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TITLE 7. BANKING AND SECURITIES

Changes Concerning Additional Offices

PART 4. DEPARTMENT OF SAVINGS
AND MORTGAGE LENDING

CHAPTER 75. APPLICATIONS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts: the repeal of existing rules at 7 Texas Administrative Code (TAC) Chapter 75, Subchapter A, §§75.1 - 75.3, 75.5 - 75.7, 75.9, 75.10; Subchapter C, §§75.31, 75.34, and 75.35; Subchapter D, §§75.83 - 75.86 and 75.90; and Subchapter E, §75.121, 75.123, and §75.125; new rules at 7 TAC Chapter 75, Subchapter A, §§75.1 - 75.3, 75.6, and 75.10; Subchapter C, §75.31 and §75.35; Subchapter D, §75.83 and §75.90; Subchapter E, §75.123; and new Subchapter F, §§75.201 - 75.204; and amendments to existing rules in 7 TAC Chapter 75, Subchapter A, §75.8; Subchapter B, §§75.25 - 75.27; Subchapter C, §§75.32, 75.33, 75.36, 75.38, 75.39, and 75.41; Subchapter D, §§75.81, 75.82, 75.87 - 75.89, and 75.91; and Subchapter E, §§75.122, 75.124, 75.126, and 75.127, without changes to the text as published in the January 1, 2021 issue of the *Texas Register* (46 TexReg 20). The rules will not be republished.

Finance Code §92.063 requires a savings bank to obtain the approval of the department's commissioner (commissioner) in order to establish an office other than the savings bank's home office approved under its banking charter. Existing §75.31, among other things, reasserts the requirements of Finance Code §92.063. The adopted rules repeal and replace existing §75.31. Adopted new §75.31 (repealed and replaced), at subsection (e), contains a list of activities that, when performed at a location other than the home or a branch office of a savings bank, is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 the savings bank requiring prior approval of the commissioner to establish. Existing §75.32, concerning Types of Additional Offices, describes specific types of additional offices other than a home or a branch office that are recognized by the commissioner and require the commissioner's prior approval to establish. Existing §75.32(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 an approved home or branch office, as provided by new § 75.31 (repealed and replaced). Other sanctioned activities in new §75.31 (repealed and replaced) include the operation of automated or remote banking equipment (*e.g.*, ATMs), advertising, the operation of information technology equipment, participation at trade association and community events, and the provision of customer service ancillary to banking functions. Adopted new §75.31 (repealed and replaced) requires a savings

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 75 partially implement Finance Code Subtitle C, the Texas Savings Bank Act. The adopted rules were identified during the department's periodic review of 7 TAC Chapter 75, conducted pursuant to Government Code §2001.039.

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bank seeking to permanently close an approved office to comply with the notice requirements of federal law and provide the department with a copy of such notice. Adopted new §75.31 (repealed and replaced) also clarifies that upon closure of the office, any prior approval to have opened such office is deemed revoked and a savings bank seeking to reopen such office must seek new approval in order to do so.

Changes Concerning the Selling of Assets

Under existing §75.81, concerning Reorganization, Merger, Consolidation or Purchase and Assumption Transaction, sale of a savings bank's assets made "in bulk [and not] in the ordinary course of business" constitutes a purchase and assumption transaction under the rule, requiring application with the department and approval from the commissioner. The adopted rules amend §75.81 such that the selling of assets in this fashion is no longer considered to constitute a purchase and assumption transaction under the rule.

Changes Concerning Application Procedures

The adopted rules make various changes concerning how applications are filed with the department. The adopted rules create a new Subchapter F, concerning General Provisions, designed to contain requirements of general applicability in the chapter. Existing §75.121, concerning Definitions, containing definitions applicable to the entirety of Chapter 75, is repealed and its subject matter addressed by new Subchapter F, §75.201, concerning Definitions. Adopted new §75.201 largely reconstitutes the definitions in existing §75.121, however,

new definitions are added for the terms "FDIC" and "managing officer," as that term is used in Finance Code §92.055. The existing rules in Chapter 75 provide that, for most application types, the applicant must publish a public notice of the application in a newspaper of general circulation in the county or counties affected by the relief sought by the application. A new §75.203 is added in new Subchapter F to establish uniform requirements for making such notices. The existing rules for each application type are also changed (amended, or by repeal and replacement of the rule) to clarify and establish by rule the county or counties where the public notice must be published.

