requirement. Each savings bank must ~~[shall]~~ maintain capital at levels which are required for institutions whose accounts are insured by the Federal Deposit Insurance Corporation.

§76.22 Increase or Decrease of Minimum Capital Requirements

(a) The Commissioner ~~[commissioner]~~ may increase or decrease the minimum capital requirement set forth in this chapter~~;~~ upon written application by a savings bank or by supervisory directive if the Commissioner determines ~~[commissioner shall have affirmatively found from the data available and/or the application and supplementary information submitted therewith]~~ that:

(1) the savings bank's failure to meet the minimum capital requirement, if applicable, is not due to unsafe and unsound practices in the conduct of the affairs of the savings bank, a violation of any provision of the certificate of formation ~~[articles of incorporation]~~ or

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bylaws of the savings bank, or a violation of any law, rule, or supervisory action [~~order~~] applicable to the savings bank or any condition that the Commissioner [~~commissioner~~] has imposed on the savings bank by written order or agreement. For purposes of this chapter, unsafe and unsound practices means [~~shall mean~~], with respect to the operation of a savings bank, any action or inaction that is likely to cause insolvency or substantial dissipation of assets or earnings or to otherwise reduce the ability of the savings bank to timely satisfy withdrawal requests of savings account holders, including, without being limited to, excessive operating expenses, excessive growth, high-risk or undiversified investment positions [~~highly speculative ventures, excessive concentrations of lending in any one area~~], and non-existent or poorly followed lending and underwriting policies, procedures, and guidelines;

(2) the savings bank is well managed. In determining whether the [~~applying~~] savings bank is well managed, the Commissioner [~~commissioner~~] may consider:

(A) management's record of operating the savings bank;

(B) management's record of compliance with laws, regulations, directives, orders, and agreements;

(C) management's timely recognition and correction of regulatory violations, unsafe and unsound practices, or other weaknesses identified through the examination or supervisory process;

(D) management's ability to operate the savings bank in changing economic conditions; and

(E) such other factors as the Commissioner [~~commissioner~~] may deem necessary to properly evaluate the quality of the savings bank's management; and

(3) the savings bank has submitted a plan acceptable to the Commissioner [~~commissioner~~] for restoring capital within a reasonable period of time. Such plan must [~~shall~~] describe the means and schedule by which capital will be increased. The plan must [~~shall~~] also specifically address restrictions on dividend levels; compensation of directors, executive officers, or individuals having a controlling interest; asset and liability growth; and payment for services or products furnished by affiliated persons as defined in Chapter 77 of this title. The plan must [~~shall~~] provide for improvement in the savings bank's capital on a continuous or periodic basis from earnings, capital infusions, liability and asset shrinkage, or any combination thereof. A plan that projects no significant improvement in capital until near the end of the waiver or variance period or that does not appear to the Commissioner [~~commissioner~~] to be reasonably feasible will not be acceptable. The Commissioner [~~commissioner~~] may require modification of the savings bank's plan in order for the institution to receive or to continue to receive such waiver or variance.

(b) Any savings bank which receives an increase or decrease of its minimum capital requirement from the Commissioner [~~commissioner~~] must file quarterly progress reports

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regarding compliance with its capital plan. The Commissioner [~~commissioner~~] may require more frequent reports. Any contemplated action that would represent a material variance from the plan that must be submitted to the Commissioner [~~commissioner~~] for approval.

(c) With respect to the granting of any waiver or variance of the minimum capital requirement, the Commissioner [~~commissioner~~] may impose any condition, limitation, or restriction on such increase or decrease as the Commissioner [~~commissioner~~] may deem necessary to ensure compliance with law and regulations and to prevent unsafe and unsound practices.

