

FORM OF ORDER AND TRANSMITTAL BY AGENCY HAVING SINGLE HEAD

State of Washington

DIVISION OF BANKING, DEPARTMENT OF GENERAL ADMINISTRATION
(agency name)

Administrative Order No. 53

(1) I, L. O. MALMBERG, Acting Supervisor, Director of the Division of Banking

do promulgate and adopt at Olympia, Washington (place)

the annexed rules relating to:

acquisitions of banks, trust companies, national banking associations or bank holding companies by out-of-state bank holding companies, creating a new chapter 50-48 WAC.

(2) ALTERNATIVE A. Use only for Adoption of Permanent Rules.

This action is taken pursuant to Notice No. filed with the code reviser on. These rules shall take effect:
[] thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).
[] at a later date, such date being

(2) ALTERNATIVE B. Use only for Adoption of Emergency Rules.

I, L. O. Malmberg, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is:

RCW 30.04.230, as amended by §9, chapter 157, Laws of 1982, authorized, for the first time, acquisition of a domestic bank, trust company, national banking association or bank holding company by an out-of-state bank holding company, if approved by the supervisor after making certain findings. These rules implement the (continued on reverse side)

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

(3) Pursuant to the requirements of RCW 34.04.026 that "every agency shall incorporate the most specific, but in no case omit all, of the following language alternatives when adopting or amending rules" fill in statement (a), (b), or (c) as appropriate:

[x] (a) This rule is promulgated pursuant to RCW 30.04.230 (4) and is intended to administratively implement that statute.

[] (b) This rule is promulgated pursuant to RCW which directs that the

(agency) has authority to implement the provisions of

(name of act or RCW citation)

[] (c) This rule is promulgated under the general rule-making authority of the

(agency)

as authorized in RCW

(4) The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

(5) This order, after being first recorded in the order register of this agency, is herewith transmitted to the Code Reviser for placement to chapter 34.04 RCW and chapter 1-12 WAC.

STATE OF WASHINGTON

FILED

APPROVED AND ADOPTED

APR 29 1983

April 29, 19 83

By

[Signature]

L. O. MALMBERG

Acting Supervisor of Banking

Title

CODE REVISER'S OFFICE

WSR 83-10-037

NOTE:

¹RCW 34.04.026 provides:

"(1) In addition to the provisions of RCW 34.04.025(1)(a)(i), every agency shall incorporate the most specific, but in no case omit all, of the following language alternatives when adopting or amending rules:

(a) The most specific reference shall be to a section of law which the rule is implementing, and shall be quoted as follows: "This rule is promulgated pursuant to RCW _____ and is intended to administratively implement that statute."

(b) The next specific reference, and one which shall be used only if paragraph (a) of this subsection is not applicable, shall be to that portion of an act which directs an agency to adopt rules and regulations as necessary to implement the act, and shall be quoted as follows: "This rule is promulgated pursuant to RCW _____ which directs that the (agency) has authority to implement the provisions of (name of act or RCW citation)."

(c) The least specific reference, and one which shall be used only if paragraphs (a) and (b) of this subsection are not applicable, is one which indicates that the rule is promulgated under the agency's broad rule-making authority—either in the agency enabling legislation or chapter 34.04 RCW, and shall be quoted as follows: "This rule is promulgated under the general rule-making authority of the (agency) as authorized in RCW _____."

(2) The code reviser is directed to develop a format for placing such specific language in each rule, and agencies shall then comply with the code reviser's direction, and shall include the same in the final rule.

(3) During the promulgation hearings process the public may question whether such rule should have a more specific reference, and the agency shall, pursuant to RCW 34.04.025(1)(b), give consideration to such requests."

(2) ALTERNATIVE B. (continued)

provisions of that statute which became effective on April 25, 1983, pursuant to an emergency clause set forth in §13, chapter 157, Laws of 1983. The holding company of the largest bank headquartered in the state of Washington has announced an agreement with an out-of-state bank holding company whereby the out-of-state bank holding company would acquire the domestic bank holding company under the terms of RCW 30.04.230. The announcement further indicated that the agreement was prompted by the necessity to take action to assure the bank's continued financial stability. If, in fact, the condition of the largest bank in this state is such as to make it eligible for acquisition under the provisions of RCW 30.04.230, any delay in reviewing or approving an acquisition to alleviate that situation could have severe repercussions for the bank's customers and the economy of the state of Washington. Observance of the requirements for notice and public comment at this time would necessitate such a delay. Immediate adoption of these rules is necessary for the supervisor to review and act on, without delay, any application which may be filed under the provisions of RCW 30.04.230.

