

Instructions for Preparation of FR 2070 Application to the Board of Governors of the Federal Reserve System

Who Must File This Application

Any insured depository institution wanting to merge or consolidate with any other insured depository institution or, either directly or indirectly, acquire the assets of, or assume liability to pay any deposits made in, any other insured depository institution must file an application with the Board if the resulting insured depository institution is to be a member bank of the Federal Reserve System.

For purposes of this application, the insured depository institution filing this application is referred to as Applicant while the insured depository institution to be acquired is referred to as Bank.

Preparation of Application

To assist Applicant, a pamphlet titled *Processing an Application Through the Federal Reserve System* is available from any Federal Reserve Bank ("Reserve Bank"). Applicant is encouraged to refer to this pamphlet as well as the Board's *Manual on Procedures for Processing Applications and Notifications for Bank Holding Companies and State Member Banks* as they provide information and assistance for preparing and filing an application, and outline the processing procedures, public notification requirements, which are also described below, and other general information.

Inquiries concerning the preparation and filing of this application should be directed to the Reserve Bank of the District in which the main office of Applicant is located. As indicated on the cover page, an application may first be submitted in draft form whenever Applicant so chooses. Applicant should contact the appropriate Reserve Bank during preparation of the application to determine whether an examination of Bank will be required. Applicant should also contact the appropriate Reserve Bank during preparation of an application involving an interim bank merger to determine what parts of the application must be completed.

The required application is to be filed by submitting the information requested in this form to the appropriate Reserve Bank. Alternative formats, if used, must provide all requested information. The application must be substantially complete and responsive to each item of information requested (including an indication that the answer is "not applicable" or "none" where such is the case) in order to be considered properly filed in accordance with the requirements of the FDI Act.

The appropriate Reserve Bank, within the established time limitations, will review the submitted application to determine if it is complete. If so, an acknowledgement letter will be sent indicating the date of completion. If the submitted application is not complete, a request for additional information will be sent to the contact person named in the application.

The Federal Reserve System reserves the right to require the filing of additional statements and information. If any information initially furnished in the application changes significantly during processing of the application, these changes should be communicated promptly to the appropriate Reserve Bank.

Publication Requirement

Pursuant to section 262.3(b)(1) of the Board's Rules of Procedures, Applicant should publish notice of the proposed transaction in a newspaper of general circulation in the communities in which the head office of each of the insured depository institutions involved in the transaction are located. The notice shall be published on at least three occasions at appropriate intervals, with the last publication of the notice appearing at least thirty days after the first publication. Such notice should be published in the joint names of all insured depository institutions involved in the transaction, it must contain the subject matter of the application, and it must provide an opportunity for the public to give written comment on the application to the appropriate Reserve Bank for at least thirty days after the date of the first publication of the notice. Within seven days of publication of notice for the first time, Applicant should submit the application to the appropriate Reserve Bank.

Following is a sample notice:

Notice of Application

Application to effect a merger, consolidation, acquisition of assets or assumption of deposit liabilities

Name and Address of Applicant

Notice is hereby given by (name of Applicant and location of head office) that it has applied to the Federal Reserve System to effect a merger, consolidation, acquisition of assets or assumption of deposit liabilities with (name of Bank and location of head office). The Federal Reserve System considers a number of factors in deciding on whether to approve the application, including the record of performance of the banks we own in helping to meet local credit needs.

You are invited to submit comments on this application, in writing, to the Federal Reserve Bank of (name and address of appropriate Reserve Bank). The comment period will not end before (date—must be no less than 30 days from the date of publication of the first notice), and may be somewhat longer. The Federal Reserve Board's Policy Statement regarding notice of applications may be found at 12 C.F.R. 262.25. To obtain a copy of the Federal Reserve Board's procedures, or if you need more information about how to submit your comments on the application, contact the Community Affairs Officer at the Federal Reserve Bank of (name of the Reserve Bank, name of Community Affairs Officer, and telephone number). The Federal Reserve System will consider your comments and any request for a hearing on the application if they are received by the Federal Reserve Bank of (name of Reserve Bank) on or before the last date of the comment period.

Confidentiality

Under the provisions of the Freedom of Information Act (5 U.S.C. 552), the application is a public document and available to the public upon request.

