



*(Facing Page)*

To: Commissioner of Business Oversight

Date: \_\_\_\_\_

The undersigned hereby apply for authority to organize and establish a corporation under the laws of the State of California to engage in:

(Check one or more)     Commercial Banking Business     Trust Business     Industrial Bank

\_\_\_\_\_  
(Street address or vicinity)

\_\_\_\_\_  
(City)

\_\_\_\_\_  
(County)

under the name \_\_\_\_\_

with shareholder's equity of \$ \_\_\_\_\_

The documents attached hereto are hereby referred to and by this reference incorporated herein.

The person authorized to represent the applicants in connection with this application is:

Name: \_\_\_\_\_ Telephone: \_\_\_\_\_

Address: \_\_\_\_\_

**APPLICANTS**

Name and Business or Occupation

Address

Signature

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(If additional space is required, continue on attached sheet.)

*(This is a facing page only. For instructions on completing and signing this application, refer to the Regulations of the Commissioner of Business Oversight. Signature must be acknowledged.)*

NOTE: Authority cited: Section 215, Financial Code. Reference: Division 1, Financial Code.

#### HISTORY

1. Repealer of subsection (b), subsection relettering and new NOTE filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

#### § 10.177. Trust Business.

"Trust business" has the meaning set forth in Financial Code Section 106.

#### § 10.178. Trust Company.

"Trust company" has the meaning set forth in Financial Code Section 107, and includes a depository trust company and an independent trust company.

NOTE: Authority cited: Section 215, Financial Code. Reference: Division 1, Financial Code.

#### HISTORY

1. Amendment of section and new NOTE filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

#### § 10.179. Trust Department.

"Trust department," when used with respect to a commercial bank which is authorized to engage in trust business, means the division of such bank through which the bank engages in trust business.

NOTE: Authority cited: Section 215, Financial Code. Reference: Division 1, Financial Code.

#### HISTORY

1. Repealer of subsection (a), repealer of subsection (b) designator, and new NOTE filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

#### § 10.180. United States.

(a) "United States," when used with respect to a bank, means (1) a state bank or (2) a national bank which maintains its head office in a state of the United States.

(b) "United States," when used with respect to an office of a bank, means an office which is located in a state of the United States.

(c) "United States," when used with respect to any corporation other than a bank, means a corporation which is organized under the laws of a state of the United States or under the laws of the United States.

#### § 10.181. Voting Securities.

"Voting securities" means securities the holders of which are presently entitled to vote for the election of directors.

#### § 10.182. Wholesale Branch Office.

"Wholesale branch office," when used with respect to a foreign (other nation) bank, has the meaning set forth in Financial Code Section 1700(u). In addition, "wholesale branch office" includes any foreign (other state) office of a foreign (other nation) bank which is substantially equivalent to a wholesale branch office, as defined in Financial Code Section 1700(u).

NOTE: Authority cited: Section 215, Financial Code. Reference: Division 1, Financial Code.

#### HISTORY

1. New section filed 10-15-81; effective upon filing (Register 81, No. 44). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2-12-82.
2. Certificate of Compliance transmitted to OAL 2-11-82 and filed 3-12-82 (Register 82, No. 11).

## Article 4. Establishment of California State Banks

### Subarticle 1. General Provisions

#### § 10.3000. Scope.

This Article contains regulations relating to the establishment of California state banks. This Subarticle contains general provisions relating to the establishment of California state banks. Subarticle 2 (commencing with Section 10.3100) of this Article contains regulations relating to the establishment of a California state commercial bank or of a California state independent trust company pursuant to Chapter 3 (commencing with Section 350) of the Banking Law. Subarticle 3 (commencing with Section 10.3700) of this Article contains regulations relating to the establishment of a trust department by a California state commercial bank pursuant to Financial Code Section 1500.1. (Subarticle 4 of this Article is reserved.) Subarticle 5 (commencing with Section 10.4300) of this Article contains regulations relating to the conversion of a California national bank into a California state bank pursuant to Article 2 (commencing with Section 4940) of Chapter 5 of the Depository Corporation Sale, Merger, and Conversion Law of the Financial Code.

NOTE: Authority cited: Sections 215 and 4831, Financial Code. Reference: Chapter 3, Division 1, Section 1500.1, and Article 2, Chapter 5, Division 1.5, Financial Code.

#### HISTORY

1. Amendment of section and new NOTE filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

#### § 10.3001. Post-Incorporation and Post-Approval Matters.

(a) In this Section, to "commence business" has the meaning set forth in Sections 10.3102, 10.3702, or 10.4302 of this Chapter.

(b) In the units of this Article relating to post-incorporation or post-approval matters:

(1) In case a provision which calls for a subject institution or applicant to file a document with the Commissioner does not expressly provide when such subject institution or applicant is to make such filing, the subject institution or applicant shall make the filing at a reasonable time under the circumstances and, in any event, at reasonable time before the subject institution or applicant commences business.

(2) In case a provision which calls for a subject institution or applicant to file a document with the Commissioner requires that such subject institution or applicant make such filing not less than a specified number of days or business days before the subject institution or applicant commences business, the subject institution or applicant is encouraged to make the filing before such deadline, if possible, so as to allow ample time not only for the staff of the Department to process the document filed but also for the subject institution or applicant to make any corrections or changes in such document that may be found to be necessary before the certificate of authority is issued.

(c) Any provision in the units of this Article relating to post-incorporation or post-approval matters which, by its terms or pursuant to Paragraph (1) of Subdivision (b) of this Section, requires a subject institution or applicant to perform an act before commencing business shall be deemed also to require such subject institution or applicant to perform such act before its certificate of authority is issued; and, in case such provision requires that the subject institution or applicant performs the act not less than a specified time before commencing business, the subject institution or applicant shall perform the act not less than the specified time before its certificate of authority is issued.

NOTE: Authority cited: Sections 215 and 4831, Financial Code. Reference: Chapter 3, Division 1, Section 1500.1, and Article 2, Chapter 5, Division 1.5, Financial Code.

## HISTORY

1. Amendment of subsections (a) and (c) and new NOTE filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).
2. Change without regulatory effect amending section filed 8-19-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

## Subarticle 2. Establishment of California State Commercial Bank or Independent Trust Company

### Part 1. General Provisions

#### § 10.3100. Definition of "Subject Institution" and Scope.

(a) In this Subarticle, "subject institution" means a California state bank which is or is proposed to be a commercial bank or an independent trust company.

(b) This Subarticle contains regulations relating to the establishment of a subject institution pursuant to Chapter 3 (commencing with Section 350) of the Banking Law. This Part contains general provisions relating to the establishment of a subject institution. Part 2 (commencing with Section 10.3150) of this Subarticle contains regulations relating to an application for authority to organize a subject institution. Part 3 (commencing with Section 10.3300) of this Subarticle contains regulations which set forth administrative standards and procedures relating to an application for authority to organize a subject institution. Part 4 (commencing with Section 10.3350) of this Subarticle contains regulations relating to the pre-incorporation period in the establishment of a subject institution. Part 5 (commencing with Section 10.3450) of this Subarticle contains regulations relating to the post-incorporation period in the establishment of a subject institution.

#### § 10.3101. Other Definitions.

In this Subarticle:

- (a) "Post-incorporation pre-opening funds account" means the deposit account called for in Section 10.3480 of this Chapter.
- (b) "Pre-incorporation pre-opening funds account" means the deposit account called for in Section 10.3405 of this Chapter.
- (c) "Pre-opening capital expenditures" means pre-opening expenditures which may be capitalized in conformity with generally accepted accounting principles and practices then applicable.
- (d) "Pre-opening expenditure" has the meaning set forth for "preopening expenditure" in Financial Code Section 399(a).
- (e) "Pre-opening funds" means any money or other thing of value solicited or accepted by a proposed director, proposed officer, or organizer of a proposed subject institution or by a subject institution at any time before such subject institution commences business, for the purposes of paying the pre-opening expenditures of such subject institution. However, "pre-opening funds" does not include any proceeds from the sale by a subject institution, after incorporation, of any security issued by it under authority of a permit or of an exemption from Financial Code Section 691 issued by the Commissioner or any income or gain derived from any such proceeds.
- (f) "Pre-opening noncapital expenditure" has the meaning set forth for "preopening noncapital expenditure" in Financial Code Section 399(b).
- (g) "Proposed subject institution" means a subject institution which is proposed to be organized but which has not yet been incorporated.

