

Acquisition or Merger of Financial Institutions
Chapter 8, Article 15
§§ 8-1501 to 8-1516

8-1501

Terms, defined.

For purposes of sections 8-1501 to 8-1505, unless the context otherwise requires:

(1) Person means an individual, corporation, partnership, limited liability company, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or other form of entity not specifically listed in this subdivision; and

(2) Control means to own directly or indirectly or to control in any manner twenty-five percent or more of the voting shares of any bank, trust company, or holding company or to control in any manner the election of the majority of directors of any bank, trust company, or holding company.

Last amended:

~ Reissue 2012

8-1502

Acquisition; notice required; exception; Director of Banking and Finance; duties.

(1) Except as provided in subsection (2) of this section, no person acting personally or as agent shall acquire control of any state-chartered bank or trust company without first giving sixty days' notice to the Department of Banking and Finance on forms provided by the department of such proposed acquisition.

The Director of Banking and Finance, upon receipt of such notice, shall act upon it within thirty days, and, unless he or she disapproves the proposed acquisition within that period of time, it may become effective on the sixty-first day after receipt without his or her approval, except that the director may extend the thirty-day period an additional thirty days if in his or her judgment any material information submitted is substantially inaccurate or the acquiring party has not furnished all the information required by sections 8-1501 to 8-1505 or by the director.

An acquisition may be made prior to the expiration of the disapproval period if the director issues written notice of his or her intent not to disapprove the action.

Within three days after his or her decision to disapprove any proposed acquisition, the director shall notify the acquiring party in writing of the disapproval. The notice shall provide a statement of the basis for the disapproval.

(2) The notice requirements of subsection (1) of this section shall not apply when:

(a) Shares of a state-chartered bank or trust company are acquired by a person in the regular course of securing or collecting a debt previously contracted in good faith or through inheritance or a bona fide gift if notice of such acquisition is given to the department, on forms provided by the department, within ten days after the acquisition;

(b) Shares of a state-chartered bank or trust company are transferred from an individual or individuals to a trust formed by the individual or individuals for estate-planning purposes if (i) there is no change in the proportion of shares held by the trust for such individual or individuals compared to the ownership of such individual or individuals prior to the formation of the trust, (ii) the individual or individuals control the trust, and (iii) notice of the proposed transfer is given to the department, on forms provided by the department, at least thirty days prior to the proposed transfer and the department does not disapprove the transfer for the reason that the transfer is an attempt to subvert the requirements of sections 8-1501 to 8-1505; or

(c) The director, the Governor, and the Secretary of State jointly determine that an emergency exists which requires expeditious action or that the department must act immediately to prevent probable failure of the institution to be acquired.

Last amended:

~ Reissue 2012

8-1503

Acquisition; hearing; when required; procedure.

Within ten days after receipt of notice of disapproval pursuant to section 8-1502, the acquiring party may request an agency hearing on the proposed acquisition. At such hearing, all issues shall be determined on the record pursuant to the administrative rules of procedure and the rules and regulations as may be issued by the Department of Banking and Finance in accordance with the Administrative Procedure Act. At the conclusion of such hearing, the Director of Banking and Finance shall by order approve or disapprove the proposed acquisition on the basis of the record made at such hearing.

Last amended:

~ Reissue 2012

8-1504

Acquisition; notice; contents.

Except as otherwise provided by rule and regulation of the department, a notice filed pursuant to section 8-1502 shall contain the following information:

(1) The identity, personal history, business background, and experience of each person by whom or on whose behalf the acquisition is to be made, including his or her material business activities and affiliations during the past five years, and a description of any material pending legal or administrative proceedings in which he or she is a party and any criminal indictment or conviction of such person by a state or federal court;

(2) A statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year immediately preceding the date of the notice;

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

(4) The identity, source, and amount of the funds or other consideration used or to be used in making the acquisition, and if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and any arrangements, agreements, or understandings with such persons;

(5) Any plans or proposals which any acquiring party making the acquisition may have to liquidate the bank or trust company, to sell its assets or merge it with any company, or to make any other major change in its business or corporate structure or management;

(6) The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on his or her behalf, to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and a brief description of the terms of such employment, retainer, or arrangement for compensation;

(7) Copies 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; and

(8) Any additional relevant information in such form as the Director of Banking and Finance may require by rule and regulation or by specific request in connection with any particular notice.