STATE OF WASHINGTON
FILED
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CODE REVISER'S OFFICE
WSR

Chapter 50-48 WAC

ACQUISITION OF BANKS, TRUST COMPANIES, NATIONAL
BANKING ASSOCIATIONS OR BANK HOLDING COMPANIES
BY OUT-OF-STATE BANK HOLDING COMPANIES

WAC	
50-48-010	Authority and Purpose.
50-48-020	Joint Application.
50-48-030	Information Required--Identity of Applicant Parties and Operating Subsidiaries-- Designation of Each Applicant.
50-48-040	Information Required from Applicant to be Acquired.
50-48-050	Information Required from Acquiring Applicant.
50-48-060	Information to be Made Available by Acquiring Applicant.
50-48-070	Information to be Made Available by Applicant Acquired.
50-48-080	Application to Include Statement of Interlocking Management or Ownership.
50-48-090	Supervisor may Consult with and Obtain Information from Appropriate Federal Regulatory Authority.

NEW SECTION

WAC 50-48-010 AUTHORITY AND PURPOSE. These regulations are promulgated pursuant to Section 9, Chapter 157, Laws of 1983, to establish a procedure under which an out-of-state bank holding company which desires to acquire more than five percent of the shares of the voting stock, or all or substantially all of the assets, of a bank, trust company, national banking association or bank holding company, the principal operations of which are conducted within this state, may apply to the supervisor for approval of such acquisition.

NEW SECTION

WAC 50-48-020 JOINT APPLICATION. An application for approval of such acquisition shall be submitted jointly by the acquiring bank holding company and the domestic institution or bank holding company to be acquired. The application need not be in any particular format, but must set forth all the information required under these regulations and must be accompanied by an application fee in the amount of five thousand dollars. The application shall include a copy of the agreement setting forth the plan of merger or acquisition, including certified copies of the resolutions of the respective boards of directors of parties to the agreement approving same. The application shall also include a statement authorizing any federal or state regulatory agency to make available to the supervisor any and all information which such agency may have relating to the applicants or any of their subsidiaries.

New Section ~~AK~~

WAC 50-48-030 INFORMATION REQUIRED--IDENTITY OF APPLICANT PARTIES AND OPERATING SUBSIDIARIES--DESIGNATION OF REPRESENTATIVE OF EACH APPLICANT. Unless included in other information required by this chapter, the application shall set forth the name and main office address of all operating subsidiaries of both the acquiring bank holding company and the bank, trust company, national banking association or domestic bank holding company to be acquired. In addition, the application shall set forth the name, office address, and telephone of one or more persons designated by each applicant to be its official representative in connection with the application. All contact between the supervisor's office and the applicant should, except in extraordinary circumstances, be through such representatives.

New Section ~~AK~~

WAC 50-48-040 INFORMATION REQUIRED FROM APPLICANT TO BE ACQUIRED. The bank, trust company, national banking association, or domestic bank holding company to be acquired shall include with the application each of the following items of information:

(a) A statement verifying that the bank, trust company, national banking association or domestic bank holding company to be acquired is in such a liquidity or financial condition as to be in danger of closing, failing or insolvency, setting forth with specificity the circumstances upon which such conclusion is based.


(b) A statement of all courses of action actively considered as an alternative to the proposed merger or acquisition; a statement of why each such course of action or combination of more than one of them was not taken; a statement as to why assistance available from the Federal Reserve Board, the Federal Deposit Insurance Corporation, or other governmental agency either alone or in combination with other actions is not sufficient to alleviate the liquidity or financial situation so as to avoid the danger of closing, failing or insolvency; and if known, the course or courses of action which will be taken in the event the merger or acquisition is not consummated.

(c) Financial records including: (1) copies of reports of condition required to be filed with the appropriate regulatory authorities and financial statements showing its assets and liabilities as of the end of each of the six most recent quarterly periods of operation; (2) copies of income and expense statements for each of the six most recent quarterly periods of operation; and (3) a copy of the most recent independent audit report.

Information submitted in response to this subsection shall be consolidated figures for the entire organization. If individual figures for operating subsidiaries are available, they shall also be submitted.