(d) The Commissioner [~~commissioner~~] may withdraw or modify any increase or decrease granted pursuant to this section if:

(1) the institution fails to comply with its capital plan;

(2) the increase or decrease was granted contingent upon the occurrence of events that do not subsequently occur;

(3) the savings bank undergoes a change of control or a material change in management that was not approved by the Commissioner [~~commissioner~~];

(4) the savings bank engages in practices inconsistent with achieving its minimum capital requirement;

(5) information is discovered that was not made available to the Commissioner [~~commissioner~~] at the time that the increase or decrease was granted and that indicates that the increase or decrease should not have been granted;

(6) the savings bank engages in unsafe and unsound practices, violates any provision of its certificate of formation [~~articles of incorporation~~] or bylaws, or violates any law, rule, or supervisory order applicable to the savings bank or any condition that the Commissioner [~~commissioner~~] has imposed upon the savings bank by written order or agreement;

(7) the savings bank fails to submit the reports required by this section.

§76.23 Business Plans

(a) All savings banks whose operations are considered by the Commissioner [~~commissioner~~] unsafe or unsound pursuant to the Texas Savings Bank Act or which have total capital less than the amount required under §76.21 of this title (relating to Capital Requirements) or §76.22 of this title (relating to Increase or Decrease of Minimum Capital Requirements) must [~~shall~~] develop a business plan and have such business plan available for review by the examiners. The period covered by the business plan must be at least one year [~~shall not be less than one year~~], but may be for so long as the Commissioner [~~any greater number of periods that the commissioner~~] may require.

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(b) The savings bank's business plan will ~~[shall]~~ be reviewed to determine its continued viability in accordance with current economic conditions and approved or revised, as determined by its board of directors, at least annually.

§76.24 Capital Notes and Debentures

No savings bank may issue and sell its capital notes or debentures without the prior written approval of the Commissioner ~~[commissioner]~~ and subject to any conditions the Commissioner ~~[commissioner]~~ may impose with regard to safety and soundness and maintenance of adequate financial condition particularly in areas of preservation of capital, quality of earnings, and adequacy of reserves.

§76.25 Provisions for Issuance of Secured or Unsecured Capital Obligations

A savings bank may, by resolution of its board of directors and with prior approval of the Commissioner ~~[commissioner]~~, issue capital notes, debentures, bonds, or other secured or unsecured capital obligations, which may be convertible in whole or in part to shares of permanent reserve fund stock, or may be issued with warrants attached, to purchase at a future date, shares of permanent reserve fund stock of the issuing savings bank, provided:

(1) the savings bank provides adequate proof to the satisfaction of the Commissioner ~~[commissioner]~~ that the holders of such obligations will receive properly amortized payments of both principal and interest at regularly stated intervals, or that proper provision is made for sinking fund allocations to retire all principal of and interest on such obligations; and

(2) sufficient evidence is furnished to the Commissioner ~~[commissioner]~~ as to the need and utilization of such funds by the savings bank in a profitable manner.

§76.26 Joint Issuance of Capital Obligations

On the same terms and conditions as stated in §76.25 of this title (relating to Provisions for Issuance of Secured or Unsecured Capital Obligations), a savings bank may, by resolution of its board of directors and with prior approval of the Commissioner ~~[commissioner]~~, join other savings banks in the joint issuance of capital notes, debentures, bonds, or other secured or unsecured capital obligations if it meets the terms and conditions of §76.25 of this title.

SUBCHAPTER C HOLDING COMPANIES

§76.41 Registration

A holding company must ~~[shall]~~ register with the Commissioner ~~[commissioner]~~ on forms prescribed by the Commissioner ~~[commissioner]~~ within 90 days after the date of becoming a holding company. The forms must include information on the financial condition, ownership, operations, management, and intercompany relations of the holding company and its subsidiaries, and on related matters the Commissioner ~~[commissioner]~~

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finds necessary and appropriate. On application, the Commissioner [~~commissioner~~] may extend the time within which a holding company is required to [~~shall~~] register and file the required information.

