

§ 53C-10-102. Holding company control transaction.

(a) Except as otherwise expressly permitted by this section, a person shall not engage in a control transaction to which a holding company formed under the laws of this State and having a bank as a subsidiary is a party without the prior approval of the Commissioner. A person may contract to engage in a control transaction with the consummation of the control transaction being subject to receipt of the approval of the Commissioner.

(b) The Commissioner may require a person who is obligated to file a notice or an application under this section to appoint an agent resident in this State for service of process upon the filing of the notice or application or as a condition to the acceptance of the notice or application for review. An application for approval shall be in a form required by the Commissioner and shall be accompanied by such fee as may be required by rule.

(c) The following transactions shall not constitute a control transaction under this section requiring the prior approval of the Commissioner:

- (1) The acquisition of control over voting securities by a person who has previously engaged in a control transaction with respect to the holding company after receiving the approval of the Commissioner under this Article, which approval permits the acquisition of control over additional voting securities, or any person who is an affiliate of the person previously engaging in the approved control transaction with such permission and who is identified in the application submitted for the approval, if the acquiring person files a notice with the Commissioner, in the form required by the Commissioner, describing the transaction at least 10 days before the acquiring person or affiliate thereof first votes or directs the voting of the voting securities.
- (2) An acquisition of control over voting securities by operation of law, will, or intestate succession, if the acquiring person files a notice with the Commissioner, in the form required by the Commissioner, describing the acquisition or transfer at least 10 days before the acquiring person first votes or directs the voting of the voting securities.
- (3) Bona fide gifts.
- (4) A transaction exempted by rules, orders, or declaratory rulings of the Commissioner, issued because approval of the transaction is not necessary to achieve the objectives of this Chapter.
- (5) An acquisition of control over voting shares exempt from the prior approval requirements set forth in section 3 of the Bank Holding Company Act, as amended (12 U.S.C. § 1842), pursuant to the exceptions described in items (A), (B), or (C) of subsection (a) of that section.
- (6) An acquisition of control over voting securities in a transaction subject to approval under section 3 of the Bank Holding Company Act, as amended (12 U.S.C. § 1842).

(d) Upon receipt of a notice described in subsection (c) of this section, the Commissioner may, before the 10th day following the receipt, notify the acquiring person of the Commissioner's objection to the exercise of control over the voting securities or may require the acquiring party to submit further information before exercising control over the voting securities. An acquiring person receiving a notice of objection shall be required to submit an application for approval of a control transaction. An acquiring person receiving a notice to submit further information may be required to provide any information that would be included in an application for approval of a control transaction. In the event such an acquiring

person is comprised of a group of persons, the Commissioner may require each member of the group to submit relevant information.

(e) All voting securities over which control has been acquired by an acquiring person shall not be voted on any matter submitted to a vote of the holders of the outstanding voting securities of the holding company of a bank and shall be deemed authorized but unissued for purposes of determining the presence of a quorum of holders of voting securities until such time as follows:

- (1) The Commissioner has approved an application for approval of a control transaction with respect to the voting securities.
- (2) The transaction is one listed in subsection (c) of this section that does not require the filing of a notice with the Commissioner.
- (3) The transaction is one listed in subsection (c) of this section that requires a notice to be filed with the Commissioner and the Commissioner has not issued an objection to the notice and any requirement of the Commissioner for the filing of further information had been determined by the Commissioner to have been satisfied. (2012-56, s. 4; 2013-29, s. 20.)