

This handbook section provides guidance on submissions filed under 12 C.F.R. § 574.4(e), to permit a passive investor, who does not control or influence the management and operations of a savings institution, to invest in an institution without having to undergo the filing procedures and intense scrutiny of an acquisition of control filing. The regulation also permits an investor to rebut the presumption of concerted action with certain parties presumed to be acting in concert. Rebuttable presumptions of concerted action are defined in 12 C.F.R. § 574.4(d). A rebuttal filing must be accepted prior to an investor exceeding a control threshold so that the Office of Thrift Supervision (OTS) has the opportunity to review the investor's proposed relationship with the institution and other investors.

12 C.F.R. § 574.4(e) provides rebuttal procedures to be followed in the event that an acquiror (a person or a company) proposes to take an action that would result in rebuttable control of an institution. The regulation also provides procedures for the filing of a rebuttal if a presumption of concerted action is raised with respect to the stockholdings of a group of individuals and/or companies.

The rebuttal procedure is available only when a party proposes to take an action (such as acquiring stock or forming a group) that would cause the party to exceed a control threshold, but not gain conclusive control (as defined in 12 C.F.R. § 574.4(a)) of an institution.

Because the rebuttal filing is made before an acquiror exceeds the rebuttal threshold, it is important to understand not only how much stock the acquiror holds and proposes to acquire directly, but also what other relationships are present that may constitute concerted action and would result in the attribution of additional stock to the acquiror.

Note: The definition of a savings institution as set forth in 12 C.F.R. § 574.2(p) includes a savings and loan holding company.

FILING REQUIREMENTS

Delegated Authority

Generally, filings made pursuant to this section may be processed by the Regional Office under delegated authority. Filings that are not delegated to the Regional Office are those that include: a significant issue of law or policy; approval of requested waivers of statutes, regulations, OTS policy or significant notice requirements; involve hostile or contested acquisitions, opposition proxy solicitations or other potential acquisitions where there is a competing acquiror; involve person(s) subject to a pending notice of charges or formal investigation; involve material waivers of the required provisions for standard rebuttal of control or action in concert filings; or raise significant competitive factor issues. See Delegation Section 040 of the handbook for information on the delegation process.

Expedited and Standard Processing Procedures

This filing is not subject to the expedited processing procedures set forth in 12 C.F.R. Part 516. Procedures for rebuttal of control filings are set forth in 12 C.F.R. § 574.4(e).

Prefiling Meeting Requirements

Prefiling meetings are not required for this filing. However, applicants are encouraged to contact the Regional Office, particularly in the event the transaction involves unique or novel issues, to determine if a prefiling meeting will expedite the application review process.

Information and Form Requirements

Rebuttal submissions must be filed and accepted prior to the acquisition of stock or control factor, except for certain transactions that are exempt from prior approval or notice under 12 C.F.R. § 574.3(d).

If delegated, all filings and the appropriate application fee should be filed with the appropriate Regional Office in accordance with 12 C.F.R. Part 516. The applicant should file the original and two copies of the filing with the appropriate Regional Office. All copies are to be clearly marked as to the type of filing, and should contain all exhibits and other pertinent documents. One copy must contain original signatures on all executed documents. For filings that are not delegated to the Regional Office, an additional three copies of the submission should be filed with the Applications Filing Room in OTS-Washington. For specific information concerning the filing procedures, refer to Application Filing Requirements Section 010 of this handbook.

Each rebuttal of control filing submitted to OTS for action should include the following information:

- A submission (in letter form) naming the involved institution, the rebuttal parties, the number of shares and percentage of voting shares held by the rebuttal parties.
- A statement setting forth the facts and circumstances that support the acquiror's contention that no control relationship would exist if the filer of the rebuttal acquires stock or obtains a control factor with respect to a savings institution.
- An executed rebuttal of control agreement that materially conforms to the form of agreement set forth in 12 C.F.R. § 574.100. (See Exhibit I.)