§76.42 Reports

Each holding company and each subsidiary of a holding company, other than a savings bank, must [~~shall~~] file with the Commissioner [~~commissioner~~] reports required by the Commissioner [~~commissioner~~]. The reports must be made under oath and must be in the form and for the periods prescribed by the Commissioner [~~commissioner~~]. Each report must contain information concerning the operations of the holding company and its subsidiaries as the Commissioner [~~commissioner~~] may require. A holding company must [~~shall~~] file with the Commissioner [~~commissioner~~] copies of any filings, documents, statements, or reports required to be filed with the appropriate federal banking agency, unless such filing, document, statement, or report is publicly available [~~regulatory authorities~~].

§76.43 Books and Records

Each holding company must [~~shall~~] maintain books and records as may be prescribed by the Commissioner [~~commissioner~~]. The records must be created and maintained in accordance with the requirements of §76.1 of this title (relating to Books and Records), pertaining to savings banks

§76.44 Examinations

Each holding company and each subsidiary of a holding company is subject to examinations as the Commissioner [~~commissioner~~] may prescribe. The holding company must [~~shall~~] pay the cost of an examination. The confidentiality provisions of Tex. Fin. Code §96.356 [~~the Texas Savings Bank Act, §96.356, shall~~] apply to this section. The Commissioner [~~commissioner~~] may furnish examination and other reports to any appropriate governmental department, agency, or instrumentality of this state, another state, or the United States. For purposes of this section, the Commissioner [~~commissioner~~], to the extent deemed feasible, may use reports filed with or examinations made by appropriate federal agencies or regulatory authorities of other states.

§76.45 Agent for Service of Process

The Commissioner [~~commissioner~~] may require a holding company or a person, other than a corporation, connected with a holding company to execute and file a prescribed form of irrevocable appointment of agent for service of process.

§76.46 Release from Registration

The Commissioner [~~commissioner~~] at any time, on the Commissioner's [~~commissioner's~~] own motion or on application, may release a registered holding company from a

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registration made by the company if the Commissioner [~~commissioner~~] determines that the company no longer controls a savings bank.

§76.47 Mutual Holding Companies

(a) A savings bank may reorganize as a mutual holding company by complying with the provisions of Tex. Fin. Code §§97.051 - 97.053 [~~Finance Code Chapter 97, Subchapter B (Finance Code §97.051)~~]. The savings bank shall [~~shall~~] provide to the Commissioner [~~commissioner~~] an application to reorganize in a form specified by the Commissioner [~~commissioner~~]. The applicant must [~~shall~~] provide one signed original and at least one copy of the application together with complete exhibits. The application shall [~~shall~~] include:

(1) the proposed certificate of formation [~~two copies of the articles of incorporation~~] for the proposed subsidiary savings bank which must [~~shall~~] comply with the requirements of Tex. Fin. Code [~~Finance Code~~] §92.051 and §92.052 or §92.053, as applicable;

(2) the proposed [~~two copies of the~~] bylaws for the proposed subsidiary;

(3) [~~two copies of~~] the proposed restated certificate of formation [~~articles of incorporation~~] and bylaws of the mutual holding company;

(4) the complete plan of reorganization;

(5) a certification by the president or secretary as to how that the reorganization, including the amendments to the certificate of formation [~~articles of incorporation~~] and bylaws of the mutual holding company have been approved by a majority of the members or shareholders of the reorganizing savings bank in accordance with Finance Code Chapter 97, Subchapter B.

(6) A fee [~~which shall be~~] in the amount of the fee required for the conversion of a mutual savings bank into a stock savings bank under §76.106 of this title (relating to Fee for Mutual to Stock Conversion).

(b) On receipt of the application, the Commissioner [~~commissioner~~] may conduct an examination of the applicant savings bank.

(c) The Commissioner may [~~commissioner shall~~] approve the reorganization without a hearing if the Commissioner [~~commissioner~~] determines:

(1) that the resulting savings bank will be in sound condition and meets all requirements of Finance Code Chapter 92, Subchapter B, and relevant rules of the Commissioner [~~commissioner~~] and the Finance Commission; and

(2) the applicant has received all approvals required under federal law for the creation of a bank or thrift holding company.

