

IC 28-1-7.5

Chapter 7.5. Formation of Certain Bank Holding Companies

IC 28-1-7.5-1

"Holding company" defined

Sec. 1. (a) As used in this chapter, "holding company" refers to a corporation that:

(1) is attempting to acquire all the outstanding shares of a bank, trust company, corporate fiduciary, or stock savings bank under this chapter; or

(2) has completed such an acquisition;

depending upon the context in which the term is used.

(b) As used in this chapter, "stock savings bank" has the meaning set forth in IC 28-6.1-2-7.

As added by P.L.238-1983, SEC.10. Amended by P.L.122-1994, SEC.60; P.L.262-1995, SEC.13.

IC 28-1-7.5-2

Acquisition of bank, trust company, corporate fiduciary, or stock savings bank by holding company under plan of exchange

Sec. 2. All the outstanding shares of common stock of any bank, trust company, corporate fiduciary, or stock savings bank may be acquired by any corporation organized under IC 23-1 if the acquisition is made under a plan of exchange approved in the manner provided in this chapter. Such a plan of exchange must provide for:

(1) the exchange of all the outstanding shares of common stock of the bank, trust company, corporate fiduciary, or stock savings bank for shares of common stock to be issued by the holding company at the rate of one (1) share of holding company stock for each share of bank, trust company, corporate fiduciary, or stock savings bank stock; and

(2) the redemption by the holding company, under unconditional rights granted by its articles of incorporation or bylaws or by agreement between the holding company and its shareholders, of all of the shares of common stock of the holding company that may be outstanding immediately before the exchange.

As added by P.L.238-1983, SEC.10. Amended by P.L.149-1986, SEC.62; P.L.122-1994, SEC.61; P.L.262-1995, SEC.14.

IC 28-1-7.5-3

Resolutions approving plan of exchange; contents; direction for submission to vote of shareholders

Sec. 3. (a) A bank, trust company, corporate fiduciary, or stock savings bank and a holding company that desire to effect an exchange of securities must, by resolutions adopted by the board of directors of each corporation, approve a plan of exchange which sets forth:

(1) the names of the holding company and the bank, trust company, corporate fiduciary, or stock savings bank;

- (2) the terms and conditions of the exchange;
- (3) the mode of carrying the exchange into effect;
- (4) the manner of redemption of all shares of common stock of the holding company that may be outstanding immediately before the exchange;
- (5) a restatement of such provisions of the articles of incorporation of the holding company as may be considered necessary or desirable to give effect to the exchange; and
- (6) such other provisions with respect to the exchange as may be considered necessary or desirable.

(b) The resolution of the board of directors of the bank, trust company, corporate fiduciary, or stock savings bank and, if the plan of exchange provides for the amendment of the articles of incorporation of the holding company, the resolution of the board of directors of the holding company, must be submitted to a vote of the shareholders of the corporation, at a meeting of the shareholders. The meeting may be an annual or a special meeting of the shareholders. If the meeting of any corporation at which the plan is to be submitted is an annual meeting, notice of the submission of the plan must be included in the notice of the annual meeting. If the meeting is a special meeting, the meeting must be called by the resolution designating the meeting, and notice of the meeting must be given as provided by law. A copy of the proposed plan of exchange must be included with the notice of the annual or special meeting of shareholders given to each shareholder.

As added by P.L.238-1983, SEC.10. Amended by P.L.122-1994, SEC.62; P.L.262-1995, SEC.15.

IC 28-1-7.5-4

Filing plan of exchange and statement disclosing required information with department

Sec. 4. (a) The bank, trust company, corporate fiduciary, or stock savings bank and the holding company shall file with the department three (3) copies of the plan of exchange certified by an officer of each as having been approved in accordance with section 3 of this chapter. They shall also file a statement which includes:

- (1) information as to the earnings and financial condition of the bank, trust company, corporate fiduciary, or stock savings bank as of the end of its last preceding year as filed with the department, and similar information, to the extent readily available, as of a date not earlier than one hundred twenty (120) days before the filing of the plan of exchange;
- (2) a balance sheet of the holding company as of the date of the most recent statement of condition of the bank, trust company, corporate fiduciary, or stock savings bank required by subdivision (1);
- (3) a pro forma balance sheet of the holding company based on the assumption that the plan of exchange was effective as proposed at the date of the balance sheet of the holding company required by subdivision (2);

(4) a description of the business intended to be done by the holding company and of any plans or proposals that the holding company may have to sell its assets or merge or consolidate with any other person, or to make any other material change in its investment policy, business, corporate structures, or management;

(5) a list of all persons who are or who have been selected to become directors or officers of the holding company, a description of their principal occupations, a list of all offices and positions held by them during the past five (5) years, and information about whether any of them:

(A) is under indictment for;

(B) has been convicted of; or

(C) has pleaded guilty or nolo contendere to:

a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction.

