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TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS
AND MORTGAGE LENDING

CHAPTER 76. MISCELLANEOUS

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 76, Subchapter A, §76.3; Subchapter D, §76.61; Subchapter E, §§76.71 - 76.73; and Subchapter G, §76.121; and amendments to existing rules in 7 TAC Chapter 76, Subchapter A, §§76.1, 76.2, 76.4 - 76.7, and 76.12; Subchapter B, §§76.21 - 76.26; Subchapter C, §§76.41 - 76.47; Subchapter F, §§76.91 - 76.97, 76.99 - 76.103, and 76.105 - 76.110; and Subchapter H, §76.122. Amended section §76.94 is adopted with a minor non-substantive change to correct a typographical error and is republished to reflect such change. Amended section §76.109 is further adopted with substantive changes to the published text due to a formatting error upon publication, and is republished to reflect such changes. The remaining sections affected by the proposal (§§76.1 - 76.7, 76.12, 76.21 - 76.26, 76.41 - 76.47, 76.61, 76.71 - 76.73, 76.91 - 76.93, 76.95 - 76.97, 76.99 - 76.103, 76.105 - 76.108, 76.110, 76.121, 76.122) are adopted without changes to the text as published in the January 8, 2021, issue of the *Texas Register* (46 TexReg 239) and will not be republished.

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 76 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 76, conducted pursuant to Government Code §2001.039.

Notice to Consumers Changes

Existing §76.122, concerning Savings Bank Complaint Notices, requires Texas-chartered savings banks to make a disclosure to consumers concerning the department's regulatory oversight and the ability to file complaints with the department. The adopted rules clarify the existing requirement for a savings bank to make a disclosure on its website by clarifying that the requirement applies only to websites accessible by the public and further clarifying how to conspicuously display such notice on a website in order to comply with the rule.

Books and Records Changes Existing §76.1, concerning Location of Books and Records, addresses how and where a savings bank keeps its books and records. The adopted rules amend §76.1 to clarify that a savings bank must comply with the applicable requirements of federal law in making and keeping its books and records, and require that records be kept in accordance with established best practices of the Federal Financial Institution Examination Council. Amended §76.3 further clarifies that, while records may be kept at a location other than the savings bank's home office, the savings bank must ensure that a complete set of its records is readily accessible at the home office. The title of §76.1 is also amended to better reflect the subject matter of the rule as amended. Existing §76.3 authorizes a savings bank to keep copies of its records, including by electronic means. The adopted rules repeal existing §76.3, and consolidate its subject

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matter in amended §76.1, which provides that records may be kept in an electronic, digital, or magnetic format.

Changes Concerning Reports from a Holding Company

Existing §76.42, concerning Reports, requires holding companies and their subsidiaries to file reports with the commissioner including any reports or other information it is required to file with the appropriate federal banking agency. The adopted rules clarify that a holding company need not file with the commissioner reports it has filed with the appropriate federal banking agency that are publicly available.

Change of Control Fee Changes

Existing §76.101, concerning Fee for Change of Control, establishes the fee for making an application for change of control of a savings bank in accordance with Finance Code Chapter 92, Subchapter L. The adopted rules lower the applicable fee from \$10,000 to \$5,000.

Changes Concerning Hearings on Applications

Existing §§76.71 - 76.73, concerning Hearings Officer, Rules of Procedure for Contested Hearings, and Publication of Hearing Notice, respectively, establish certain processes and procedures governing adjudicative hearings (contested cases) on applications filed with the commissioner. The adopted rules repeal these rules to coincide with a separate rules adoption for 7 TAC Chapter 75, wherein the subject matter of existing §§76.71 - 76.73 is addressed in such chapter.

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 February 7, 2021. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

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

7 TAC §§76.1, 76.2, 76.4 - 76.7, 76.12

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 §76.1 is adopted under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (3) and (5) of that subsection; §92.201; and §96.056. 7 TAC

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§76.2 is adopted under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (3) and (4) of that subsection; and §92.201. 7 TAC §76.4 is adopted under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (7) and (11) of that subsection; §96.051; and §96.053. 7 TAC §76.5 is adopted under the authority of, and to implement, Finance Code §96.002(a), for those specific subject matters outlined in paragraph (11) of that subsection. 7 TAC §76.6 is adopted under the authority of, and to implement, Finance Code §96.002(a), for those specific subject matters outlined in paragraph (9) of that subsection. 7 TAC §76.7 is adopted under the authority of, and to implement, Finance Code §96.002(a), for those specific subject matters set forth in paragraph (11) of that subsection. 7 TAC §76.12 is adopted under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraph (11) of that subsection; §92.051(b)(2); §92.058(c)(2); §92.062; §92.157; and §92.205.

