

**DEPARTMENT OF BANKING AND FINANCE  
INSTRUCTIONS FOR FILING APPLICATIONS FOR  
BANK HOLDING COMPANY FORMATION AND ACQUISITION**

Department procedures have been developed to be compatible with the requirements of the Federal Reserve Bank in carrying out concurrent responsibilities under the Federal Bank Holding Company Act. The Department does not have separate application forms but utilizes Federal Reserve Forms for the convenience of the applicant. Those forms and federal instructions may be obtained from the Division of Supervision and Regulation, Federal Reserve Bank of Atlanta. Acquisitions of federal thrifts should contain the same information as the Federal Reserve Application; however, if the information is already included in an application submitted to the Office of Thrift Supervision, that information may be referenced in the appropriate place in the Federal Reserve application. Except where the acquisition results in the target bank being a branch of another subsidiary of the holding company, approval from both the Department of Banking and Finance and the Federal Reserve or Office of Thrift Supervision is required. Depending upon the method of acquisition being used, approvals may also be required from the Federal Deposit Insurance Corporation and the Administrator of National Banks. Please refer to the Department's Applications Manual for specific details regarding filing requirements, applicable laws and regulations, and filing fees.

With respect to disclosure, particular care should be taken to assure that insiders do not engage in stock transactions prior to the filing of the application without full and adequate disclosure of their knowledge of the application and its implications. Applicants should also be fully aware that, while possibly able to avoid state or federal securities registrations requirements, the fraud provisions of those statutes may be applicable to the proposed transactions.

Depending on whether the applicant meets expedited treatment qualifications, it may require up to two months before the transaction is approved. Any delay in providing requested additional information could extend this time period.

Note: Please refer to the notification section of the Applications Manual for acquisitions which do not require an application but do require notification.

PROCESS TO BE FOLLOWED BY HOLDING COMPANY APPLICANTS

- I. Incorporation of Proposed Bank Holding Company (in the form of a General Business Corporation)
  - A. Reserve Name with Secretary of State. Note: Where the proposed name contains the word "Bank" or a variation of the word "Bank," the Secretary of State requires clearance of the name by the department; therefore, please follow instructions for Name Reservations and Permissions in the Applications Manual.
  - B. File Articles of Incorporation under the Georgia Corporate Code.
- II. Form of Acquisition (Determines the next step in process)
  - A. Direct Tender Offer - Note: If Direct Tender Offer is used, skip to III. A. and III. B.
  - B. Acquisition resulting in a subsidiary using a Merger Process through the use of an "Acquisition Vehicle" (with next step in this type of acquisition being the incorporation of the "acquisition vehicle").
    1. General Business Corporation (Secretary of State)
      - a. A general business corporation may be used as an acquisition vehicle (phantom or interim subsidiary) only when the bank to be acquired (target bank) is a State-chartered bank.
      - b. In forming a "phantom or interim general business corporation," follow same procedures outlined in I. above.
    2. Phantom Bank
      - a. Where target bank is a National Bank, file application for Interim or Phantom Bank Charter under Federal Requirements (Regional Administrator of the Comptroller of Currency).
      - b. Where phantom bank is a State-chartered bank:
        - (1) Reserve Name with Department of Banking and Finance.
        - (2) File three originals of Articles of Incorporation, in triplicate, with the Department along with a check made payable to the Secretary of State for the appropriate fee.
        - (3) Publish Legal Notice for Certified copy of the Articles, as prescribed by Section 7-1-7, and furnish proof of publication to Department. Also, applicant shall publish for public comments as required by Regulation, and provide proof of publication to the Department.

### III. Application Process and Acquisition Procedure

#### A. Publication of Public Notice of Acquisition.

1. May publish joint with notice required by federal regulator if required.
2. Thirty day public comment period from date of publication in a newspaper of general circulation in the county where the bank or bank holding company to be acquired is located.

#### B. File Application including Proof of Publication discussed under III. A., if available.

1. File two copies (one with original signatures) of the application filed with the appropriate Federal Regulator when the Applicant wishes to become a bank holding company and simultaneously acquire another financial institution, or when the Applicant is an existing bank holding company and wishes to acquire another financial institution.  
NOTE: All applicable application forms must be obtained from the Federal Reserve or Office of Thrift Supervision.
2. Also, furnish DBF with all documents required by Chapter 80-6-1.

NOTE: When this Department approves a holding company acquisition which involves a merger, in instances when the approval occurs prior to the vote of shareholders on the transaction, the approval will be made subject to the following standard condition:

“That the shareholders be informed that the Department’s review of the application does not include an evaluation of the proposed transaction from the financial perspective of the individual shareholders. Further, no shareholder should construe an approval from the Department to be a recommendation that the shareholders vote to approve the proposal. Each shareholder entitled to vote should evaluate the proposal to determine the personal financial impact of the completion of the proposed transaction. Shareholders not fully knowledgeable in such matters are advised to obtain the assistance of competent professionals in evaluating all aspects of the proposal including any determination that the completion of the proposed transaction is in the best financial interest of the shareholder.”

#### C. When acquisition is to involve a Merger Process, file Merger Application and Articles of Merger with chartering authority and federal regulatory agency for resulting or surviving bank.

1. When resultant bank is a National Bank, file under Federal Requirements with Regional Administrator of the Comptroller of the Currency.
2. When resultant bank is a State-chartered bank
  - a. File two originals of Articles of Merger with DBF and include a check made payable to the Secretary of State for \$20.00 for the filing fee. (An additional \$100 will be needed if the Merger documents require expedited treatment with the Secretary of State).
  - b. File Merger Application with FDIC (FRB) and DBF - Follow Federal Requirements.

**NOTE:** Merger application for a State non-member bank is a joint application for both FDIC and DBF. These forms may be obtained from the Federal Regulator or at the Department’s Internet site (Interagency Bank Merger Application).

#### D. Notification of Anticipated Effective Date - Requested effective date must be in writing and meet all regulatory approvals and Justice Department waiting periods, if required.