(6) a description of any plans or proposals that the holding company may have to liquidate the bank, trust company, corporate fiduciary, or stock savings bank to sell its assets or merge or consolidate it with any person, or to make any other material change in its investment policy, business, corporate structure, or management;

(7) a copy of a preliminary proxy or information statement prepared for distribution to the shareholders of the bank, trust company, corporate fiduciary, or stock savings bank setting forth all material facts relating to the holding company and the proposed plan of exchange; and

(8) such other information as the director may prescribe.

(b) The statement must:

(1) assert the completeness and accuracy of the information referred to in subsection (a)(1) through (a)(8); and

(2) be made under oath or affirmation by an officer of the bank, trust company, corporate fiduciary, or stock savings bank and an officer of the holding company.

If any material change occurs in the facts set forth in the statement filed with the department, an amendment setting forth the change, together with copies of all documents and other material relevant to the change, shall be filed with the department within five (5) business days after the parties learn of the change.

As added by P.L.238-1983, SEC.10. Amended by P.L.122-1994, SEC.63; P.L.262-1995, SEC.16; P.L.213-2007, SEC.36; P.L.217-2007, SEC.34.

IC 28-1-7.5-5

Public hearing; requisites; procedures

Sec. 5. (a) At the time of the filing of a plan of exchange with the department, the bank, trust company, corporate fiduciary, or stock savings bank may submit a written request asking the department to hold a hearing on the matter. If such a request is submitted, the department shall hold a public hearing upon the fairness of the terms,

conditions, and provisions of the plan of exchange and the proposed issuance and exchange of stock of the holding company for the stock of the bank, trust company, corporate fiduciary, or stock savings bank. In addition, the department may on its own motion hold such a public hearing. The shareholders of the bank, the trust company, the corporate fiduciary, and the holding company and any other interested party may appear and become a party to the proceeding at any public hearing at which the fairness of the exchange is to be determined. The department shall require the bank, trust company, corporate fiduciary, or stock savings bank and the holding company to produce such evidence as the director considers necessary to the hearing.

(b) The department shall commence any public hearing held under this section not less than thirty (30) days and not more than one hundred twenty (120) days after the date on which the plan of exchange is filed with the department. The hearing shall be held at such place, date, and time as the department shall specify. The hearing may be held by any member or members of the department, by the director of the department, by a deputy director of the department, by the supervisor of the department's division of banks and trust companies, or by any employee of the department designated by the members of the department. At least ten (10) days before the hearing, the applicant shall publish notice of the hearing in a newspaper of general circulation in the county or counties where the principal offices of the bank, trust company, corporate fiduciary, or stock savings bank and the holding company are located and in the county where the hearing will be held. Written notice of the hearing shall be mailed at least ten (10) days before the hearing by the bank, trust company, corporate fiduciary, or stock savings bank and by the holding company to all of their respective shareholders. All expenses of publication, court reporter fees, department expenses, and hearing room fees shall be paid by:

- (1) the bank, trust company, corporate fiduciary, or stock savings bank;
- (2) the holding company; or
- (3) both;

as specified in the plan of exchange.

(c) Except as otherwise provided in this section, the hearing and the determination made by the department are subject to IC 4-21.5-3. *As added by P.L.238-1983, SEC.10. Amended by P.L.7-1987, SEC.158; P.L.14-1992, SEC.74; P.L.122-1994, SEC.64; P.L.262-1995, SEC.17.*

IC 28-1-7.5-6

Approval or disapproval of plan of exchange by department; order; findings of fact; judicial review

Sec. 6. (a) The department shall issue an order approving the plan of exchange as delivered to it by the bank, trust company, corporate fiduciary, or stock savings bank and the holding company, including any modifications to the plan as the board of directors of each

corporation may approve, unless it finds that:

- (1) the plan, including any modifications, would adversely affect the financial stability or management of the bank, trust company, corporate fiduciary, or stock savings bank or the general capacity or intention to continue the safe and sound conduct of the bank, trust company, corporate fiduciary, or stock savings bank;
- (2) the terms and conditions of the plan of exchange are unfair and unreasonable to the shareholders of the bank, trust company, corporate fiduciary, or stock savings bank; or
- (3) the plans or proposals that the holding company has to liquidate the bank, trust company, corporate fiduciary, or stock savings bank, sell its assets or consolidate or merge it with any person, or to make any other material change in its investment policy, business, corporate structure, or management, are unfair and unreasonable to the shareholders of the bank, trust company, corporate fiduciary, or stock savings bank and not in the public interest.

