

SUBCHAPTER 16I - ACQUISITION OF CONTROL

SECTION .0100 - SCOPE

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04 NCAC 16I .0102 DEFINITIONS AND OTHER TERMS

History Note: *Authority G.S. 54B-55; 54B-261; 54B-262;*
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Amended Eff. February 1, 1983;
Repealed Eff. July 1, 1983.

SECTION .0200 - ACQUISITIONS

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History Note: *Authority G.S. 54B-55; 54B-63; 54B-261; 54B-262;*
Eff. December 1, 1981;
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Repealed Eff. July 1, 1983.

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History Note: *Authority G.S. 54B-55; 54B-261; 54B-262;*
Eff. December 1, 1981;
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History Note: *Authority G.S. 54B-55; 54B-261; 54B-262;*
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Amended Eff. July 1, 1982;
Repealed Eff. July 1, 1983.

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History Note: Authority G.S. 54B-55; 54B-261; 54B-262;
 Eff. December 1, 1981;
 Repealed Eff. July 1, 1983.

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 Eff. December 1, 1981;
 Repealed Eff. July 1, 1983.

SECTION .0700 - GENERAL

04 NCAC 16I .0701 GENERAL

History Note: Authority G.S. 54B-55; 54B-261; 54B-262;
 Eff. July 1, 1983;
 Amended Eff. November 1, 1985;
 Repealed Eff. July 1, 1990.

04 NCAC 16I .0702 DEFINITIONS AND OTHER TERMS

As used in this Subchapter, the words and phrases defined by G.S. 54C-4 and the following definitions apply:

- (1) "Acquisition" shall mean a transaction in which a person or holding company acquires control of a stock savings institution by means of an exchange of its capital stock for the capital stock of the stock savings institution or by means of a purchase of the capital stock of the stock savings institution.
- (2) "Applicant" shall mean a person or holding company that has filed with the Commissioner of Banks an application pursuant to this Subchapter.
- (3) "Holding Company" means any company that directly or indirectly controls a savings institution or controls any other company that is a holding company of a savings institution.
- (4) "Person" shall mean an individual or group acting in concert, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization similar company, or a syndicate.
- (5) "Plan of Reorganization" shall mean a plan duly adopted in accordance with the requirements of G.S. 54B-261 or 54C-195 and this Subchapter that sets out all relevant terms and conditions pertaining to a stock savings institution's reorganization of its ownership to provide for a holding company.
- (6) "Registrant" shall mean any holding company that has filed a registration statement with the Commissioner of Banks pursuant to this Subchapter.
- (7) "Tax Free Exchange" shall mean an exchange of stock that would result in no tax consequences to the holding company, the stock savings institution, and its stockholders under State or federal law.

History Note: Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196;
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 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22,
 2018.

04 NCAC 16I .0703 STANDARDS FOR APPROVAL OF ACQUISITION: DUTIES AND CONDUCT

A savings institution may be controlled by a person or a holding company. In evaluating an application for control, the Commissioner of Banks shall consider:

- (1) whether the person or holding company is qualified by character, experience, and financial responsibility to control the savings institution in a legal and responsible manner;
- (2) the applicant's financial and managerial resources;
- (3) the organizational structure and future prospects and plans of both the applicant and the savings institution; and
- (4) whether the business and activities of the applicant, or its officers and directors, or any other person controlling, controlled by, or associated with the applicant by having a common controller, would create a material deterioration of confidence in the safety, soundness, and financial integrity of the institution to be controlled.

History Note: Authority G.S. 53-227.1; 54B-43; 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196;
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04 NCAC 16I .0704 INVESTMENT ACTIVITIES OF HOLDING COMPANIES

History Note: Filed as a Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992;
Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196;
Eff. July 1, 1990;
Amended Eff. February 15, 1992;
Repealed Eff. November 1, 2017.

SECTION .0800 - ACQUISITIONS

04 NCAC 16I .0801 PRIOR WRITTEN APPROVAL REQUIRED

A person or holding company shall not acquire control of any savings institution without having filed with the Commissioner of Banks an application and without the written approval of the Commissioner of Banks after consideration of the application and any amendments. The application shall contain identifying information for the applicant and the information set forth in the Interagency Notice of Change in Bank Control. The Interagency Notice of Change in Bank Control is hereby incorporated by reference, including subsequent amendments or editions, and may be found free of charge as follows: <https://www.fdic.gov/formsdocuments/interag2.pdf>.

History Note: Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196;
Eff. July 1, 1983;
Amended Eff. July 1, 1990;
Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992;
Amended Eff. November 1, 2017; February 15, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

04 NCAC 16I .0802 APPLICATION FEES: FILINGS

An application may be obtained from the Office of the Commissioner of Banks at its mailing address specified in 04 NCAC 03A .0101. Applications shall be accompanied by an application fee in the amount prescribed by the fee schedule specified in 04 NCAC 03C .1601(a)(4). The fee shall be non-refundable.

