



NOTICE OF PRECOMMENT DRAFT AND STAKEHOLDERS WEBINAR

SML Rulemaking – Savings Bank Rule Review July 15, 2022 Pre-comment Draft

The Department of Savings and Mortgage Lending (SML or the Department) is considering changes to its rules in 7 Texas Administrative Code (TAC): Chapter 75, concerning Applications; Chapter 76, concerning Miscellaneous; and Chapter 77, concerning Loans, Investments, Savings, and Deposits. Each of the chapters affects the thrift industry, and specifically, savings banks chartered by the Department under Texas Finance Code Title 3, Subtitle C (primarily Chapters 91-95). The rule changes were identified during the Department's periodic review of its rules conducted pursuant to Texas Government Code § 2001.039.

The Department will hold a stakeholders webinar on July 19, 2022 at 10:00 a.m. to discuss the pre-comment draft of the rule changes.

The Department will also accept informal written pre-comments until July 25, 2022 at 5:00 p.m.

The Department plans to present the rules for consideration by the Finance Commission at its August 19, 2022 meeting.

Participating in the Webinar

The webinar will be conducted using the Webex platform by Cisco.

Note: While WebEx has the capability for participants to appear by video, participation by the panelists and attendees will be by audio only (with screen sharing by the panelists).

[Meeting Link](#)

Submission of Informal Pre-comments

Informal written pre-comments regarding the Department's draft rules may be submitted by email to rules.comments@sml.texas.gov. **Informal pre-comments must be received by 5:00 p.m. on July 25, 2022.**

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Overview of Changes:

Changes Concerning the Reorganization (Consolidation) of Chapters 75, 76, and 77 into Chapter 75. The Department's rules in 7 TAC Chapters 75, 76 and 77 affect savings banks regulated by the Department. The Department has determined it would be advantageous to consolidate such chapters into one unified chapter governing savings banks. Specifically, the rule changes, if adopted, would:

- repeal the existing rules in 7 TAC Chapter 75 and insert new rules largely patterned after the existing rules in 7 TAC Chapters 75, 76, and 77;
- repeal the existing rules in 7 TAC Chapters 76 and 77; and
- rename 7 TAC Chapter 75 "Savings Banks," to better reflect its subject matter.

Changes Concerning Authorized Loans. The Department's existing rules in 7 TAC Chapter 77, Subchapter A, §§77.2-77.9 establish various requirements for loans made by a savings bank. The Department has determined these rules, while one time appropriate, are now overly prescriptive and should be repealed.

Other Modernization and Update Changes. The rule changes, if adopted, would 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.

<rule>

TITLE 7 BANKING AND SECURITIESPART 4 DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 75 SAVINGS BANKS [APPLICATIONS]

{{All existing sections in Chapter 75 will be repealed and replaced with new rules. Specifically, the following rules sections will be repealed:

§75.1. Application for Savings Bank Charter.

§75.2. Publication of Notice of Charter Application.

§75.3. Hearing on Charter Application.

§75.6. Time of Decision on Charter Application.

§75.8. Identification of Office Site; Temporary Location and Community.

§75.10. Change of Name Application.

§75.25. Eligible Institution.

§75.26 Expedited Applications.

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§75.27. Denial of Expedited Treatment.

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

§75.32. Types of Additional Offices.

§75.33. Branch Office Applications.

§75.35. Mobile Facilities.

§75.36. Exemption for Supervisory Sale.

§75.38. Change of Home or Additional Office Location.

§75.39. Temporary Closing of Additional Offices.

§75.41. Offices in Other States or Territories.

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

§75.82. Form and Content of Application.

§75.83. Notice and Hearing.

§75.87. Exemption for Supervisory Merger.

§75.88. Acquisitions Involving Financial Institutions in Other States or Territories.

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

§75.90. Conversion into a Savings Bank.

§75.91. Mutual to Stock Conversion.

§75.122. Acquisition of a Savings Bank.

§75.123. Notice and Hearing.

§75.124. Retention of Control.

§75.126. Abeyance of Other Applications.

§75.127. Exempt Transactions.

§75.201. Definitions.

§75.202. Application Filing Requirements.

§75.203. Public Notice of Application.

§75.204. Motions for Rehearing.}}

SUBCHAPTER A GENERAL PROVISIONS [~~CHARTER APPLICATIONS~~]

§75.1. Purpose and Applicability.

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This chapter governs the chartering, administration, and operations of a Texas-chartered savings bank, including the affiliates and third-party service providers of a savings bank under Finance Code Title 3, Subtitle C, the Texas Savings Bank Act (Finance Code §91.001 et seq.).

§75.2. Definitions.

As used in this chapter, and in the Commissioner's administration and enforcement of Finance Code Title 3, Subtitle C, the following words and terms 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 a savings bank;

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

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

(D) any company (other than the savings bank, its holding company, or an operating subsidiary) of which a director, officer, or controlling person of a savings bank:

(i) is a director or officer;

(ii) in the case of a limited liability company, is a manager or managing member;

(iii) in the case of a partnership, is a general partner;

(iv) in the case of a partnership, 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 a 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

(v) 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 or controls 10% or more of any class of equity securities, or owns or controls with other directors, officers, and controlling persons of a 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

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

(3) Application--An application requesting authorization or other relief from the Commissioner pursuant to this chapter or under the Texas Savings Bank Act for which a filing fee is required under §75.102 of this section (relating to Application Fees and Charges).

(4) Appropriate banking agency--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002).

(5) Board--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002).

(6) Bylaws--The rules adopted to regulate or manage a company, regardless of the name used to designate the rules, and with respect to a limited liability company (including a limited savings bank), means the company agreement, or similar rules adopted to regulate or manage the limited liability company.

(7) Capital stock--Has the meaning assigned by the Texas Savings Bank Act (Tex. Fin. Code §91.002).

(8) Capital stock savings bank--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002).

(9) Certificate of formation--The document evidencing the formation of the business entity, referred to in other governmental jurisdictions as the articles of incorporation, certificate of incorporation, or articles of organization, as applicable.

(10) Commissioner--The savings and mortgage lending commissioner appointed under Finance Code Chapter 13.

(11) Company--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002).

(12) Control--The power to exercise, directly or indirectly, a controlling influence over the management or policies of a company. Control is deemed to exist when a person, directly or indirectly, or acting through or in concert with one or more persons:

(A) owns, controls, or has the power to vote 25% or more of any class of voting securities of a company;

(B) is an officer or director of the company and owns, controls, or has the power to vote 10% or more of any class of voting securities of a company, and no other person owns, controls, or has the power to vote a greater percentage of that class of voting securities; or

(B) controls, in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions of a company.

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(13) Controlling person--A person having control as defined by paragraph (13) of this section.

(14) Day--A calendar day, unless another method of counting days is specified.

(15) Deposit account--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002).

(16) Deposit liability--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002)

(17) FDIC--The Federal Deposit Insurance Corporation, including any successor.

(18) Financial institution--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002).

(19) Finance Commission--The Finance Commission of Texas, the oversight body responsible for overseeing and coordinating the Department under Finance Code Chapter 11.

(20) GAAP--Generally Accepted Accounting Principles.

(21) Holding company affiliate--A company of which a savings bank is a subsidiary and any other subsidiary of such company other than a subsidiary of the savings bank.

(22) Home office--The office where a savings bank has its headquarters and from which all of its operations are directed.

(23) Immediate family--The spouse of an individual, the individual's minor children, and any of the individual's children (including adults) residing in the individual's home.

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

(25) Limited savings bank--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002).

(26) Managing officer--An individual designated by the board 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.

(27) Member--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002).

(28) Mutual savings bank--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002).

(29) Officer--The president, any vice president (but not an assistant vice president, second president, or other vice president having authority similar to an assistant or second vice president), the secretary, the treasurer, the comptroller, and any other person performing

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similar functions with respect to any entity or organization, whether incorporated or unincorporated. The term “officer” includes the chairman of the board, if the savings bank’s certificate of formation or bylaws authorize the chairman to participate in the operating management of the entity or organization, or if the chairman actually participates in such management.

(30) 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.

(31) Recourse-- A contract by a borrower or guarantor to repay 100% of all amounts due and owing under the loan.

(32) Savings bank--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002).

(33) Shareholder--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002).

(34) Subsidiary-- Any company that is controlled by the savings bank or by a company that is controlled by a company which is controlled, directly or indirectly, by the savings bank.

(35) Surplus--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002).

(36) Texas Savings Bank Act--Finance Code Title3, Subtitle C (Finance Code §91.001 et seq.).

(37) Unsafe and unsound practice--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002), and includes excessive operating expenses, excessive growth, high-risk or undiversified investment positions, and non-existent or poorly followed lending or underwriting policies, procedures, or guidelines.

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

(39) Withdrawal value--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002) in defining “withdrawal value of deposit account.”

SUBCHAPTER B APPLICATIONS [~~EXPEDITED APPLICATIONS~~]

DIVISION 1 GENERAL PROVISIONS

§75.101. Application Filing Requirements.

(a) Purpose and Applicability. Applications 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.

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(c) Incomplete Filings; Notice of Acceptance; Deemed Withdrawal. An application will only be deemed submitted if it is complete. An application 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 the Commissioner or the Commissioner's designee will issue a written notice to the applicant informing them either that the application is complete and accepted for filing, or that the application is incomplete and specifying the information required to render the application complete. The application may be deemed withdrawn and the applicable fee forfeited if, within 30 days of being notified the application was incomplete, the applicant fails to provide to the Department the supplemental information or supporting documentation necessary to render the application complete.

