

## Chapter 19

### Acquisition of Failing Depository Institutions or Holding Companies

#### 7-19-1 Definitions.

As used in this chapter:

- (1) "Failing or failed depository institution" means a depository institution under the jurisdiction of the department:
  - (a) regarding which the commissioner makes a finding that any of the conditions set forth in Subsections 7-2-1(1)(a) through (k) exist;
  - (b) that meets the requirements of Subsection 7-2-1(1)(l);
  - (c) whose shareholders have consented to a supervisory action by the commissioner pursuant to Subsection 7-2-1(2); or
  - (d) which is in the possession of the commissioner, or any receiver or liquidator appointed by the commissioner, pursuant to Chapter 2, Possession of Depository Institution by Commissioner.
- (2) "Failing or failed depository institution holding company" means a depository institution holding company under the jurisdiction of the department:
  - (a) regarding which the commissioner makes a finding that any of the conditions set forth in Subsections 7-2-1(1)(a) through (k) exist;
  - (b) that meets the requirements of Subsection 7-2-1(1)(l);
  - (c) whose shareholders have consented to a supervisory action by the commissioner pursuant to Subsection 7-2-1(2);
  - (d) which is in the possession of the commissioner, or any receiver or liquidator appointed by the commissioner, pursuant to Chapter 2, Possession of Depository Institution by Commissioner; or
  - (e) whose subsidiary depository institution is a failing or failed depository institution.
- (3) "Supervisory acquisition" means the acquisition of control, the acquisition of all or a portion of the assets, or the assumption of all or a portion of the liabilities, pursuant to Section 7-2-1, 7-2-12, or 7-2-18, of a failing or failed depository institution or a failing or failed depository institution holding company, whether or not in the possession of the commissioner, by:
  - (a) a Utah depository institution;
  - (b) an out-of-state depository institution;
  - (c) a Utah depository institution holding company; or
  - (d) an out-of-state depository institution holding company.
- (4) "Supervisory merger" means the merger or consolidation, pursuant to Section 7-2-1, 7-2-12, or 7-2-18 of a failing or failed depository institution or a failing or failed depository institution holding company, whether or not in the possession of the commissioner, with:
  - (a) a Utah depository institution;
  - (b) an out-of-state depository institution;
  - (c) a Utah depository institution holding company; or
  - (d) an out-of-state depository institution holding company.

Amended by Chapter 189, 2014 General Session

#### 7-19-2 Supervisory acquisition or merger authorized or required by commissioner.

Notwithstanding any provision of law to the contrary, the commissioner, or any receiver or liquidator appointed by the commissioner, may solicit offers from and authorize, require, or give effect to, a supervisory acquisition of, or a supervisory merger with respect to a failing or failed

depository institution or failing or failed depository institution holding company by a Utah depository institution, an out-of-state depository institution, a Utah depository institution holding company, or an out-of-state depository institution holding company.

Amended by Chapter 49, 1995 General Session

**7-19-3 Waiver of procedures.**

The commissioner may waive any of the procedures of Section 7-1-705 or any regulation of the department if he considers it necessary to protect the interest of depositors, creditors, and other customers of a failing or failed depository institution or failing or failed depository institution holding company in a supervisory merger or a supervisory acquisition.

Amended by Chapter 1, 1986 General Session

**7-19-4 Rights and powers of acquired or resulting institution or holding company.**

Any depository institution or depository institution holding company acquired, or the resulting institution in a merger under the provisions of this chapter, has all the rights, powers, and privileges of any other depository institution of the same class under the laws of this state, the rules of the department, the applicable laws of the United States or any other state, and the rules and regulations of the primary federal regulatory agency with jurisdiction over that institution. These rights, powers, and privileges include, but are not limited to, acquiring control of, merging with, acquiring all or a portion of the assets of, or assuming all or a portion of the liabilities of, a Utah depository institution or Utah depository institution holding company.

Amended by Chapter 1, 1986 General Session

**7-19-5 Findings prerequisite to requiring or authorizing supervisory acquisitions or mergers by commissioner.**

The commissioner may not authorize or require any transaction pursuant to Section 7-19-2 unless he determines that:

- (1) the acquiring or resulting depository institution or depository institution holding company has demonstrated an acceptable record of meeting the credit needs of the communities which it serves; and
- (2) the acquiring or resulting depository institution or depository institution holding company has a record of sound performance, capital adequacy, financial capacity, and efficient management such that the acquisition or merger will not jeopardize the financial stability of the acquired or merged depository institution and will not be detrimental to the interests of depositors, creditors, other customers of the depository institution, or to the public.

Amended by Chapter 1, 1986 General Session

**7-19-5.5 Transferred assets free of encumbrances.**

- (1) Any institution or other person to whom assets, business, and property are transferred pursuant to a supervisory merger or a supervisory acquisition shall take those assets, business, and property:
  - (a) free and clear of all liens, claims, and encumbrances that have been avoided or disallowed by the commissioner under Sections 7-2-6 and 7-2-12;

- (b) free and clear of all unperfected liens, claims, and encumbrances pertaining to the assets, business, and property, except to the extent expressly assumed by the transferee; and
  - (c) subject to all allowed perfected liens, claims, security interests, and encumbrances relating to such assets, business, and property.
- (2) Only those deposit liabilities and other liabilities, claims, and obligations of or against the transferring institution, its officers, directors, employees, and agents which are expressly assumed by the transferee shall be transferred or assigned pursuant to a supervisory merger or a supervisory acquisition. In addition, no such transferee shall be liable for any claim or obligation made against or attributable to acts or omissions of the commissioner, the department, or any of their agents, arising out of or related to the supervisory merger or the supervisory acquisition.

Amended by Chapter 229, 1987 General Session

**7-19-9 Commissioner's powers not limited -- Immunity -- Rules -- Reports.**

- (1) This chapter does not limit any power otherwise granted to the commissioner or to any depository institution or depository institution holding company by the laws of this state.
- (2) The commissioner is not subject to any civil liability or penalty nor to any criminal prosecution for any error in judgment or discretion in any action taken or omitted by him in good faith under the provisions of this chapter.
- (3) The commissioner may promulgate such rules and regulations as may be necessary to implement this chapter.
- (4) By January 10 of each year, the commissioner shall report to the governor and the Legislature the nature and general terms and conditions of any supervisory acquisition or supervisory merger effectuated under the provisions of this chapter during the preceding year.

Enacted by Chapter 5, 1984 Special Session 2

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