WEST VIRGINIA CODE CHAPTER 31A ARTICLE 8A

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§31A-8A-1. Definitions.

For purposes of this article:

(a) "Acquire" means:

(1) For a company to merge or consolidate with a bank holding company;

(2) For a company to assume direct or indirect ownership or control of:

(i) More than twenty-five percent of any class of voting shares of a bank holding company or a bank, if the acquiring company was not a bank holding company prior to such acquisition;

(ii) More than five percent of any class of voting shares of a bank holding company or a bank, if the acquiring company was a bank holding company prior to such acquisition; or

(iii) All or substantially all of the assets of a bank holding company or a bank; or

(3) For a company to take any other action that results in the direct or indirect acquisition of control by such company of a bank holding company or a bank.

(b) "Affiliate" means any company that controls, is controlled by, or is under common control with a bank or another company or otherwise meets the criteria set forth in Section 2(k) of the Bank Holding Company Act, 12 U.S.C. §1841(k).

(c) "Bank" means a corporation or association heretofore or hereafter chartered to conduct a banking business under the laws of the United States or any state, territory, district or possession thereof, which is authorized to accept deposits that the depositor has a legal right to withdraw on demand and is authorized to engage in the business of commercial lending and meets the criteria set forth in Section 2(c) of the Bank Holding Company Act, 12 U.S.C. §1841(c).

(d) "Bank holding company" means any company which has control over any bank or over any company that is or becomes a bank holding company as that term is set forth in Section 2(a) of the Bank Holding Company Act, 12 U.S.C. §1841(a), and, unless the context requires otherwise, includes a West Virginia bank holding company, an out-of-state bank holding company and a foreign bank holding company.

(e) "Bank Holding Company Act" means the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. §§1841 et seq.

(f) "Bank supervisory agency" means any of the following:

(1) Any agency of another state with primary responsibility for chartering and supervising banks; and

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(2) The office of the comptroller of the currency, the federal deposit insurance corporation, the board of Governors of the federal reserve system and any successor to these agencies.

(g) "Board of Banking and Financial Institutions" means the board created pursuant to article three of this chapter and is referred to herein as "board".

(h) "Branch" or "branch bank" has the meaning set forth in subsection (f), section two, article one of this chapter.

(i) "Commissioner" means the West Virginia commissioner of banking then in office and, where appropriate, all of his or her successors and predecessors in office.

(j) "Company" has the meaning set forth in Section 2(b) of the Bank Holding Company Act, 12 U.S.C. §1841(b), and includes a bank holding company.

(k) "Control" shall be construed consistently with Section 2(a) of the Bank Holding Company Act, 12 U.S.C. §1841(a).

(l) "Deposit" has the meaning set forth in 12 U.S.C. §1813(l) plus all deposits held by credit unions within this state.

(m) "Depository institution" means any institution included for any purpose within the definitions of "insured depository institution" as set forth in 12 U.S.C. §§1813(c)(2) and (3).

(n) "Foreign bank holding company" means a bank holding company that is organized under the laws of a country other than the United States (including any territory or possession thereof).

(o) "Home state regulator" means, with respect to an out-of-state bank holding company, the bank supervisory agency of the state in which such company maintains its principal place of business.

(p) "Out-of-state bank holding company" means:

(1) A bank holding company that is not a West Virginia bank holding company; and

(2) Unless the context requires otherwise, includes a foreign bank holding company.

(q) "Principal place of business" of a bank holding company means the state in which the total deposits of its bank subsidiaries were the greatest on the later of July 1, 1966, or the date on which such company became a bank holding company.

(r) "State" means any state, territory or other possession of the United States, including the District of Columbia.

(s) "Subsidiary" has the meaning set forth in Section 2(d) of the Bank Holding Company Act,

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12 U.S.C. §1841(d).

(t) "West Virginia bank" means a bank that is:

(1) Organized under the laws of the State of West Virginia; or

(2) Organized under federal law and has its main office in this state.

(u) "West Virginia bank holding company" means a bank holding company that:

(1) Had its principal place of business in this state on July 1, 1966, or the date on which it became a bank holding company, whichever is later; and

(2) Is not controlled by a bank holding company other than a West Virginia bank holding company.

(v) "West Virginia state bank" means a bank organized under the laws of the State of West Virginia.

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§31A-8A-2. Scope and statement of legislative intent.