(d) Duty to Supplement. Even after being notified of the application being complete, the applicant has a continuing obligation and duty to supplement the application 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 agency 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 §75.103 of this title (relating to Public Notice of Application). Amendments made after publication of such notice may require the notice to be republished, as determined in the sole discretion of the Commissioner, with written notice to the applicant.

§75.102. Application Fees and Charges.

(a). Filing Fees. An applicant must pay the following filing fees, unless an expedited filing fee applies (see subsection (b) of this section):

(1) Charter Application and Amendments.

(A) Charter application: \$10,000.

(B) Change of name: \$500.

(C) Certificate of formation or bylaws amendments: \$100 per request.

(2) Office Locations.

(A) Branch office (other than a mobile facility): \$1,500.

(B) Mobile facility: \$500, plus \$100 for each location where the mobile facility is to be conducting banking business for purposes of §75.133 of this title (relating to Mobile Facility).

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(C) Relocate home or branch office: \$500.

(3) Reorganization, merger, consolidation, conversion, or purchase and assumption:

(A) For a reorganization, merger, or consolidation transaction in which the resulting institution will be a savings bank, a fee of \$2,500 for each financial institution involved in the transaction.

(B) For a purchase and assumption transaction by a savings bank as purchaser, a fee of \$2,000 for each financial institution involved in the transaction.

(C) For the conversion by a financial institution that is not a savings bank into a savings bank, the fee will be determined based on the total asset size of the institution, as follows:

(i) \$0 - 125 million: \$2,500.

(ii) \$125 million - \$500 million: \$5,000.

(iii) \$500 million - 1 billion: \$10,000.

(iv) over 1 billion - \$15,000.

(D) For the conversion of a savings bank into another type of financial institution charter, or a reorganization, merger, or consolidation transaction that otherwise results in a savings bank reorganizing into, or merging or consolidating with a financial institution that is not a savings bank, no fee will be assessed.

(E) for the conversion of a mutual savings bank into a stock savings bank, a fee of \$7,500.

(4) Change of control (obtaining control of a savings bank): \$5,000.

(5) Permission to issue capital notes or debentures: \$1,000.

(6) Holding Companies.

(A) Registration: \$2,000.

(B) Reorganization as a mutual holding company: \$7,500.

(7) Investment in subsidiaries.

(A) Initial investment: \$1,500, plus \$100 for each office other than the home office of the proposed subsidiary.

(B) Service subsidiary application to engage in a new activity: \$500.

(C) Redesignation of operating subsidiary: \$300.

(D) Change of name: \$100.

(E) Relocate home or branch office: \$100.

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(b) Filing Fees for Expedited Applications. Notwithstanding subsection (a) of this section, an applicant qualifying for expedited treatment for purposes of §75.152 of this chapter (relating to Expedited Applications) must pay the following filing fees:

- (1) Branch office: \$500.
- (2) Mobile facility: \$500 (no additional per-site fee).
- (3) Relocate home or additional office location: \$250.
- (4) Reorganization, merger, or consolidation: \$2,500.
- (5) Purchase and assumption transactions: \$2,000. .

(c) Reimbursement for Costs. In addition to filing fees established in subsections (a) and (b) of this section, the applicant must reimburse the Department for any costs incurred in connection with investigating or conducting a hearing on the application, including travel expenses.

(d) Protest Filing Fee. A person filing a protest to an application or otherwise requesting a hearing on an application (other than the applicant) must pay a fee of \$2,500 which must be paid at the time the protest or request for hearing is filed.

(e) Fees Nonrefundable; Discretion to Waive Fees and Costs. All filing fees must be paid at the time the application is filed and are nonrefundable. Except for fees set or required by statute, the Commissioner, in his or her sole discretion, may waive, in whole or in part, any fees or costs required by this section.

§75.103. Public Notice of Application.

An application for which notice to the public is required to be published must comply with the requirements of this section. The notice must be made using language and content preapproved by the Commissioner prior to publishing. The notice must be submitted to the publisher for publication within 15 days after the date the applicant receives notice that the application is complete and accepted for filing as provided by §75.101 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.

§75.104 Motions for Rehearing

A motion for rehearing pursuant to Finance 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

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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 rehearing 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.

DIVISION 2 CHARTER APPLICATIONS AND AMENDMENTS

§75.121. Savings Bank Charter.

(a) Application Requirements. 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 Finance 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 Finance Code §92.058.

(b) Identification of Home Office; Definition of Community; Temporary Office Location. The proposed location for the home office must be specifically identified so as to exactly locate it within the community to be served. The term "community" as used in the Finance Code §92.058 means the geographical area surrounding the proposed location of the home office within which persons would be reasonably anticipated to patronize the proposed office in the ordinary course of their business. The Commissioner may approve the opening and operation of a temporary home office location for an approved charter, provided that such office is within the 1/2-mile radius of the permanent home office approved in the charter. If a temporary home office location is approved, the savings bank must promptly cease operations at such office upon the permanent home office being constructed or rendered fit for occupancy, but in any event no longer than 18 months from the date the charter was approved, unless extended in writing by the Commissioner.

(c) Capital Requirements. 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.

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(d) Public Notice. A charter application is deemed to be a complete application for purposes of Finance 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 §75.102 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 §75.103 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 Finance Code §92.057.

(e) Request for Hearing; Deadline to Protest. A person may protest or otherwise request a hearing on the application as provided by Finance Code §92.057. Any person desiring to protest the application or otherwise requesting 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 (c) of this section, otherwise, any right or opportunity by such person to protest or have a hearing on the application under Finance Code §92.057 is deemed to be waived.

(f) Hearing. 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 (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(g) Time of Decision. 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 Finance 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 Finance Code §92.057.

§75.122. Change of Name.

(a) Approval Required. A savings bank may not change its name without the prior written approval of the Commissioner, and a savings bank may not operate under any name which has not been approved by the Commissioner in writing.

(b) Public Notice. An applicant seeking to change its name must publish a public notice of the application as provided by §75.103 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 Finance Code §92.063. Any person affected by the proposed name change

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and desiring to protest the application or otherwise requesting 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 Finance 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 Finance 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 will review the request for hearing and determine, in his or her sole discretion, if the person might be affected so as to require a hearing under Finance 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 contained in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

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

§75.123. Certificate of Formation or Bylaws Amendments.

(a) Approval Required. A savings bank may not amend its certificate of formation, bylaws, or other governing documents without the prior written approval of the Commissioner.

(b) Application Requirements. The application to amend the savings bank's certificate of formation, or bylaws must include the proposed amendments together with an explanation as to why the amendments are necessary.

DIVISION 3 OFFICE LOCATIONS

§75.131. Branch Office.

(a) Approval Required. A savings bank may not establish a branch office or an additional office as provided by §75.202 of this title (relating to Types of Additional Offices) without prior written approval of the Commissioner. A branch office application is required if a state

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savings bank would like to establish and operate a courier/messenger service pursuant to §75.202 of this title (relating to Types of Additional Offices).

(b) Required Information. The application must provide the following information which must be subscribed to and sworn before a notary:

- (1) proposed location for the office;
- (2) the personnel and office facilities to be provided;
- (3) the estimated cost and projected profits of such office; and
- (4) any information deemed necessary by the Commissioner to render a determination on the matters set forth in subsection (c) of this section.

(c) Determination by Commissioner. The Commissioner will not approve the application unless the Commissioner determines from the information furnished with the application, the evidence produced at the hearing, if one is required, and the Department's records that:

- (1) the operation and condition of the savings bank affords no basis for supervisory objection;
- (2) the character, responsibility and general fitness of the current management of the savings bank warrant a belief that the branch office will be operated in accordance with the Texas Savings Bank Act; and
- (3) the financial effect of establishing and operating the proposed office will not adversely affect the safe and sound operation of the savings bank.

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

(e) Identification of Branch Office; Definition of Community. The proposed location for the branch office must be specifically identified so as to exactly locate it within the community to be served. The term "community" as used in Finance Code §92.060 means the geographical area surrounding the proposed location of the branch office within which persons would be reasonably anticipated to patronize the proposed office in the ordinary course of their business.

(f) Public Notice. An applicant seeking to establish a branch office must publish a public notice of the application as provided by §75.103 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

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office application as provided by Finance 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 Finance 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 (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(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.

(j) Offices in Other States or Territories. To the extent permitted by the laws of the state or territory in question, and subject to the requirements of this chapter, a savings bank may establish branch offices in any state or territory of the United States. Each application for permission to establish such a branch office must comply with the requirements of this section, and must include a certified copy of an order from the appropriate banking agency approving the office or unit, or other evidence satisfactory to the Commissioner that all state or territorial regulatory requirements have been satisfied. The Commissioner will not approve the application unless the Commissioner determines from the information furnished with the application, the evidence produced at the hearing, if one is required, and the Department's 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.

§75.132. Mobile Facility.

(a) Approval Required. A savings bank may not establish a mobile facility as provided by §75.202 of this title (relating to Types of Additional Offices) without prior written approval of the Commissioner.

(b) Required Information. The application must provide the following information which must be subscribed to and sworn before a notary:

(1) the proposed location(s) at and times during which the mobile facility will operate;

(2) the need for the mobile facility within the community;

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(3) the personnel and office facilities to be provided; and

(4) the estimated expense to operate the mobile facility.

(c) Determination by Commissioner. The Commissioner will not approve the application unless the Commissioner determines from the information furnished with the application, the evidence produced at the hearing, if one is required, and the Department's records, that all requirements for approval of a branch office (§75.132 of this title, relating to Branch Office) have been met. Additionally, the savings bank must show that adequate safeguards exist for the security of the mobile facility.

(d) Public Notice. An applicant seeking to establish a mobile facility must publish a public notice of the application as provided by §75.103 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.