Each rebuttal of concerted action filing submitted to OTS for action should include the following information:

- A submission (in letter form) naming the involved institution, the rebuttal parties, the number of shares and percentage of voting shares held by the rebuttal parties;
- A statement setting forth the facts and circumstances that clearly and convincingly demonstrate the filer's contention that no action in concert exists; and

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- An affidavit, executed by each person or company presumed to be acting in concert pursuant to 12 C.F.R. § 574.4(e)(2), stating that such person or company does not and shall not have any agreements or understandings with respect to the exercise of control over management or policies of the institution, including agreements related to voting acquisition, or disposition of the institution's stock. The affidavit should also include a recitation that the signatory is aware that the filing of a false affidavit may subject the person or company to criminal sanctions, would constitute a violation of 12 C.F.R. § 563.180(b), and would be considered a "presumptive disqualifier" under 12 C.F.R. § 574.7(g)(1)(v).

Although not required by regulation, OTS policy requires each party to a rebuttal to execute a copy of Attachment A to Regulatory Bulletin (RB) 20.

Confidentiality

The applicant must submit in writing, concurrently with the submission of the application, any requests to keep specific portions of the application confidential. In accordance with the Freedom of Information Act, the request should discuss the justification for the requested treatment and should specifically demonstrate the harm (e.g., to competitive position, invasion of privacy) that would result from the public release of information. OTS will not treat as confidential the portion of an application describing the plan to meet the Community Reinvestment Act objectives.

Information for which confidential treatment is requested should be: (i) specifically identified in the public portion of the application by reference to the confidential section; (ii) separately bound; and (iii) labeled "confidential." The applicant should follow these same procedures when filing supplemental information to the application. OTS will determine whether information designated as confidential must be made available to the public under the Freedom of Information Act. OTS will advise the applicant before it makes information designated as confidential available to the public.

REVIEW GUIDELINES

Processing Procedures and Time Frames

As noted in the Delegated Authority section, certain filings are not subject to delegated authority and are processed concurrently with OTS-Washington staff. As a general matter, correspondence from OTS regarding notices that are nondelegated will be transmitted from OTS-Washington. Correspondence on delegated notices will generally come from the Regional Office.

Within five business days of receipt of the notice and fee, the Regional Office must notify the applicant, in writing, of the notice's receipt. The appropriate fee must accompany each notice in order for it to be considered filed. For nondelegated notices, the notice will not be considered filed until received by both OTS-Washington and the Regional Office.

If applicable, within five business days of receipt of the submission, the Regional Office will begin its background investigations on individuals who were required to submit such information in connection with the filing. The background investigations should include, at a minimum, a search of the applicants in the Westlaw, LEXIS/NEXIS, and CIIS databases. If appropriate, the review may

also require OTS to contact other regulatory agencies to seek additional comments on the applicants. This review may also require that OTS request examination reports from another agency. All issues that are disclosed in the background check must be addressed directly with the individual. Results of all background checks should be addressed in the Regional Office's digest.

The applicant may acquire additional shares upon the expiration of 20 calendar days after the filing date of its submission, unless OTS takes one of the following actions before expiration of that time period:

- Request, in writing, any additional information necessary to supplement the notification;
- Return the submission to the acquiror as materially deficient; or
- Accept or reject the submission.

Failure by OTS to act within 20 calendar days of receipt of the submission for processing shall result in the filed submission being accepted. If supplemental information is requested, the applicant will have 30 days to provide such information. Upon receipt of such information, OTS has 15 calendar days to take one of the three actions noted above.

For purposes of calculating processing time frames, OTS does not include the day of the act or event, in determining the date the time period commences. In determining the conclusion of a time period, when the last day of the time period is a Saturday, Sunday, or a Federal holiday, the last day will become the next day that is not a Saturday, Sunday, or Federal holiday.

