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Handbooks: Application Processing
 Subjects: Mergers; De Novo/PTO; Holding Company Acquisition

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Overview of FIRREA Changes to Thrift Acquisition Statutes

RESCINDED

Summary: FIRREA repealed the Change in Savings and Loan Control Act¹ and amended the Change in Bank Control Act to include substantially the same provisions, with some significant changes. The changes are outlined in this Bulletin.

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For Further Information Contact:
 The Office of General Counsel, Corporate and Securities Division, Eugene H. Cantor, Staff Attorney, (202) 906-7239, Kevin A. Corcoran, Deputy Director for Corporate Transactions, (202) 906-6962, or Julie L. Williams, Deputy General Counsel for Securities and Corporate Structure, (202) 906-6459.

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The purpose of this memorandum is to provide a brief explanation of the new statutory structure applicable to changes in control of savings associations resulting from enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989¹ ("FIRREA"). FIRREA has repealed the Change in Savings and Loan Control Act² (the "S&L Control Act") which governed acquisitions of "insured institutions" by individuals as well as companies, but has amended the Change in Bank Control Act³ (the "Bank Control Act"), to apply to changes in control of savings associations as well as banks. As amended, the Bank Control Act, (the provisions of which are substantially the same as the repealed S&L Control Act), makes the Office of Thrift Supervision ("OTS") the appropriate Federal banking agency for jurisdictional purposes over any change in control of a savings asso-

ciation or holding company that controls a savings association⁴. The Bank Control Act is not applicable however, to acquisitions of savings associations which are subject to the Bank Merger Act⁵, the Bank Holding Company Act⁶ or the Savings and Loan Holding Company Act ("SLHCA").⁷ FIRREA also made numerous amendments to the SLHCA (not discussed herein), and moved the revised SLHCA to a new Section 10 of the HOLA.⁸

As a result of this change in the statutory structure several significant items should be noted. First, the provisions contained in the repealed S&L Control Act and the former version of the SLHCA which dealt with the consideration of the loss of certain net operating loss carryforwards in connection with the approval of acquisitions of "insured institutions," has not been carried over to the Bank Control Act or the revised SLHCA. This does not preclude the OTS from considering such tax benefits as a factor, along with all other relevant factors, in connection with its normal review of such transactions; however, it is likely to be a rare case where this item would be the determining factor to deny a notice or application.

Second, as noted above, transactions subject to the Bank Merger Act are not subject to the Change in Bank Control Act.⁹ This has a significant impact on any transaction structured as an acquisition by an individual (or group of individuals)

through the use of an interim association. For example, if an individual were to form an interim association and merge the interim into an existing savings association, and thereby acquire control of the existing savings association, the transaction would be subject to the Bank Merger Act,¹⁰ and a merger application thereunder would need to be filed with the OTS. Such a transaction would *not* be subject to the Bank Control Act and 12 C.F.R. Part 574 — Acquisition of Control of Savings Associations. Accordingly, with respect to any situation where an individual is using an interim as a vehicle to acquire an existing association, in addition to the merger application, there will be an application for permission to charter a Federal interim association or state interim association. Where the interim being chartered is a Federal, the personal, financial and biographical information relevant to evaluating the controlling person will be available to OTS staff through the permission to organize application.¹¹ In the case of a state-chartered interim, however, OTS staff will need to obtain such information in conjunction with review of the merger application.

Other than for the type of transaction described above, *Part 574 continues to apply to acquisitions of savings associations and savings association holding companies.* In this regard, Part 574 is currently being revised to reflect these and other provisions of FIRREA, and is

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expected to be released soon. In addition, the Corporate and Securities Division is in the process of revising its *Legal Guide: Change in Control Notices* and *Legal Guide: Holding Company Applications*, and they too should be released shortly.

Finally, it should be noted that FIRREA adds an additional review standard in connection with acquisitions subject to the Bank Control Act. The new standard provides that the proposed transaction may be disapproved if it "would result in an adverse effect on the Bank Insurance Fund or the Savings Association Insurance Fund."¹² This new standard comports more closely with the type of review currently accorded holding company applications by allowing for the review of the future prospects of the acquirer.

1 Pub. L. 101-73, 103 Stat. 183 (1989).

2 12 U.S.C. §1730(q).

3 12 U.S.C. §1817(j).

4 12 U.S.C. §1813(q)(4).

5 12 U.S.C. §1828(c).

6 12 U.S.C. §1842.

7 12 U.S.C. §1467a. The carve-out for transactions subject to the Bank Merger Act, the Bank Holding Company Act, and the Savings and Loan Holding Company Act is set forth at 12 U.S.C. §1817(j)(17).

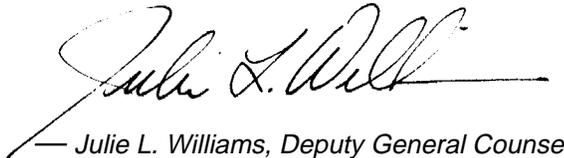
8 12 U.S.C. §1467a.

9 By contrast, where an acquisition subject to the SLHCA also involves a merger, including a merger with an interim, both the SLHCA and the Bank Merger Act are applicable. In cases where both statutes apply, filing of a separate merger application is not necessary, and all information needed to evaluate both approval requests may be included in the holding company application; but approval of the transaction must still reference approval under the standards of both statutes.

10 Such transactions would also be subject to 12 C.F.R. §§563.22 and either 552.13 or applicable state law.

11 See Form 1393.

12 FIRREA §208(11) which amends 12 U.S.C. §1817(j)(17).



— Julie L. Williams, Deputy General Counsel