(e) 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 Finance 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 (d) of this section, otherwise, any right or opportunity by such person to protest or have a hearing on the application under Finance Code §92.063 is deemed to be waived.

(f) 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 (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(g) 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 (e) of this section.

§75.133. Relocate Home or Additional Office.

(a) Approval Required. A savings bank may not move its home office or any additional office as provided by §75.202 of this title (relating to Types of Additional Offices) beyond its immediate vicinity without the prior written approval of the Commissioner.

(b) Immediate Vicinity. The term "Immediate vicinity" as used in Finance Code §92.063 means the area within a radius of 1 mile from the present location of such office. However, if the office to be relocated has not been open for business at its present location for more

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than 2 years, approval in accordance with this section is required as if the office were not within the immediate vicinity. If the existing office has been open for more than 2 years, prior written notice must be provided to the Commissioner describing the saving bank's plans for the relocation, including the precise location for the new office, the date of the relocation, and information supporting that the new location of the office will be within the immediate vicinity of the present location and does not require the Commissioner's approval.

(c) Relocation of Existing Offices. 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 with prior written notice. Upon such notification, the establishment of such office is deemed to be an approved branch office of the savings bank.

(d) Required Information. Each application for prior approval, or prior written notice, whichever is applicable, must provide the following information which must be subscribed to and sworn before a notary:

- (1) the existing and new branch location's address;
- (2) a description of the land and building to be built or leased and terms thereof;
- (3) estimates of the cost of removal to and maintenance of the new location;
- (4) whether any affiliated parties are involved in transactions regarding the purchase, sale, construction, or lease of the new proposed office;
- (5) evidence of the board's approval of the relocation; and
- (6) any other information deemed necessary by the Commissioner.

(e) Determination by Commissioner. The Commissioner will not approve the application unless the Commissioner determines from the information furnished with the application, the evidence produced at the hearing, if one is required, and the Department's records, that all requirements for approval of a branch office (§75.132 of this title, relating to Branch Office) have been met.

(f) Public Notice. An applicant seeking to change the location of the home or an additional office must publish a public notice of the application as provided by §75.103 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.

(g) Request for Hearing; Deadline to Protest. A person affected by the proposed change in home or additional office location may protest or otherwise request a hearing on the application, as provided by Finance Code §92.063. Any person affected by the proposed change in home or branch office location and desiring to protest the application or otherwise requesting 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 (f) of this

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section, otherwise any right or opportunity by such person to protest or have a hearing on the application under Finance 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 (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(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 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 (g) of this section.

DIVISION 4 REORGANIZATION, MERGER, CONSOLIDATION, CONVERSION, PURCHASE, AND ASSUMPTION AND ACQUISITION

§75.141 Reorganization, Merger, Consolidation or Purchase and Assumption Transaction -Resulting in a Savings Bank.

(a) Applicability. This section governs:

(1) A reorganization, merger, or consolidation transaction in which the resulting institution will be a savings bank; and

(2) A purchase and assumption transaction by a savings bank as purchaser.

(b) Non-Applicability. This section does not govern:

(1) the conversion of a savings bank into another type of financial institution charter, or a reorganization, merger, or consolidation transaction that otherwise results in a savings bank reorganizing into, or merging or consolidating with, a financial institution that is not a savings bank, which is governed by section §75.143 of this title (relating to Reorganization, Merger or Conversion by a Savings Bank to Another Financial Institution Charter); or

(2) the conversion by a financial institution that is not a savings bank into a savings bank, which is governed by section §75.144 (relating to Conversion into a Savings Bank).

(c) Plan Required. 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 savings bank must do so pursuant to a plan adopted by the board and filed with the Commissioner as a part of an application for approval. Purchase and assumption

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transactions include purchases of assets, deposit accounts or other liabilities in bulk not made in the ordinary course of business.

(d) Application Required. The application for approval of the plan must contain: proof that the plan was adopted by the board of each institution involved; documentation showing that the plan has been approved by each institution by a majority of the total vote the members or shareholders of each are entitled to cast; a statement that the corporate continuity of the resulting institution will 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 and correct copy of the plan, as adopted, must be filed as part of the application. All documents and their contents must be subscribed and sworn to before a notary.

(e) 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 §75.103 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 Finance Code §92.352.

(f) 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 Finance Code §92.352 is deemed to be waived.

(g) 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 provisions set forth in §75.142 of this title (relating to Exemption for Supervisory Merger) apply, and the merger is designated as a supervisory merger for purposes of Finance 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 (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(h) 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 (f) of this section, unless the Commissioner establishes a longer time period, with written notice to the applicant.

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(i) Transactions 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 the requirements of this section, a savings bank may acquire, by merger or purchase of stock, a financial institution incorporated under the laws of another state or territory. Each such application must 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 that all state regulatory requirements have been satisfied. The Commissioner will not approve such an application unless the Commissioner determines from the information furnished with the application, the evidence produced at the hearing, if one is required, and the Department's records, that all requirements of this section have been met, and all applicable requirements of the laws of the state or territory in question have been met.

§75.142. Exemption for Supervisory Merger.

(a) The Commissioner may designate a transaction under §75.141 of this title (relating to Reorganization, Merger, Consolidation or Purchase and Assumption Transaction - Resulting in a State Savings Bank) to be a supervisory merger when:

(1) the 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;

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

(3) the FDIC has determined, and certified to the Commissioner, that the merger of one or more of the institutions involved is necessary to prevent the failure or possible failure of the said institution.

(b) For purposes of this section, unsafe condition means that the savings bank is (or savings banks are) insolvent or in imminent danger of insolvency, or that there has been a substantial dissipation of assets or earnings due to any violation(s) 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, or any agreement between the savings bank and the 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 or other duly authorized personnel of the Department; or any other condition affecting the savings bank which the Commissioner and the board agree place the savings bank in an unsafe condition.

(c) Effect of Exemption. If the Commissioner designates the transaction as a supervisory merger, the application and all information relating to the application are deemed confidential. As a result, the requirements of §75.141 of this title (relating to Reorganization, Merger, Consolidation or Purchase and Assumption Transaction - Resulting in a Savings

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Bank) concerning public notice of the application, and a hearing on the application are not applicable.

§75.143. Reorganization, Merger or Conversion by a Savings Bank 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 be held by the resulting institution.

(b) The Commissioner must 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 file with the Commissioner:

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

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

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

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

(d) The Commissioner is 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 §75.102 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 be filed with the 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. 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 §75.251 of this title (relating to Annual Assessments.)

§75.144. 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 must approve 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

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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 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, Subchapter B, and §75.121 of this title (relating to 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 §75.121 of this title (relating to Savings Bank Charter). 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 Finance Code §92.303(c).

(d) Denial; Request for Hearing. 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 Finance Code §92.304.

§75.145. Mutual to Stock Conversion.

(a) The application for mutual to stock conversion must include:

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

(b) The plan of conversion must provide:

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

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(3) that a direct community offering by the converting savings bank will 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 be a uniform price determined in accordance with paragraph (1) of this subsection, and specify the underwriting and/or other marketing arrangements to be made;

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

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

(7) for an eligibility record date;

(8) that expenses incurred in the conversion are reasonable;

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

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

(11) the amount of the deposit of an accountholder will 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 not be considered for purposes of paragraph (6) of this subsection.

(c) A plan of conversion must be adopted by not less than two-thirds of the board.

(d) Public Notice. An application for mutual to stock conversion is deemed to be a complete application at the time the Department notifies the applicant that application is complete and has been accepted for filing as provided by §75.102 of this title (relating to Application Filing Requirements). Upon receipt of such notice, the proposed incorporators must publish a public notice of the application as provided by §75.103 of this title (relating to Public Notice of Application), which must be published in each county in which the savings bank has an office, and must prominently post the notice in each of its offices.

(e) Following approval of the application for conversion by the Commissioner, the plan of conversion must be submitted to the members at an annual or special meeting and the plan must be approved, in person or by proxy, by at least a majority of the total outstanding votes of the members.

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

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(1) application for conversion;

(2) proxy statement; and

(3) offering circular.

(g) Within 45 days:

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

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

(h) The converting savings bank must 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.

(i) For the purpose of this rule, the public offering and a direct community offering is deemed to commence upon the declaration of effectiveness by the Commissioner of the final offering circular.

(j) The Commissioner may grant a written waiver from any requirement of this rule.

DIVISION 5 EXPEDITED APPLICATIONS

§75.151. Eligible Institution.

An eligible institution is a financial institution that:

(1) is well capitalized as defined by 12 C.F.R. §324.403;

(2) received a composite rating of either 1 or 2 as defined by the Uniform Financial Institutions Rating System (CAMELS) at the most recent examination by the Department 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 agency;

(4) is not operating in violation of a regulatory condition or directive imposed by the state or federal banking regulatory agency; and

(5) is not operating under a supervisory action of, or a plan for remedial or corrective action imposed by, a state or federal banking agency.

§75.152. Expedited Applications.

(a) An eligible institution as defined in §75.151 of this title (relating to Eligible Institution) may file an expedited filing in lieu of an application required pursuant to §75.131 of this title (relating to Branch Office), §75.132 of this title (relating to Mobile Facility), §75.133 of this

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title (relating to Relocate Home or Branch Office Location), or §75.111 of this title (relating to Reorganization, Merger, Consolidation or Purchase and Assumption Transaction - Resulting in a Savings Bank), and simultaneously tender the required filing fee pursuant to §75.102 of this title (relating to Application Fees and Charges).

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

(1) a detailed description of the transaction;

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

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

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

(5) evidence satisfactory to the Commissioner that a public notice of the application has been published and effected as provided by §75.103 of this title (relating to Public Notice of Application), published in each county where a non-expedited application is required to be published.