(b) If a hearing is held on the plan of exchange, the department shall issue its order approving or disapproving the plan within ninety (90) days of the date of hearing. The department shall include its findings of fact in the order. If the department approves the plan, the findings of fact must include a finding that the terms and conditions of the plan and of the issuance and exchange of holding company stock for stock of the bank, trust company, corporate fiduciary, or stock savings bank are fair and reasonable to the shareholders of the bank, trust company, corporate fiduciary, or stock savings bank. Any party to the proceedings aggrieved by the order is entitled to a judicial review in accordance with IC 4-21.5-5.

(c) If no hearing is held on the plan of exchange, the department shall issue an order approving or disapproving the plan, within ninety (90) days after the date on which the plan of exchange is filed with the department. The department may issue the order without including its findings of facts.

As added by P.L.238-1983, SEC.10. Amended by P.L.7-1987, SEC.159; P.L.122-1994, SEC.65; P.L.262-1995, SEC.18.

IC 28-1-7.5-7

Submission of plan of exchange to shareholders; procedures; voting rights; approval; abandonment

Sec. 7. (a) If a plan of exchange is approved by the department, the plan shall be submitted to a vote of the shareholders of the bank, trust company, corporate fiduciary, or stock savings bank and, if the articles of incorporation of the holding company are to be amended in the plan, to a vote of the shareholders of the holding company, at the meeting or meetings of the shareholders directed by the resolutions of the board of directors of the corporation approving the plan of exchange. Each shareholder of the bank, trust company, corporate fiduciary, or stock savings bank shall be provided with a copy of a proxy or information statement setting forth material facts

regarding the holding company and the plan of exchange at the same time as the shareholder is provided with the notice of the meeting. Three (3) copies of the definitive proxy or information statement, one (1) of which shall be marked to indicate the changes from the preliminary statement filed under section 4 of this chapter, shall be filed with the department by the bank, trust company, corporate fiduciary, or stock savings bank not later than the date the statement is first sent, given, or delivered to shareholders.

(b) Each outstanding share of the bank, trust company, corporate fiduciary, or stock savings bank and, if the articles of incorporation of the holding company are to be amended in the plan, the holding company, is entitled to one (1) vote, regardless of class, on the approval of the plan of exchange unless the articles of incorporation in effect at the time of the vote provide for special, conditional, or limited voting rights, or for no right to vote. The holders of the outstanding shares of a class of the bank, trust company, corporate fiduciary, or stock savings bank and, if the articles of incorporation of the holding company are to be amended in the plan, the holding company are entitled to vote as a separate class on a proposed plan of exchange if the plan would:

- (1) increase or decrease the aggregate number of authorized shares of the class;
- (2) effect an exchange or reclassification of all or part of the shares of the class into shares of another class;
- (3) effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;
- (4) change the designation, rights, preferences, or limitations of all or part of the shares of the class;
- (5) change the shares of all or part of the class into a different number of shares of the same class;
- (6) create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;
- (7) increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;
- (8) limit or deny an existing preemptive right of all or part of the shares of the class; or
- (9) cancel or otherwise affect rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class.

(c) The plan of exchange is approved by the shareholders of a corporation when affirmative votes representing at least a majority (or such greater portion as the articles of incorporation may require) of the outstanding shares are received from shareholders entitled to vote on the plan. Notwithstanding shareholder adoption of the plan of exchange and at any time before the filing of articles of exchange

with the secretary of state under section 9 of this chapter, the plan of exchange may be abandoned by a resolution of the board of directors of the bank, trust company, corporate fiduciary, or stock savings bank or of the holding company.

As added by P.L.238-1983, SEC.10. Amended by P.L.122-1994, SEC.66; P.L.262-1995, SEC.19; P.L.213-2007, SEC.37; P.L.217-2007, SEC.35.