NOTE: Authority cited: Section 215, Financial Code.

## HISTORY

1. Change without regulatory effect amending section and adding new NOTE filed 8-19-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

#### § 10.3102. Commencement of Business.

For purposes of this Subarticle, a subject institution shall be deemed to commence business at the time when, the Commissioner having issued a certificate of authority authorizing such subject institution to transact commercial banking business, trust business, or both, as the case may be, the subject institution opens for the purpose of transacting commercial banking business, trust business, or both, as the case may be.

NOTE: Authority cited: Section 215, Financial Code.

## HISTORY

1. Change without regulatory effect amending section and adding new NOTE filed 8-19-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

#### § 10.3103. Counting Number of Persons.

In determining for purposes of this Subarticle the number of persons from whom pre-opening funds are solicited or accepted, persons shall be counted in the same manner as provided in Section 10.6 of this Chapter.

### Part 2. Application

#### § 10.3150. Scope.

This Part contains regulations relating to an application for authority to organize a subject institution.

#### § 10.3151. Applicants.

One or more persons may apply to the Commissioner for authority to organize a subject institution.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 360, Financial Code.

## HISTORY

1. Change without regulatory effect amending section and adding new NOTE filed 8-19-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

#### § 10.3152. Included Application.

An application for authority to organize a subject institution which proposes that such subject institution commence business with its head office in temporary quarters and subsequently relocate its head office to permanent quarters shall, unless otherwise provided in such application, be deemed to include an application for approval pursuant to Financial Code Section 420 for the subject institution to relocate its head office from such temporary quarters to such permanent quarters and shall be accompanied by the fee prescribed in Financial Code Section 420. Approval of such an application for authority to organize a subject institution shall, unless otherwise provided in such approval, be deemed to include approval of such included application for approval for the subject institution to relocate its head office. The subject institution shall, with respect to relocating its head office, comply with the provisions of Subpart 7 (commencing with Section 10.6475), Part 3, Article 5 of this Subchapter.

#### § 10.3153. Facing Page.

An application for authority to organize a subject institution shall have as its first page a facing page in the form of Department Form 10 and shall contain the information called for therein.

#### § 10.3154. Additional Information.

An application for authority to organize a subject institution shall contain, in addition to the information called for in the facing page:

- (a) In case the subject institution is to be a commercial bank with a trust department, the information called for in Sections 10.3155 to 10.3181, inclusive, of this Chapter.
- (b) In case the subject institution is to be a commercial bank without trust department, the information called for in Sections 10.3155, 10.3159 to 10.3163, inclusive, 10.3166 to 10.3168, inclusive, 10.3172, 10.3176 and 10.3177 of this Chapter.
- (c) In case the subject institution is to be an independent trust company, the information called for in Sections 10.3155, 10.3159 to 10.3163, inclusive, 10.3165 to 10.3167, inclusive, 10.3169, 10.3173, and 10.3177 of this Chapter.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 360, Financial Code.

## HISTORY

1. Amendment of subsections (b) and (c) and new NOTE filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).
2. Change without regulatory effect amending section filed 2-11-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 7).

### § 10.3155. Information Regarding Proposed Business Plan.

Provide a business plan for the subject institution which includes all of the following:

- (a) Description of the market that the subject institution proposes to serve.
- (b) Description of the services and products proposed to be offered by the subject institution.
- (c) Analysis of the need for the services and products proposed to be offered by the subject institution.
- (d) Description of competition in the proposed market of the subject institution, including the name of each other business which provides to the proposed market of the subject institution services and products that are similar to any of the principal services and products proposed to be offered by the subject institution.
- (e) Description of how services and products of the subject institution will be marketed in consideration of the existing and anticipated competition.
- (f) Analysis of the capital, financial, physical and human resources required by the subject institution to successfully implement the proposed business plan.
- (g) In case any material element of the business plan is based on an assumption, a statement of the assumption, and the justification for the assumption.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 360, Financial Code.

## HISTORY

1. Amendment of section heading, repealer and new section, and new NOTE filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).
2. Amendment of section heading and repealer and new section filed 4-14-98; operative 5-14-98 (Register 98, No. 16).

### § 10.3156. Information Regarding Proposed Market—Trust Business.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 360, Financial Code.

## HISTORY

1. Amendment of section heading, repealer and new section, and new NOTE filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).
2. Repealer filed 4-14-98; operative 5-14-98 (Register 98, No. 16).

### § 10.3157. Information Regarding Marketing Plan—Commercial Banking Business.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 360, Financial Code.

## HISTORY

1. Amendment of subsections (a)-(a)(3), repealer of subsections (a)(4)-(c), new subsection (b) and new NOTE filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).
2. Repealer filed 4-14-98; operative 5-14-98 (Register 98, No. 16).

### § 10.3158. Information Regarding Marketing Plan—Trust Business.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 360, Financial Code.

## HISTORY

1. Amendment of subsection (b), repealer of subsections (b)(1)-(d), new subsection (c) and new NOTE filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).
2. Repealer filed 4-14-98; operative 5-14-98 (Register 98, No. 16).

### § 10.3159. Information Regarding Proposed Board.

(a) Provide a table showing, with respect to each proposed director of the subject institution:

- (1) Name.

(2) Business address.

(3) Home address.

(4) Age.

(5) Business or occupation.

(6) Amount of shares of the subject institution for which the proposed director and his associates intend to subscribe.

(b) With respect to each proposed director of the subject institution, provide:

(1) Personal financial statement in the form of Department Form 2, containing the information called for therein, dated as of a date within 90 days before the filing of the application, and signed by the proposed director.

(2) Confidential resume in the form of Department Form 3, containing the information called for therein, dated as of a date within 90 days before the filing of the application, and signed by the proposed director.

(3) Statement dated as of a date within 90 days before the filing of the application and signed by the proposed director, stating:

(A) Amount of shares of the subject institution for which the proposed director intends to subscribe, the source of funds with which he intends to pay for such subscription, and, if any of such funds are to be borrowed, the amount to be borrowed and the source of funds with which he intends to repay such amount.

(B) Whether or not, to the knowledge or information and belief of the proposed director, any associate of the proposed director intends to subscribe for shares of the subject institution and, if so, the name, business address, home address, and business or occupation of the associate, the amount of shares of the subject institution for which the associate intends to subscribe, the source of funds with which he intends to pay for such subscription, and, if any of such funds are to be borrowed, the amount to be borrowed and the source of funds with which he intends to repay such amount.

(C) Commercial banking, trust, other financial, and other business experience of the proposed director, including, with respect to each position held, title, description of duties, name and address of employer, period of employment, and reason for leaving.

(D) Whether or not the proposed director has had in the past or has presently any relationship with any bank as director, officer, employee, adviser, five percent equity security owner, or in any other capacity (other than solely as a customer), and, if so, the name of the bank and a description of the relationship, and, in the case of any present relationship, whether the proposed director intends to continue, change, or terminate such relationship if and when the subject institution commences business.

(E) Ways in which the proposed director intends to serve the subject institution, including generating business and otherwise promoting the well-being of the subject institution, and qualifications of the proposed director to implement such intentions, including, as applicable, civic, professional, social, and other organizational memberships and participation in local community affairs.

(F) Amount of time which the proposed director intends to devote to the affairs of the subject institution during each of the first three years of business of the subject institution.

(c) State the amount of fees and describe any other compensation which the subject institution proposes to pay to its directors during each of the first three years of business.

(d) State whether or not any change is proposed to be made in the membership of the board of the subject institution during the first three years of business, and, if so, describe such change.

### § 10.3160. Information Regarding Proposed Officers, Employees, and Advisers.

(a) Provide a table showing, with respect to the proposed chief executive officer of the subject institution and, in case the subject institution is to be a commercial bank with trust department, the proposed senior trust officer, and any other proposed officer of the subject institution who has been selected:

- (1) Name.
- (2) Business address.
- (3) Home address.
- (4) Age.
- (5) Business or occupation.
- (6) Amount of shares of the subject institution for which the proposed officer and his consociates intend to subscribe.
- (7) Proposed title.
- (8) Proposed duties.
- (9) Proposed annual salary.