(d) A statement setting forth which, if any, state banks, trust companies, or national banking associations doing business in this state, or domestic bank holding companies have been solicited to make an offer for acquisition or merger. If no such solicitations have been made, the application shall include an explanation of the decision not to make such solicitations. The application shall include a summary of the terms of any bona fide offer for merger or acquisition received from any domestic bank,

trust company, national banking association or bank holding company, and shall further state whether any domestic offerors have been given the opportunity to match the terms of the proposed acquisition by or merger with the out-of-state bank holding company.

New Section 


WAC 50-48-050 INFORMATION REQUIRED FROM ACQUIRING APPLICANT. The applicant out-of-state bank holding company shall submit with the application each of the following items of information:

(a) A copy of its most recent audited financial statement, its most recently prepared statement of assets and liabilities, including footnotes and explanations, and its most recent income and expense report.

(b) A statement of its then existing business plan, both short-range and long-range, for operation of the bank, trust company, national banking association or domestic bank holding company to be acquired. Such statement shall include comments by the acquiror as to how the proposed acquisition will meet the needs and convenience of the people of the state of Washington.

(c) A list of any other notices pursuant to the Change in Bank Control Act (12 U.S.C. §1817(j)) filed on its behalf involving any other bank, trust company, national banking association or bank holding company which is presently pending. Such list shall include the date and place of filing each notice and the name and address of the institution to which each notice pertains.


(d) A statement as to what part, if any, of the funds to be used in making the acquisition or merger are borrowed from sources other than its own subsidiaries. With respect to any such funds, the applicant shall state: (1) the amount and source of borrowed funds; (2) collateral pledged, if any; (3) terms of the loan, including interest rates, amortization requirements, guarantors, endorsers, and any other arrangements or agreements among the parties to such loan transaction; (4) proposed source of funds for debt service; (5) whether and to what extent the acquiring party intends to rely on dividends, fees, etc. from the institution being acquired for debt servicing requirements.

New Section 


WAC 50-48-060 INFORMATION TO BE MADE AVAILABLE BY ACQUIRING APPLICANT. The applicant out-of-state bank holding company shall make available for review by the office of the supervisor the following:

(a) Any current file which it or its principal banking subsidiary or subordinate is required to maintain by regulations promulgated by the appropriate federal financial supervisory authority (as defined in 12 U.S.C. §2902(1)) for purposes of the Community Reinvestment Act (12 U.S.C. §2902 et seq.).

(b) Copies of all internal documents having to do with the proposed merger or acquisition, including, without limitation, memoranda or analyses together with conclusions and recommendations to management and all financial or other information from which such memoranda, analyses, conclusions, recommendations or other documents were prepared.

New Section 

WAC 50-48-070 INFORMATION TO BE MADE AVAILABLE BY APPLICANT TO BE ACQUIRED. The bank, trust company, national banking association or domestic bank holding company to be acquired shall make available to the supervisor all internally generated reports relating to the operation of any or all operating subsidiaries during the immediately preceding two-year period.

New Section 

WAC 50-48-080 APPLICATION TO INCLUDE STATEMENT OF INTERLOCKING MANAGEMENT OR OWNERSHIP. The application must state whether any management official (as defined in 12 U.S.C. §3201(4)) of the acquiring out-of-state bank holding company or any of its affiliated corporations (as the term "affiliated" is defined by 12 U.S.C. §3201(3)) is also a management official of any other depository institution or holding company other than the bank, trust company, or national banking association being acquired, or whether any person, partnership or corporation who owns or controls, directly or indirectly, ten percent or more of the outstanding voting shares of the acquiring applicant also owns, directly or indirectly, ten percent or more of the outstanding voting shares of any other depository institution or holding company. If such circumstances do exist, the application shall include: (1) the name of such person or persons, partnerships or corporations; (2) name and address of the depository institution or holding company; (3) relationship triggering this reporting requirement; and (4) nature and extent of ownership interest held by such person, partnership or corporation in the applicant and other depository institution or holding company.

New Section 

WAC 50-48-090 SUPERVISOR MAY CONSULT WITH AND OBTAIN INFORMATION FROM APPROPRIATE FEDERAL REGULATORY AUTHORITY. The supervisor may consult with appropriate federal regulatory agencies in connection with any application filed hereunder and shall consider any information received from such agency or agencies in ruling upon the application.