(d) If the Commissioner [~~commissioner~~] denies an application to reorganize, the applicant may appeal in the same manner as provided in Tex. Fin. Code [~~Finance Code~~] §92.304.

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(e) A mutual holding company may establish a subsidiary holding company as a direct subsidiary to hold 100% of the stock of its savings bank subsidiary in accordance with the provisions of this subsection.

(1) The subsidiary holding company may be established either at the time of the initial mutual holding company reorganization or at a subsequent date, subject to the approval of the Commissioner [Department].

(2) For the purposes of Tex. Fin. Code [~~Finance Code~~] §97.053(a)(3) and (4), the subsidiary holding company will [~~shall~~] be treated as a savings bank issuing stock and must comply with [~~shall be subject to~~] the requirements of those sections. The mutual holding company parent must at all times own more than fifty percent (50%) of the outstanding stock of the subsidiary holding company.

(3) The certificate of formation [~~charter~~] and by-laws of a subsidiary holding company must be approved by the Commissioner [Department] and may only be amended with the prior approval of the Commissioner [Department].

{{Subchapter D will effectively be repealed}}

[SUBCHAPTER D FOREIGN SAVINGS BANKS]

{{Section 76.61 will be repealed}}

[§76.61 Foreign Savings Banks]

[~~The rules and regulations in §75.10 of this title (relating to Change of Name) and §§75.31 – 75.36, 75.38, 75.39, and 75.41 of this title (relating to Additional Offices) shall be applicable to foreign savings banks.~~]

{{Subchapter E will effectively be repealed}}

[SUBCHAPTER E HEARINGS]

{{Section 76.71 will be repealed}}

[§76.71 Hearings Officer]

[~~Chapter 11 of the Texas Finance Code provides that the Finance Commission may employ a hearings officer, who for purposes of Government Code, §2003.21, is an employee of the Department of Savings and Mortgage Lending, Texas Department of Banking and the Office of the Consumer Credit Commissioner. As determined by the Commissioner, the Finance Commission hearings officer or an Administrative Law Judge at the State Office of Administrative Hearings (SOAH) may conduct hearings under provisions of the Act.~~]

{{Section 76.72 will be repealed}}

[§76.72 Rules of Procedure for Contested Hearings]

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~~[Rules of procedure for contested hearings as set forth in the Texas Administrative Code, Title 7, Chapter 9, Subchapter A and B, as revised, are incorporated herein by reference.]~~

{{Section 76.73 will be repealed}}

~~§76.73 Publication of Hearing Notice~~

~~[The provisions of §75.3 of this title (relating to Publication of Notice of Charter Application), §75.84 of this title (relating to Publication), and §75.91 of this title (relating to Mutual to Stock Conversion) provide specific requirements regarding the form, content and time for publication of notice of hearing. Notwithstanding these provisions, content of the publication notice may be modified with approval of the commissioner to facilitate joint publication of the notice with other regulatory agencies having jurisdiction in the matter, expedite the hearing process, or provide other information relevant to the hearing or arrangement and scheduling therefor.]~~

SUBCHAPTER F FEES AND CHARGES

§76.91 Fee for Charter Application

Applicants for new charters for savings banks must ~~[shall]~~ pay a fee of \$10,000. ~~[This fee shall be paid at the time of filing and shall include the cost of filing and processing of said application.]~~ In addition, the applicant must ~~[shall]~~ pay the cost of a formal record and any cost incurred by the Department ~~[department]~~ in connection with the hearing, investigation, and travel expenses.

§76.92 Fee for Branch Office

Applicants for branch offices under §75.33 of this title (relating to Branch Office Applications) must ~~[shall]~~ pay a fee of \$1,500. ~~[This fee shall be paid at the time of filing and shall include the cost of filing, and processing of said application.]~~ In addition, the applicants must ~~[shall]~~ pay ~~[the cost of a formal record and]~~ any cost incurred by the Department ~~[department]~~ in connection with the hearing, investigation and travel expenses.