(c) The Commissioner will render a decision on the expedited application within 30 days after the date the expedited filing is complete and has been accepted for filing as provided by §75.102 of this title (Relating to Application Filing Requirements), provided, the application is not protested or a hearing is not otherwise requested. 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. If a hearing is required, consideration of the application will proceed in the same fashion as a non-expedited application.

(d) The applicant bears the burden to supply all material information necessary to enable the 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 §75.151 of this title (relating to Eligible Institution).

§75.153 Denial of Expedited Treatment

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

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(b) The Commissioner will 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 §75.101 of this title (relating to Application Filing Requirements) if expedited filing treatment is denied, indicating the reason for denial.

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

DIVISION 6 CHANGE OF CONTROL

§75.161. Acquisition of a Savings Bank.

The following procedures must be followed when a person desires to obtain control of a savings bank (including change of control of a savings bank holding company).

(1) No person other than the issuer may 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 all of the following information on an application form approved by the Commissioner and which application form is deemed by the Commissioner to be complete and has received a written order from the Commissioner approving such acquisition or change of control:

(A) the background and identity of the applicant, if such 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. Such filing must contain the following information:

(i) name and address;

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

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

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

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

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

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

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

(D) nature, identity, source, and amount of funds or other consideration used or to be used in effecting the acquisition of control, and, if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained, there must 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) any plans or proposals which the applicant may have to declare dividends to liquidate such savings banks, to sell its assets, or to merge it with any person or persons or to make any other material change in its business operations or corporate structure or management, including modifications in or plans to enter into any management contracts, and any financial or employment guarantees given to present and contemplated management;

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

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

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

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

(J) any other relevant information requested by the Commissioner.

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(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 may require that the information must be given to:

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

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

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

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

(4) The transaction for acquisition of control of a savings bank may not be consummated until the Commissioner approves the application for acquisition of control. The application will be processed and considered in accordance with Finance Code §92.556 and §92.557. The Commissioner will render a decision within 60 days after the application is complete and has been accepted for filing as provided by §75.102 of this title (relating to Application Filing Requirements) The application will be denied 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;

(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 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

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untrustworthiness of the applicant, affiliates, or affiliated persons which would affect the savings bank has been evidenced; or

(G) the applicant is not acting in good faith.

§75.162 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 §75.103 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 Finance 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 (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(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.

§75.163. 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 to investigate, seek to enjoin, or set aside any change of control of a savings bank, if the Commissioner deems the transfer to be against the public interest:

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

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

(b) The Commissioner 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 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

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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 finds that such unauthorized control exists, the Commissioner may, after notice and hearing, issue an order requiring immediate divestiture by certain persons of unapproved or indirect control, or the Commissioner may issue any other supervisory order the Commissioner deems appropriate.

§75.164. Abeyance of Other Applications.

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

§75.165. Exempt Transactions.

The following transactions are exempt from the application requirements of this division:

(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 within 30 days and provided further that the acquiror may not retain such control for more than one year from the date on which such control was acquired. The 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 finds such extension is warranted and would not be detrimental to the public interest. Nothing in this subsection prevents such acquiror from filing an application pursuant to this chapter for permanent approval of the acquisition of control;

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

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

DIVISION 7 CAPITAL NOTES AND DEBENTURES

§75.171 Capital Notes and Debentures.

(a) Approval Required. No savings bank may issue and sell its capital notes or debentures without the prior written approval of the Commissioner and subject to any conditions the Commissioner may impose with regard to safety and soundness and maintenance of

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adequate financial condition particularly in areas of preservation of capital, quality of earnings, and adequacy of reserves.

(b) Requirements. A savings bank may, by resolution of its board and with prior approval of the 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 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 as to the need and utilization of such funds by the savings bank in a profitable manner.

DIVISION 8 HOLDING COMPANY APPLICATIONS

§75.181. Registration.

A holding company must apply and register with the Commissioner within the time prescribed by Finance Code §97.002. The application 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 finds necessary and appropriate. On written request, the Commissioner may, in his or her sole discretion, extend the time within which a holding company is required to register and file the required information.

§75.182. Reorganization as a Mutual Holding Company.

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

(1) the proposed certificate of formation for the proposed subsidiary savings bank which must comply with the requirements of Finance Code §92.051 and §92.052 or §92.053, as applicable;

(2) the proposed bylaws for the proposed subsidiary;

(3) the proposed restated certificate of formation and bylaws of the mutual holding company;

(4) the complete plan of reorganization; and

(5) a certification by the president or secretary as to how that the reorganization, including the amendments to the certificate of formation and bylaws of the mutual holding

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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;

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

(c) The Commissioner may approve the reorganization without a hearing if the 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 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 denies an application to reorganize, the applicant may appeal in the same manner as provided in 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.

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

(3) The certificate of formation and by-laws of a subsidiary holding company must be approved by the Commissioner and may only be amended with the prior approval of the Commissioner by making an application in accordance with §75.123 of this title (relating to Certificate of Formation or Bylaws Amendments).

DIVISION 9 SUBSIDIARY APPLICATIONS

§75.191 Subsidiary Application.

(a) In order to obtain approval for a subsidiary, the savings bank must file with the Commissioner an application accompanied by the following information:

_____ (1) an audited financial statement in the event of acquisition of an existing company;

_____ (2) a certified board resolution of the board of the applying savings bank approving the investment in the proposed subsidiary;

_____ (3) a certified copy of the certificate of formation and bylaws of the proposed subsidiary;

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(4) the acquisition terms, cost, or investment requirements of the savings bank;

(5) projected operating statements of the proposed subsidiary for the first 3 years of operation;

(6) an attorney's opinion letter as to direct, indirect, and/or contingent liability of the savings bank and the proposed subsidiary;

(7) an outline of plans for operation of the proposed subsidiary;

(8) evidence that the proposed subsidiary will have adequate management and operating personnel with proper supervision by savings bank management;

(9) plans for the safeguarding of assets of the proposed subsidiary;

(10) affidavits from all directors of a savings bank and the proposed subsidiary fully disclosing any interest they may directly or indirectly have in the proposed subsidiary; and

(11) such other information or data as the Commissioner may require.

(b) The Commissioner may approve an investment in a subsidiary if the Commissioner finds that:

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

(2) there are adequate income and reserves to support the proposed investment;

(3) the operations of the subsidiary will be clearly distinguishable from those of the parent savings bank; and

(4) the subsidiary is or will be profitably operating within a reasonable period of time or the investment is reasonably projected to result in economic benefit to the savings bank.

(c) If the Commissioner finds that a savings bank has abused or is abusing the authority to invest in a subsidiary, the Commissioner may exercise discretion in denying such savings bank the right to future exercise thereof until such abuse or abuses have been corrected.

SUBCHAPTER C OPERATIONS ~~[ADDITIONAL OFFICES]~~

DIVISION 1 OFFICE LOCATIONS

§75.201 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 §75.202 of this title (relating to Types of Additional Offices), without the prior written approval of the Commissioner, except as otherwise provided by §75.145 of this title (relating to Change of Home or Additional Office Location).

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(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 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 §75.203 of this title (relating to Temporary Closing of Additional Offices), or an emergency closure as provided by Finance Code §93.011, a savings bank must comply with the notice requirements of federal law, and provide the Commissioner with a copy of the closing notice filed with the appropriate federal banking agency upon filing such notice. A savings bank must provide the Commissioner with confirmation within 10 days after the actual closing date. Once closed, prior written approval from the Commissioner to operate a branch or other office is deemed revoked, and a savings bank may not reopen the branch or other office without seeking new approval from the Commissioner.

(e) Activities Not Requiring an Approved Office. The following activities of a savings bank, 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 Finance 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.

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(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.

§75.202. Types of Additional Offices.

The following types of additional offices may be established and maintained by a savings bank:

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

(2) 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 be maintained); and

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

§75.203. Temporary Closing of Additional Offices.

In the event a savings bank closes any additional office of any type on a temporary basis, such 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 §75.201 of this title (relating to Additional Offices; Activities Not Requiring an Approved Office) is deemed revoked. Written notice of any temporary closing must be furnished to the Commissioner within 10 days of such closing, and no additional office may reopen until the Commissioner receives written notification within 10 days of such reopening.

§75.204. 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, and located within 100 miles of the savings bank's home office or a branch office.

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(2) The savings bank must maintain adequate safeguards for the security of the mobile facility. The Commissioner may require additional safeguards, if in the Commissioner's sole discretion, existing safeguards are inadequate, with written notice to the savings bank.

DIVISION 2 BOOKS, RECORDS, ACCOUNTING PRACTICES, FINANCIAL STATEMENTS AND RESERVES

§75.221. 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, 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.

§75.222. Accounting Practices.

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

§75.223. Financial Statements; Annual Reports; Audits.

For safety and soundness purposes, within 90 days of its fiscal year end, each savings bank 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, with the exception of any matters specifically addressed by this section, the Texas Savings Bank Act, or the rules (regulations) adopted thereunder.

§75.224. Misdescription of Transactions.

No savings bank may, either directly or indirectly, knowingly make any entry on its books that is not accurate or otherwise fails to appropriately describe the transaction, or withholds information material to the transaction.

§75.225. Charging Off or Setting Up Reserves against Bad Debts.

The 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

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special reserve or reserves equal to such depreciation or overstated value be established in accordance with GAAP.

§75.226. Examinations.

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

(b) An examination under this section may be performed jointly or in conjunction with an examination by the saving bank's appropriate federal banking agency. The Commissioner may accept an examination made by such federal banking agency in lieu of an examination pursuant to this section.

§75.227. Bylaws.