(b) Provide a table showing, with respect to each proposed officer position for which no person has been selected, including, in case the subject institution is to engage in commercial banking business, the positions of principal commercial lending officer and principal operations officer and, in case the subject institution is to engage in trust business, the positions of principal trust investment officer, principal trust operations officer, and trust administrative officers:

- (1) Proposed title.
- (2) Proposed duties.
- (3) Proposed annual salary.

(c) With respect to each proposed officer of the subject institution listed in the table called for in Subdivision (a) of this Section, provide:

(1) Personal financial statement in the form of Department Form 2, containing the information called for therein, dated as of a date within 90 days before the filing of the application, and signed by the proposed officer.

(2) Confidential resume in the form of Department Form 3, containing the information called for therein, dated as of a date within 90 days before the filing of the application, and signed by the proposed officer.

(3) Statement dated as of a date within 90 days before the filing of the application and signed by the proposed officer, stating:

(A) Amount of shares of the subject institution for which the proposed officer intends to subscribe, the source of funds with which he intends to pay for such subscription, and, if any of such funds are to be borrowed, the amount to be borrowed and the source of funds with which he intends to repay such amount.

(B) Whether or not, to the knowledge or information and belief of the proposed officer, any consociate of the proposed officer intends to subscribe for shares of the subject institution and, if so, the name, business address, home address, and business or occupation of the consociate, the amount of shares of the subject institution for which the consociate intends to subscribe, the source of funds with which he intends to pay for such subscription, and, if any of such funds are to be borrowed, the amount to be borrowed and the source of funds with which he intends to repay such amount.

(C) Commercial banking, trust, other financial, and other business experience of the proposed officer, including, with respect to each position held, title, description of duties, name and address of employer, period of employment, and reason for leaving.

(D) Whether or not the proposed officer has had in the past or has presently any relationship with any bank as director, officer, employee, advisor, five percent equity security owner, or in any other capacity (other than solely as customer), and, if so, the name of the bank and a description of the relationship, and, in the case of any present relationship, whether the proposed officer intends to continue, change, or terminate such relationship if and when the subject institution commences business.

(E) Whether or not the proposed officer has ever been discharged or requested to resign from any position, and, if so, an account of the circumstances.

(d) State the amount of salary and describe any other compensation

which the subject institution proposes to pay to each officer and to all employees, as a group, during each of the first three years of business.

(e) State the total number of officers and employees proposed to be employed by the subject institution upon commencement of business and at the end of each of the first three years of business.

(f) State whether or not any change is proposed to be made with respect to the executive officers of the subject institution during the first three years of business, and, if so, describe such change.

(g) State whether or not the subject institution proposes to retain any adviser, and, if so, provide, with respect to each such adviser:

- (1) Name.
- (2) Name of firm of which the adviser is a member or by which the adviser is employed.
- (3) Business address.
- (4) Description of services which the adviser is to render to the subject institution.

(5) Summary of the adviser's professional qualifications relating to the services referred to in Paragraph (4) of this Subdivision (g).

#### § 10.3161. Information Regarding Organizers.

State whether or not there is any organizer of the subject institution who is neither a proposed director nor a proposed officer of the subject institution, and, if so, with respect to each such organizer:

(a) In case the organizer is an individual, state:

- (1) Name.
- (2) Business address.
- (3) Home address.
- (4) Business or occupation.

(5) Amount of shares of the subject institution for which the organizer and his consociates intend to subscribe.

(6) Whether or not the organizer intends to participate in the management or operation of the subject institution, and, if so, a description of such participation.

(b) In case the organizer is any type of person other than an individual, state:

- (1) Name.
- (2) Type of person (that is, corporation, partnership, etc.).
- (3) Address of principal office.
- (4) Description of business.

(5) Amount of shares of the subject institution for which the organizer intends to subscribe.

(c) In case the organizer is neither an individual nor a corporation, provide information comparable to the information called for in Subdivision (b) of this Section.

#### § 10.3162. Information Regarding Proposed Controlling Persons and Proposed 25 Percent (Including Consociates) Equity Security Owners.

(a) In this Section, "subject person," when used with respect to a subject institution, means:

(1) Any person who is proposed to control the subject institution (including, in case any such person consists of a group of persons acting in concert, each person who is a member of such group); or

(2) Any person (other than a proposed director, proposed officer, or proposed controlling person of the subject institution) who is proposed to be a 25 percent (including consociates) equity security owner of the subject institution.

(b) (1) State whether or not it is proposed that any person control the subject institution, and, if so, provide a table showing, with respect to each such proposed controlling person:

(A) Name.

(B) Type of person (that is, individual, corporation, etc.).

(C) In case the proposed controlling person is an individual, the title of any position which the proposed controlling person is proposed to have with the subject institution.

(2) State whether or not it is proposed that any person (other than a proposed director, proposed officer, or proposed controlling person of the subject institution) be a 25 percent (including consociates) equity security owner of the subject institution, and, if so, provide a table showing, with respect to each such proposed 25 percent (including consociates) equity security owner:

(A) Name.

(B) Type of person (that is, individual, corporation, etc.).

(C) Amount of share of the subject institution for which the proposed 25 percent (including consociates) equity security owner and his consociates intend to subscribe.

(c) With respect to each subject person named in any table called for in Subdivision (b) of this Section who is an individual and who is neither a proposed director nor a proposed officer of the subject institution:

(1) State:

(A) Name.

(B) Business address.

(C) Home address.

(D) Age.

(E) Business or occupation.

(F) Amount of shares of the subject institution for which the subject person and his consociates intend to subscribe.

(2) Provide a personal financial statement in the form of Department Form 2 (see § 95.2), containing the information called for therein, dated as of a date within 90 days before the filing of the application, and signed by the subject person.

(3) Provide a confidential resume in the form of Department Form 3 (see § 95.3), containing the information called for therein, dated as of a date within 90 days before the filing of the application, and signed by the subject person.

(4) Provide a statement dated as of a date within 90 days before the filing of the application and signed by the subject person, stating:

(A) Amount of shares of the subject institution for which the subject person intends to subscribe, the source of funds with which he intends to pay for such subscription, and, if any of such funds are to be borrowed, the amount to be borrowed and the source of funds with which he intends to repay such amount.

(B) Whether or not, to the knowledge or information and belief of the subject person, any consociate of the subject person intends to subscribe for shares of the subject institution and, if so, the name, business address, home address, and business or occupation of the consociate, the amount of shares of the subject institution for which the consociate intends to subscribe, the source of funds with which he intends to pay for such subscription, and, if any of such funds are to be borrowed, the amount to be borrowed and the source of funds with which he intends to repay such amount.

(C) Commercial banking, trust, other financial, and other business experience of the subject person, including, with respect to each position held, title, description of duties, name and address of employer, period of employment, and reason for leaving.

(D) Whether or not the subject person has had in the past or has presently any relationship with any bank as director, officer, employee, adviser, 15 percent equity security owner, or in any other capacity (other than solely as a customer), and, if so, the name of the bank and a description of the relationship, and, in the case of any present relationship, whether the proposed controlling person intends to continue, change, or terminate such relationship if and when the subject institution commences business.

(E) Whether or not the subject person intends to participate in the management or operation of the subject institution, and, if so, a description of such participation.

(d) With respect to each subject person named in any table called for in Subdivision (b) of this Section which is a corporation:

(1) State:

(A) Name.

(B) Address of principal office.

(C) Description of business.

(D) Amount of shares of the subject institution for which the subject person intends to subscribe.

(2) Provide a table showing, with respect to each director, executive officer, and 25 percent (including consociates) equity security owner of the subject person:

(A) Name.

(B) Relationship to the subject person.

(3) Provide a table showing, with respect to each affiliate of the subject person:

(A) Name.

(B) Description of business.

(C) Relationship to the subject person.

(4) Provide the following financial statements of the subject person:

(A) Balance sheet as of a date within 120 days before the filing of the application.

(B) If the balance sheet called for in Subparagraph (A) of this Paragraph (4) is not as of the end of a fiscal year of the subject person, a balance sheet as of the end of the fiscal year of the subject person next preceding the date of such balance sheet.