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

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

A savings bank must create and maintain books and records of its operations, including complete minutes of the meetings of its members and the board of directors, and actions taken by written consent in lieu of such meetings. Records must be maintained in compliance with the applicable requirements of the appropriate federal banking agency and established

industry best practices promoted by the Federal Financial Institution Examination Counsel. Records must be accurate, complete, current, legible, readily accessible, and readily sortable. A state savings bank may store original records or copies of records at a location other than the home office; however, a savings bank must ensure that a complete set of its books and records is readily accessible at the home office at all times so as to facilitate the examination of the savings bank by the Commissioner at the home office. A savings bank may maintain copies of its books and records in an electronic, digital, or magnetic format. A true and correct copy of an original record stored in an electronic, digital, or magnetic format is deemed to be an original record.

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

§76.2. Accounting Practices.

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

§76.4. Financial Statements; Annual Reports; Audits.

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

§76.5. Misdescription of Transactions.

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

§76.6. Charging Off or Setting Up Reserves Against [~~against~~] Bad Debts.

The Commissioner [~~commissioner~~], after a determination of value, may order that assets in the aggregate, to the extent that such assets have depreciated in value, or to the

extent the value of such assets, including loans, are overstated in value for any reason, be charged off, or that a special reserve or reserves equal to such depreciation or overstated value be established in accordance with Generally Accepted Accounting Principles (GAAP).

§76.7. Examinations.

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

(b) An examination under this section may be performed jointly or in conjunction with an examination by the saving bank's appropriate federal banking agency. The Commissioner [~~Federal Deposit Insurance Corporation or any other federal depository institutions regulatory agency having jurisdiction over a savings bank, and/or the commissioner~~] may accept an examination made by such federal banking agency in lieu of an examination pursuant to this section.

§76.12. Bylaws

(a) The bylaws of a [~~state~~] savings bank must [~~shall~~] contain sufficient provisions to govern the institution in accordance with the Texas Savings Bank Act, the Texas

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Business Organizations Code, and other applicable laws, rules and regulations, or the certificate of formation [~~articles of incorporation~~]. Bylaws may contain a provision which permits such bylaws to be adopted, amended, or repealed by either a majority of the shareholders or a majority of the board of directors of the savings bank. Bylaw amendments may not take effect before being filed with and approved by the Commissioner [~~commissioner~~].

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

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

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

Filed with the Office of the Secretary of State on February 24, 2021

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Department of Savings and Mortgage Lending

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For further information, please call: (512) 475-1535



7 TAC §76.3

Statutory Authority

The adopted 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.

§76.3.Reproduction and Destruction of Records.

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 B. CAPITAL AND
CAPITAL OBLIGATIONS**

7 TAC §§76.21 - 76.26

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 made 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 §76.21 and §76.22 are adopted under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters set forth in paragraphs (1) and (11) of that subsection; §92.052(b); §92.053(b); §92.054; §92.102; and §92.203. 7 TAC §76.23 is adopted under the authority of, and to implement, Finance Code: 96.002(a), for those specific subject matters set forth in paragraphs (1) and (11) of that subsection; §92.203; and Chapter 96, Subchapter C. 7 TAC §§76.24 - 76.26 is adopted under the authority of, and to implement, Finance Code: 96.002(a), for those subject matters set forth in paragraph (11); and §93.004(b).

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

§76.21. Capital Requirements.

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

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

§76.22. Increase or Decrease of Minimum Capital Requirements.

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

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

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

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

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

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

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

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

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

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

(b) Any savings bank which receives an increase or decrease of its minimum capital requirement from the Commissioner [~~commissioner~~] must file quarterly progress reports regarding compliance with its capital plan. The Commissioner [~~commissioner~~] may require more frequent reports. Any contemplated action that would represent a material variance from the plan that must be

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submitted to the Commissioner [~~commissioner~~] for approval.