(a) The bylaws of a savings bank must contain sufficient provisions to govern the institution in accordance with the Texas Savings Bank Act, the Texas Business Organizations Code, and other applicable laws, rules and regulations, or the certificate of formation. 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. Bylaw amendments may not take effect before being filed with and approved by the Commissioner in accordance with §75.123 of this title (relating to Certificate of Formation or Bylaws Amendments).

(b) A 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 savings bank.

(c) Other optional bylaws may be adopted by a state savings bank with the approval of the Commissioner obtained in accordance with §75.123 of this title (relating to Certificate of Formation or Bylaws Amendments).

DIVISION 3 CAPITAL AND CAPITAL OBLIGATIONS

§75.231. Capital Requirements.

(a) Unless the context clearly indicates otherwise, when used in this division, "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 GAAP) plus any retained earnings and additional paid-in capital as well as such other items as the Commissioner may approve in writing for inclusion as capital.

(b) Minimum capital requirement. Each savings bank must maintain capital at levels which are required for institutions whose accounts are insured by the FDIC.

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§75.232. Increase or Decrease of Minimum Capital Requirements.

(a) The Commissioner may increase or decrease the minimum capital requirement set forth in this chapter upon written request by a savings bank or by supervisory directive if the Commissioner determines 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 or bylaws of the savings bank, or a violation of any law, rule, or supervisory action applicable to the savings bank or any condition that the Commissioner has imposed on the savings bank by written order or agreement;

(2) the savings bank is well managed. In determining whether the savings bank is well managed, the 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 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 for restoring capital within a reasonable period of time. Such plan must describe the means and schedule by which capital will be increased. The plan must 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. The plan must 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 to be reasonably feasible will not be acceptable. The 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) Progress Reports. Any savings bank which receives an increase or decrease of its minimum capital requirement from the Commissioner must file quarterly progress reports regarding compliance with its capital plan. The Commissioner may require more frequent reports. Any contemplated action that would represent a material variance from the plan that must be submitted to the Commissioner for approval.

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

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

(1) the savings bank 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;

(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 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 or bylaws, or violates any law, rule, or supervisory order applicable to the savings bank or any condition that the 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.

§75.233. Business Plans.

(a) All savings banks whose operations are considered by the Commissioner unsafe or unsound or which have total capital less than the amount required under §76.231 of this title (relating to Capital Requirements) or §76.232 of this title (relating to Increase or Decrease of Minimum Capital Requirements) must 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 1 year, but may be for so long as the Commissioner may require.

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

§75.234. Joint Issuance of Capital Obligations.

Joint Issuance of Capital Obligations. On the same terms and conditions as stated in §75.171 of this title (relating to Capital Notes and Debentures), a savings bank may, by resolution of its board and with prior approval of the Commissioner, join other savings banks in the joint issuance of capital notes, debentures, bonds, or other secured or unsecured capital obligations.

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DIVISION 4 HOLDING COMPANIES

§75.241 Reports.

Each holding company and each subsidiary of a holding company, other than a savings bank, must file with the Commissioner reports required by the Commissioner. The reports must be made under oath and must be in the form and for the periods prescribed by the Commissioner. Each report must contain information concerning the operations of the holding company and its subsidiaries as the Commissioner may require. A holding company must file with the 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.

§75.242. Books and Records.

Each holding company must maintain books and records as may be prescribed by the Commissioner. The records must be created and maintained in accordance with the requirements of §76.221 of this title (relating to Books and Records), pertaining to savings banks.

§75.244. Examinations.

Each holding company and each subsidiary of a holding company is subject to examinations as the Commissioner may prescribe. The holding company must pay the cost of an examination. The confidentiality provisions of Finance Code §96.356 apply to an examination performed in accordance with this section, however, the 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, to the extent deemed feasible, may use reports filed with or examinations made by appropriate federal agencies or regulatory authorities of other states.

§75.245. Agent for Service of Process.

The 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.

§75.246. Release from Registration.

The Commissioner at any time, on the Commissioner's own motion or on written request, may release a registered holding company from a registration made by the company if the Commissioner determines that the company no longer controls a savings bank. If released, the savings bank associated with the holding company must maintain the books and records of such holding company.

DIVISION 5 ASSESSMENTS AND FEES

§75.251. Annual Assessments

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(a) Annual assessment. All savings banks chartered under the laws of the state and all foreign savings banks (as defined by the Texas Savings Bank Act) holding a certificate of authority to do business in this state must pay to the department an annual assessment fee in an amount determined by the Commissioner as provided by subsection (c) of this section in accordance with the rate requirements set by the Finance Commission of Texas, and subject to the maximum assessment rates established by subsection (d) of this section. The Department will maintain on its website information concerning current rate requirements.

(b) Payment of Assessment. The annual assessment must be paid in quarterly installments. Upon receipt of a written invoice from the department, the savings bank must pay the assessment fee by electronic/ACH payment, or by another method, if directed to do so by the Department.

(c) Determination of assessment. The assessment will be determined based on either the total assets, or total risk-weighted assets of the savings bank, whichever results in the lowest fee being assessed. The valuation of assets will be determined as of the close of the calendar quarter immediately preceding the effective date of the assessment. A savings bank's total assets or total risk-weighted assets will be derived from the savings bank's Federal Financial Institutions Examination Council consolidated report of condition and income (call report), filed in accordance with federal law. If a savings bank is not required by applicable federal law to disclose its total risk-weighted assets in the call report, the savings bank may voluntarily report to the Commissioner information concerning its total risk-weighted assets for purposes of calculating its assessment, which must be provided to the Commissioner in the manner and within the time prescribed by the Commissioner; otherwise, the assessment will be based on the savings bank's total assets.

(d) Maximum Assessment Rates. The assessment rates set by the Finance Commission of Texas may not exceed the maximum rates established in the following rate schedule:

[Figure: 7 TAC §75.251(d)]

§75.252. Fee for Special Examination.

(a) A special examination is one that is conducted outside the context of a savings bank's annual examination and includes, but is not limited to, examinations of a savings bank holding company, interstate branches of savings banks in Texas as the host state, and a savings bank's affiliates and third-party service providers. The savings bank or other regulated entity that is the subject of the special examination is subject to a fee and liable for the Department's costs as provided by this section in order to recoup the salary expense of the examiner(s) plus a proportionate share of Department overhead allocable to the special examination, and the actual costs by the examiner in conducting the special examination.

(b) The fee for a special examination under this section will be calculated at a rate not to exceed \$75 per examiner per hour. The entity that is the subject of the examination must also pay to the Department an amount for actual travel expenses and costs incurred by the Department's examiner(s), including mileage, public transportation, food, and lodging. The

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Commissioner, in his or her sole discretion, may lower the applicable rate for the examination fee or waive, in whole or in part, any fees or costs chargeable in accordance with this section.

(c) In connection with an examination under this section, the regulated entity or other legally responsible party (including the savings bank, with respect to affiliates and third-party service providers) must pay the examination fee and costs incurred as provided by this section.

DIVISION 6 COMPLAINT PROCEDURES

§75.261. 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 Mail: 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294, Phone: (877) 276-5550, Fax: (512) 936-2003, or through the Department's website at www.sml.texas.gov.

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

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

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

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

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notices to the general public (such as equal housing posters, licenses, Community Reinvestment Act notices, etc.) are posted.

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

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

SUBCHAPTER D LOANS, INVESTMENTS, SAVINGS, AND DEPOSITS [ADDITIONAL OFFICES]

DIVISION 1 AUTHORIZED LOANS AND INVESTMENTS

§75.301. Definitions.

As used in this division, the following words and terms are assigned the following meanings, unless the context clearly indicates otherwise.

(1) Commercial real estate--Land on which structures or improvements do not qualify the property as residential real estate are located.

(2) Home--A structure designed and used as a residence by one family, or a structure designed and used for occupancy for one to four family units. The term also includes common areas around town houses or condominium units which are incidental to ownership of the residence.

(3) Home improvement loan--Any loan made for the improvement, maintenance, repair, modernization, or equipment of a home.

(4) Interim construction loan--A loan made to finance the improvement of or the building of residential or commercial structures on developed building sites, and may include the acquisition of such developed building sites. This term does not include home improvement loans allowed under §75.304 of this title (relating to Home Improvement Loans).

(5) Manufactured home--A structure, transportable in one or more sections, which in the traveling mode is 8 feet or more in width or and 40 feet or more in length, or when erected on site, is 400 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems.

(6) One borrower--Any person or entity that is, or that upon the making of a loan will become, obligor on a loan or guarantor of a loan; nominees of such obligor; all persons, trusts, syndicates, partnerships, and corporations of which such obligor is a nominee, a beneficiary, a

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member, a general partner, a limited partner owning an interest of 10% or more (based on the value of their contribution), or a record or beneficial stockholder owning 10% or more of the capital stock; and if such obligor is a trust, syndicate, partnership, or corporation, all trusts, syndicates, partnerships, and corporations of which any beneficiary, member, general partner, limited partner owning an interest of 10% or more, or record or beneficial stockholder owning 10% or more of the capital stock, is also a beneficiary, member, general partner, limited partner owning an interest of 10% or more, or record or beneficial stockholder owning 10% or more of the capital stock of such obligor. In the case of a loan that has been assumed by a third party with the consent of the lending institution, the former debtor will not be deemed an obligor.

(7) Personal property--Tangible and intangible property that is not real property, including the following items as defined in the Texas Business and Commerce Code: consumer goods, equipment, farm products, inventory, accounts, instruments, chattel paper, documents, general intangibles, cash proceeds, and non-cash proceeds.

(8) Residential real estate--Land on which a house, a home, or an apartment house is located, including combinations of farm residences and commercial farm real estate.