This article sets forth the conditions under which a company may acquire a West Virginia state bank may form or acquire a West Virginia bank holding company, or may acquire an out-of-state bank or out-of-state bank holding company. This article is intended not to discriminate against out-of-state bank holding companies or against foreign bank holding companies in any manner that would violate Section 3(d) of the Bank Holding Company Act, 12 U.S.C. §1842(d), as amended, effective September 29, 1995, by Section 101 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law No. 103-328.

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§31A-8A-3. Permitted acquisitions.

(a) Except as otherwise expressly permitted by federal law, a company may not form a West Virginia bank holding company or acquire a West Virginia state bank or a bank holding company controlling a West Virginia state bank without the prior application and approval upon order of the board. A West Virginia state bank or West Virginia state bank holding company which controls, directly or indirectly, a West Virginia state bank may not acquire an out-of-state bank or out-of-state bank holding company without first filing with the commissioner a copy of the application it files with the appropriate federal regulator unless the acquisition involves a merger and establishment of branches pursuant to article eight-d of this chapter.

(b) The prohibition in subsection (a) of this section shall not apply where the acquisition is made:

(1) Solely for the purpose of facilitating an acquisition otherwise permitted under this article;

(2) In a transaction arranged by the commissioner with the consent of the West Virginia board of banking and financial institutions with another state or federal bank supervisory agency to prevent the insolvency or closing of the acquired bank; or

(3) In a transaction in which a national bank or out-of-state state bank forms its own bank holding company, if the ownership rights of the former bank shareholders are substantially similar to those of the shareholders of the new bank holding company.

(c) In any transaction involving the acquisition or change in control of a West Virginia bank, West Virginia bank holding company, bank branch located in West Virginia by a bank holding company, the formation of a West Virginia bank holding company or the acquisition of a thrift institution in West Virginia by a bank holding company for which an application to the board for approval is not initially required under subsection (a) of this section, the party seeking the action shall give written notice to the commissioner at the time the application or notice is filed with the responsible federal bank supervisory agency and at least forty-five days before the effective date of the acquisition, unless a shorter period of notice is required under applicable federal law. In addition, the parties shall give the commissioner copies of all final federal and state applications filed in connection with the transaction together with a $250 filing fee. Unless preempted by federal law, the commissioner has thirty days from receipt of the written notice to object to any proposed transaction, require an application and request a hearing before the board on the basis that the transaction is contrary to applicable West Virginia law. The failure to object within thirty days shall be construed as consent by the commissioner, or, in his or her discretion, the commissioner may, at any time, consent in writing.

(d) To the extent that any acquisition under this section involves the merger of a bank with and into a West Virginia state bank, the merger transaction remains subject to the

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jurisdiction and approval of the board pursuant to section seven, article seven of this chapter or article eight-d of this chapter, as applicable.

(e) An acquisition shall not be permitted under this article or otherwise if upon consummation of the transaction, the resulting bank or bank holding company, including any depository institutions affiliated with the applicant, would assume sufficient additional deposits to cause it to control deposits in this state in excess of that allowed by section twelve-a, article two of this chapter: Provided, That the commissioner may by rule adopt a procedure whereby the acquisition deposit limitation as set forth in this code may be waived for good cause shown. The commissioner shall calculate the acquisition deposit limitation based upon the most recently available reports containing the deposit information filed with state or federal authorities.

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§31A-8A-4. Required application.

(a) A company that proposes to make an acquisition under this article shall:

(1) File with the commissioner a copy of the application that such company has filed with the responsible federal bank supervisory agency, together with such additional information as the commissioner may prescribe; and

(2) Pay to the commissioner a $4,500 application fee.

(b) To the extent consistent with the effective discharge of the commissioner's responsibilities, the forms established under this article for application and reporting shall conform to those established by the board of Governors of the federal reserve system under the Bank Holding Company Act.

(c) In connection with an application received under this article, the commissioner shall:

(1) Require that prior notice of the application be published once in a daily newspaper of general circulation and provide an opportunity for public comment; and

(2) Make the application available for public inspection to the extent required or permitted under applicable state law.

(d) If the applicant is an out-of-state bank holding company that is not incorporated under the laws of this state, it shall submit with the application proof that the applicant has complied with applicable requirements of West Virginia law requiring foreign corporations to qualify to do business in the State of West Virginia.

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§31A-8A-5. Standards for approval.