Under 12 C.F.R. § 516.290, if OTS has not acted on a pending application within two calendar years after the filing date, OTS may deem the application withdrawn unless OTS determines that the applicant is actively pursuing a final determination on the application. Applications that are subject to this withdrawal provision are those that have failed to timely take action such as filing required additional information, or OTS has suspended processing of an application based on circumstances that are, in whole or in part, within the applicant's control and have failed to take reasonable steps to resolve these circumstances.

Regulatory Criteria

Rebuttal of Control

An acquiror shall be determined, subject to rebuttal, to have acquired control of a savings institution, if the acquiror:

- Acquires more than ten percent of any class of voting stock of the institution and is subject to any control factor (discussed below).
- Acquires more than 25 percent of any class of stock of the institution and is subject to any control factor.

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- Holds any combination of voting stock and revocable and/or irrevocable proxies, representing more than 25 percent of any class of voting stock of an institution, and such proxies would enable the acquiror to:
 - * Elect one-third or more of the institution's board of directors, including nominees or representatives of the acquiror currently serving on such board;
 - * Cause the institution's stockholders to approve the acquisition or corporate reorganization of the institution; or
 - * Exert a continuing influence on a material aspect of the business operations of the institution.

The following constitute control factors:

- The acquiror would be one of the two largest holders of any class of stock of the savings institution.
- The acquiror would hold more than 25 percent of the total stockholders' equity of the institution.
- The acquiror would hold more than 35 percent of the combined debt securities and stockholders' equity of the institution.
- The acquiror is party to any agreement that enables the acquiror to influence a material aspect of the management or policies of the institution or is party to any agreement pursuant to which the acquiror would possess a material economic stake in the institution resulting from a profit-sharing arrangement.
- The acquiror would have the ability, other than through the holding of revocable proxies, to direct the votes of more than 25 percent of a class of the institution's voting stock.
- The acquiror would have the power to direct the disposition of more than 25 percent of a class of the institution's voting stock other than through a public offering.
- The acquiror and/or the acquiror's representatives or nominees would constitute more than one member of the institution's board of directors.
- The acquiror or nominee or management official of the acquiror would serve as the chairman of the board of directors, chairman of the executive committee, chief executive officer, chief operating officer, chief financial officer, or in any position with similar policymaking authority in the institution.

Rebuttal of Presumption of Concerted Action

An acquiror will be presumed to be acting in concert with the following persons and companies:

- A company will be presumed to be acting in concert with a controlling shareholder, partner, trustee, or management official of such company with respect to the acquisition of stock of a savings institution, if:

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- * The company and the person own stock in the savings institution;
 - * The company provides credit to the person to purchase the savings institution's stock; or
 - * The company pledges its assets or otherwise is instrumental in obtaining financing for the person to acquire stock of the savings institution.
- A person will be presumed to be acting in concert with members of his immediate family, as defined by 12 C.F.R. § 574.2(j).
 - Persons will be presumed to be acting in concert with each other where:
 - * Both own stock in a savings institution and both are also management officials, controlling shareholders, partners, or trustees of another company, or
 - * One person provides credit to another person or obtains financing for another person to purchase stock of the savings institution.
 - A company controlling or controlled by another company and companies under common control will be presumed to be acting in concert.
 - Persons or companies will be presumed to be acting in concert where they constitute a group under the rules and regulations of the Securities Exchange Act of 1934.
 - A person or company will be presumed to be acting in concert with any trust for which such person acts as trustee (except for tax-qualified employee stock benefit plans).
 - Persons or companies will be presumed to be acting in concert with each other, and with any other person or company with which they also are presumed to act in concert.

Pursuant to 12 C.F.R. § 574.4(e)(3), the OTS may reject any rebuttal that is inconsistent with the facts and circumstances known to it or where the rebuttal does not clearly and convincingly refute the rebuttable determination of control or presumption of action in concert, and may determine to reject a submission solely on such bases.