(9) Unimproved real estate--Land which has no substantial improvements or utilities. All other real estate will be considered either residential real estate or commercial real estate.

§75.302. Loans Authorized.

(a) A savings bank may originate, invest in, sell, purchase, service, participate, or otherwise deal in (including brokerage or warehousing) loans or participations subject to the requirements of the Texas Savings Bank Act, and this subchapter, including:

(1) residential real estate loans, including loans on the security of leasehold interests in residential real estate;

(2) home improvement loans;

(3) manufactured home loans.;

(4) interim construction loans;

(5) other real estate loans, including loans on the security of leasehold interest in real estate;

(6) personal property loans;

(7) commercial real estate loans, including loans on the security of leasehold interest in real estate;

(8) non-real estate commercial loans;

(9) loans fully secured by savings accounts owned or otherwise pledged for or by the borrower;

(10) unsecured loans; and

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(11) loans which are insured or guaranteed by the United States or any instrumentality thereof.

(b) Parity. A savings bank may purchase or commit to purchase any loan it could make if it were incorporated and operating as a federal savings bank domiciled in this state, so long as for each such transaction the savings bank complies with all applicable regulations governing such activities by federal savings banks. However, all such loans must be documented in accordance with the applicable requirements of this chapter.

§75.303. Non-Real Estate Commercial Loans.

A savings bank may lend and invest not more than 40% of its total assets in non-real estate commercial loans for business, corporate, or agricultural purposes. The amount of each letter of credit or other unfunded commitment to make a non-real estate commercial loan must be included in computing this limitation.

§75.304. Unsecured Loans.

(a) A savings bank may make unsecured loans or purchase participations in unsecured loans, on the terms and in amounts consistent with the savings bank's lending policies, subject to the limitations of this section.

(b) Real estate, personal property, or interests in oil and gas leases may be provided as security for such loans without meeting the requirements of this chapter for real estate or personal property loans, so long as all requirements of this section are met.

§75.305. Loan Policies and Documentation.

(a) Policies. Each savings bank must establish written policies approved by its board establishing prudent credit underwriting and loan documentation standards. Such standards must be designed to identify potential safety and soundness concerns and ensure that action is taken to address those concerns before they pose a risk to the savings bank's capital. Credit underwriting standards should consider the nature of the markets in which loans will be made; provide for consideration, prior to credit commitment, of the borrower's overall financial condition and resources, the financial stability of any guarantor, the nature and value of underlying collateral, and the borrower's character and willingness to repay as agreed; establish a system of independent, ongoing credit review and appropriate communication to senior management and the board; take adequate account of concentration of credit risk; and are appropriate to the size of the savings bank and the scope of its lending activities.

(b) Loan Documentation Standards. Loan documentation standards must be established and maintained to enable the savings bank to make informed lending decisions and assess risk, as necessary, on an ongoing basis; identify the purpose of the loan and source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner; ensure that any claim against a borrower is legally enforceable; demonstrate appropriate administration and monitoring of a loan; and consider the size and complexity of a loan. The following documents are generally appropriate and can be used as a guideline

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for prudent lending; however, unless such documents are specifically required by other state and federal statutes or regulations, there may be alternative documents equally suitable in satisfying the safety and soundness intent of this section which the savings bank may substitute and still address the safety and soundness concern:

(1) an application for the loan, signed and dated by the borrower or their agent (and if the borrower is a corporation, a board resolution authorizing the loan), which discloses the purpose for which the loan is sought, the identity of the security property, and the source of funds which will be used to repay the loan;

(2) a statement signed by the borrower or their agent, or a copy of the executed contract, disclosing the actual price at which the security is being purchased by the borrower, if the loan is made for the purpose of financing the purchase of the security for the loan;

(3) current financial statements signed by the borrower and all guarantors and/or current documented credit reports disclosing the financial ability of the borrower and guarantors (a current financial statement is as of a date within 180 days before the application is filed) together with written certification by the borrower and guarantors that no material adverse changes in financial condition have occurred since the financial statement was prepared;

(4) a loan approval sheet (which may be part of the loan application form) indicating the amount and terms of the loan, the date of loan approval, by whom approved, the signatures of the persons approving the loan, any conditions of approval, and verifying that the persons approving the loan have confirmed applicable limitations on loans to one borrower for purposes of Finance Code §94.001 are met;

(5) a loan disbursement statement or other documentation, indicating the date, amount, and ultimate recipient of every disbursement of the proceeds of such loan (this requirement is not met by showing one or more disbursements to a title company or other escrow agent, but for a construction loan, this requirement may be met by documenting bona fide construction draw disbursements to the general contractor of the project, upon their completion of an affidavit stating that all bills for labor and materials have been paid as of the date of the disbursement);

(6) a loan settlement statement, indicating in detail the expenses, fees, and charges the borrower or borrowers have paid in connection with such loan;

(7) the promissory note or notes containing the borrower's obligation to repay duly executed by the borrower and all guaranty agreements duly executed by the guarantors (a copy of the note or notes may be kept in the loan file, if the original notes are stored for safekeeping in another location at the savings bank);

(8) the original mortgage, deed of trust, or other instrument creating or constituting the lien securing the loan;

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(9) for real estate loans, an attorney's opinion letter based on an abstract of title, or a policy of title insurance, or binder of same, issued by a title company authorized to insure titles in the state in which the security for the loan is located, showing that the lien securing such loan meets the applicable requirements of this chapter for liens securing the loan in question;

(10) evidence that the insurable improvements of the real estate are insured against loss by a fire and extended coverage policy or its equivalent issued by an insurance company authorized to do business in the state in which the real estate security is located and naming the savings bank as a co-insured, as its interest may appear;

(11) for real estate loans, an appraisal or evaluation completed in accordance with the requirements of 12 C.F.R. §323.1, et seq.;

(12) for personal property loans, a detailed explanation of how the savings bank arrived at the appraised or market value of the security property;

(13) any loan agreement or other ancillary documents relating to the loan; and

(14) any documents required by the Texas Credit Title (Finance Code §301.001 et seq.).

(c) Unsecured Loans. Documentation guidelines for unsecured loans under this chapter would generally include the documents in subsection (a)(1) and (3) - (7) of this section.

(d) Loan documentation which meets the documentation requirements of the applicable agency meets the requirements of this section for any loan of which at least 80% of the principal is guaranteed by the United States or any agency or instrumentality thereof.

(e) Closing Agent. A savings bank may designate as escrow agent an attorney or a title company, either of which must be duly licensed in the state where the transaction is closed. However, where an escrow agent is used, all original documents must be forwarded to the savings bank within 5 business days after closing, or immediately after recording, for those documents which require filing of record.

(f) Permanent Loan File Requirements.

(1) Loan documentation must be in the possession of the savings bank or an escrow agent designated by the savings bank before funding, together with a signed certification by an officer or employee that the loan documentation was complete before funding and such documents and records must be placed in one permanent loan file immediately upon receipt by the savings bank.

(2) The permanent loan file required by this section must be located at an office of the savings bank. Duplicate loan files or other files containing loan documentation not required by this rule may be maintained at the savings bank's discretion. Files for loans which are fully secured by accounts at the savings bank may be maintained at the office where the loan was originated.

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(3) The permanent loan file must contain evidence that the savings bank obtained the prompt recording in the proper records of every mortgage, deed of trust, or other instrument creating, constituting or transferring any lien securing in whole or part any loan made under this chapter, or the savings bank's interest therein. This requirement does not apply to loan participations purchased by the savings bank.

(4) Where the proceeds of a loan are disbursed over the term of the loan in the form of draws by the borrower, the documentation supporting each draw must be part of the permanent file.

(5) When a savings bank purchases whole loans or participations in loans, it must cause the assignment or transfer of its interest in the liens securing such loans to be in recordable form and maintained in the permanent file. If such loans are serviced by others, the servicing agreement must be a part of the permanent file. The savings bank must obtain a certification from the seller of the loan or participation that the seller is in possession of all documents required by this section.

(g) The records of the savings bank must reflect that the board has by appropriate resolution established procedures for the approval of all loans, loan commitments or letters of credit made by the savings bank and specifically fixing the authority and responsibility for preliminary loan approval by officers and employees of the savings bank. Loans originating in branch offices, loan offices, or agencies must be approved in the same manner as loans originating in the principal office.

(h) A savings bank must maintain a register of all outstanding loan commitments, including commitments to purchase loans or participations, containing the name and address of the customer to whom the commitment is made, dollar amount of the commitment, and a summary of all material terms of the commitment, with a description of any written documents evidencing the loan commitment.

§75.306. Loans to and Transactions with Officers, Directors, Affiliated Persons, and Employees.

All transactions, including loans, involving officers, directors, affiliated persons, controlling persons or employees are subject to the requirements of Federal Reserve Board Regulations O and W, which sections are hereby incorporated by reference. The Department will monitor and enforce compliance with such provisions.

§75.307. Letters of Credit.

A savings bank may issue letters of credit in accordance with the terms and conditions of the Uniform Commercial Code of the State of Texas and the Uniform Customs and Practice for Documentary Credits, subject to the following requirements.

(1) The savings bank must maintain a letter of credit register containing name of customer, address, amount of credit extended, and identifying number.

(2) Each letter of credit must conspicuously state that it is a letter of credit or must be conspicuously entitled as such.

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(3) The savings bank's undertaking must contain a specified expiration date or be for a definite term and must be limited in amount.

(4) The savings bank's obligation to pay arises only upon presentation of a draft and other documents as specified in the letter of credit and there is no obligation on the part of the savings bank to determine questions of fact or law at issue between the account party and the beneficiary.