(C) Statement of income and statement of shareholders' equity for each of the two fiscal years of the subject person next preceding the date of the balance sheet called for in Subparagraph (A) of this Paragraph (4) and, if such balance sheet is not as of the end of a fiscal year of the subject person, a statement of income and a statement of shareholders' equity for the interim period from the date of the balance sheet called for in Subparagraph (B) of this Paragraph (4) to the date of the balance sheet called for in Subparagraph (A) of this Paragraph (4).

(5) Provide a copy of each of the last two annual reports of the subject person to its shareholders and a copy of any interim report of the subject person to its shareholders issued since the last annual report.

(6) In case the subject person is required to file reports pursuant to Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. Section 78m), provide a copy of each of the last two such annual reports of the subject person and a copy of each quarterly or current report of the subject person filed since the last annual report.

(7) Provide a statement dated as of a date within 90 days before the filing of the application and signed by an officer of the subject person, stating:

(A) Amount of shares of the subject institution for which the subject person intends to subscribe, and, if any of such funds are to be borrowed, the amount to be borrowed and the source of funds with which it intends to repay such amount.

(B) Whether or not, to the knowledge or information and belief of the subject person, any person referred to in Paragraph (2) or (3) of this Subdivision (d) intends to subscribe for shares of the subject institution and, if so, the name of such person, the amount of shares of the subject institution for which the person intends to subscribe, the source of funds with which he intends to pay for such subscription, and, if any of such funds are to be borrowed, the amount to be borrowed and the source of funds with which he intends to repay such amount.

(C) Whether or not the subject person has had in the past or has presently any relationship with any bank as adviser, 15 percent equity security owner, or in any other capacity (other than solely as a customer), and, if so, the name of the bank and a description of the relationship, and, in the

case of any present relationship, whether the subject person intends to continue, change, or terminate such relationship if and when the subject institution commences business.

(D) Whether or not the subject person intends to participate in the management or operation of the subject institution, and, if so, a description of such participation.

(e) With respect to any subject person named in any table called for in Subdivision (b) of this Section which is neither an individual nor a corporation, provide information comparable to the information called for in Subdivision (d) of this Section.

(f) There is hereby exempted from the provisions of Financial Code Section 701 as not being comprehended within the purposes of Article 7 (commencing with Section 700), Chapter 5 of the Banking Law and the regulation of which is not necessary or appropriate in the public interest or for the protection of subject institutions, controlling persons of subject institutions, or the depositors, creditors, or shareholders of subject institutions or of controlling persons of subject institutions, the acquisition of control of a subject institution in accordance with the application for authority to organize such subject institution, as approved by the Commissioner.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 360, Financial Code.

#### HISTORY

1. Amendment of section heading and subsections (a)(2), (b)(2), (b)(2)(C), (c)(2), (c)(3), (c)(4)(D), (d)(4)(C), (d)(5), (d)(6), (d)(7)(A) and (d)(7)(C) and new NOTE filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).
2. Change without regulatory effect amending section filed 8-19-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).
3. Amendment of subsection (d)(2) filed 4-14-98; operative 5-14-98 (Register 98, No. 16).

### § 10.3163. Information Regarding Proposed Premises, Furniture, and Equipment.

(a) State whether or not it is proposed that the subject institution purchase, lease, or construct any real property in addition to the real property required for its proposed head office, and, if so, describe such additional real property, state how such additional real property is proposed to be used, and, if such additional real property is proposed to be leased, sold, or otherwise transferred to any person, state the name of such person and describe the terms of such lease, sale, or transfer.

(b) With respect to the premises where the head office of the subject institution is proposed to be located and any additional real property referred to in Subdivision (a) of this Section:

(1) In case it is proposed that the whole or any part of such property be purchased by the subject institution, identify the property to be purchased, describe any arrangements which have been made for the subject institution to purchase the property, state the purchase price, identify the source of funds with which the purchase price is proposed to be paid, and, if any of the purchase price is proposed to be financed, state the amount to be financed.

(2) In case it is proposed that the whole or any part of such property be leased by the subject institution, identify the property to be leased, describe any arrangements which have been made for the subject institution to lease the property, and summarize the terms of the proposed lease, including rent, commencement date, termination date, and options to renew or to purchase.

(3) In case it is proposed that the whole or any part of such property be constructed, identify the property to be constructed, describe any arrangements which have been made for the property to be constructed, state the proposed completion date of construction, state the cost of construction, identify the source of funds with which the cost of construction is proposed to be paid, and, if any of the cost of construction is proposed to be financed, state the amount to be financed.

(c) State the total amount which the subject institution proposes to invest in banking premises, additional real property, furniture, and equipment up to the end of the first year of business.

(d) State whether or not any person to whom any payment is proposed to be made by the subject institution in connection with the purchase, lease, or construction of the premises where the head office of the subject institution is proposed to be located or any property referred to in Subdivision (a) or (b) of this Section is, or is a consociate of, any (1) proposed director, (2) proposed officer, (3) organizer, (4) proposed affiliate, or (5) proposed 25 percent (including consociates) equity security owner, of the subject institution, and, if so, identify such person, describe the terms of the transaction, state the amount to be paid, state the cost of such property to the person, and describe the circumstances under which the person acquired the property.

(e) If it is proposed that the subject institution commence business with its head office in temporary quarters and later relocate its head office to permanent quarters, provide the information called for in Subdivisions (a) to (d), inclusive, of this Section with respect to the permanent quarters, and provide the following additional information:

(1) State the address or vicinity of the temporary quarters and of the permanent quarters.

(2) State the time at which it is proposed that the subject institution relocate the head office from the temporary quarters to the permanent quarters.

(3) Provide the information called for in Subdivision (d) of this Section with respect to the temporary quarters.

(4) State the estimated cost of the temporary quarters and of relocating the head office from the temporary quarters to the permanent quarters.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 360, Financial Code.

#### HISTORY

1. Amendment of section and new NOTE filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).
2. Repealer of subsection (a), subsection relettering, and amendment of newly designated subsections (b), (d), (e) and (e)(3) filed 4-14-98; operative 5-14-98 (Register 98, No. 16).

### § 10.3164. Information Regarding Proposed Operations—Commercial Banking Business.

#### HISTORY

1. Repealer filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

### § 10.3165. Information Regarding Proposed Operations—Trust Business.

(a) Describe the proposed policies and procedures of the subject institution relating to:

(1) Acceptance of fiduciary accounts.

(2) Initial and periodic review of fiduciary accounts.

(b) Describe any provisions for successor trustees which are proposed to be included in fiduciary accounts to be accepted by the subject institution.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 360, Financial Code.

#### HISTORY

1. Amendment of section and new NOTE filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

### § 10.3166. Information Regarding Pre-Opening Expenditures.

(a) State the total amount of pre-opening capital expenditures which have been or are proposed to be incurred, and provide an itemized schedule of such pre-opening capital expenditures.

(b) State the total amount of pre-opening noncapital expenditures which have been or are proposed to be incurred, and provide an itemized schedule of such pre-opening noncapital expenditures.

(c) State whether or not any person to whom any pre-opening expenditures has been or is proposed to be paid is, or is a consociate of, any (1) proposed director, (2) proposed officer, (3) organizer, (4) proposed affiliate, or (5) proposed 15 percent equity security owner of the subject institution, and, if so, identify such person, describe the pre-opening expenditure, and state the amount of the pre-opening expenditure, and, if the transaction involves the purchase or lease of any property which the per-

son acquired within the past two years, state the cost of such property to the person and describe the circumstances under which the person acquired the property.

(d) Describe how pre-opening funds have been or are proposed to be obtained, how such pre-opening funds have been or are proposed to be held and accounted for, and how such pre-opening funds have been or are proposed to be disbursed.

(e) State whether or not any pre-opening funds have been solicited, and, if so, describe the manner in which such pre-opening funds were solicited, and provide a copy of each document used in such solicitation.

(f) State whether or not any pre-opening funds have been accepted, and, if so:

(1) State the total amount accepted.

(2) Provide an itemized schedule of pre-opening funds accepted, showing, with respect to each person from whom pre-opening funds have been accepted:

(A) Name of the person.

(B) Proposed position, if any, of the person with the subject institution.

(C) Aggregate total amount accepted from the person.

(D) Terms under which pre-opening funds have been accepted from the person; and, if the terms are set forth in any document, provide a copy of such document.

(3) State the total amount expended.