If Applicant is of the opinion that disclosure of commercial or financial information would likely result in substantial harm to its competitive position or that of its subsidiaries, or that disclosure of information of a personal nature would result in a clearly unwarranted invasion of personal privacy, confidential treatment of such information may be requested. This request for confidential treatment must be submitted in writing concurrently with the submission of the application, and must discuss in detail the justification for confidential treatment. Such justification must be provided for each response for which confidential treatment in the public portion of the application is requested. Applicant's reasons for requesting confidentiality should demonstrate specifically the harm that would result from public release of the information. A statement simply indicating that the information would result in competitive harm or that it is personal in nature is not sufficient. (A claim that disclosure would violate the law or policy of a foreign country is not, in and of itself, sufficient to exempt information from disclosure. It must be demonstrated that disclosure would meet either the "substantial competitive harm" or "unwarranted invasion of personal privacy" tests.)

Information for which confidential treatment is requested should be: (1) specifically identified in the public portion of the application (by reference to the confidential section); (2) separately bound; and (3) labeled "Confidential." Applicant should follow this same procedure on confidentiality with regard to filing any supplemental information to the application.

The Board will determine whether information submitted as confidential will be so regarded, and will advise Applicant of any decision to make available to the public information labeled "Confidential." However, it shall be understood that, without prior notice to Applicant, the Board may disclose or comment on any of the contents of the application in the Order or Statement issued by the Board in connection with its decision on the application. The Board's staff normally will apprise Applicant in the course of the applications process that such information may need to be disclosed in connection with the Board's action on the application.

Oakar Transactions

Section 5(d)(3) of the FDI Act (the "Oakar Amendment"), as amended by the Federal Deposit Insurance Improvement Act of 1991, permits the direct merger of banks with savings associations, subject to the satisfaction of certain conditions. With regard to determinations filed pursuant to the Oakar Amendment, Applicant must demonstrate that the proposed transaction conforms with each of the specific conditions as imposed on these transactions by the FDI Act. Contact the appropriate Reserve Bank for the specific informational requirements of an Oakar Amendment determination.

Preliminary Charter Approval

If a proposed new operating bank is involved, Applicant should have received at least preliminary approval of the charter before filing this application.

Supporting Information

Please note that the Federal Reserve System specifically reserves the right to require the filing of additional statements and information. The formal questions in the application are not intended to limit Applicant's presentation. Applicant bears the full burden for presenting and documenting a case to meet the statutory criteria for approval. Supporting information for any or all factors, setting forth the basis for Applicant's judgment, may accompany the application.

Compliance

The Board expects Applicant to comply with all representations and commitments made in this application. Applicant should immediately contact the appropriate Reserve Bank if there is any change in the structure of the proposal prior to consummation.

REQUESTED INFORMATION

Proposed Transaction

1. Provide the following with respect to Bank:
 - a. Total number of shares of each class of stock outstanding;
 - b. Number of shares of each class now owned or under option by Applicant, by subsidiaries of Applicant, by principals of Applicant,¹ by trustees for the benefit of Applicant, its subsidiaries, shareholders, and employees as a class, or by an escrow arrangement instituted by Applicant;
 - c. Number of shares of each class to be acquired by cash purchase, the amount to be paid, per share and in total, and the source of funds to be applied to the purchase; and
 - d. Number of shares of each class to be acquired by exchange of stock, the exchange ratio, and the number and class of Applicant's shares to be exchanged.
 - e. Addresses of all branch locations including a brief description of Applicant's plans with regard to operation of each branch.

1. The term principal as used herein means any individual or corporation that (1) owns, directly or indirectly, 10 percent or more of the outstanding shares of any class; (2) is a director, trustee, partner, or executive officer; or (3) with or without ownership interest, participates, or has the authority to participate in major policy-making functions, whether or not the individual has an official title or is serving without compensation. If Applicant believes that any such individual should not be regarded as a principal, Applicant should so indicate and give reasons for such opinion.