Changes Concerning Hearings on Applications

Existing §75.10, concerning Change of Name, §75.33, concerning Branch Office Applications, §75.35, concerning Mobile Facilities, §75.38, concerning Change of Home or Branch Office Location, and §75.83, concerning Notice of Hearing (reorganization, merger, or consolidation), create processes and procedures governing how hearings are conducted for each application type addressed by each such rule by referring to and adopting the processes and procedures governing charter applications, contained in existing Chapter 75, Subchapter A. The adopted rules establish separate processes and procedures specific to each such rule, rather than by adopting by reference the processes and procedures applicable to charter applications. Existing §75.7, concerning Motions for Rehearing, which establishes certain timelines for a motion for rehearing made pursuant to Finance Code §91.006, is

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repealed, and its subject matter addressed by new Subchapter F, §75.203, concerning Motions for Rehearing. Adopted new §75.203 also extends the time period for filing a reply to a motion for rehearing from 25 days after the date the order was signed under existing §75.7, to 30 days after the date the order was signed.

Other Modernization and Update Changes.

The adopted rules 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.

Summary of Public Comments

Publication of the commission's proposal for the rule amendments, new rules, and repeals recited a deadline of 30 days to receive public comments, or January 31, 2021. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

SUBCHAPTER A. CHARTER APPLICATIONS

7 TAC §§75.1 - 75.3, 75.5 - 75.7, 75.9, 75.10

Statutory Authority

The repeals are adopted under the authority of Finance Code §11.302(a), which authorizes the commission to adopt rules applicable to state savings banks. The adopted rules are also adopted under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-

chartered savings banks and to protect public investment in Texas-chartered savings banks.

The adopted rules affect the statutes contained in Finance Code Subtitle C, the Texas State Savings Bank Act.

§75.1. Application for Permission to Organize a State Savings Bank.

§75.2. Hearing on Charter Application.

§75.3. Publication of Notice of Charter Application.

§75.5. Filing of Proof of Publication.

§75.6. Time of Decision on Charter Application.

§75.7. Motions for Rehearing.

§75.9. Notice to Applicants.

§75.10. Change of Name.

The agency certifies that legal counsel has reviewed the adoption and found it to be within the state agency's legal authority.

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7 TAC §§75.1 - 75.3, 75.6, 75.8, 75.10

Statutory Authority

The adopted rules are adopted under the authority of Finance Code §11.302(a), which authorizes the commission to adopt rules applicable to state savings banks. The adopted rules are adopted under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §§75.1 - 75.3 and 75.6 are adopted under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraph (2) of that subsection; Chapter 92, Subchapter B; §92.203; and §92.601(b). 7 TAC §75.8 is adopted under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (2) and (14) of that subsection; §92.051; §92.060; and §92.058. 7 TAC §75.10 is adopted under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (2) and (14) of that subsection; and §92.063.

The adopted rules affect the statutes contained in Finance Code Subtitle C, the Texas State Savings Bank Act.

§75.1.Application for Savings Bank Charter.

(a) The charter application and all required supporting information must be executed by the proposed incorporators of the proposed savings bank which must consist of at least five adult residents of this state and must include all of the information required by Tex. Fin. Code §92.051. The application must include a request for a corporate name to be approved by the Commissioner. The application must include the proposed home office of the savings bank, the identity and qualifications of the proposed managing officer(s), and any additional information the Commissioner deems to be necessary or prudent to enable the Commissioner to determine the matters set forth in Tex. Fin. Code §92.058.

(b) No application to incorporate a savings bank will be approved unless the application and evidence produced at a hearing, if one is required, satisfy the 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 or the amount required of a national bank. No savings bank with an approved charter may open or do business as a savings bank until the Commissioner certifies that the 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.

§75.2.Publication of Notice of Charter Application.

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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.

§75.3.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.

§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.

§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 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.

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§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, and a savings bank may not operate under any name which has not been approved by the Commissioner. The Commissioner may not approve an application by a savings bank to change its name unless the Commissioner finds from the information furnished with the application, the evidence produced at the hearing, if one is required, and 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.

(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 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 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

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application lapsed as provided by subsection (c) of this section.

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SUBCHAPTER B. EXPEDITED APPLICATIONS

7 TAC §§75.25 - 75.27

Statutory Authority

The adopted rules are adopted under the authority of Finance Code §11.302(a), which authorizes the commission to adopt rules applicable to state savings banks. The adopted rules are also adopted under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §§75.25 - 75.27 are adopted under the authority of, and to implement, Finance Code

§96.002(a), for those specific subject matters outlined in paragraph (2) of that subsection.

The adopted rules affect the statutes contained in Finance Code Subtitle C, the Texas State Savings Bank Act.

§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 §325.103~~];

(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) (No change.)

(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

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§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 [~~§§76.91—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) (No change.)

(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) - (4) (No change.)

(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 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

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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.

The agency certifies that legal counsel has reviewed the adoption and found it to be within the state agency's legal authority.

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SUBCHAPTER C. ADDITIONAL OFFICES

7 TAC §§75.31, 75.34, 75.35

Statutory Authority

The repeals are adopted under the authority of Finance Code §11.302(a), which authorizes the commission to adopt rules applicable to state savings banks. The adopted rules are also adopted under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

§75.31. Establishment and Operation of Additional Offices.