(4) Provide an itemized schedule of expenditures of pre-opening funds showing, with respect to each person to whom the aggregate total amount paid is \$25,000 or more:

(A) Name of the person.

(B) Aggregate total amount paid to the person.

(C) Description of purpose of payment to the person.

(5) State the total amount accepted but not yet expended, and describe the present disposition of such amount.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 360, Financial Code.

#### HISTORY

1. Repealer of subsection (c), subsection relettering, amendment of newly designated subsections (c) and (f)(4) and new NOTE filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

#### § 10.3167. Information Regarding Proposed Capitalization.

(a) Provide a pro forma statement of the shareholders' equity of the subject institution as of the date of commencement of business, showing:

(1) Authorized number of shares.

(2) Number of shares outstanding.

(3) Amount of contributed capital.

(4) Amount of retained earnings.

(b) Describe the plan for selling shares of the subject institution, including:

(1) Number of shares proposed to be sold.

(2) Proposed selling price per share.

(3) Whether or not shares are proposed to be offered to the public.

(4) Proposed method of selecting and contacting offerees.

(5) Minimum and maximum number of shares proposed to be sold to any one person and his associates.

(6) Percentage of shares proposed to be sold to proposed directors, proposed officers, and their consociates, as a group, and percentage of shares proposed to be sold to others.

(7) Proposed total number of shareholders.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 360, Financial Code.

#### HISTORY

1. Change without regulatory effect amending subsection (b)(4) and adoption of NOTE filed 8-28-91 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 4).

2. Repealer of subsection (b)(6), subsection renumbering, and amendment of NOTE filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

#### § 10.3168. Information Regarding Pro Forma Financial Statements—Commercial Banking Business.

(a) Provide a pro forma balance sheet of the subject institution as of the end of the first half-year of business, as of the end of the first year of business, and as of the end of the second year of business.

(b) Provide a pro forma statement of income and a pro forma statement of shareholder's equity of the subject institution for the first half-year of business, for the first year of business, and for the second year of business.

(c) Explain the basis for the pro forma statements called for in this Section.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 360, Financial Code.

#### HISTORY

1. Amendment of subsection (a), repealer of subsections (a)(1)-(a)(14), amendment of subsection (b), repealer of subsections (b)(1)-(b)(4), subsection relettering, and new NOTE filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

#### § 10.3169. Information Regarding Pro Forma Financial Statements—Trust Business.

(a) Provide a pro forma fiduciary statement of the subject institution as of the first half-year of business, as of the end of the first year of business, and as of the end of the second year of business, stating, with respect to each of the following types of fiduciary accounts, the number of such fiduciary accounts and the market value of the assets of such fiduciary accounts:

(1) Court trusts.

(2) Personal living trusts.

(3) Employee benefit trusts.

(4) Managing agency accounts.

(5) Safekeeping, custodian, nonmanaging agency, and escrow accounts.

(6) Corporate accounts.

(7) Local agency security accounts.

(8) Other fiduciary accounts.

(b) In case the subject institution is to be an independent trust company, provide a pro forma balance sheet of the subject institution as of the end of the first half-year of business, as of the end of the first year of business, and as of the end of the second year of business.

(c) In case the subject institution is to be an independent trust company, provide a pro forma statement of income and a pro forma statement of shareholders' equity of the subject institution for the first half-year of business, as of the end of the first year of business, and as of the end of the second year of business.

(d) In case the subject institution is to be a commercial bank with trust department, provide a pro forma statement of income of the trust department of the subject institution for the first half-year of business, for the first year of business, and for the second year of business.

(e) Explain the basis for the pro forma statements called for in this Section.

(f) State whether or not the pro forma statements called for in Subdivision (d) of this Section include adjustments for (1) charges for a pro rata portion of administrative overhead or taxes or (2) credits for deposits of fiduciary account funds with the commercial banking department of the subject institution, and, if so, describe such adjustments.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 360, Financial Code.

#### HISTORY

1. Amendment of subsections (a) and (b), repealer of subsections (b)(1)-(b)(11), amendment of subsection (c), repealer of subsections (c)(1)-(c)(10), amendment of subsection (d), repealer of subsections (d)(1)-(d)(4), subsection relettering, and new NOTE filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

#### § 10.3170. Information Regarding Effects on Competition—Commercial Banking Business.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 360, Financial Code.

## HISTORY

1. Change without regulatory effect amending section filed 7-2-91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 40).
2. Repealer filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

**§ 10.3171. Information Regarding Effects on Competition—Trust Business.**

## HISTORY

1. Repealer filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

**§ 10.3172. Information Regarding Public Convenience and Advantage—Commercial Banking Business.**

Show that the establishment of the subject institution will promote the public convenience and advantage.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 360, Financial Code.

## HISTORY

1. Amendment of first paragraph, repealer of subsections (a)-(e) and new NOTE filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

**§ 10.3173. Information Regarding Public Convenience and Advantage—Trust Business.**

Show that the establishment of the subject institution will promote the public convenience and advantage. Such showing shall include the following:

- (a) Comment on the adequacy of existing trust services.
- (b) Cite any factors which make it inconvenient or impractical for existing trust administration offices of trust companies to provide trust services adequately.
- (c) Specify any trust services which are not provided or which are only inadequately provided by existing trust administration offices of trust companies.
- (d) State the reasons why additional trust services are needed.
- (e) Describe the manner in which the subject institution proposes to respond to existing trust needs.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 360, Financial Code.

## HISTORY

1. Amendment of section and new NOTE filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

**§ 10.3174. Information Regarding Reasonable Promise of Successful Operation.**

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 360, Financial Code.

## HISTORY

1. Amendment of section heading and first paragraph, repealer of subsections (a) and (b) and new NOTE filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).
2. Repealer filed 4-14-98; operative 5-14-98 (Register 98, No. 16).

**§ 10.3175. Information Regarding Reasonable Promise of Successful Operation—Trust Business.**

## HISTORY

1. Repealer filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

**§ 10.3176. Information Regarding Proposed Membership in Federal Reserve System.**

State whether or not it is proposed that the subject institution be a member bank.

**§ 10.3177. Information Regarding Purposes of Applicants.**

(a) State the reasons why the applicants wish to establish the subject institution.

(b) State whether or not it is proposed that the subject institution be merged or consolidated with any other bank or that the business of the subject institution be sold to any other bank, and, if so, describe such proposal.

**§ 10.3178. Information Regarding Assistance in Preparation of Application.**

## HISTORY

1. Repealer filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

**§ 10.3179. Signature and Acknowledgment.**

(a) An application for authority to organize a subject institution shall be signed at the places provided on the facing page personally by each of the applicants and, in the case of any applicant which is a corporation, in the name of such corporation.

(b) The signature of each applicant on an application for authority to organize a subject institution shall be acknowledged.

**§ 10.3180. Fee.**

An application for authority to organize a subject institution shall be accompanied by the fee prescribed in Financial Code Section 360.

**§ 10.3181. Amendment.**

An amendment to an application for authority to organize a subject institution shall be signed by the person designated in such application as the representative of the applicants. However, any amendment to an application for authority to organize a subject institution which changes the representative of the applicants shall be signed, and the signatures acknowledged, in like manner as is required by Section 10.3179 of this Chapter in the case of an original application.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 360, Financial Code.

## HISTORY

1. Amendment of section and new NOTE filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

## Part 3. Administrative Standards and Procedures

**§ 10.3300. Scope.**

This Part contains regulations which set forth administrative standards and procedures relating to an application for authority to organize a subject institution.

**§ 10.3301. Incomplete Application.**

As an administrative procedure, the Commissioner generally will reject for filing any application for authority to organize a subject institution which is not substantially complete.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 362, Financial Code.

## HISTORY

1. Change without regulatory effect amending section and adding new NOTE filed 8-19-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

**§ 10.3302. Shareholders' Equity.**

As an administrative standard, the Commissioner generally requires that, at the time when a subject institution which is a commercial bank commences business, the shareholders' equity of such subject institution be not less than 10% of estimated total deposits of the subject institution as of the end of the third year of business.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 362, Financial Code.