Last amended:

~ Reissue 2012

8-1505

Acquisition; disapproval; grounds.

The Director of Banking and Finance may disapprove any proposed acquisition if:

(1) The financial condition of any acquiring person is such as might jeopardize the financial stability of the bank or trust company or prejudice the interests of the depositors of the bank or trust company;

(2) The competence, experience, or 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 bank or trust company or in the interest of the public to permit such person to control the bank or trust company; or

(3) Any acquiring person neglects, fails, or refuses to furnish the Director of Banking and Finance all the information required by him or her.

Last amended:

~ Reissue 2012

8-1506

Failing financial institution; Director of Banking and Finance; powers; hearing; order; appeal.

(1) Whenever the Department of Banking and Finance determines the acquisition of any financial institution is necessary because its capital is impaired, it is conducting its business in an unsafe or unauthorized manner, or it is endangering the interest of depositors or savers, the Director of Banking and Finance may take immediate action in the case of an emergency so declared by the Governor, the Secretary of State, and the Director of Banking and Finance, without the benefit of a hearing, to convert or merge the charter, form of ownership or operating powers, some or all of the assets and liabilities, or one or more of the branches of the financial institution into the charter, form of ownership, or operating powers of one or more financial institutions to facilitate the acquisition. In the case of a financial institution chartered under the laws of Nebraska, such immediate action may include the ability by the director to take possession of the institution.

(2) Any stockholder, depositor, or creditor of any state-chartered financial institution shall, upon application to the director within five days of the entry of the order, be afforded a hearing relating to the department's order and determination not later than ten days after such application has been filed. On the basis of such hearing, the director shall enter a final order which may continue the original order in effect, revoke it, or modify it. Any person aggrieved by a final order of the director made pursuant to this section may appeal the order by filing, within ten days after the entry of the final order, a written petition praying that the final order be modified or set aside in whole or in part. Upon service of the petition, the director shall within fifteen days certify and file in such court a copy of the original order, the application for hearing, all exhibits and testimony, and the final order from which the appeal is taken. Such appeal shall otherwise be governed by the Administrative Procedure Act.

Last amended:

~ Reissue 2012

8-1506.01

Financial institution, defined.

For purposes of sections 8-1506 to 8-1510, financial institution shall mean a bank, savings bank, savings and loan association, building and loan association, trust company, or credit union, organized under the laws of this state or organized under the laws of the United States to do business in this state.

Last amended:

~ Reissue 2012

8-1507

Cross-industry acquisition; acquisition and operation as bank subsidiary; when authorized.

Pursuant to section 8-1506, the Department of Banking and Finance may permit cross-industry acquisition of any failing financial institution or permit acquisition and operation of such financial institution as a bank subsidiary by a bank holding company when the department determines the acquisition of any of the financial institutions is necessary because its capital is impaired, it is conducting its business in an unsafe or unauthorized manner, or it is endangering the interests of depositors or savers. If the acquiring institution is a bank, it may continue to operate such financial institution in its original form notwithstanding its denomination as a bank subsidiary. Acquisitions by any financial institution under sections 8-1506 to 8-1510 or section 8-1516 shall be deemed to be of the same nature as an acquisition of a state-chartered bank and shall follow such rules or regulations as may be established by the Director of Banking and Finance for acquisition of state-chartered banks by a bank holding company.

Last amended:

~ Reissue 2012

8-1508

Application by bank or bank holding company; terms and conditions.

Whenever an application by a bank or a bank holding company is received by the Department of Banking and Finance to acquire any other financial institution, the following terms and conditions shall be met and such acquisitions shall be valid only when and for as long as these conditions are satisfied:

(1) The acquiring bank holding company may not apply for and it shall not operate such a financial institution as a nonbank subsidiary under section 4 of the federal Bank Holding Company Act of 1956, as such act existed on July 20, 2002, unless such financial institution is a savings association as defined by section 2(j) of the federal Bank Holding Company Act of 1956, as such act existed on July 20, 2002;

(2) The financial institution to be acquired by a bank or a bank holding company shall be subject to the conditions upon which a bank incorporated under the laws of this state may establish, maintain, relocate, or close any of its offices pursuant to the Nebraska Banking Act, but nothing in sections 8-1506 to 8-1510 or any other provision of law shall require divestiture of any branch or office in operation at the time of acquisition; and

(3) A financial institution to be acquired by a bank holding company shall be subject to the provisions of section 3 of the federal Bank Holding Company Act of 1956, as such act existed on July 20, 2002, and those rules and regulations that apply to bank subsidiaries of bank holding companies as are or may be established by both the Board of Governors of the Federal Reserve System and the Director of Banking and Finance.