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

§75.35. Mobile Facilities.

The amended rules affect the statutes contained in Finance Code Subtitle C, the Texas State Savings Bank Act.

The agency certifies that legal counsel has reviewed the adoption and found it to be within the state agency's legal authority.

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**7 TAC §§75.31 - 75.33, 75.35, 75.36, 75.38,
75.39, 75.41**

Statutory Authority

The adopted rules are adopted under the authority of Finance Code §11.302(a), which authorizes the commission to adopt rules applicable to state savings banks. The adopted rules are also adopted under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §§75.31 - 75.33, 75.35, 75.36, 75.38, 75.39 and 75.41 are adopted under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (2) and (14) of that subsection; and §92.063. 7 TAC §75.36 is also adopted under the authority of, and to implement, Finance Code §92.352.

The adopted rules affect the statutes contained in Finance Code Subtitle C, the Texas State Savings Bank Act.

§75.31. Approval of Offices Required; Closing an Office; Activities Not Requiring an Approved Office.

(a) Approval Required. No savings bank may establish, maintain, or relocate its home office, or an additional office as provided by §75.32 of this title (relating to Types of Additional Offices), without the prior written approval of the Commissioner, except as otherwise provided by §75.38 of this title (relating to Change of Home or Additional Office Location). A savings bank's home office is the place where a savings bank has its headquarters and from which all of its operations are directed.

(b) Ancillary Facilities. An authorized or approved office of a savings bank is the place where the business of the savings bank is conducted, and with the prior written consent of the Commissioner may include facilities ancillary thereto for the extension of the savings bank's services to the public. Any authorized or approved office of a savings bank also means, with the prior written consent of the 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 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, other than a temporary closure as provided by §75.39 of this title (relating to Temporary Closing of Additional Offices), or an emergency closure as provided by Tex. Fin. Code §93.011, a savings bank must comply with the notice

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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, or any combination thereof, 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, 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 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.

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Subject to the provisions of §§~~75.31 - 75.33, 75.35, 75.36, 75.38, 75.39, and 75.41~~ [75.34 - 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) (No change.)

~~[(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 must [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 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) - (3) (No change.)

(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 [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].

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(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 [~~§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 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 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 (g) of this section.

§75.35. Mobile Facilities.

(a) Each application for permission to establish a mobile facility must state the proposed location(s) at and times during which the facility will operate; the need therefor; the personnel and office facilities to be provided and the estimated expense of such facility. An application for permission to establish a mobile facility may not be approved unless the Commissioner determines from the information furnished with the application, the evidence produced at the hearing, if one is required, and Department records, all requirements 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.

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(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 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

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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 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 ~~[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 ~~[§§75.31 - 75.41]~~ of this title (relating to Additional Offices), are not ~~[shall not be]~~

applicable, and such purchase must ~~[shall]~~ be effected in accordance with this section.

§75.38. Change of Home or Additional Office ~~[Branch Office]~~ Location.

(a) A savings bank may not move its home office or any additional office as provided by §75.32 of this title (relating to Types of Additional Offices) ~~[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

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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 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.

§75.39. Temporary Closing of Additional Offices.

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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, the Commissioner's approval to establish such office for purposes of §75.31 of this title (relating to Additional Offices; Activities Not Requiring an Approved Office) is deemed revoked [such authorization for the office 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 [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.

The agency certifies that legal counsel has reviewed the adoption and found it to be within the state agency's legal authority.

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SUBCHAPTER D. REORGANIZATION,
MERGER, CONSOLIDATION,
CONVERSION, PURCHASE AND
ASSUMPTION OR ACQUISITION

7 TAC §§75.81 - 75.83, 75.87 - 75.91

Statutory Authority

The adopted rules are adopted under the authority of Finance Code §11.302(a), which authorizes the commission to adopt rules applicable to state savings banks. The adopted rules are also adopted under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §§75.81 - 75.83 and 75.88 are adopted under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (2) and (13) of that subsection; and Chapter 92, Subchapters C and H. 7 TAC §75.88 is also adopted under the authority of, and to implement, Finance Code Chapter 92, Subchapter I. 7 TAC §75.89 is adopted under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (2) and (13) of that subsection; and Chapter 92, Subchapter F. 7 TAC §75.90 is adopted under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (2) and (13) of that subsection; and Chapter 92, Subchapter G. 7 TAC §75.91 is adopted under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (2) and (13) of that subsection; and §92.052.

The adopted rules affect the statutes contained in Finance Code Subtitle C, the Texas State Savings Bank Act.

§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 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

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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 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 Government Code Chapter 2001 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.

§75.87. ~~Designation as and~~ Exemption for Supervisory Merger.