History Note: Authority G.S. 54B-55; 54B-57; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196;
Eff. July 1, 1983;
Amended Eff. November 1, 2017; July 1, 1990; August 1, 1984;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

04 NCAC 16I .0803 CONFIDENTIAL INFORMATION

An applicant that submits information may request that the information be confidential regarding the answer to any item or a part of an exhibit included in any application for filing pursuant to this Subchapter, by separately binding and labeling the information as "confidential" and a statement shall be submitted setting forth the grounds on which the information should be treated confidential pursuant to G.S. 54B-63, G.S. 54B-63.1. or G.S. 54C-60. Filings pursuant to this Subchapter shall be made available for inspection by the public, except for portions that are bound and labeled "confidential" and that the Commissioner of Banks determines to be confidential pursuant to the provisions of G.S. 54B-63, G.S. 54B-63.1, or G.S. 54C-60.

History Note: Authority G.S. 54B-55; 54B-63; 54B-63.1; 54B-261; 54B-262; 54C-53; 54C-60; 54C-195; 54C-196; Eff. July 1, 1983; Amended Eff. July 1, 1990; Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992; Amended Eff. November 1, 2017; February 15, 1992; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

SECTION .0900 - REORGANIZING STOCK ASSOCIATION INTO HOLDING COMPANY

04 NCAC 16I .0901 REQUIRED APPLICATION

A stock savings institution may be controlled by a holding company by means of a plan of reorganization. An applicant shall file one executed copy of an application with the Commissioner of Banks. For the purposes of filing the application, the applicant shall be considered a holding company, even though it may not yet control a stock savings institution.

History Note: Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196; Eff. July 1, 1983; Amended Eff. July 1, 1990; Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992; Amended Eff. November 1, 2017; February 15, 1992; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

04 NCAC 16I .0902 ACQUISITION PROCEDURE

(a) Upon determining that an application is executed and is not incomplete, the Commissioner of Banks shall process the application. The application shall include a Plan of Reorganization. If the Plan of Reorganization is not approved, the Commissioner of Banks shall notify the applicant and state the reasons for its disapproval.

(b) If the Commissioner of Banks approves the Plan of Reorganization, the Commissioner shall notify the applicant. A regular or special meeting of the stockholders of the savings institution shall be called to approve reorganization of ownership of the savings institution to provide for ownership by a holding company after advance written notice to the stockholders of not less than 20 days specifying the time, place, and purpose for the meeting. Notice shall be published in at least one newspaper of general circulation in each county where the savings institution has an office. After publication of the notice, the applicant shall file a copy of the notice with the Commissioner of Banks. The applicant shall file the publisher's affidavits with the Commissioner of Banks to confirm the publication of notice.

(c) The results of the stockholder's meeting shall be confirmed to the Commissioner of Banks by filing attested minutes of the meeting. If the stockholders approve reorganization of ownership of the savings institution to provide for ownership by a holding company, the Commissioner of Banks shall enter a final order approving the reorganization.

(d) The Commissioner of Banks may waive or alter any requirements set forth in this Rule upon a finding that compliance would work an undue financial hardship on the applicant, would adversely affect the operation of the applicant, or would have an unintended negative impact upon the public or the applicant.

History Note: Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196; Eff. July 1, 1983;

Amended Eff. July 1, 1990;
Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992;
Amended Eff. November 1, 2017; February 15, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

04 NCAC 16I .0903 INVESTMENT ACTIVITIES
04 NCAC 16I .0904 NOTICE OF FILING: HEARINGS

History Note: Authority G.S. 54B-54; 54B-55; 54B-261; 54B-262;
Eff. July 1, 1983;
Amended Eff. June 1, 1988; November 1, 1985; September 1, 1983;
Repealed Eff. July 1, 1990.

SECTION .1000 - ACQUISITIONS OF STOCK ASSOCIATIONS

04 NCAC 16I .1001 REQUIRED APPLICATION

A person seeking to acquire control of any stock savings institution shall file with the Commissioner of Banks one executed copy of an application.

History Note: Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196;
Eff. July 1, 1983;
Amended Eff. July 1, 1990;
Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992;
Amended Eff. November 1, 2017; February 15, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

04 NCAC 16I .1002 FOREIGN APPLICANTS

If the applicant is a corporation for profit or having capital stock, but not created under any general or special act of the State of North Carolina, then that corporation shall procure a Certificate of Authority from the Secretary of State under the provisions of Article 15 of Chapter 55 of the North Carolina General Statutes before it shall be approved by the Commissioner of Banks to obtain control of a stock savings institution. The applicant shall file a copy of the Certificate of Authority from the Secretary of State as evidence of compliance.