Decision Guidelines

Rebuttal of Control

The regulatory requirements are designed to ensure that the individuals or companies maintain a passive ownership interest in, and are not in control of, the institution of savings and loan holding company. The analysis should conclude that the investors rebutting control do not and will not be in a position to influence control over the institution in any way, thereby avoiding a control filing. If it has been determined that the individuals do have control over the institution, the rebuttal must be rejected and the applicant must file a change in control notice or divest. OTS should consider the following factors in analyzing the application to determine if the transaction satisfies the applicable statutory and regulatory criteria for approval:

- Information concerning current and proposed stock holdings
 - * How much stock does the applicant directly own and how much stock will the applicant acquire?
 - * How much stock does the applicant indirectly control and how much will the applicant indirectly own after the acquisition? Should shares held by others be aggregated with the applicant's holdings?
 - * Is any of the stock currently held "immediately convertible," and, therefore, considered "voting stock" pursuant to 12 C.F.R. § 574.2(u)?
 - * Is any stock convertible at a later date? On what terms?

- Background information concerning the applicant
 - * Occupation/lines of business of the applicant.
 - * Source of funds to make the acquisition. If funds are to be borrowed, is the lender presumed to be acting in concert with the applicant?
 - * Have background checks of the applicant provided evidence of fraud or questionable dealings in the past?

- Relationship with the institution
 - * Information concerning the applicant's affiliations and business dealings with the institution.
 - * Has the applicant made a material change in the rebuttal agreement, for example, to reflect plans for representation in the management of the institution or intent to attempt to influence the operations of the institution?

- OTS should be alert for information that is inconsistent with the "passive investor" status required for a rebuttal to be accepted. Such information could include the following:
 - * The applicant has shown the desire to acquire control of the institution. Review Schedule 13D Reports (Shareholder Reports of Beneficial Ownership), if any, statements in the rebuttal filing, and any information provided by the institution.
 - * The applicant has explored the possibility of acquiring the institution.
 - * The applicant has indicated an interest in acquiring two or more board positions or other executive management positions.

Rebuttal of Concerted Action

The regulatory requirements are designed to ensure that the filing party does not have control of an institution. The analysis should conclude that the individuals rebutting concerted action are independent of one another. If it has been determined that the individuals are acting in concert, the rebuttal must be rejected and the applicant must file a change in control notice or divest. OTS should consider the following factors in analyzing the application to determine if the transaction satisfies the applicable regulatory criteria for approval:

- Relationships among filing parties
 - * Are current or prior family or business relationships present among the individuals or companies filing the rebuttal?
 - * If the only presumption is a familial tie, is there evidence that family members work together or invest in (or own) similar companies or stocks?
 - * Are the applicants comprised of a parent(s) and dependent child? (If yes, it is unlikely that the rebuttal would be accepted.)
 - * Has a parent(s) purchased stock for a child or loaned the funds for such purchase?
 - * If the presumption arises as the result of a series of business relationships, are the relationships formal and active undertakings?
 - * Do the affiliations represent a major source of income, investment or business for the applicants?
 - * What is the pattern of stock purchases by the applicants? Is there a pattern among the filers of purchasing stock at the same time, for the same price, or in the same amount?
 - * Have the applicants generally voted their stock in the same manner?
 - * Do the applicants share the same address?
 - * Do the applicants use the same accountants, investment advisors, or legal counsel?
 - * Does any information reflected in Schedule 13D reports (Shareholder Reports of Beneficial Ownership), indicate that the applicants are acting in concert?

Note: Generally, evidence of a pattern of relationships and dealings among the applicants will make it difficult to rebut the presumption of concerted action. Therefore, it is unlikely that two family members who own and operate a business together will be able to rebut the presumption. Similarly, when applicants who are not related have made a number of common investments, the presumption will be difficult to overcome.

- General information concerning each applicant, such as:
 - * Each applicant's number of shares and percentage of stock currently held.
 - * Each applicant's identity, occupation, and employer.