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(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 FDIC [~~Federal Deposit Insurance Corporation~~] has determined, and certified to the Commissioner [~~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; Form and Content of Application; and Notice and Hearing) are not applicable, and the merger will instead be effected pursuant to this section [~~Filing of Plan; Form and Content of Application; Notice and Hearing; Publication; Time of Decision; and Appeal~~] shall not be applicable, and the merger 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 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

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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) - (3) (No change.)

(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 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 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 board of directors must approve

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and authorize the filing of a conversion plan and application. Upon approval of the conversion plan, the plan must 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 be so converted, which resolution, verified by affidavit of the secretary or an assistant secretary, must be filed with the 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 also vote on the directors of the savings bank. The proposed directors must execute an application for savings bank charter as provided by Finance Code Chapter 92 Chapter 92, Subchapter B, and §75.1 of this title (relating to Application for Savings Bank Charter).

(c) Review by Commissioner; Approval. The Commissioner, on receipt of the application and verified copy of the minutes, will conduct an examination of the financial institution seeking conversion. Following the examination, the Commissioner will approve the conversion without a hearing if the Commissioner determines that the converting financial institution is in sound condition and meets all standards, conditions, and requirements of Finance Code 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). On approval of the conversion, the saving bank's charter is deemed to include a paragraph 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 denies an application to convert and a written request for a hearing is delivered to the Commissioner within 10 days after the date of denial. A hearings officer designated by the Commissioner will 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.

§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) (No change.)

(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.

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

(1) (No change.)

(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;

(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) (No change.)

(6) that each savings accountholder of the converting savings bank will [~~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) (No change.)

(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) (No change.)

(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.

Figure: 7 TAC §75.91(d) (No change.)

(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

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of publication from each publisher with the Commissioner [~~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 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) - (3) (No change.)

(h) Within 45 days:

(1) (No change.)

(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 must [~~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 is [~~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) (No change.)

The agency certifies that legal counsel has reviewed the adoption and found it to be within the state agency's legal authority.

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7 TAC §§75.83 - 75.86, 75.90

Statutory Authority

The repeals are adopted under the authority of Finance Code §11.302(a), which authorizes the commission to adopt rules applicable to state savings banks. The adopted rules are also adopted under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules

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necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

The adopted rules affect the statutes contained in Finance Code Subtitle C, the Texas State Savings Bank Act.

§75.83. Notice and Hearing.

§75.84. Publication.

§75.85. Time of Decision.

§75.86. Appeal.

§75.90. Conversion into a Savings Bank.

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SUBCHAPTER E. CHANGE OF CONTROL

7 TAC §§75.121, 75.123, 75.125

Statutory Authority

The repeals are adopted under the authority of Finance Code §11.302(a), which authorizes the commission to adopt rules applicable to state savings banks. The adopted rules are also adopted under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

The adopted rules affect the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

§75.121. Definitions.

§75.123. Hearings.

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

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7 TAC §§75.122 - 75.124, 75.126, 75.127

Statutory Authority

The adopted rules are adopted under the authority of Finance Code §11.302(a), which authorizes the commission to adopt rules applicable to state savings banks. The adopted rules are also adopted under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §§75.122 - 75.124, 75.126 and 75.127 are adopted under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (2) and (10) of that subsection; and Chapter 92, Subchapter L. 7 TAC §75.122 is also adopted under the authority of Finance Code §96.002(b).

The adopted rules affect the statutes contained in Finance Code Subtitle C, the Texas State Savings Bank Act.

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

(i) - (v) (No change.)

(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

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applicant and any predecessors thereof ~~[shall]~~ have been in existence;

(C) (No change.)

(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;

(E) - (H) (No change.)

(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) - (C) (No change.)

(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 ~~[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:~~

(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;

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(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.

(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 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.

§75.124. Retention of Control.

(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~~]

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deems the transfer to be against the public interest:

(1) - (2) (No change.)

(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.

§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~~]:

(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) - (3) (No change.)

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SUBCHAPTER F. GENERAL PROVISIONS

7 TAC §§75.201 - 75.204

Statutory Authority

The adopted rules are adopted under the authority of Finance Code §11.302(a), which authorizes the commission to adopt rules applicable to state savings banks. The adopted rules are also adopted under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §§75.202 and 75.203 are adopted under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraph (2) of that subsection. 7 TAC §75.201 is also adopted under the authority of, and to implement, Finance Code §92.055. 7 TAC §75.203 is also adopted under the authority of, and to implement, Finance Code:

§92.057(a)(1); §92.352(a)(1); and §92.557(d).

The adopted rules affect the statutes contained in Finance Code Subtitle C, the Texas State Savings Bank Act.

§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;

(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;

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(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, 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 includes any other person controlling a savings bank.

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(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 Acceptance; 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 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 §75.203 of this title (relating to Public Notice of Application). 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

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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 30th 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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