History Note: Authority G.S. 54B-55; 54C-53; 54C-195; 54C-196;
Eff. July 1, 1983;
Amended Eff. September 1, 1983;
Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992;
Amended Eff. November 1, 2017; February 15, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

04 NCAC 16I .1003 ACQUISITION PROCEDURE

(a) Upon determining that an application is executed and complete, the Commissioner of Banks shall process the application. If the application is not approved, the Commissioner of Banks shall notify the applicant and state the reasons for its disapproval.

(b) If the Commissioner of Banks approves the application, the applicant shall be notified. The notice shall include any requirements or stipulations the Commissioner of Banks may require prior to the applicant's execution of the acquisition.

History Note: Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196;
Eff. July 1, 1983;
Amended Eff. July 1, 1990; June 1, 1988;
Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992;
Amended Eff. November 1, 2017; February 15, 1992;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

SECTION .1100 - REGISTRATION: SUPERVISION: REPORTS: FILINGS: BOOKS AND RECORDS

04 NCAC 16I .1101 REGISTRATION

History Note: Filed as a Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992;
Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196;
Eff. July 1, 1983;
Amended Eff. February 15, 1992; July 1, 1990; November 1, 1985;
Repealed Eff. November 1, 2017.

04 NCAC 16I .1102 SUPERVISION

- (a) Officers, directors, and employees of holding companies have the same duties and responsibilities, express or implied, as officers, directors, and employees of savings institutions.
- (b) Each holding company shall be subject to examination by the Office of the Commissioner of Banks. The cost of examination shall be paid by the holding company.

History Note: Authority G.S. 54B-55; 54B-57; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196;
Eff. July 1, 1983;
Amended Eff. July 1, 1990; November 1, 1985;
Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992;
Amended Eff. November 1, 2017; February 15, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

04 NCAC 16I .1103 ANNUAL REPORTS

Each registrant shall file an annual report with the Commissioner of Banks.

History Note: Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196;
Eff. July 1, 1983;
Amended Eff. November 1, 2017;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

04 NCAC 16I .1104 FILING AND APPROVAL: AMENDMENTS TO ARTICLES AND BYLAWS

- (a) Prior to any filing with the Secretary of State of the State of North Carolina, a holding company shall file with the Commissioner of Banks copies of any proposed amendment to its articles of incorporation. The Commissioner of Banks must give his or her approval to the content and form of the proposed amendments.
- (b) Before any amendments to the bylaws of a holding company shall become effective, a copy of the amendments shall be filed with and approved by the Commissioner of Banks.

History Note: Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196;
Eff. July 1, 1983;
Amended Eff. July 1, 1990;
Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992;
Amended Eff. November 1, 2017; February 15, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

04 NCAC 16I .1105 REPORTS

Each registrant shall file simultaneously with the Commissioner of Banks copies of any filings, documents, statements, or reports required to be filed with the federal regulatory authority.

History Note: Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196;
Eff. July 1, 1983;
Amended Eff. July 1, 1990;
Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992;
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04 NCAC 16I .1106 BOOKS AND RECORDS

History Note: Filed as a Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992;
Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196;
Eff. July 1, 1983;
Amended Eff. February 15, 1992; July 1, 1990;
Repealed Eff. November 1, 2017.

SECTION .1200 - CONVERSION OF MUTUAL ASSOCIATION INTO HOLDING COMPANY

04 NCAC 16I .1201 REQUIRED ACQUISITION APPLICATION

04 NCAC 16I .1202 CONVERSION PROCEDURE

04 NCAC 16I .1203 PLAN OF CONVERSION REQUIREMENTS

History Note: Filed as a Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992;
Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196;
Eff. July 1, 1990;
Amended Eff. February 15, 1992;
Repealed Eff. November 1, 2017.

SECTION .1300 - HOLDING COMPANY ACQUISITIONS

04 NCAC 16I .1301 REQUIRED APPLICATION

A person seeking to acquire control of any holding company shall file with the Commissioner of Banks one executed copy of an application.

History Note: Authority G.S. 54B-55; 54B-262; 54C-53; 54C-195;
Eff. July 1, 1990;
Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992;
Amended Eff. November 1, 2017; February 15, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

04 NCAC 16I .1302 ACQUISITION PROCEDURE

(a) Upon determining that an application is executed and complete, the Commissioner of Banks shall process the application. If the application is not approved, the Commissioner of Banks shall notify the applicant and state the reasons for its disapproval.

(b) If the Commissioner of Banks approves the application, the applicant shall be notified. The notice shall include any requirements or stipulations the Commissioner of Banks may require prior to the applicant's execution of the acquisition.

(c) The Commissioner of Banks may waive or alter any requirements set forth in this Rule upon a finding that compliance would work as undue financial hardship on the applicant, would adversely affect the safe and sound operation of the applicant, or would have an unintended negative impact upon the public or the applicant.

History Note: Authority G.S. 54B-55; 54B-262; 54C-53; 54C-195;

Eff. July 1, 1990;

Amended Eff. November 1, 2017;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.