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- * Previous or existing relationships or transactions between each applicant and the institution that would indicate whether the applicant is exerting control over the institution.
 - * Have background checks of the applicant provided evidence of fraud or questionable dealings in the past?

General Decision Guidelines

- Is the acquiror already in violation of the regulations by acquiring such stock before filing a rebuttal?
- Does the rebuttal submission include all applicable parties?
- Does the rebuttal filing include the appropriate rebuttal agreement or affidavit?
- Has the applicant executed Certification A to RB-20?
- Has the target institution been contacted to determine if it has any objection to the rebuttal?
- Is the proposed acquiror currently in compliance with the provisions of 12 C.F.R. Part 574?
- Does the rebuttal involve an acquisition by an individual or a group of individuals acting in concert that does not constitute a company, as defined in 12 C.F.R. § 574.2(f)?
- Have all the appropriate persons filed?
- Is there any evidence that the acquiror is acting in concert with any other person who has not joined the rebuttal?
- Does the rebuttal contain the occupation of all acquirors?
- Do any of the acquirors participate in businesses similar to or in competition with the institution?
- Does the rebuttal contain a description of amounts of stock (including options) currently held by the acquirors?
- Does the rebuttal contain a description of the amount and type of stock the acquirors will acquire?
- Are the rights and convertibility features of the stock to be acquired described in the request?
- Are the rights and convertibility features of other classes of stock currently held by the acquiror described?
- Does the rebuttal outline how the acquiror proposes to acquire the stock?
- Does the rebuttal adequately explain how the acquiror intends to finance the acquisition of the stock?
- Is there any evidence that the acquiror has or will act in a manner inconsistent with the rebuttal request?
- Are there any affiliate transactions between the acquiror (or affiliates of the acquiror) and the institution? Would the transactions violate the rebuttal of control agreement?

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- Has the acquiror filed any Schedule 13Ds (Shareholder Reports of Beneficial Ownership) that reveal inconsistencies with the rebuttal?
 - Has the acquiror been checked through Westlaw? LEXIS/NEXIS? CIIS?
 - Has the acquiror been checked through the Suspicious Activity Report?
 - Is there any evidence or known fact that was disclosed in the background checks that is inconsistent with the information presented in the rebuttal?
 - Does the rebuttal disclose ownership interests in other thrifts?
 - Does the institution object to acceptance of the rebuttal filing or believe there exists certain control factors? If so, what is the basis for the objection?

If a rebuttal of concerted action:

- Are all relationships disclosed that would raise any of the presumptions of concerted action contained in 12 C.F.R. § 574.4(d)?
- If the presumption results from a family relationship, are the names and relationships fully disclosed?
- If the presumption results from a family relationship, are any of the filing parties minor children of a filing party? (Note: It is doubtful that a rebuttal of concerted action between a parent and minor child could be accepted.)
- Do other affiliations or associations exist between any of the family parties, e.g., father and adult child are business associates? (Note: If the presumption arises solely from the family relationship, and the filing clearly and convincingly demonstrates that the parties are not otherwise acting in concert, the rebuttal could be accepted.)
- Is there evidence that the filing parties have voted their shares of stock independently, such as voting differently on shareholder issues?
- Is there evidence that the filing parties purchased their stock as part of a group? (Note: For example, did each party purchase the same amount of stock at the same time?)
- Did any filing party lend money to another filing party for the purchase of stock?
- Is OTS aware of any current or prior family or business relationship among the acquirors that are not disclosed in the filing?
- Does the institution object to the acceptance to the rebuttal of concerted action filing? If so, what is the basis for the objection?

Conditions

The letter issued by OTS regarding the acceptance of a rebuttal of control should require the acquiror to transmit a copy of the executed rebuttal agreement to the savings institution to which the rebuttal pertains. Additionally, evidence of the transmission of the agreement should be submitted to the Regional Office.

