

2660.0030 ACQUISITION PROCEDURE.

Subpart 1. **Application.** After filing an application in writing with the commissioner on the forms provided by the Department of Commerce:

A. An association in any reciprocating state may establish or operate branch offices in this state by acquisition, merger, purchase, and assumption of some or all of the assets or liabilities or consolidation, and may acquire by direct or indirect ownership or control the voting shares of a savings and loan holding company, a savings association, or a savings bank located in this state, and may acquire and merge with a savings and loan holding company with its headquarters in this state.

B. A savings and loan holding company with its headquarters in a reciprocating state may acquire by direct or indirect ownership or control the voting shares of a savings and loan holding company, a savings association, or a savings bank located in this state, and may acquire and merge with a savings and loan holding company with its headquarters in this state.

C. The headquarters of a savings and loan holding company for purposes of this part is that state in which the operations of its deposit taking subsidiaries are the largest in terms of total deposits.

D. The commissioner, upon receipt of the application, shall act upon it within 30 days of the end of the public comment period provided by part 2660.0110 and, unless the proposed acquisition is disapproved within that period of time, it becomes effective without approval, except that the commissioner may extend the 30-day period an additional 30 days if in the commissioner's judgment any material submitted is substantially inaccurate or the acquiring party has not furnished all the information required by subparts 3 and 4, or the commissioner. No application for approval required by this part is complete unless accompanied by an application fee of \$5,000 payable to the commissioner of management and budget. Within three days after making the decision to disapprove any proposed acquisition, the commissioner shall notify the acquiring party in writing of the disapproval. The notice must provide a statement of the basis for the disapproval.

Subp. 2. **Hearings.** Within ten days of receipt of notice of disapproval under subpart 1, the applicant may request an agency hearing on the proposed acquisition. At the hearing, all issues must be determined on the record under Minnesota Statutes, chapter 14, and the rules issued by the department. At the conclusion of the hearing, the commissioner shall by order approve or disapprove the proposed acquisition on the basis of the record made at the hearing.

Subp. 3. **Application documentation.** An application filed under subpart 1 must contain the following attachments:

A. A certified copy of the applicant board's resolution authorizing submission of the application and designating the officers authorized to sign it.

B. A copy of the most recent Federal Home Loan Bank Examination Report for the applicant or the applicable state regulatory authority. If the applicant is prohibited from releasing this report, it shall file a copy of a written request to the appropriate federal or state authority requesting delivery of the report to the commissioner.

C. A copy of all invitations, tenders, or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition.

D. A copy of all acquisition agreements detailing the terms and conditions of any proposed acquisition.

E. An organizational chart of the applicant and its subsidiaries.

F. A copy of the most recent consolidated report of condition and statement of earnings of the applicant.

G. A pro forma balance sheet of the applicant on a consolidated basis both before and after the acquisition.

H. A statement of the assets and liabilities of the applicant, as of the end of the calendar year for each of the five years immediately preceding the date of the application, together with related statements of income, sources, and application of funds for each of the calendar years then concluded, prepared in accordance with generally accepted accounting principles, consistently applied.

I. An interim statement of assets and liabilities of the applicant, together with related statements of income, source, and application of funds as of a date not more than 90 days before the date of the filing of the application.

J. Any other information the commissioner considers necessary to determine whether the application should be approved.

Subp. 4. **Information.** The application form shall include, but not be limited to, the following:

A. The name and address of the applicant.

B. The name and address of the acquiree.

C. The full name of each shareholder who owns or controls ten percent or more of the stock of the acquiree who is tendering its stock.

D. The total number of shares presently held by each shareholder who owns or controls ten percent or more of the stock of the acquiree who is tendering its stock.

E. The total number of shares to be sold or transferred by each shareholder who owns or controls ten percent or more of the stock of the acquiree.

F. The total number of shares to be held by each shareholder of the acquiree who will hold or control ten percent or more of the stock following completion of the proposed transaction.

G. The total number of voting shares authorized by either the acquiree association or the acquiree savings and loan holding company.