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

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

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

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

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

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

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

(6) the savings bank engages in unsafe and unsound practices, violates any provision of its certificate of formation [~~articles of~~

~~incorporation~~] or bylaws, or violates any law, rule, or supervisory order applicable to the savings bank or any condition that the Commissioner [~~commissioner~~] has imposed upon the savings bank by written order or agreement;

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

§76.23. Business Plans.

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

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

§76.24. Capital Notes and Debentures.

No savings bank may issue and sell its capital notes or debentures without the prior written approval of the Commissioner [~~commissioner~~] and subject to any

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conditions the Commissioner [~~commissioner~~] may impose with regard to safety and soundness and maintenance of adequate financial condition particularly in areas of preservation of capital, quality of earnings, and adequacy of reserves.

§76.25. Provisions for Issuance of Secured or Unsecured Capital Obligations.

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

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

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

§76.26. Joint Issuance of Capital Obligations.

On the same terms and conditions as stated in §76.25 of this title (relating to Provisions for Issuance of Secured or Unsecured

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

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. HOLDING COMPANIES

7 TAC §§76.41 - 76.47

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

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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 §§76.41 - 76.47 are adopted under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (11) and (15) of that subsection; and §97.002. 7 TAC §76.41 is further adopted under the authority of, and to implement, Finance Code §97.002. 7 TAC §76.42 is further adopted under the authority of, and to implement, Finance Code §97.004. 7 TAC §76.43 is further adopted under the authority of, and to implement, Finance Code §97.005. 7 TAC §76.44 is further adopted under the authority of, and to implement, Finance Code §97.006. 7 TAC §76.45 is further adopted under the authority of, and to implement, Finance Code §97.007. 7 TAC §76.46 is further adopted under the authority of, and to implement, Finance Code §97.003. 7 TAC §76.47 is further adopted under the authority of, and to implement, Finance Code Chapter 98, Subchapter B.

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

§76.41.Registration.

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

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

§76.42.Reports.

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

§76.43.Books and Records.

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

§76.44.Examinations.

Each holding company and each subsidiary of a holding company is subject to examinations as the Commissioner

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

§76.45. Agent for Service of Process.

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

§76.46. Release from Registration.

The Commissioner [~~commissioner~~] at any time, on the Commissioner's [~~commissioner's~~] own motion or on application, may release a registered holding company from a registration made by the company if the Commissioner [~~commissioner~~] determines that the company no longer controls a savings bank.

§76.47. Mutual Holding Companies.

(a) A savings bank may reorganize as a mutual holding company by complying with the provisions of Tex. Fin. Code §§97.051 - 97.053 [~~Finance Code Chapter 97,~~

~~Subchapter B (Finance Code §97.051)]~~. The savings bank must [~~shall~~] provide to the Commissioner [~~commissioner~~] an application to reorganize in a form specified by the Commissioner [~~commissioner~~]. The applicant must [~~shall~~] provide one signed original and at least one copy of the application together with complete exhibits. The application must [~~shall~~] include:

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

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

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

(4) the complete plan of reorganization;

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

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

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

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

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

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

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

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

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

(2) For the purposes of Tex. Fin. Code [~~Finance Code~~] §97.053(a)(3) and (4), the subsidiary holding company will [~~shall~~] be treated as a savings bank issuing stock and

must comply with [~~shall be subject to~~] the requirements of those sections. The mutual holding company parent must at all times own more than fifty percent (50%) of the outstanding stock of the subsidiary holding company.

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

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. FOREIGN SAVINGS BANKS

7 TAC §76.61

Statutory Authority

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The adopted 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.

§76.61.Foreign Savings Banks.

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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Department of Savings and Mortgage
Lending

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SUBCHAPTER E. HEARINGS

7 TAC §76.71 - 76.73

Statutory Authority

The adopted 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.

§76.71.Hearings Officer.

§76.72.Rules of Procedure for Contested Hearings.

§76.73.Publication of Hearing Notice.