§76.93 Fee for Mobile Facility

Applicants for a mobile facility under §75.35 of this title (relating to Mobile Facilities) must ~~[shall]~~ pay a fee of \$500 plus \$100 for each location. ~~[This fee shall be paid at the time of filing and shall include the cost of filing, processing, and hearing of said application.]~~ In addition, the applicants must ~~[shall]~~ pay the cost of a formal record and any cost incurred by the Department ~~[department]~~ in connection with the hearing, investigation, and travel expenses.

§76.94 Fee for Change of Name or of Location

Applicants for change of name or change of location of any branch office, approved or existing, ~~[shall]~~ pay a fee of \$500. ~~[This fee shall be paid at the time of filing and shall~~

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~~include the cost for filing, processing, and hearing of said application.]~~ In addition, the applicants must ~~[shall]~~ pay ~~[the cost of a formal record]~~ and any cost incurred by the Department ~~[department]~~ in connection with the hearing, investigation and travel expenses.

§76.95 Fee for Special Examination or Audit

Each savings bank subject to a special examination may be required to ~~[shall]~~ pay to the Department ~~[department]~~ an examination fee based upon a daily rate of \$325 for each examiner engaged in the examination of the affairs of such institution. For the purposes of this section, a special examination includes ~~[shall include]~~ only those examinations which the Commissioner ~~[commissioner]~~ conducts or causes to have conducted after the institution has completed one annual examination or such other additional examinations as the Commissioner ~~[commissioner]~~ deems to be necessary. This special examination fee will ~~[shall]~~ not be charged for an institution's annual regular examination.

§76.96 Fee for Certificate of Formation ~~[Charter]~~ and Bylaw Amendments

The Commissioner will ~~[commissioner shall]~~ collect a filing fee of \$100 for each request for approval of amendments to the certificate of formation or ~~[amendment to a charter or to]~~ the bylaws of a savings bank.

§76.97 Fee for Permission To Issue Capital Obligations

The Commissioner will ~~[commissioner shall]~~ collect a filing fee of \$1,000 for each application by a savings bank for permission to issue capital notes, debentures, bonds, or other capital obligations to cover processing and investigation of such applications.

§76.98 Annual Assessments

[No change.]

§76.99 Fee for Reorganization, Merger, and Consolidation

(a) Any savings bank seeking to reorganize, merge, and/or consolidate, pursuant to the Texas Savings Bank Act, Subchapter H, and §§75.81 - 75.83, 75.85, 75.87 and 75.88 of this title must ~~[shall]~~ pay to the Commissioner ~~[commissioner]~~, at time of filing its plan, a fee of \$2,500 for each financial institution involved in a plan of reorganization, merger and/or consolidation. For each financial institution involved in a plan filed for a purchase and assumption acquisition, a fee of \$2,000 must ~~[shall]~~ be paid to the Commissioner ~~[commissioner]~~. No fee is required for a reorganization, merger, or consolidation pursuant to §75.89 of this title (relating to Reorganization, Merger or Conversion to Another Financial Institution Charter) where the resulting institution is not a state savings bank. No additional fee is required for an interim charter to facilitate a transaction under §§75.81 - 75.83, 75.85, 75.87 and 75.88 of this title.

(b) The fee set forth in subsection (a) of this section covers ~~[shall cover]~~ the cost of filing and processing with respect to the plan. In addition, such savings bank must ~~[shall]~~ pay

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~~[the cost of a formal record, if applicable,]~~ any cost incurred by the Department ~~[department]~~ in connection with the hearing, investigation, and travel expenses.