(5) The savings bank must obtain an unqualified obligation from its customer to reimburse it for payments made under the letter of credit.

(6) The amount of each letter of credit must be included in the aggregation of loans subject to the limitations of this chapter relating to the loans to one borrower for purposes of Finance Code §94.001.

(7) Each letter of credit's terms is subject to the limitations and documentation requirements to the same extent as if it were a loan made under this chapter.

(8) An appropriate fee may be collected for each letter of credit issued.

§75.308. Investment in Securities.

(a) A savings bank is deemed to have power to invest in obligations of, or guaranteed as to principal and interest by, the United States or this state; in stock of a federal home loan bank of which it is eligible to be a member, and in any obligations or consolidated obligations of any federal home loan bank or banks; in stock or obligations of the FDIC; in stock or obligations of a national mortgage association created by federal law or any successor or successors thereto; in demand, time, or savings deposits with any bank or trust company the deposits of which are insured by the Federal Deposit Insurance Corporation; in stock or obligations of any corporation or agency of the United States or this state, or in deposits therewith to the extent that such corporation or agency assists in furthering or facilitating the savings bank's purposes or power; in demand, time, or savings deposits of any financial institution the deposits of which are insured by the FDIC; in bonds, notes, or other evidences of indebtedness which are a general obligation of any city, town, village, county, school district, or other municipal corporation or political subdivision of this state; and in such other securities or obligations approved by the Commissioner.

(b) A savings bank investing in securities under this section must insure that the securities are delivered to the savings bank, or for the savings bank's account to a custodial agent or trustee designated by the savings bank, within 3 business days after paying for or becoming obligated to pay for the securities. The savings bank may employ as custodial agent or trustee a federal home loan bank, a federal reserve bank, a bank the accounts of which are insured by the Federal Deposit Insurance Corporation, any savings and loan association legally exercising trust powers and the accounts of which are insured by the Federal Deposit Insurance Corporation, or such other trust company approved in advance by the Commissioner. When employing any of the foregoing entities as trustee or custodial agent

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to accept delivery of the securities, the savings bank must insure that it receives a custodial or trust receipt for the securities within 3 business days of the delivery of the securities.

(c) No savings bank or subsidiary thereof may invest, either directly or indirectly, in the stocks, bonds, notes, or other securities of any affiliated person without the prior written approval of the Commissioner.

(d) No savings bank or subsidiary thereof may, either directly or indirectly, purchase securities from any affiliated person of such savings bank.

(e) Investments in equity securities.

(1) A savings bank or any service corporation, operating subsidiary, or finance subsidiary of a savings bank may not invest in stock or equity securities unless the securities qualify as investment grade securities. Additionally, no savings bank may invest in stock or equity securities unless the securities are eligible investments for federal savings banks.

(2) The limitations of paragraph (1) of this subsection do not apply to equity securities:

(A) issued by any United States government-sponsored corporation including the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Student Loan Marketing Association; or

(B) issued by a service corporation, an operating subsidiary, or a finance subsidiary of the savings bank.

(f) A savings bank may be a member of the Federal Home Loan Bank System and/or Federal Reserve System and is specifically authorized to invest in such Federal Home Loan Bank and Federal Reserve Bank stock.

§75.309. Investment in Banking Premises and Other Real Estate Owned.

(a) A savings bank may not, without prior written consent of the Commissioner, invest an amount in excess of its capital in fixed assets, including land, improvements, furniture and fixtures, and other depreciable assets, and capital leases.

(b) A savings bank may not acquire real estate, other than its domicile, except in satisfaction or partial satisfaction of indebtedness, or in the ordinary course of the collection of loans and other obligations owing the savings bank, or for the use of the bank in future expansion of its banking facilities.

(c) Real estate acquired for the future expansion of a savings bank's facilities not improved and occupied as banking facilities within 5 years from the date of its acquisition must be sold or otherwise disposed of. Existing bank facilities must be sold or otherwise disposed of within 5 years of the date the real estate ceases to be used for banking purposes. The Commissioner may, for good cause shown, grant an extension of time for the sale or disposition of the real estate, as described in this subsection.

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(d) Real estate acquired in satisfaction or partial satisfaction of indebtedness, or in the ordinary course of the collection of loans and other obligations owing the savings bank may be held by a savings bank for no more than 5 years, unless the Commissioner extends in writing the holding period for such property.

(e) Subject to subsection (f) of this section, when real estate is acquired in accordance with subsection (d) of this section, a savings bank must substantiate the market value of the real estate by obtaining an appraisal within 90 days of the date of acquisition. An evaluation may be substituted for an appraisal if the recorded book value of the real estate is \$500,000 or less. The Commissioner may, for good cause shown, grant an extension of time for obtaining an appraisal or evaluation (as appropriate), as described in this subsection.

(f) An additional appraisal or evaluation is not required when a savings bank acquires real estate in accordance with subsection (d) of this section, if a valid appraisal or appropriate evaluation was made in connection with the real estate loan that financed the acquisition of the real estate and the appraisal or evaluation is less than 1 year old.

(g) An evaluation must be made on all real estate acquired in accordance with subsection (d) of this section at least once a year. An appraisal must be made at least once every 3 years on real estate with a recorded book value in excess of \$500,000.

(h) Notwithstanding any other provision of this section, the Commissioner may require an appraisal of real estate if the Commissioner considers an appraisal necessary to address safety and soundness concerns.

(i) An appraisal or evaluation made in accordance with this section must be performed in accordance with the standards described by the Federal Deposit Insurance Corporation in 12 C.F.R., Part 323, Subpart A or the Federal Reserve System in 12 C.F.R., Part 225, Subpart G, as applicable.

DIVISION 2 SUBSIDIARIES

§75.321. Investment in and Divestiture of Subsidiaries.

(b) A savings bank may, only after prior written approval of the Commissioner, invest in a subsidiary.

(d) Subsequent to obtaining approval for its initial investment and activity, a subsidiary may not engage in additional or substitute activities without the prior written approval of the Commissioner.

(e) A savings bank may, with prior written approval of the Commissioner, divest itself of a subsidiary or merge or consolidate the subsidiary with another company if the Commissioner finds that the terms and conditions of the transaction are in the best interests of the savings bank.

§75.323. Authorized Subsidiary Investments.

(a) Activities of a subsidiary must consist of one or more of the following:

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(1) loan origination, purchasing, selling, and servicing;

(2) acquisition of unimproved real estate lots and other unimproved real estate for the purpose of prompt development and subdividing;

(3) purchasing, selling, owning, renting, leasing, managing, subdividing, improving, operating for income, or otherwise dealing in and with real property, whether improved or unimproved (excluding any investment of any nature in an oil and gas drilling venture, whether such investment be in the stock of a corporate entity or in the partnership or joint venture interest of any entity making purchases or investments in oil and gas drilling ventures);

(4) acquisition of improved residential real estate and mobile home lots to be held for sale or rental;

(5) acquisition of improved residential real estate for remodeling, rehabilitation, modernization, renovation, or demolition and rebuilding for sale or for rental;

(6) maintenance and management of rental real estate;

(7) serving as real estate brokers;

(8) serving as insurance broker or agent;

(9) engaging in or owning an interest in insurance companies engaged in the property, casualty, fire and marine, life, health and accident, title, fidelity, guaranty, and surety insurance business;

(10) serving in the capacity of trustee under deeds of trust or escrow agent;

(11) preparation of state and federal tax returns for the savings bank's accountholders and/or borrowers;

(12) acquisition, maintenance, and management of real estate to be used for savings bank offices and related facilities;

(13) investing in obligations of, or guaranteed as to principal and interest by, the United States or this state, and in bonds, notes, or other evidences of indebtedness which are a general obligation of any city, town, village, county, school district, or other municipal corporation or political subdivision of this state;

(14) investing in venture capital through small business investment corporations;
and

(15) other activities which may be approved by the Commissioner.

(b) A subsidiary may not, without prior approval of the Commissioner, invest in the stock of any savings and loan association or savings bank.

(c) A subsidiary may not receive payments on new or established savings accounts or pay out withdrawals of monies from savings accounts, and may not perform any duties for the savings bank other than those specifically authorized in this section.

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(d) The savings bank must maintain the originals of all documents relating to the activities of its subsidiaries that do not require prior approval by the Commissioner, which documents must be made available at all times to state and federal supervisory authorities for examination and review.

§75.324. Subsidiary Operations.

(a) The savings bank must obtain prior written approval of the Commissioner for the establishment and location of the home office, and any branch office, agency office, or any other office or facility of the subsidiary, and for any change of name of the subsidiary.

(b) A verified copy of all contracts, instruments, joint ventures, and partnership agreements and financing arrangements of the subsidiary investments must be furnished to the savings bank within 30 days from date of execution.

(c) The subsidiary must furnish, at the expense of the subsidiary or parent savings bank or its holding company, an independent appraiser's report or other expert opinion as determined to be necessary by the Commissioner for the purpose of establishing the value of any investments made by the subsidiary.

(d) Each subsidiary must maintain fidelity bond coverage with an acceptable bonding company in an amount that adequately protects the subsidiary from such loss. Coverage as an additional insured entity under a fidelity bond of the parent savings bank or its holding company may satisfy this requirement.

(e) All directors of the savings bank and subsidiary must furnish affidavits fully disclosing any direct or indirect interest they may have in each investment made by the corporation.

(f) Each subsidiary must maintain books and records as may be prescribed by the Commissioner. The records must be created and maintained in accordance with the requirements of §76.201 of this title (relating to Books and Records), pertaining to savings banks.

§75.325. Subsidiary Investment and Debt Limitation.