2. Provide a copy of the executed Merger Agreement between the participating parties as well as any other contract or agreement that is material to the proposed transaction, including any existing or proposed contract or agreement that in any manner limits the ability of individuals associated with Applicant or Bank to compete with the resulting bank. Discuss the purpose of and the reasonableness of such an arrangement with respect to duration, geographic area, and the institutions involved.
3. Provide a brief description of any unusual contractual terms, emphasizing those terms not disclosed elsewhere in the application. Also, provide the expiration dates of any contractual arrangement between the parties involved in this application.
4. If the proposed transaction is an acquisition of assets and assumption of liabilities, indicate the total price and the amount such price represents per share to the stockholders of Bank. Also, indicate the source of funds which Applicant intends to use in acquiring the assets of Bank. If funds are to be supplied by Applicant's parent holding company, discuss the effect of the transaction on the holding company.
5. a. Provide a copy of the executed Merger Agreement between the participating parties as well as any other contract or agreement that is material to the proposed transaction, including any existing or proposed contract or agreement that in any manner limits the ability of individuals associated with Applicant or Bank to compete with the resulting bank. Discuss the purpose of and the reasonableness of such an arrangement with respect to duration, geographic area, and the institutions involved.
6. Provide a brief description of any unusual contractual terms, emphasizing those terms not disclosed elsewhere in the application. Also, provide the expiration dates of any contractual arrangement between the parties involved in this application.
7. If the proposed transaction is an acquisition of assets and assumption of liabilities, indicate the total price and the amount such price represents per share to the stockholders of Bank. Also, indicate the source of funds which Applicant intends to use in acquiring the assets of Bank. If funds are to be supplied by Applicant's parent holding company, discuss the effect of the transaction on the holding company.
8. Discuss any material change in the financial condition of Applicant or Bank since the most recent examination(s). If there are no material changes, a statement to that effect should be made.
9. Describe any plans of Applicant and its parent holding company to issue additional equity, subordinated debentures or other long-term debt, including debt to be incurred or assumed in this proposal. Provide the amount, maturity and a brief description of the debt instruments and indicate which instruments qualify under the risk-based capital guidelines as tier 2 capital.
10. a. If the pro forma consolidated assets of Applicant's parent holding company are equal to or greater than \$150 million, or if the pro forma consolidated assets of Applicant's parent holding company are less than \$150 million and it engages in a leveraged nonbank activity or issues publicly held debt, and parent company long-term debt will exceed 30 percent of parent company equity capital accounts on a pro forma basis, provide cash flow projections for the parent company for each of the next three years, along with supporting schedules for each material cash receipt and disbursement. For example, if the parent company projects that dividends from its subsidiary banks will be utilized to service parent company debt, provide projections of assets, tier 1 and total capital ratios pursuant to the risk-based capital guidelines as well as the leverage ratio, earnings, and dividends for the subsidiary banks. (If the combined assets of the subsidiary banks exceed \$500 million, subsidiary bank data can be shown on an aggregate basis.) Explain the methods and assumptions utilized in the projections, and support all assumptions which deviate from historical performance; or
- b. If the pro forma consolidated assets of Applicant's parent holding company are less than \$150 million and parent company long-term debt will exceed 30 percent of parent company equity capital accounts on a pro forma basis, provide cash flow projections for the parent company which clearly demonstrate the ability to reduce the long-term debt to equity ratio to 30 percent or less within 12 years of consummation.² Such projections must take into account the schedule of principal reduction required by the parent company's creditor(s). Include projections of subsidiary bank(s) assets, tier 1 and total capital ratios pursuant to the risk-based capital guidelines as well as the leverage ratio, earnings, and dividends. Explain the methods and assumptions utilized in the projections, and support all assumptions which deviate from historical performance.