§76.100 Fees for Expedited Applications

Applicants for expedited applications under §75.26 of this title (relating to Expedited Applications) must ~~[shall]~~ pay the following fees:

- (1) branch office - \$500;
- (2) mobile facilities - \$500;
- (3) office relocation - \$250;
- (4) reorganization, merger or consolidation - \$2,500; and
- (5) purchase and assumption transactions - \$2,000

~~[branch office \$500; mobile facilities \$500; office relocation \$250; reorganization, merger or consolidation \$2,500; and purchase and assumption transactions \$2,000. [All fees shall be paid at the time of filing and shall include the cost of filing, processing, and hearing of said application].~~

§76.101 Fee for Change of Control

The Commissioner will ~~[commissioner shall]~~ collect a filing fee of \$5,000 ~~[\$10,000]~~ for each change of control application filed pursuant to §75.122 ~~[[§§75.121—75.127]~~ of this title (relating to Acquisition of a Savings Bank) ~~[Change of Control]~~ and \$2,500 for rebuttal of control of a savings bank or rebuttal of concerted action].

§76.102 Fee for Subsidiaries

The Commissioner will ~~[commissioner shall]~~ collect a fee of \$1,500 for each application by a savings bank for permission to make an initial investment in a subsidiary corporation pursuant to §§77.91 - 77.95 of this title (relating to Authorized Loans and Investments) to cover the processing and investigation of such applications, and an additional fee of \$100 for each office other than the home office of a subsidiary that is applied for. The Commissioner will ~~[commissioner shall]~~ collect a fee of \$500 for service corporation application to engage in a new activity; \$300 for redesignation of an operating subsidiary; and \$100 for each application by a savings bank to change the name of a subsidiary or the location of a subsidiary office.

§76.103 Fee for Charter Application under 7 TAC §75.36

The Commissioner will ~~[commissioner shall]~~ collect a filing fee of \$500 for the processing of an application for a charter for a savings bank where the sole purpose of such application is the purchase of the assets, assumption of liabilities, and continuation of the business of any institution deemed by the Commissioner ~~[commissioner]~~ to be in an

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unsafe condition, pursuant to §75.36 of this title (relating to [~~Designation as and~~] Exemption for Supervisory Sale).

§76.105 Fee for Conversion into a Savings Bank

The Commissioner will [~~commissioner shall~~] collect a filing fee for each application filed pursuant to §75.90 of this title (relating to Conversion into a Savings Bank) for conversion into a savings bank, as follows, based on the size of its total assets [~~pursuant to the following schedule~~]:

- (1) \$0 - 125 million - \$2,500;
- (2) \$125 - 500 million - \$5,000;
- (3) \$500 million - 1 billion - \$10,000; and
- (4) Over 1 billion - \$15,000

~~[\$0—125 million \$2,500; \$125—500 million \$5,000; \$500 million—1 billion \$10,000; and Over 1 billion \$15,000].~~

§76.106 Fee for Mutual to Stock Conversion

The Commissioner will [~~commissioner shall~~] collect a filing fee of \$7,500 for each application filed pursuant to §75.91 of this title (relating to Mutual to Stock Conversion) for conversion into a stock savings bank.

§76.107 Fee for Holding Company Registration

The Commissioner will [~~commissioner shall~~] collect a filing fee of \$2,000 for each application filed pursuant to §76.41 of this title (relating to Holding Companies) for [~~as~~] registration of a holding company.

§76.108 Fees for Public Information Requests

(a) The fees for copies of records of the Department [~~department~~] which are subject to public examination pursuant to Chapter 552 of the Texas Government Code will be assessed [~~shall~~] in accordance with Tex. Gov't Code [~~Texas Government Code~~] §552.262, be those adopted by rules of the attorney general.

(b) All requests will be treated equally. Charges may be waived at the Commissioner's [~~commissioner's~~] discretion.

(c) If records are requested to be inspected instead of receiving copies, access will be by appointment only during regular business hours of the Department [~~department~~] and will be at the discretion of the Commissioner [~~commissioner~~].

(d) Confidential documents will not be made available for examination or copying except under court order or as otherwise permitted or required by a rule adopted under this title or other applicable law.

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(e) All public information requests will be referred to the Commissioner's [commissioner's] designee before the Department [department] will release the information.