(a) In deciding whether to approve an application for a proposed acquisition under this article, the board shall consider whether the acquisition may:

(1) Be detrimental to the safety and soundness of the West Virginia state bank or the West Virginia bank holding company to be acquired which controls a West Virginia state bank, or be contrary to the best interests of the customers or shareholders of the bank whose shares are affected by the action, taking into consideration the financial and managerial resources and further prospects of the company or companies and the banks concerned;

(2) Result in a substantial reduction of competition in any section of this state, or result in a monopoly, or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any section of this state;

(3) Have a significantly adverse effect on the convenience and needs of the community or communities in this state that are served by the West Virginia state bank or the West Virginia bank holding company to be acquired; or

(4) Violate the acquisition deposit limitation set forth in section three of this article.

(b) The board shall not approve an application for, nor shall the commissioner consent to, an acquisition under this article unless the West Virginia bank to be acquired, or all West Virginia bank subsidiaries of the bank holding company to be acquired, have as of the proposed date of acquisition been in existence and in continuous operation for more than two years: Provided, That this limitation shall not apply to acquisitions made on or after May 31, 1997.

(c) The board may approve an application which may lessen competition if the anticompetitive effects of the proposed action are clearly outweighed in the public interest by the probable effect of the action in meeting the convenience and needs of the community to be served.

(d) In deciding whether to approve an application for an acquisition under this article, the board shall consider the applicant's record of compliance with all applicable state(s) and federal community reinvestment laws.

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§31A-8A-6. Procedures relating to applications.

(a) The board shall decide whether to approve an acquisition under this article within one hundred twenty days after receipt of a completed application: Provided, That if the board or commissioner requests additional information from the applicant following receipt of a completed application, the time limit for decision by the board shall be the later of:

(i) The date set forth above in this subsection; or

(ii) Thirty days after the board's or commissioner's receipt, whichever is applicable, of the requested additional information.

(b) The board shall, in accordance with its rules, hold a public hearing in connection with an application and determine any significant issue of law or fact raised with respect to the proposed acquisition relevant and necessary for proper disposition of the application.

(c) If the board holds a full public hearing under the provisions set forth in article five, chapter twenty-nine-a of this code in connection with an application, the time limit specified in subsection (a) of this section shall be extended to the later of thirty days after the conclusion of the public hearing or thirty days after submission of all documents and materials necessary for proper adjudication of the matter, including transcripts.

(d) An application shall be deemed approved if the board takes no action on the application within the time limits specified in this section.

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§31A-8A-7. Reports; examinations.

(a) To the extent specified by the commissioner by rule, order or written request, each bank holding company that directly or indirectly controls a West Virginia bank, bank branch in West Virginia or a West Virginia bank holding company shall submit to the commissioner an annual report specifying for each bank and branch (excluding automated teller machines) in this state controlled by the bank holding company:

(i) The location of each office, including county and, where applicable, municipality;

(ii) The amount of deposits held by each office as of the end of the preceding calendar year; and

(iii) The amount of loans outstanding by each office at the end of the preceding calendar year.

The foregoing report shall be based upon each bank's allocation of its deposit base and loan portfolio among its main office and branches. The report shall be filed with the commissioner on or before February 15 of each year on forms prescribed by the commissioner.

(b) A parent bank holding company controlling a bank or bank holding company having, or through a subsidiary having, a place of business in this state shall, on or before the thirty-first day of March of each year, register with the commissioner on forms provided or prescribed by said office which shall include such information with respect to the financial condition, operation, management and intercompany relationships of the parent bank holding company and its subsidiaries and related matters as the commissioner may consider necessary or appropriate to carry out the purposes of this article. The information required herein may be supplied by submission of copies of other similar federal or state regulatory filings or forms containing the information unless otherwise required by order or rule.

(c) The commissioner may enter into cooperative agreements with any other bank supervisory agencies to facilitate the examination of any bank holding company that: (i) Has acquired or has an application pending to acquire a West Virginia bank or West Virginia bank holding company pursuant to this article; or (ii) operates a subsidiary doing business in this state which is subject to the jurisdiction or supervision of the commissioner. The commissioner may accept reports of examinations and other records from other authorities in lieu of conducting his or her own examination of the bank holding companies or their subsidiaries. The commissioner may take any action jointly with other regulatory agencies having concurrent jurisdiction over the bank holding companies or subsidiaries or may take action independently in order to carry out his or her responsibilities under this chapter.

(d) When the commissioner considers it necessary, he or she may require any bank holding company that has acquired a West Virginia bank, bank branch in West Virginia or West Virginia bank holding company to submit the reports to the commissioner as he or she determines to be necessary or appropriate for the purpose of carrying out his or her

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responsibilities.