OTS may condition its approval of the rebuttal of control or concerted action submission to include nonstandard conditions. If such nonstandard conditions are utilized, the Regional Office's digest must include appropriate justification for imposing such conditions.

Any nonstandard conditions incorporated into the approval letter must be summarized in the National Applications Tracking System record for the application. This requirement helps OTS to provide the public a complete listing of all applications approved with nonstandard conditions of approval.

RECORDKEEPING REQUIREMENTS

OTS is required to consolidate all correspondence related to the processing of the notice or application into a file copy to be sent to a central file. Both the Regional Office and OTS-Washington will maintain a separate file copy for nondelegated filings. The file copy must include a copy of the original filing including any exhibits, all amendments, all internal and external correspondence between interested parties, all documentation associated with the review and analysis of the filing, and all decision, recommendation memorandum, and compliance material. The file copy must be organized and separated into public and confidential material, and clearly identified as such. The public and confidential sections must be arranged in chronological order.

MONITORING AND CONTROL

The approval order or letter will generally include conditions of approval. The Regional Office will monitor compliance with all conditions imposed in connection with an application's approval. The applicant must submit evidence of satisfaction of the conditions included in the approval order or letter to the Regional Office within the stated time frames.

OTS should notify the appropriate staff responsible for the supervision and examination of the institution regarding the action taken on an application. In addition, OTS should provide the appropriate staff with copies of the approval order or letter. If an application is approved, the first examination of the institution following the approval should include a review of compliance with all conditions of approval and any changes in operations as a result of the transaction.

A review of the application file should be made after all compliance material is received to ensure that the file is complete. Any deficiencies should be corrected before the file is sent to storage.

OTS-Washington may conduct a post audit review of the application in the Regional Office, including a review of the documentation maintained in the application file.

Actions and Referrals

OTS staff should review for deviations from the terms of rebuttal of control agreements or rebuttal of concerted action affidavits. If deviations are found, the OTS staff member should consult with Regional Counsel and may refer the matter to the Office of Enforcement. If a violation is found, the shareholder(s) under review is prohibited from (i) receiving dividends from the subject institution and

(ii) voting on his/her stock, other than proportionately with other stockholders until the matter has been resolved.

OTS may take one or more of the following actions concerning deviations from the terms of rebuttal of control agreements or rebuttal of concerted action affidavits:

- Require the shareholder to divest his/her stock holdings below a control threshold.
- Impose one or more enforcement actions against the shareholder.

INFORMATION SOURCES

Statutes

12 U.S.C. § 1467a
12 U.S.C. § 1817(j)

Savings and Loan Holding Company Act
Change in Bank Control Act

Regulations

12 C.F.R. Part 516
12 C.F.R. Part 574

Applications Processing Guidelines
Acquisition of Control of Savings Institutions

OTS Bulletins

Regulatory Bulletin 20

Proper Investigation of Applicants and Increased
Communications Between the OTS and Other Financial
Institution Regulatory Agencies