H. The total number of outstanding voting shares of the acquiree.

I. The number of shares involved in this transaction.

J. The total number of shares of the acquiree currently held by the applicant.

K. The total consideration for the proposed transaction.

L. The identity, personal history, business background, and experience of the applicant. If known to the applicant, or any officer or director of the applicant, the identity, personal history, business background, and experience of its affiliates, including any material business activities and affiliations during the past five years.

M. A description of any material pending legal or administrative proceeding in which the applicant is a party, and any criminal indictment or conviction of that person by a state or federal court; and, if known by the applicant or an officer or director of the applicant, similar proceedings involving an affiliate of the applicant must be disclosed.

N. The names and addresses of the anticipated board of directors of the Minnesota association being acquired by the applicant. If a savings and loan holding company located in Minnesota is being acquired, the attachment must contain the names and addresses of the anticipated board of directors of the subsidiary located in Minnesota of the savings and loan holding company. If the anticipated board is not known, include an explanation of how the directors will be determined.

O. If a savings and loan holding company located in Minnesota is being acquired, the attachment must list the names and addresses of its subsidiaries.

P. The source and amount of funds or other consideration, except those funds borrowed, to be used in making the acquisition. The applicant should particularly describe any of its assets that are to be liquidated to finance the acquisition.

Q. If any part of the funds or other consideration are to be borrowed to make the acquisition, the applicant must describe the collateral to be pledged and the terms of the transaction, including the name of the lender, interest rates, requirements, guarantors,

endorsers, and any other arrangements, agreements, and understandings between and among the parties. The application must include copies of any loan commitments obtained from lenders in connection with the proposed acquisition.

R. If borrowed funds are to be obtained, the applicant must indicate the sources of funds for debt service. Additionally, the applicant shall detail the extent to which the applicant intends to rely on dividends and fees or other funds from the association being acquired for debt servicing requirements.

S. The applicant must identify any person retained or compensated by the applicant, or by any person on the applicant's behalf, to make solicitations of recommendations to stockholders for the purpose of assisting in the acquisition, and a brief description of the terms of any retainer or arrangement for compensation.

T. The applicant must disclose any plans or proposals regarding any partial or full liquidation of the acquiree, of any plans or proposals to sell the acquiree's assets or merge it, or any other major change in the acquiree's business or corporate structure or management.

U. The applicant must describe how the acquisition will bring net new funds, under part 2660.0100 to Minnesota.

V. The application must also disclose how the acquisition will not result in undue concentration of resources or a substantial lessening of competition in Minnesota. The application shall delineate the relevant market area of the association or associations to be acquired and located in Minnesota. This delineation is to be described by map or drawing showing the other associations and commercial banks accompanied by a schedule of correspondent, current total deposits of each.

W. The applicant shall describe its plan of compliance in providing the developmental loans and investments.

X. The applicant must describe developmental loans or developmental investments as set forth in part 2660.0040.

Y. The commissioner may additionally require other information as may be necessary to determine whether the application should be approved.

Subp. 5. **Disapproval.** The commissioner shall disapprove any proposed acquisition if:

A. the financial condition of any acquiring person is such as might jeopardize the financial stability of the Minnesota association or prejudice the interests of the depositors of the Minnesota association;

B. the competence, experience, and integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the

depositors of the Minnesota association or in the interest of the public to permit the person to control the Minnesota association;

C. the acquisition will result in undue concentration of resources or substantial lessening of competition in this state;

D. the application fails to adequately demonstrate that the acquisition proposal would bring net new funds into Minnesota; or

E. the application is incomplete or any acquiring party neglects, fails, or refuses to furnish all the information required by the commissioner.

Subp. 6. **Appeals.** The Court of Appeals of Minnesota will have exclusive original jurisdiction of any judicial review of an order issued under this part. The applicant that is the subject of the order may see judicial review at any time within 90 days of the date of an order lawfully issued under this part.

Statutory Authority: *MS s 45.023; 51A.58*

History: *14 SR 2893; L 1995 c 202 art 1 s 25; L 2003 c 112 art 2 s 50; L 2009 c 101 art 2 s 109*

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