Financial and Managerial Information

5. a. Provide balance sheets for Applicant and Bank as of the end of the most recent fiscal quarter, showing separately each principal group of assets, liabilities, and capital accounts; debit and credit adjustments (explained by footnotes) reflecting the proposed acquisition; and the resulting pro forma balance sheets. Goodwill and all other intangible assets should be set out separately on the balance sheet according to type of intangible, and indicate the amortization period for any intangible asset and the accretion period of any purchase discount on the balance sheet. Also, material changes between the date of the balance sheets and the date of the application should be disclosed. If there are no material changes, a statement to that effect should be made; and
 - b. Provide for Applicant a breakdown of its existing and pro forma risk-adjusted assets as of the end of the most recent fiscal quarter, showing each principal group of on- and off-balance sheet assets and the relevant risk-weight. Also, identify the existing and pro forma components of tier 1 and tier 2 capital pursuant to the risk-based capital guidelines as of the end of the most recent fiscal quarter, and provide calculations of Applicant's existing and pro forma tier 1 and total capital to risk-adjusted assets, as well as the leverage ratio.
 6. Provide the most recent income statements for Applicant and Bank as well as a pro forma statement of income and expenses for the first fiscal year of operation after the merger.
 7. Indicate the amount of any dividend payments by Applicant or Bank since the date of the most recent report of condition and report of income and dividends. Also, indicate the amount of any Applicant or Bank dividends that are planned prior to consummation.
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2. If Applicant's pro forma consolidated assets are less than \$150 million and if Applicant is either engaged in a leveraged nonbank activity or has issued publicly held debt, Applicant need not submit the specified cash flow projections.

11. List any changes in management or other principal relationships of Applicant which will result from the proposal. For any existing or proposed principal of Applicant or Bank that is also a principal of any other depository institution or depository institution holding company,³ provide the following information:
 - a. Name, address, and title or position with Applicant, Bank, and the other depository institution or depository institution holding company (give the name and location of the other depository institution or depository institution holding company);
 - b. Number and percentage of each class of shares of Applicant and Bank owned, controlled, or held with power to vote by this individual;⁴
 - c. Principal occupation if other than with Applicant or Bank; and
 - d. Percentage of direct or indirect ownership held in the other depository institution or depository institution holding company if such ownership represents 10 percent or more of any class of shares. (Information that has been collected or updated within the past 12 months may be submitted, unless Applicant has reason to believe that such information is incorrect.)

Competition and Convenience and Needs

Note: Applicant should contact the appropriate Reserve Bank to determine whether a response to item 12 is necessary. If a response is required, Applicant should obtain a pre-liminary definition of the relevant banking markets from the Reserve Bank. If Applicant disagrees materially with the Reserve Bank's preliminary definition of the banking market(s), it may in addition to supplying the information requested on the basis of the Reserve Bank's definition of the banking market(s), include its own definition of the banking market(s), with supportive data, and answer the questions based on its definition. If later analysis leads Fed-

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3. For purposes of this application, a "depository institution" is defined as a commercial bank (including a private bank), a savings bank, a trust company, a savings and loan association, a homestead association, a cooperative bank, an industrial bank, or a credit union.
 4. Include shares owned, controlled or held with power to vote by principal's spouse and dependents. Give record ownership and to the extent information is available, beneficial ownership of shares held by trustees, nominees, or in street names.

eral Reserve staff to alter the preliminary definition provided, Applicant will be so informed.

12. Discuss the effects of the proposed acquisition of Bank on existing and potential competition considering existing horizontal and market extension merger guidelines. Applicant may be required to provide additional information if Federal Reserve staff determines that the proposal exceeds existing competitive guidelines. Also, if divestiture of all or any portion of any bank constitutes part of this proposal, discuss in detail the specifics and timing of such divestiture.
13. In an application in which any principal of Applicant or Bank is also a principal of any other depository institution or depository institution holding company, give the name and location of each office of such other institution that is located within the relevant banking market of Bank, and give the approximate road miles by the most accessible and traveled route between those offices and each of the offices of Bank.
14. Indicate any banking needs of the community(ies) served by Bank that will be better met after the proposed acquisition. Also, discuss any new or expanded services that will be provided as a result of the proposal, including a reference to a prospective timeframe in which such services will be provided. Indicate which of the new services are not currently available in the community(ies) to be served. (If any new or expanded services cited in applications submitted by Applicant within the past two years have not been implemented, state the reason(s)). Comments should include, but need not be limited to, discussion of any expected changes in:
 - a. Service charges on transaction deposits;
 - b. Interest rates paid on time and savings deposits;
 - c. Interest rates on business, consumer, personal, and other loans;
 - d. Maximum maturities and other loan terms;
 - e. Composition of the loan and investment portfolio;
 - f. Banking house and improvements in physical facilities; and
 - g. Policies and activities of Applicant designed to meet existing or anticipated credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with safe and sound operations.