Exhibit I

Rebuttal of Rebuttable Determination of Control under Part 574

I. WHEREAS

- A. [] is the owner of [] shares (the “Shares”) of the [] stock, of [name and address of the institution], which Shares represent [] percent of a class of “voting stock” of [] as defined under the Acquisition of Control Regulations (“Regulations”) of the Office of Thrift Supervision (“Office”), 12 CFR part 574 (“Voting Stock”);
- B. [] is a “savings association” within the meaning of the Regulations;
- C. [] seeks to acquire additional shares of stock of [] (“Additional Shares”), such that []’s ownership thereof will exceed 10 percent of a class of Voting Stock but will not exceed 25 percent of a class of Voting Stock of []; [and/or] [] seeks to [], which would constitute the acquisition of a “control factor” as defined in the Regulations (“Control Factor”);
- D. [] does not seek to acquire the [Additional Shares or Control Factor] for the purpose or effect of changing the control of [] or in connection with or as a participant in any transaction having such purpose or effect;
- E. The Regulations require a company or a person who intends to hold 10 percent or more but not in excess of 25 percent of any class of Voting Stock of a savings association or holding company thereof and that also would possess any of the Control Factors specified in the Regulations, to file and obtain approval of an application (“Application”) under the Savings and Loan Holding Company Act (“Holding Company Act”), 12 U.S.C. 1467a, or file and obtain clearance of a notice (“Notice”) under the Change in Control Act (“Control Act”), 12 U.S.C. 1817(j), prior to acquiring such amount of stock and a Control Factor unless the rebuttable determination of control has been rebutted;
- F. Under the Regulations, [] would be determined to be in control, subject to rebuttal, of [] upon acquisition of the [Additional Shares or Control Factor];
- G. [] has no intention to manage or control, directly or indirectly, [];
- H. [] has filed on [], a written statement seeking to rebut the determination of control, attached hereto and incorporated by reference herein (these submissions referred to as the “Rebuttal”);
- I. In order to rebut the rebuttable determination of control, [] agrees to offer this Agreement as evidence that the acquisition of the [Additional Shares or Control Factor] as proposed would not constitute an acquisition of control under the Regulations.

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- II. The Office has determined, and hereby agrees, to act favorably on the Rebuttal, and in consideration of such a determination and agreement by the Office to act favorably on the Rebuttal, [] and any other existing, resulting or successor entities of [] agree with the Office that:
- A. Unless [] shall have filed a Notice under the Control Act, or an Application under the Holding Company Act, as appropriate, and either shall have obtained approval of the Application or clearance of the Notice in accordance with the Regulations, [] will not, except as expressly permitted otherwise herein or pursuant to an amendment to this Rebuttal Agreement:
1. Seek or accept representation of more than one member of the board of directors of [insert the name of the institution and any holding company thereof];
 2. Have or seek to have any representative serve as the chairman of the board of directors, or chairman of an executive or similar committee of [insert the name of the institution and any holding company thereof]'s board of directors or as president or chief executive officer of [insert the name of the institution and any holding company thereof];
 3. Engage in any intercompany transaction with [] or []'s affiliates;
 4. Propose a director in opposition to nominees proposed by the management of [insert the name of the institution and any holding company thereof] for the board of directors of [insert the name of the institution and any holding company thereof] other than as permitted in paragraph A-1 of this Section II;
 5. Solicit proxies or participate in any solicitation of proxies with respect to any matter presented to the stockholders of [] other than in support of, or in opposition to, a solicitation conducted on behalf of management of [];
 6. Do any of the following, except as necessary solely in connection with []'s representative's performance of duties as a member of []'s board of directors:
 - (a) Influence or attempt to influence in any respect the loan and credit decisions or policies of [], the pricing of services, any personnel decisions, the location of any offices, branching, the hours of operation or similar activities of [];
 - (b) Influence or attempt to influence the dividend policies and practices of [] or any decisions or policies of [] as to the offering or exchange of any securities;
 - (c) Seek to amend, or otherwise take action to change, the bylaws, articles of incorporation, or charter of [];