## HISTORY

1. Change without regulatory effect amending section and adding new NOTE filed 8-19-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

## Part 4. Pre-Incorporation Matters

### Subpart 1. General Provisions

#### § 10.3350. Scope.

This Part contains regulations relating to the pre-incorporation period in the establishment of a subject institution. This Subpart contains general provisions relating to pre-incorporation period in the establishment of a subject institution. Subpart 2 (commencing with Section 10.3375) of this Part contains regulations relating to the offer and sale, before a subject institution is incorporated, of securities to be issued by such subject institution and of rights or options to subscribe for or purchase such securities. Subpart 3 (commencing with Section 10.3400) of this Part contains regulations relating to the solicitation and acceptance, before a subject institution is incorporated, of pre-opening funds for such proposed subject institution. Subpart 4 (commencing with Section 10.3425) of this Part contains regulations relating to other matters in the pre-incorporation period in the establishment of a subject institution.

### Subpart 2. Pre-Incorporation Offer and Sale of Securities

#### § 10.3375. Scope.

(a) This Subpart contains regulations relating to the offer and sale, before a subject institution is incorporated, of securities to be issued by such subject institution and of rights or options to subscribe for or purchase such securities.

(b) Nothing in this Subpart shall affect the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000), Title 4 of the Corporations Code) or any regulation adopted pursuant thereto.

#### § 10.3376. Definitions.

In this Subpart:

(a) "Offer" or "offer to sell" has the meaning set forth in Financial Code Section 690(a).

(b) "Sale" or "sell" has the meaning set forth in Financial Code Section 690(b).

(c) "Security" has the meaning set forth in Financial Code Section 690(c).

#### § 10.3377. Requirement of Permit.

Except as otherwise provided in Section 10.3378 of this Chapter, no proposed director, proposed officer, or organizer of a proposed subject institution shall offer or sell any security to be issued by such subject institution or any right or option to subscribe for or purchase any such security unless the Superintendent has issued a permit authorizing such offer or sale.

#### § 10.3378. Exemptions.

There are hereby exempted from the provisions of Section 10.3377 of this Chapter and, to the extent applicable, the provisions of Financial Code Section 691 as not being comprehended within the purposes of Section 10.3377 of this Chapter or of Financial Code Section 691 and the regulation of which is not necessary or appropriate in the public interest or for the protection of investors, the following transactions and securities:

(a) The offer (but not the sale) by a proposed director, proposed officer, or organizer of a proposed subject institution to any proposed director, proposed officer, or organizer of such proposed subject institution of any security to be issued by the subject institution or of any right or option to subscribe for or purchase any such security, provided:

(1) No advertisement shall be published regarding the security or such right or option.

(2) No consideration for the security or the right or option shall be accepted.

(b) The offer and sale by a proposed director, proposed officer, or organizer of a proposed subject institution to any proposed director, proposed officer, or organizer of such proposed subject institution of any right or option to subscribe for or purchase any security to be issued by the subject institution, provided:

(1) No advertisement shall be published regarding the right or option.

(2) The total number of purchasers shall not exceed 25.

(3) No consideration for such right or option shall be accepted except in accordance with the provisions of Subpart 3 (commencing with section 3.500) of this Part for the purpose of paying pre-opening expenses of the proposed subject institution.

(c) The offer (but not the sale) by any proposed director, proposed officer, or organizer of a proposed subject institution to any commercial bank of a security interest in any security to be issued by such subject institution or in any right or option to subscribe for or purchase any such security.

#### § 10.3379. Application for Permit.

An application for a permit authorizing the offer or sale by a proposed director, proposed officer, or organizer of a proposed subject institution of a security to be issued by such subject institution or of a right or option to subscribe for or purchase any such security shall contain:

(a) Name of the proposed subject institution.

(b) Address or vicinity of the proposed head office of the proposed subject institution.

(c) Name, address, business or occupation, and proposed title of each of the proposed directors, proposed officers, and organizers of the proposed subject institution.

(d) Description of the security or of the right or option to be offered or sold.

(e) Description of the terms and conditions of the offer or sale.

(f) Description of the manner in which the offer or sale is to be made.

(g) Description of the persons to whom the offer or sale is to be made, including:

(1) In case the offer or sale is to be made to specified persons, the name, address, and business or occupation of each such specified person.

(2) In case the offer or sale is to be made to a specified class of persons, a description of such specified class and the approximate number of persons in the specified class.

(h) Copies of all documents to be used in connection with the offer or sale.

(i) Opinion of an attorney at law that the offer or sale will not contravene either (1) the Corporate Securities Law of 1968 or any regulation adopted pursuant thereto or (2) the Securities Act of 1933 (15 U.S.C. Sections 77a-77aa) or any regulation adopted pursuant thereto.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 360, Financial Code.

#### HISTORY

1. Repealer of subsection (g)(3) and new NOTE filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

#### § 10.3380. Administrative Standards.

(a) As an administrative standard, if the Commissioner finds that the proposed offer or sale by a proposed director, proposed officer, or organizer of a proposed subject institution of securities to be issued by such subject institution or of rights or options to subscribe for or purchase such securities is fair, just, and equitable, he will grant an application for a permit authorizing such offer or sale, such permit; if the Commissioner finds otherwise, he will deny the application.

(b) As an administrative standard, the Commissioner generally will not grant an application for a permit authorizing an unrestricted public offer or unrestricted public sale by a proposed director, proposed officer, or organizer of a proposed subject institution of securities to be issued by such subject institution or of rights or options to subscribe for or purchase such securities.

(c) As an administrative standard, the Commissioner generally will grant an application for a permit authorizing the offer (but not the sale) by a proposed director, proposed officer, or organizer of a proposed subject institution of securities to be issued by such subject institution, provided that such offer is limited to soliciting, in the proposed service area of the subject institution or among an appropriate class of persons, non-binding indications of interest in subscribing for such securities.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 693, Financial Code.

#### HISTORY

1. Change without regulatory effect amending section and adding new NOTE filed 8-19-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

### Subpart 3. Pre-Incorporation Solicitation and Acceptance of Pre-Opening Funds

#### § 10.3400. Scope.

(a) This Subpart contains regulations relating to the solicitation and acceptance, before a subject institution is incorporated, of pre-opening funds for such proposed subject institution.

(b) This Subpart does not apply to any offer or sale by a subject institution, after incorporation, of any security issued by it under authority of a permit or of an exemption from Financial Code Section 691 issued by the Commissioner or the proceeds of any such sale.

(c) This Subpart does not apply in any case where pre-opening funds for a proposed subject institution are provided exclusively by an organizer of such proposed subject institution which is a bank, a registered bank holding company, or a person which will be required to become a registered bank holding company on account of the establishment of the proposed subject institution.

(d) Nothing in this Subpart shall affect the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000), Title 4 of the Corporations Code) or any regulation adopted pursuant thereto.

NOTE: Authority cited: Section 215, Financial Code.

#### HISTORY

1. Change without regulatory effect amending section and adding new NOTE filed 8-19-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

#### § 10.3401. Requirement of Approval.

Except as otherwise provided in Section 10.3402 of this Chapter, no proposed director, proposed officer, or organizer of a proposed subject institution shall solicit or accept pre-opening funds for such proposed subject institution from any person unless the Commissioner has approved such solicitation and acceptance.

NOTE: Authority cited: Section 215, Financial Code.

#### HISTORY

1. Change without regulatory effect amending section and adding new NOTE filed 8-19-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

#### § 10.3402. Exemptions.

There are hereby exempted from the provisions of Section 10.3402 of this Chapter as not being comprehended within the purposes of Section 10.3402 of this Chapter and the regulation of which is not necessary or appropriate in the public interest or for the protection of the public, the following transactions:

(a) The solicitation and acceptance by a proposed director, proposed officer, or organizer of a proposed subject institution from any proposed director, proposed officer, or organizer of such proposed subject institution of pre-opening funds for the proposed subject institution, provided:

(1) No advertisement shall be published regarding the solicitation or acceptance of pre-opening funds.

(2) The total number of persons from whom pre-opening funds for the subject institution are accepted shall not exceed 25.

(3) No pre-opening funds shall be accepted from any person except pursuant to a written agreement which shall provide:

(A) Terms under which the pre-opening funds are accepted.

(B) Terms under which the pre-opening funds shall be held, including the name of the California commercial bank in which such money is to be deposited in accordance with Section 10.3405(a) of this Chapter and the name and address of the manager of the pre-incorporation pre-opening funds account.