§76.109 Fee for Protest Filing

~~[(a)] A person or entity filing a protest to an application must [shall] pay a fee of \$2,500 simultaneously with such protest filing. The purpose of this fee is to partially offset the Department's [department's] increased cost of processing an application and reduce costs incurred by the applicant that result solely from the protest.~~

~~[(b) Additionally, the Administrative Law Judge for a contested hearing may allocate costs incurred by the department to the parties pursuant §76.72 of this title (relating to Rules of Procedure for Contested Hearings). In such cases, the fee paid pursuant to subsection (a) of this section shall be applied toward payment of the protestant's allocation of hearing costs; however, no amount will be refunded and any additional amounts will be billed.~~

~~(c) Notwithstanding the provisions of subsection (a) of this section, a member of the general public allowed to testify under oath or affirmation in a contested case, who is not deemed a party by the Administrative Law Judge under the provisions incorporated by §76.72 of this title is not subject to this fee.]~~

§76.110 Fees Nonrefundable

All filing fees must be paid at the time of filing and are nonrefundable. Except for fees established by statute, the Commissioner [commissioner] may exercise discretion to reduce or waive any filing fee and will [shall] charge fees on a consistent and nondiscriminatory basis.

{{Subchapter G will effectively be repealed}}

[SUBCHAPTER G STATEMENTS OF POLICY]

{{Section 76.121 will be repealed}}

[§76.121 Application of the Statutory Parity Provision]

~~[A savings bank may make any loan or investment or engage in any activity permitted under state law for banks or savings and loan associations or under the laws of the United States for federal savings and loan associations, savings banks or national banks with principal offices located in this state. The commissioner and the Finance Commission reserve the authority to impose by limitations or restrictions on the preceding parity provision. However, any such limitations and/or restrictions shall only be effective if such specifically states that it overrides the §93.008 parity provision of the Texas Savings Bank Act.]~~

SUBCHAPTER H COMPLAINT PROCEDURES

§76.122 Savings Bank Complaint Notices

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(a) Definitions.

(1) "Privacy notice" means any notice which a state savings bank gives regarding a consumer's right to privacy, regardless of whether it is required by a specific state or federal law or given voluntarily.

(2) "Required notice" means a notice in a form set forth or provided for in subsection (b)(1) of this section.

(b) Notice of how to file complaints.

(1) In order to let its consumers know how to file complaints, state savings banks must use the following notice: The (name of state savings bank) is chartered under the laws of the State of Texas and by state law is subject to regulatory oversight by the Department of Savings and Mortgage Lending. Any consumer wishing to file a complaint against the (name of state savings bank) should contact the Department of Savings and Mortgage Lending through one of the means indicated below: In Person or by [U.S.] Mail: 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294, Telephone No.: (877) 276-5550, Fax [No.]: (512) 936-2003, or through the [~~via electronic submission on~~] the Department's website at www.sml.texas.gov [http://www.sml.texas.gov/consumerinformation/tdsml_consumer_complaints.html].

(2) A required notice must be included in each privacy notice that a state savings bank sends out.

(3) Regardless of whether a state savings bank is required by any state or federal law to give privacy notices, each state savings bank must take appropriate steps to let its consumers know how to file complaints by giving them the required notice in compliance with paragraph (1) of this subsection.

(4) The following measures are deemed to be appropriate steps to give the required notice:

(A) In each area where a state savings bank conducts business on a face-to-face basis, the required notice, in the form specified in paragraph (1) of this subsection, must be conspicuously posted. A notice is deemed to be conspicuously posted if a customer with 20/20 vision can read it from the place where he or she would typically conduct business or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, Community Reinvestment Act notices, etc.) are posted.

(B) For customers who are not given privacy notices, the state savings bank must give the required notice when the customer relationship is established.

(C) The required notice must be posted on each website of the savings bank that is accessible by the public and either used to conduct banking activities or from which the savings bank advertises to solicit such business. The required notice is deemed to be

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conspicuously posted on a website when it is displayed on the initial or home page of the website (typically the base-level domain name) or is otherwise contained in a linked page with the link to such page prominently displayed on such initial or home page. [If a state savings bank maintains a website, the required notice must be included in a screen which the consumer must view whenever the site is accessed].