Investment in subsidiaries is deemed to include investment in the subsidiary's capital stock, paid-in capital, subordinated debentures, unsecured loans, advances, contingencies, and other obligations (excluding secured conforming loans), and may not, in the aggregate, exceed 10% of the savings bank's total assets without prior approval.

§75.326. Operating Subsidiaries.

A savings bank is authorized to invest in operating subsidiaries, the activities of which are exclusively limited to activities which could be conducted directly by the parent savings bank. Because an operating subsidiary is limited to activities that could otherwise be conducted directly by the savings bank, operating subsidiary investment is not limited by the percentage of assets or dollar amount restrictions applicable to subsidiary corporations as set forth in §75.321 of this title (relating to Subsidiary Investment and Debt Limitation).

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Notwithstanding this exclusion, all other provisions of this chapter applicable to a subsidiary apply equally to an operating subsidiary.

DIVISION 3 SAVINGS AND DEPOSITS

§75.331. User Safety at Unmanned Teller Machines.

(a) Definitions. Words and terms used in this subchapter that are defined in the Finance Code §59.301, have the same meanings assigned by such section.

(b) Measurement of candle foot power. For purposes of measuring compliance with the Finance Code §59.307, candle foot power should be determined under normal, dry weather conditions, without complicating factors such as fog, rain, snow, sand or dust storm, or other similar condition.

(c) Leased premises.

(1) Noncompliance by Landlord. Pursuant to the Finance Code, §59.306, the landlord or owner of property is required to comply with the safety procedures of the Finance Code, Chapter 59, Subchapter D, if an access area or defined parking area for an unmanned teller machine is not controlled by the owner or operator of the unmanned teller machine. If an owner or operator of an unmanned teller machine on leased premises is unable to obtain compliance with safety procedures from the landlord or owner of the property, the owner or operator must notify the landlord in writing of the requirements of the Finance Code Chapter 59, Subchapter D, and of those provisions for which the landlord is in noncompliance.

(2) Enforcement. Noncompliance with safety procedures required by the Finance Code Chapter 59, Subchapter D, by a landlord or owner of property after receipt of written notification from the owner or operator constitutes a violation of the Finance Code Chapter 59, Subchapter D, which may be enforced by the Texas Attorney General.

(d) Safety Evaluations.

(1) The owner or operator of an unmanned teller machine must evaluate the safety of each machine on a periodic basis no less frequently than annually.

(2) The scope of the safety evaluation must include, at a minimum, the factors identified in Finance Code §59.308.

(3) The owner or operator of the unmanned teller machine may provide the landlord or owner of the property with a copy of the safety evaluation if an access area or defined parking area for an unmanned teller machine is not controlled by the owner or operator of the machine.

(e) Notice. An issuer of access devices must furnish its customers with a notice of basic safety precautions that each customer should employ while using an unmanned teller machine. The notice must be personally delivered or sent to each customer whose mailing address is in this state, according to records for the account to which the access device relates, and may be included with other disclosures related to the access device, including

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an initial or periodic disclosure statement furnished under the Electronic Fund Transfer Act (15 U.S.C. §1693 et seq.). The notice may be delivered electronically if permissible under Texas Business & Commerce Code §322.008.

(1) When Notice is Required. The issuer must furnish the notice to its customer whenever an access device is issued or renewed. If the issuer furnishes an access device to more than one customer on the same account, the issuer is not required to furnish the notice to more than one of the customers.

(2) Content of Notice. The notice of basic safety precautions required by this subsection may include recommendations or advice regarding:

(A) security at walk-up and drive-up unmanned teller machines, such as recommendations that the customer should:

(i) remain aware of surroundings and exercise caution when withdrawing funds;

(ii) inspect an unmanned teller machine before use for possible tampering, or for the presence of an unauthorized attachment that could capture information from the access device or the customer's personal identification number;

(iii) refrain from displaying cash and put it away as soon as the transaction is completed; and

(iv) wait to count cash until the customer is in the safety of a locked enclosure, such as a car or home;

(B) protection of the customer's code or personal identification number, such as a recommendation that the customer ensure no one can observe entry of the customer's code or personal identification number;

(C) safeguarding and protection of the customer's access device, such as a recommendation that the customer treat the access device as if it were cash, and if the access device has an embedded chip, that the customer keep the access device in a safety envelope to avoid undetected and unauthorized scanning;

(D) procedures for reporting a lost or stolen access device and for reporting a crime;

(E) reaction to suspicious circumstances, such as a recommendation that a customer who observes suspicious persons or circumstances, while approaching or using an unmanned teller machine, should not use the unmanned teller machine at that time or, if the customer is in the middle of a transaction, should cancel the transaction, take the access device, leave the area, and come back at another time, or use an unmanned teller machine at another location;

(F) safekeeping and secure disposition of unmanned teller machine receipts;

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(G) the inadvisability of surrendering information about the customer's access device over the telephone or over the Internet, unless to a trusted merchant in a call or transaction initiated by the customer;

(H) protection against unmanned teller machine fraud, such as a recommendation that the customer promptly review the customer's monthly statement and compare unmanned teller machine receipts against the statement;

(I) protection against Internet fraud, such as a recommendation that the customer, if purchasing online with the access device, should end transactions by logging out of websites instead of just closing the web browser; and

(J) other recommendations that the issuer reasonably believes are appropriate to facilitate the security of its unmanned teller machine customers.

(f) Video Surveillance Equipment. Video surveillance equipment is not required to be installed at all unmanned teller machines. The owner or operator must determine whether video surveillance or unconnected video surveillance equipment should be installed at a particular unmanned teller machine site, based on the safety evaluation required under Finance Code §59.308. If an owner or operator determines that video surveillance equipment should be installed, the owner or operator must provide for selecting, testing, operating, and maintaining appropriate equipment.

(g) Unmanned Teller Machines Located in a Bank Vestibule. The provisions of the Finance Code Chapter 59, Subchapter D, and this section are applicable to an unmanned teller machine located in a bank vestibule if there is 24 hour access to the vestibule from outside the building.

(h) Certification of Compliance. The security officer of each depository must certify compliance with the Finance Code Chapter 59, Subchapter D, and this section on a basis no less frequently than annually.

§75.332. Pledging of Assets to Secure Deposits of Certain Public Purpose Entities.

A savings bank may pledge its assets to secure the deposits of:

- (1) the United States government or any instrumentality thereof;
- (2) any State or political subdivision, agency, or instrumentally thereof;
- (3) any local municipality, agency, or instrumentally thereof;
- (4) any federally-recognized Indian tribe; or
- (5) any other entity, as required by state or federal law, or court order.

CHAPTER 76 MISCELLANEOUS

{{All existing sections in Chapter 76 will be repealed. Specifically, the following rules sections will be repealed:

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§76.1. Books and Records.

§76.2. Accounting Practices.

§76.4. Financial Statements; Annual Reports; Audits.

§76.5. Misdescription of Transactions.

§76.6. Charging Off or Setting Up Reserves against Bad Debts.

§76.7. Examinations.

§76.12. Bylaws.

§76.21. Capital Requirements.

§76.22. Increase or Decrease of Minimum Capital Requirements.

§76.23. Business Plans.

§76.24. Capital Notes and Debentures.

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

§76.26. Joint Issuance of Capital Obligations.

§76.41. Registration.

§76.42. Reports.

§76.43. Release from Registration.

§76.44. Examinations.

§76.45. Agent for Service of Process.

§76.46. Release from Registration.

§76.47. Mutual Holding Companies.

§76.91. Fee for Charter Application.

§76.92. Fee for Branch Office.

§76.93. Fee for Mobile Facility.

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

§76.95. Fee for Special Examination.

§76.96. Fee for Certificate of Formation and Bylaw Amendments.

§76.97. Fee for Permission To Issue Capital Obligations.

§76.98. Annual Assessments.

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

§76.100. Fee for Expedited Applications.

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§76.101. Fee for Change of Control.

§76.103. Fees for Subsidiaries.

§76.105. Fee for Conversion into a Savings Bank.

§76.106. Fee for Mutual to Stock Conversion.

§76.107. Fee for Holding Company Registration.

§76.108. Fees for Public Information Requests.

§76.109. Fee for Protest Filing.

§76.110. Fees Nonrefundable.

§76.122. Savings Bank Complaint Notices.}}

CHAPTER 77 LOANS, INVESTMENTS, SAVINGS, AND DEPOSITS

{{All existing sections in Chapter 77 will be repealed. Specifically, the following rules sections will be repealed:

§77.1. Loans Authorized.

§77.2. Limitations on Aggregate Loans to One Borrower.

§77.3. Residential Real Estate Loans.

§77.4. Home Improvement Loans.

§77.5. Manufactured Home Loans.

§77.6. Interim Construction Loans.

§77.7. Other Real Estate Loans.

§77.8. Personal Property Loans.

§77.9. Commercial Real Estate Loans.

§77.10. Non-Real Estate Commercial Loans.

§77.11. Unsecured Loans.

§77.31. Loan Policies and Documentation.

§77.33. Loans to and Transactions with Officers, Directors, Affiliated Persons, and Employees.

§77.35. Definitions.

§77.51. Letters of Credit.

§77.71. Investment in Securities.

§77.73. Investment in Banking Premises and Other Real Estate Owned.

§77.91. Investment in and Divestiture of Subsidiary Corporations.

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§77.92. Subsidiary Corporation Application.

§77.93. Authorized Subsidiary Investments.

§77.94. Subsidiary Operations.

§77.95. Subsidiary Investment and Debt Limitation.

§77.96. Operating Subsidiaries.

§77.115. User Safety at Unmanned Teller Machines.

§77.116. Pledging of Assets to Secure Deposits of Certain Public Purpose Entities.}}