(C) Terms under which the pre-opening funds shall be disbursed, including a provision that the pre-opening funds shall be expended only for the purpose of paying pre-opening expenditures of the proposed subject institution.

(D) Terms under which the pre-opening funds shall be repaid.

(E) That the pre-opening funds, if expended for the purpose of paying pre-opening expenditures of the proposed subject institution, may not be repaid unless, among other contingencies, an application for authority to organize the subject institution is filed with and approved by the Commissioner, the subject institution is organized and is issued a certificate of authority to transact commercial banking business, trust business, or both, as the case may be, the subject institution, in case it is a commercial bank, becomes an insured bank, and pre-opening expenditures are assumed by the subject institution and, in the case of pre-opening noncapital expenditures, approved by the Commissioner; and that no assurance can be given that any of the foregoing contingencies will occur.

(b) The solicitation and acceptance by a proposed director, proposed officer, or organizer of a proposed subject institution from any commercial bank of pre-opening funds for such proposed subject institution.

NOTE: Authority cited: Section 215, Financial Code.

#### HISTORY

1. Change without regulatory effect amending section and adding new NOTE filed 8-19-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

#### § 10.3403. Application for Approval.

An application by a proposed director, proposed officer, or organizer of a proposed subject institution for approval to solicit and accept pre-opening funds for such proposed subject institution shall contain:

(a) Name of the proposed subject institution.

(b) Address or vicinity of the proposed head office of the proposed subject institution.

(c) Name, address, business or occupation, and proposed title of each of the proposed directors, proposed officers, and organizers of the proposed subject institution.

(d) Amount of pre-opening funds to be solicited and accepted.

(e) Description of the terms and conditions under which pre-opening funds are to be solicited and accepted.

(f) Description of the manner in which pre-opening funds are to be solicited and accepted.

(g) Description of the persons from whom pre-opening funds are to be solicited and accepted, including:

(1) In case pre-opening funds are to be solicited and accepted from specified persons, the name, address, and business or occupation of each such specified person.

(2) In case pre-opening funds are to be solicited and accepted from a specified class of persons, a description of such specified class and the approximate number of persons in the specified class.

(h) Opinion of an attorney at law that the solicitation and acceptance of pre-opening funds will not contravene either (1) the Corporate Securities Law of 1968 or any regulation adopted pursuant thereto or (2) the Securities Act of 1933 (15 U.S.C. Sections 77a-77aa) or any regulation adopted pursuant thereto.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 350, Financial Code.

#### HISTORY

1. Repealer of subsection (g)(3) and new NOTE filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

2. Repealer of subsections (h)-(i), subsection relettering, and amendment of NOTE filed 4-14-98; operative 5-14-98 (Register 98, No. 16).

#### § 10.3404. Administrative Standards.

(a) As an administrative standard, if the Commissioner finds that the proposed solicitation and acceptance by a proposed director, proposed officer, or organizer of a proposed subject institution of pre-opening funds for such proposed subject institution is fair, just, and equitable, he will grant an application for approval of such solicitation and acceptance, subject to such terms and conditions as he may provide in such approval; if the Commissioner finds otherwise, he will deny the application.

(b) As an administrative standard, the Commissioner generally will not grant an application for approval for a proposed director, proposed officer, or organizer of a proposed subject institution to solicit and accept pre-opening funds for such proposed subject institution from the public on an unrestricted basis.

NOTE: Authority cited: Section 215, Financial Code.

#### HISTORY

1. Change without regulatory effect amending section and adding new NOTE filed 8-19-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

#### § 10.3405. Account.

(a) Any pre-opening funds for a proposed subject institution accepted by a proposed director, proposed officer, or organizer of such proposed subject institution shall, upon acceptance, be deposited in a deposit account with a California commercial bank. No other funds shall be deposited in such account.

(b) No funds shall be withdrawn from a pre-incorporation pre-opening funds account for a proposed subject institution except:

(1) Upon the order of the manager of such account; and

(2) For the purpose of paying pre-opening expenditures of such proposed subject institution or in accordance with the provisions of Section 10.3408 of this Chapter.

#### § 10.3406. Records.

(a) The manager of a pre-incorporation pre-opening funds account shall keep and maintain records containing:

(1) With respect to each deposit to the account:

(A) Date of deposit.

(B) Amount of money deposited.

(C) Name of person from whom such money was accepted.

(2) With respect to each withdrawal from the account:

(A) Date of withdrawal.

(B) Amount of money withdrawn.

(C) Name of person to whom such money was paid.

(D) Description of purpose of such payment.

(E) Any invoice or billing relating to such payment.

(3) Copy of each agreement with person from whom money is accepted, including each agreement called for in Section 10.3402(a)(3) of this Chapter, if applicable.

(4) Copies of all documents used in connection with the solicitation or acceptance of pre-incorporation pre-opening funds.

(b) The manager of a pre-incorporation pre-opening funds account shall preserve the records called for in Subdivision (a) of this Section for a period of not less than four years after such account is closed.

(c) The manager of a pre-incorporation pre-opening funds account for a proposed subject institution shall, upon request, make the records called for in Subdivision (a) of this Section available for inspection and copying by the Commissioner, any proposed director, proposed officer, or organizer of such proposed subject institution, any person from whom pre-opening funds for the proposed subject institution have been accepted, and the subject institution, if and when incorporated.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 350, Financial Code.

#### HISTORY

1. Change without regulatory effect amending section and adding new NOTE filed 8-19-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

2. New subsection (a)(4) and amendment of NOTE filed 4-14-98; operative 5-14-98 (Register 98, No. 16).

#### § 10.3407. Reports.

On or before the 15th day of each calendar quarter, commencing with the calendar quarter after pre-opening funds for a proposed subject institution are first accepted by a proposed director, proposed officer, or organizer of such proposed subject institution and continuing until the pre-incorporation pre-opening funds account for the proposed subject institution is closed in accordance with the provisions of Section 10.3408 of this Chapter, the manager of such account shall file with the Commissioner a report stating, with respect to the last calendar quarter:

(1) Opening balance of the account.

(2) Total amount deposited in the account during the calendar quarter.

(3) Total amount disbursed from the account during the calendar quarter.

(4) Closing balance of the account.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 350, Financial Code.

#### HISTORY

1. Amendment of subsection (a)(5) and new NOTE filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

2. Change without regulatory effect amending section filed 8-19-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

3. Amendment of section and NOTE filed 4-14-98; operative 5-14-98 (Register 98, No. 16).

#### § 10.3408. Disposition.

(a) In case an application for authority to organize a subject institution is approved by the Commissioner and such proposed subject institution is incorporated, the balance of the pre-incorporation pre-opening funds account for the proposed subject institution may be transferred to the post-incorporation pre-opening funds account of the subject institution.

(b) In case an application for authority to organize a subject institution is not filed with the Commissioner within nine months after pre-opening funds for such proposed subject institution are first accepted by a proposed director, proposed officer, or organizer of the proposed subject institution, or in case an application for authority to organize a subject institution filed with the Commissioner within such time is denied by the Commissioner and a reapplication for authority to organize such subject institution is not filed with the Commissioner within 90 days after such denial, or in case an application for authority to organize a subject institution is approved by the Commissioner and such proposed subject institution is incorporated but the balance of the pre-incorporation pre-opening funds account for the proposed subject institution is not, within 90 days after such incorporation, transferred to the post-incorporation pre-opening funds account of the subject institution, the manager of the pre-incorporation pre-opening funds account for the proposed subject institution shall, after making all disbursements authorized under the terms of agreements with persons from whom pre-opening funds for the proposed subject institution were accepted, including the agreements called for in Section 10.3402(a)(3) of this Chapter, if applicable, pay the balance of such account on a pro rata basis to the persons from whom pre-opening funds for the proposed subject institution have been accepted by the proposed directors, proposed officers, or organizers of the proposed subject institution and, after making such payments, close the account.

NOTE: Authority cited: Section 215, Financial Code.

#### HISTORY

1. Change without regulatory effect amending section and adding new NOTE filed 8-19-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

## Subpart 4. Other Pre-Incorporation Matters

#### § 10.3425. Scope.

This Subpart contains regulations relating to matters (other than matters relating to offer and sale of securities and solicitation and acceptance

of pre-opening funds) in the pre-incorporation period in the establishment of a subject institution.