IC 28-1-7.5-8

Dissenting shareholders; demand for payment of value of shares; withdrawal of demand; determination of value; procedures; limitations

Sec. 8. (a) If a shareholder votes in opposition to a plan of exchange at the meeting at which the plan is adopted by the shareholders, the shareholder may, within thirty (30) days after the date of the meeting, make written objection to the exchange and demand that the bank, trust company, corporate fiduciary, or stock savings bank pay him the value of his shares. If the plan of exchange is effected, the bank, trust company, corporate fiduciary, or stock savings bank shall pay to the shareholder, upon surrender of the certificate or certificates representing his shares, the value of the shares as of the day before the date on which the vote was taken approving the plan of exchange. Any shareholder failing to make demand within the thirty (30) day period is bound by the terms of the plan of exchange. Immediately after making such a demand, the shareholder, except as provided in subsection (b), is entitled to payment as provided in this section, ceases to be a shareholder, and is not entitled to vote or to exercise any other rights of a shareholder.

(b) A demand for payment made under subsection (a) may not be withdrawn unless the bank, trust company, corporate fiduciary, or stock savings bank consents to the withdrawal. With respect to a shareholder who has made a demand for payment, the right of the shareholder to be paid the value of his shares ceases and his status as a shareholder is restored, without prejudice to any corporate proceedings which may have been taken during the interim, and the shares held by the shareholder shall be treated for all purposes as if no objection and demand had been made by the shareholder, if:

- (1) the shareholder's request to withdraw his demand is consented to by the bank, trust company, corporate fiduciary, or stock savings bank;
- (2) the plan of exchange is abandoned;
- (3) the shareholders revoke the authority to effect the exchange;
- (4) a petition for the determination of value by a court is not filed within the time provided in this section; or
- (5) a court of competent jurisdiction determines that the shareholder is not entitled to the relief provided by this section.

(c) Within ten (10) days after the plan of exchange is effected, the bank, trust company, corporate fiduciary, or stock savings bank shall mail or deliver written notice of the date of that action to each dissenting shareholder who has made demand under this section. The

bank, trust company, corporate fiduciary, or stock savings bank shall use the shareholder's address which appears on the corporate records. The notice shall include a written offer to the shareholder to pay for the shareholder's shares at a specified price considered by the corporation to be the value of the shares. If within thirty (30) days after the date on which the plan of exchange was effected the value of the shares is agreed upon, the bank, trust company, corporate fiduciary, or stock savings bank shall make payment to the shareholder for the shares. The bank, trust company, corporate fiduciary, or stock savings bank shall make the payment within ninety (90) days after the date on which the plan of exchange was effected, upon surrender of the certificates representing the shares. Upon payment of the agreed value, the dissenting shareholder ceases to have any interest in the shares.

(d) If within the period of thirty (30) days a dissenting shareholder and the bank, trust company, corporate fiduciary, or stock savings bank do not agree, then either the bank, trust company, corporate fiduciary, or stock savings bank or the dissenting shareholder may file a petition in a circuit or superior court in the county in this state where the principal office of the bank, trust company, corporate fiduciary, or stock savings bank is located requesting that the court determine the value of the shares. However, such a petition must be filed within ninety (90) days after the date on which the plan of exchange was effected.

(e) The court shall render judgment against the bank, trust company, corporate fiduciary, or stock savings bank for payment of an amount equal to the value of each dissenting share multiplied by the number of dissenting shares that any dissenting shareholder who is a party is entitled to require the bank, trust company, corporate fiduciary, or stock savings bank to purchase. The judgment is payable only upon the endorsement and delivery to the bank, trust company, corporate fiduciary, or stock savings bank of the certificates for the shares described in the judgment. Any party may appeal from the judgment.

(f) Within twenty (20) days after payment is demanded for a shareholder's shares, the shareholder shall submit the certificates to the bank, trust company, corporate fiduciary, or stock savings bank for notation on the certificates that demand for payment has been made. The failure of the shareholder to do so, at the option of the bank, trust company, corporate fiduciary, or stock savings bank, terminates the shareholder's rights under this section unless a court, for good and sufficient cause shown, otherwise directs. If shares are transferred, each new certificate issued for those shares shall bear a notation, together with the name of the original dissenting holder of the shares, and a transferee of the shares acquires by the transfer no rights in the bank, trust company, corporate fiduciary, or stock savings bank other than those which the original dissenting shareholder had after making demand for payment of the value of the shares.

As added by P.L.238-1983, SEC.10. Amended by P.L.122-1994,

SEC.67; P.L.262-1995, SEC.20.