(e) When the commissioner of banking considers it necessary or appropriate, he or she may examine any bank holding company that has acquired or has an application pending to acquire a West Virginia bank, bank branch in West Virginia or West Virginia bank holding company. The cost of an examination in connection with an application, if in excess of the initial fee, shall be assessed against and paid by the bank holding company examined. The commissioner may request the bank holding company to be examined pursuant to this subsection to advance the estimated cost of the examination. The cost of an examination for a bank holding company controlling a West Virginia bank or West Virginia bank holding company regarding compliance with the law of this state or safe and sound banking practices shall be assessed against and paid by the bank holding company examined.

(f) Any parent bank holding company or bank holding company having, or through a subsidiary having, a place of business in this state, shall provide the commissioner with notice of any filing it makes with the board of Governors of the federal reserve to declare its intent to become a financial holding company. The notice required herein may be met by filing copies of the federal filings or forms containing the information filed with the board of Governors of the federal reserve and shall be filed with the commissioner no later than two weeks after the date the declaration of intent is filed with the federal reserve.

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§31A-8A-8. Authority to issue rules; cooperative agreements; fees.

In order to carry out the purposes of this article, the Commissioner may:

(1) Propose rules and issue orders;

(2) Enter into cooperative, coordinating or information-sharing agreements with any other bank supervisory agency or any organization affiliated with or representing one or more bank supervisory agencies;

(3) Accept any report of examination or investigation by another bank supervisory agency having concurrent jurisdiction over a West Virginia bank or a bank holding company that controls a West Virginia state bank in lieu of conducting the Commissioner's own examination or investigation of the bank holding company or bank;

(4) Enter into contracts with any bank supervisory agency having concurrent jurisdiction over a West Virginia state bank or a bank holding company that controls a West Virginia state bank to engage the services of the agency's examiners at a reasonable rate of compensation, or to provide the services of the Commissioner's examiners to any bank supervisory agency at a reasonable rate of compensation: Provided, That any contract for examiners shall be excluded from the requirements of article three, chapter five-a of this code;

(5) Enter into joint examinations or joint enforcement actions with any other bank supervisory agency having concurrent jurisdiction over any West Virginia state bank or any bank holding company that controls a West Virginia state bank: Provided, That the Commissioner may take any such action independently if he or she determines that the action is necessary to carry out the responsibilities set forth in this article to enforce compliance with the laws of this state: Provided, however, That in the case of an out-of-state bank holding company, the Commissioner shall recognize the authority of the home state regulator over corporate governance matters and the primary responsibility of the home state regulator with respect to safety and soundness matters; and

(6) Assess supervisory and examination fees that shall be payable by any bank holding company operating a bank or bank branch in West Virginia in connection with the Commissioner's performance of his or her duties under this article. The Commissioner shall charge and collect from each bank holding company and pay into a special revenue account in the state Treasury for the Department of Banking an annual assessment payable on January 15, computed on total deposits in this state of the bank holding company as of June 30 of the previous year as is set out in section eight, article two of this chapter. The payment of the assessment fee shall be accompanied by the report prescribed by the Commissioner under subsection (a), section seven of this article. Examination fees may be shared with other bank supervisory agencies or organizations affiliated with or representing one or more bank supervisory agencies in accordance with agreements between them and the Commissioner.

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§31A-8A-9. Authority to conduct banking business; credit card processing.

(a) Except as authorized in this article or articles eight-d, eight-e or eight-f of this chapter, no banking institution incorporated under the laws of any other state or having its principal place of business in any other state may receive deposits or transact any banking business of any kind in this state other than the lending of money.

(b) A bank holding company with its principal place of business in another state or foreign country may establish electronic data processing facilities and credit card processing facilities in West Virginia. Such facilities are those established solely for the purpose of processing accounts and/or processing transactions relating to the issuance of credit cards.

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§31A-8A-10. Penalties.

(a) The commissioner or board may enforce the provisions of this article by any appropriate action in the circuit court of Kanawha County or other court having proper jurisdiction, including an action for civil money penalties or injunctive relief: Provided, That the commissioner shall promptly give notice to the home state regulator of any enforcement action initiated against an out-of-state bank holding company and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving said enforcement action.

(b) Any violation of any provision of this article shall constitute a misdemeanor offense, which, upon conviction thereof, shall be punishable by applicable penalties as provided in section fifteen, article eight of this chapter.

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