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- (d) Exercise, or attempt to exercise, directly or indirectly, control or a controlling influence over the management, policies or business operations of []; or
 - (e) Seek or accept access to any non-public information concerning [];
- B. [] is not a party to any agreement with [].
 - C. [] shall not assist, aid or abet any of []'s affiliates or associates that are not parties to this Agreement to act, or act in concert with any person or company, in a manner which is inconsistent with the terms hereof or which constitutes an attempt to evade the requirements of this Agreement;
 - D. Any amendment to this Agreement shall only be proposed in connection with an amended rebuttal filed by [] with the Office for its determination;
 - E. Prior to acquisition of any additional shares of "Voting Stock" of [] as defined in the Regulations in excess of the Additional Shares, any required filing will be made by [] under the Control Act or the Holding Company Act and either approval of the acquisition under the Holding Company Act shall be obtained from the Office or any Notice filed under the Control Act shall be cleared in accordance with the Regulations;
 - F. At any time during which 10 percent or more of any class of Voting Stock of [] is owned or controlled by [], no action which is inconsistent with the provisions of this Agreement shall be taken by [] until [] files and either obtains from the Office a favorable determination with respect to either an amended rebuttal, approval of an Application under the Holding Company Act, or clearance of a Notice under the Control Act, in accordance with the Regulations;
 - G. Where any amended rebuttal filed by [] is denied or disapproved, [] shall take no action which is inconsistent with the terms of this Agreement, except after either (1) reducing the amount of shares of Voting Stock of [] owned or controlled by [] to an amount under 10 percent of a class of Voting Stock, or immediately ceasing any other actions that give rise to a conclusive or rebuttable determination of control under the Regulations; or (2) filing a Notice under the Control Act, or an Application under the Holding Company Act, as appropriate, and either obtaining approval of the Application or clearance of the Notice, in accordance with the Regulations;
 - H. Where any Application or Notice filed by [] is disapproved, [] shall take no action which is inconsistent with the terms of this Agreement, except after reducing the amount of shares of Voting Stock of [] owned or controlled by [] to an amount under 10 percent of any class of Voting Stock, or immediately ceasing any other actions that give rise to a conclusive or rebuttable determination of control under the Regulations;
 - I. Should circumstances beyond []'s control result in [] being placed in a position to direct the management or policies of [], then [] shall either (1) promptly file an Application under the Holding Company Act or a Notice under the Control Act, as appropriate, and take no affirmative steps to enlarge that control pending either a final

determination with respect to the Application or Notice, or (2) promptly reduce the amount of shares of [] Voting Stock owned or controlled by [] to an amount under 10 percent of any class of Voting Stock or immediately cease any actions that give rise to a conclusive or rebuttable determination of control under the Regulations;

- J. By entering into this Agreement and by offering it for reliance in reaching a decision on the request to rebut the presumption of control under the Regulations, as long as 10 percent or more of any class of Voting Stock of [] is owned or controlled, directly or indirectly, by [], and [] possesses any Control Factor as defined in the Regulations, [] will submit to the jurisdiction of the Regulations, including (1) the filing of an amended rebuttal or Application or Notice for any proposed action which is prohibited by this Agreement, and (2) the provisions relating to a penalty for any person who willfully violates or with reckless disregard for the safety or soundness of a savings association participates in a violation of the [Holding Company Act or Control Act] and the Regulations thereunder, and any regulation or order issued by the Office;
- K. Any violation of this Agreement shall be deemed to be a violation of the [Holding Company Act or Control Act] and the Regulations, and shall be subject to such remedies and procedures as are provided in the [Holding Company Act or Control Act] and the Regulations for a violation thereunder and in addition shall be subject to any such additional remedies and procedures as are provided under any other applicable statutes or regulations for a violation, willful or otherwise, of any agreement entered into with the Office.
- III. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which counterparts collectively shall constitute one instrument representing the Agreement among the parties thereto. It shall not be necessary that any one counterpart be signed by all of the parties hereto as long as each of the parties has signed at least one counterpart.
- IV. This Agreement shall be interpreted in a manner consistent with the provisions of the Rules and Regulations of the Office.
- V. This Agreement shall terminate upon (i) the approval by the Office of []'s Application under the Holding Company Act or clearance by the Office of []'s Notice under the Control Act to acquire [], and consummation of the transaction as described in such Application or Notice, (ii) in the disposition by [] of a sufficient number of shares of [], or (iii) the taking of such other action that thereafter [] is not in control and would not be determined to be in control of [] under the Control Act, the Holding Company Act or the Regulations of the Office as in effect at that time.

VI. IN WITNESS THEREOF, the parties hereto have executed this Agreement by their duly authorized officer.

Dated: _____

By: _____
Name:
Title:

OFFICE OF THRIFT SUPERVISION

Dated: _____

By: _____