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 F. FEES AND CHARGES

7 TAC §§76.91 - 76.97, 76.99 - 76.103, 76.105 - 76.110.

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 §§76.91 - 76.97, 76.99 - 76.103, 76.105 - 76.110 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; §91.007; and 16.003(c). 7 TAC §76.91 is further adopted under the authority of, and to implement, Finance Code §92.051(a)(2). 7 TAC §76.92 is further adopted under the authority of, and to implement, Finance Code §92.063. 7 TAC §76.97 is further adopted under the authority of, and to implement, Finance Code §93.004(b). 7 TAC §76.107 is further adopted under the authority of, and to implement, Finance Code §97.001.

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

§76.91.Fee for Charter Application.

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

§76.92.Fee for Branch Office.

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

§76.93.Fee for Mobile Facility.

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

§76.94.Fee for Change of Name or of Location.

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Applicants for change of name or change of location of any branch office, approved or existing, ~~[shall]~~ pay a fee of \$500. ~~[This fee shall be paid at the time of filing and shall include the cost for filing, processing, and hearing of said application.]~~ In addition, the applicants must ~~[shall]~~ pay ~~[the cost of a formal record and]~~ any cost incurred by the Department ~~[department]~~ in connection with the hearing, investigation and travel expenses.

§76.95.Fee for Special Examination or Audit.

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

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

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

§76.97.Fee for Permission To Issue Capital Obligations.

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

§76.99.Fee for Reorganization, Merger, and Consolidation.

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

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

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[department] in connection with the hearing, investigation, and travel expenses.

§76.100.Fees for Expedited Applications.

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

(1) branch office - \$500;

(2) mobile facilities - \$500;

(3) office relocation - \$250;

(4) reorganization, merger or consolidation - \$2,500; and

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

§76.101.Fee for Change of Control.

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

§76.102.Fee for Subsidiaries.

The Commissioner will ~~[commissioner shall]~~ collect a fee of \$1,500 for each

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

§76.103.Fee for Charter Application under 7 TAC §75.36.

The Commissioner will ~~[commissioner shall]~~ collect a filing fee of \$500 for the processing of an application for a charter for a savings bank where the sole purpose of such application is the purchase of the assets, assumption of liabilities, and continuation of the business of any institution deemed by the Commissioner ~~[commissioner]~~ to be in an unsafe condition, pursuant to §75.36 of this title (relating to ~~[Designation as and]~~ Exemption for Supervisory Sale).

§76.105.Fee for Conversion into a Savings Bank.

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

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(1) \$0 - 125 million - \$2,500;

(2) \$125 - 500 million - \$5,000;

(3) \$500 million - 1 billion - \$10,000; and

(4) Over 1 billion - \$15,000 ~~[pursuant to the following schedule: \$0 - 125 million \$2,500; \$125 - 500 million \$5,000; \$500 million - 1 billion \$10,000; and Over 1 billion \$15,000].~~ *§76.106.Fee for Mutual to Stock Conversion.*

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

§76.107.Fee for Holding Company Registration.

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

§76.108.Fees for Public Information Requests.

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

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

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

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

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

§76.109.Fee for Protest Filing.

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

~~[(b) Additionally, the Administrative Law Judge for a contested hearing may allocate costs incurred by the department to the parties pursuant §76.72 of this title (relating to Rules of Procedure for Contested Hearings). In such cases, the fee paid pursuant to subsection (a) of this section shall be applied toward payment of the protestant's allocation of hearing costs;~~

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~~however, no amount will be refunded and any additional amounts will be billed.~~

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

§76.110.Fees Nonrefundable.

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

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 G. STATEMENTS OF POLICY

7 TAC §76.121

Statutory Authority

The adopted 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.

§76.121.Application of the Statutory Parity Provision.

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 H. COMPLAINT PROCEDURES

7 TAC §76.122

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 §76.122 is adopted under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraph (11) of that subsection; §96.054; and Chapter 96, Subchapter C.

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

§76.122.Savings Bank Complaint Notices.

(a) Definitions.

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

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

(b) Notice of how to file complaints.

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

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

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

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

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

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

(C) The required notice must be posted on each website of the savings bank that is accessible by the public and either used to conduct banking activities or from which the savings bank advertises to solicit such business. The required notice is deemed to be conspicuously posted on a website when it is displayed on the initial or home page of the website (typically the base-level domain name) or is otherwise contained in a linked page with the link to such page prominently displayed on such initial or home page. [If a state savings bank maintains a website, the required notice must be included in a screen which the consumer must view whenever the site is accessed].

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