Last amended:

~ Reissue 2012

8-1509***Acquisition by bank holding company; prohibited; exceptions.***

A bank holding company shall not acquire, hold, or operate a financial institution acquired under sections 8-1506 to 8-1510 or section 8-1516 located in this state as a nonbank subsidiary under section 4 of the federal Bank Holding Company Act of 1956, as amended, unless such financial institution is a savings association as defined by section 2(j) of the federal Bank Holding Company Act of 1956, as amended. The Director of Banking and Finance shall not either accept or approve an application for acquisition under sections 8-1506 to 8-1510 or section 8-1516 which contains as a term or condition thereof the approval of the Board of Governors of the Federal Reserve System under section 4(c)(8) of the federal Bank Holding Company Act of 1956, as amended, unless such financial institution is a savings association as defined by section 2(j) of the federal Bank Holding Company Act of 1956, as amended.

Last amended:

~ Reissue 2012

8-1510***Cross-industry acquisition or merger; application; notice; hearing.***

(1) The Director of Banking and Finance may permit cross-industry acquisition or merger of one or more financial institutions under its supervision upon the application of such institutions to the Department of Banking and Finance. The application shall be made on forms prescribed by the department.

(2) Except as provided for in subsection (3) of this section, when an application is made for such an acquisition or merger, notice of the filing of the application shall be published by the department three weeks in a legal newspaper in or of general circulation in the county where the applicant proposes to operate the acquired or merged financial institution. A public hearing shall be held on each application. The date for hearing the application shall be not more than ninety days after the filing of the application and not less than thirty days after the last publication of notice after the examination and approval by the department of the application. If the department, upon investigation and after public hearing on the application, is satisfied that the stockholders and officers of the financial institution applying for such acquisition or merger are parties of integrity and responsibility, that the requirements of section 8-702 have been met or some alternate form of protection for depositors has been met, and that the public necessity, convenience, and advantage will be promoted by permitting such acquisition or merger, the department shall, upon payment of the required fees, issue to such institution an order of approval for the acquisition or merger.

(3) When application is made for cross-industry acquisition or merger and the director determines, in his or her discretion, that the financial condition of the financial institution surviving the acquisition or merger is such as to indicate that a hearing on the application would not be necessary, then the hearing requirement of subsection (2) of this section shall only be required if, (a) after publishing a notice of the proposed application in a newspaper of general circulation in the county or counties where the offices of the financial institution to be merged or acquired are

located and (b) after giving notice to all financial institutions located within such county or counties, the director receives a substantive objection to the application within fifteen days after the first day of publication. The director shall send the notice to financial institutions by first-class mail, postage prepaid, or electronic mail. Electronic mail may be used if the financial institution agrees in advance to receive such notices by electronic mail. A financial institution may designate one office for receipt of any such notice if it has more than one office located within the county where such notice is to be sent or a main office in a county other than the county where such notice is to be sent.

(4) The expense of any publication and mailing required by this section shall be paid by the applicant but payment shall not be a condition precedent to approval by the director.

Last amended:

~ Cum. Supp. 2018

8-1511

Terms, defined.

For purposes of sections 8-1511 to 8-1513, unless the context otherwise requires:

(1) Affiliated bank or thrift institution means (a) if the bank or thrift institution is a subsidiary of a state bank, national banking association, or thrift institution, the parent bank or thrift institution as the case may be and (b) if the bank or thrift institution is a subsidiary of a bank or thrift institution holding company, the principal subsidiary of the holding company which is a bank or thrift institution as the case may be;

(2) Association of banks or thrift institutions means two or more banks or thrift institutions formed for the purpose of acquiring and holding all or substantially all of the voting stock of one credit card bank pursuant to sections 8-1512 and 8-1513;

(3) Bank or banking corporation means the principal office of (a) any national bank doing business in this state, (b) any corporation which is chartered to conduct a bank in this state as provided in the Nebraska Banking Act, (c) any association of banks, (d) a bank holding company as defined in the Nebraska Bank Holding Company Act of 1995, or (e) an out-of-state bank holding company as defined in the Nebraska Bank Holding Company Act of 1995;