IC 28-1-7.5-9

Articles of exchange; requisites; filing; certificate of exchange; issuance; effectiveness of plan

Sec. 9. (a) After the plan of exchange is approved by shareholders of the bank, trust company, corporate fiduciary, or stock savings bank and, if required, by the shareholders of the holding company, and unless the plan of exchange is subsequently abandoned, the bank, trust company, corporate fiduciary, or stock savings bank and the holding company shall prepare articles of exchange setting forth:

- (1) the plan of exchange;
- (2) the manner of the approval of the plan by the directors of the holding company and the bank, trust company, corporate fiduciary, or stock savings bank;
- (3) the manner of its adoption and the vote by which adopted by the shareholders; and
- (4) the fact that the plan of exchange has been approved by the department.

(b) The articles of exchange shall be signed under oath on behalf of each corporation. The articles of exchange shall be filed with the department. The department shall, if it approves the articles of exchange, endorse its approval on all copies and file them with the secretary of state. The secretary of state shall endorse the approval of the secretary of state on each of the copies and keep one (1) copy of the articles of exchange, issue a certificate of exchange, and deliver the remaining copies to the holding company.

(c) The plan of exchange becomes effective upon the issuance of the certificate of exchange by the secretary of state, unless a later date is specified.

As added by P.L.238-1983, SEC.10. Amended by P.L.122-1994, SEC.68; P.L.262-1995, SEC.21.

IC 28-1-7.5-10

Plan of exchange; consummation by operation of law; effect

Sec. 10. At the time that the plan of exchange becomes effective:

- (1) each shareholder ceases to be a shareholder of the bank, trust company, corporate fiduciary, or stock savings bank;
- (2) the ownership of all shares of the issued and outstanding common stock of the bank, trust company, corporate fiduciary, or stock savings bank (except shares for which payment of value is required to be made under section 8 of this chapter) vest in the holding company automatically without any physical transfer or deposit of certificates representing those shares;
- (3) the articles of incorporation of the holding company are amended to the extent that any provisions of those articles are restated in the plan of exchange;
- (4) the holding company becomes the sole holder of the common stock of the bank, trust company, corporate fiduciary, or stock savings bank and has all of the rights, privileges,

immunities and powers, and (except as otherwise provided in this chapter) is subject to all of the duties and liabilities, of a shareholder of a bank, trust company, corporate fiduciary, or stock savings bank; and

(5) depending upon which option is provided for in the plan of exchange, certificates representing shares of common stock of the bank and trust company or corporate fiduciary (except shares for which payment of value is required to be made under section 8 of this chapter) become certificates representing either shares of the issued and outstanding common stock of the holding company, or the right to receive shares of stock issued by the holding company upon such terms as are specified in the plan of exchange.

As added by P.L.238-1983, SEC.10. Amended by P.L.122-1994, SEC.69; P.L.262-1995, SEC.22.

IC 28-1-7.5-11

Redemption by holding company of its outstanding common stock

Sec. 11. Within thirty (30) days after the plan of exchange becomes effective, the holding company shall redeem all shares of common stock of the holding company that were outstanding immediately before the effective time of the exchange. The holding company shall redeem the shares in the manner provided in the plan of exchange.

As added by P.L.238-1983, SEC.10.

IC 28-1-7.5-12

Separate and distinct corporations; effect upon liability

Sec. 12. The bank, trust company, corporate fiduciary, or stock savings bank and the holding company are separate and distinct corporations. Notwithstanding any acts or omissions of the officers, directors, or shareholders of the corporations, neither of the corporations has any liability to the creditors, depositors, or shareholders of the other.

As added by P.L.238-1983, SEC.10. Amended by P.L.122-1994, SEC.70; P.L.262-1995, SEC.23.

IC 28-1-7.5-13

Exemption from requirements of IC 28-1-2-23

Sec. 13. An acquisition by a holding company of control of a bank, trust company, corporate fiduciary, or stock savings bank is exempt from the requirements of IC 28-1-2-23 if the acquisition is made under this chapter.

As added by P.L.238-1983, SEC.10. Amended by P.L.122-1994, SEC.71; P.L.262-1995, SEC.24.

IC 28-1-7.5-14

Acquisition under other lawful procedures unaffected

Sec. 14. This chapter does not prohibit the acquisition by a holding company of shares of stock of a bank, trust company,

corporate fiduciary, or stock savings bank under any other procedure that may be authorized by law, under voluntary exchange, or under an agreement with shareholders.

As added by P.L.238-1983, SEC.10. Amended by P.L.122-1994, SEC.72; P.L.262-1995, SEC.25.

IC 28-1-7.5-15

Limitations of IC 28-2-14 unaffected

Sec. 15. This chapter does not affect the limitations imposed on bank holding companies by IC 28-2-14.

As added by P.L.238-1983, SEC.10. Amended by P.L.19-1986, SEC.48.