(4) Qualifying association means an association, corporation, partnership, limited liability company, or other entity which at all times maintains an office in this state at which it employs at least fifty persons in this state and which pursuant to contract or otherwise offers at least the following services to banks: (a) The distribution, as agent for a bank, of credit cards or transaction cards; (b) the preparation of periodic statements of amounts due under such account; (c) the receipt from credit card or transaction card holders of amounts paid on or with respect to such accounts; and (d) the maintenance of financial records reflecting the status of such accounts from time to time;

(5) Thrift institution means (a) any corporation which is chartered as a building and loan association, savings and loan association, savings bank, or credit union under the laws of the United States, any other state, or the District of Columbia and whose operations are principally conducted outside of Nebraska, (b) any holding company of a thrift institution with subsidiaries whose operations are principally conducted outside of Nebraska, or (c) any association of thrift institutions; and

(6) Transaction card means a device or means used to access a prearranged revolving credit plan account.

Last amended:

~ Reissue 2012

8-1512

Bank or thrift institution; acquire credit card bank; conditions; sections, how construed.

(1) Notwithstanding any other provisions of law and subject to the provisions of this section and to the approval of the Director of Banking and Finance, any bank or thrift institution may acquire and hold all or substantially all of the voting stock of one credit card bank located in this state when and so long as the credit card bank meets the conditions set forth in section 8-2401.

(2) Sections 8-1511 to 8-1513 and 8-2401 to 8-2403 shall not be construed so as to limit the acquisition or ownership of a credit card bank to banks or thrift institutions.

Last amended:

~ Reissue 2012

8-1513

Application; contents; approval; considerations; director; powers and duties.

(1) Any bank or thrift institution proposing any acquisition pursuant to section 8-1512 shall file an application with the Department of Banking and Finance for approval to make the acquisition. The application shall contain such information as the Director of Banking and Finance may by regulation require and shall specifically acknowledge the applicant's agreement to be bound by the conditions set forth in section 8-2401. In addition, the application shall designate a resident of this state as the applicant's agent for the service of any paper, notice, or legal process upon the applicant in connection with the matters arising out of the laws of this state and shall be accompanied by the filing fee provided in section 8-602.

(2) In determining whether to approve an acquisition by a bank or thrift institution of any voting stock of a credit card bank located in this state, the director shall consider: (a) The financial and managerial resources of such bank or thrift institution; (b) whether the acquisition may result in undue concentration of resources or substantial lessening of competition; and (c) whether the convenience and benefit to the public outweigh any adverse competitive effects.

(3) Any approval granted to a bank or thrift institution by the director is subject to such reasonable conditions as the director deems necessary and to the director's continuing authority to ascertain such financial institution's compliance with the provisions of the laws of this state and the conditions of approval.

(4) Whenever the director determines after notice and hearing that any bank or thrift institution is not in compliance with the laws of this state or the conditions of approval, the director shall order such bank or thrift institution to divest itself of all stock of the credit card bank acquired pursuant to section 8-1512 and such bank or thrift institution shall be liable for a penalty of ten thousand dollars per day from the date such divestiture is ordered until it is completed.

Last amended:

~ Reissue 2012

8-1514

Repealed. Laws 1995, LB 384, § 35.

~ Reissue 2012

8-1515

Repealed. Laws 2002, LB 1089, § 14.

~ Reissue 2012

8-1516

Bank; purchase or merger; financial institution; cross-industry merger or acquisition; when.

(1)(a) With the approval of the director, a bank may only acquire another bank in Nebraska as a result of a purchase or merger if the acquired bank and its branches are converted to branches of the acquiring bank.

(b) With the approval of the director, a financial institution may only acquire another financial institution in Nebraska as a result of a cross-industry merger or acquisition under section 8-1510 if (i) the acquired financial institution and its branches are converted to branches of the acquiring financial institution and (ii) section 8-1510 has been satisfied.

(2) For purposes of this section:

(a) Bank means a bank organized under the laws of this state or organized under the laws of the United States to do business in this state; and

(b) Financial institution means a bank, savings bank, savings and loan association, building and loan association, trust company, or credit union, organized under the laws of this state or organized under the laws of the United States to do business in this state.

Last amended:

~ Reissue 2012