#### § 10.3426. Name.

No proposed director, proposed officer, or organizer of a proposed subject institution shall use the name of such proposed subject institution in any document unless the designation "Proposed" is appended to such name.

#### § 10.3427. Advertisements.

(a) An application for authority to organize a subject institution shall contain a copy of each advertisement regarding such proposed subject institution which is published before the time when such application is filed.

(b) Whenever, at any time after an application for authority to organize a subject institution is filed, any proposed director, proposed officer, or organizer of such proposed subject institution publishes an advertisement regarding the proposed subject institution, he shall, before or concurrently with such publication, serve a copy of such advertisement on the Commissioner.

NOTE: Authority cited: Section 215, Financial Code.

#### HISTORY

1. Change without regulatory effect amending section and adding new NOTE filed 8-19-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

#### § 10.3428. Articles.

Promptly after an application for authority to organize a subject institution is approved by the Commissioner, the applicants shall file with the Commissioner an application for approval of the articles of such subject institution.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 400, Financial Code.

#### HISTORY

1. Amendment of section and new NOTE filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).
2. Change without regulatory effect amending section filed 8-19-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

## Part 5. Post-Incorporation Matters

### Subpart 1. General Provisions

#### § 10.3450. Scope.

This Part contains regulations relating to the post-incorporation period in the establishment of a subject institution. This Subpart contains general provisions relating to the post-incorporation period in the establishment of a subject institution. Subpart 2 (commencing with Section 10.3475) of this Part contains regulations relating to the solicitation and acceptance by a subject institution, after incorporation, of pre-opening funds. Subpart 3 (commencing with Section 10.3500) of this Part contains regulations relating to other matters in the post-incorporation period in the establishment of a subject institution.

### Subpart 2. Post-Incorporation Solicitation and Acceptance of Pre-Opening Funds

#### § 10.3475. Scope.

(a) This Subpart contains regulations relating to the solicitation and acceptance by a subject institution, after incorporation, of pre-opening funds.

(b) Nothing in this Subpart shall apply to or affect any offer or sale by a subject institution, after incorporation, of any security issued by it under authority of a permit or of an exemption from Financial Code Section 691 issued by the Commissioner or the proceeds of any such sale.

(c) This Subpart does not apply in any case where pre-opening funds for a subject institution are provided exclusively by an organizer of such subject institution which is a bank, a registered bank holding company, or a person which will be required to become a registered bank holding company on account of the establishment of the subject institution.

(d) Nothing in this Subpart shall affect the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000), Title 4 of Corporations Code) or any regulation adopted pursuant thereto.

NOTE: Authority cited: Section 215, Financial Code.

#### HISTORY

1. Change without regulatory effect amending section and adding new NOTE filed 8-19-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

#### § 10.3476. Requirement of Approval.

Except as otherwise provided in Section 10.3477 of this Chapter, no subject institution shall solicit or accept pre-opening funds from any person unless the Commissioner has approved such solicitation and acceptance.

NOTE: Authority cited: Section 215, Financial Code.

#### HISTORY

1. Change without regulatory effect amending section and adding new NOTE filed 8-19-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

#### § 10.3477. Exemptions.

There are hereby exempted from the provisions of Section 10.3476 of this Chapter as not being comprehended within the purposes of Section 10.3476 of this Chapter and the regulation of which is not necessary or appropriate in the public interest or for the protection of the public, the following transactions:

(a) The solicitation and acceptance by a subject institution from any director, officer, or organizer of such subject institution of pre-opening funds, provided:

(1) No advertisement shall be published regarding the solicitation or acceptance of pre-opening funds.

(2) The total number of persons from whom pre-opening funds are accepted by the subject institution, together with the total number of persons from whom pre-opening funds were accepted before incorporation of the subject institution by a then proposed director, proposed officer, or organizer of the then proposed subject institution, shall not exceed 25.

(3) No pre-opening funds shall be accepted from any person except pursuant to a written agreement which shall provide:

(A) Terms under which the pre-opening funds are accepted.

(B) Terms under which the pre-opening funds shall be held, including the name of the California commercial bank in which such money is to be deposited in accordance with Section 10.3480 of this Chapter.

(C) Terms under which the pre-opening funds shall be disbursed, including a provision that the pre-opening funds shall be expended only for the purpose of paying pre-opening expenditures of the subject institution.

(D) Terms under which the pre-opening funds shall be repaid.

(E) That the pre-opening funds, if expended for the purpose of paying pre-opening expenditures of the subject institution, may not be repaid unless, among other contingencies, the subject institution is organized and is issued a certificate of authority to transact commercial banking business, trust business, or both, as the case may be, the subject institution, in case it is a commercial bank, becomes an insured bank, and pre-opening noncapital expenditures are approved by the Commissioner; and that no assurance can be given that any of the foregoing contingencies will occur.

(b) The solicitation and acceptance by a subject institution from any commercial bank of pre-opening funds.

NOTE: Authority cited: Section 215, Financial Code.

#### HISTORY

1. Change without regulatory effect amending section and adding new NOTE filed 8-19-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

**§ 10.3478. Application for Approval.**

An application by a subject institution for approval to solicit and accept pre-opening funds shall contain:

- (a) Amount of pre-opening funds to be solicited and accepted.
- (b) Description of the terms and conditions under which pre-opening funds are to be solicited and accepted
- (c) Description of the manner in which pre-opening funds are to be solicited and accepted.
- (d) Description of the persons from who pre-opening funds are to be solicited and accepted, including:

(1) In case pre-opening funds are to be solicited and accepted from specified persons, the name, address, and business or occupation of each such specified person.

(2) In case pre-opening funds are to be solicited and accepted from a specified class of persons, a description of such specified class and the approximate number of persons in the specified class.

(e) Opinion by an attorney at law that the solicitation and acceptance of pre-opening funds will not contravene either (1) the Corporate Securities Law of 1968 or any regulation adopted pursuant thereto or (2) the Securities Act of 1933 (15 U.S.C. Sections 77a-77aa) or any regulation adopted pursuant thereto.

NOTE: Authority cited: Section 215, Financial Code. Reference: Sections 350 and 362, Financial Code.

**HISTORY**

1. Repealer of subsection (d)(3) and new NOTE filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).
2. Repealer of subsections (e) and (f), subsection relettering, and amendment of NOTE filed 4-14-98; operative 5-14-98 (Register 98, No. 16).

**§ 10.3479. Administrative Standards.**

(a) As an administrative standard, if the Commissioner finds that the proposed solicitation and acceptance by a subject institution of pre-opening funds is fair, just and equitable, he will grant an application for approval of such solicitation and acceptance, subject to such terms and conditions as he may provide in such approval; if the Commissioner finds otherwise, he will deny the application.

(b) As an administrative standard, the Commissioner generally will not grant an application by a subject institution for approval to solicit and accept pre-opening funds from the public on an unrestricted basis.

NOTE: Authority cited: Section 215, Financial Code.

**HISTORY**

1. Change without regulatory effect amending section and adding new NOTE filed 8-19-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

**§ 10.3480. Account.**

(a) Not more than 30 days after incorporation, a subject institution shall establish a deposit account with a California commercial bank, and there shall be deposited in such account any pre-opening funds transferred pursuant to Section 10.3408(a) of this Chapter from the pre-incorporation pre-opening funds account for such subject institution, upon such transfer, and any pre-opening funds for the subject institution accepted by the subject institution, upon such acceptance. No other funds shall be deposited in such account.

(b) No funds shall be withdrawn from the post-incorporation pre-opening funds account of a subject institution except:

- (1) Upon the order of an officer of such subject institution duly authorized by the board of directors of the subject institution; and
- (2) For the purpose of paying pre-opening expenditures of the subject institution or in accordance with the provisions of Section 10.3483 of this Chapter.

**§ 10.3481. Records.**

(a) A subject institution shall keep and maintain records relating to its post-incorporation pre-opening funds account, containing:

- (1) With respect to each deposit to the account:
  - (A) Date of deposit.
  - (B) Amount of money deposited.

(C) Name of person from whom such money was accepted.

(2) With respect to each withdrawal from the account:

- (A) Date of withdrawal.
- (B) Amount of money withdrawn.
- (C) Name of person to whom such money was paid.
- (D) Description of purpose of such payment.
- (E) Any invoice or billing relating to such payment.

(3) Copy of each agreement with persons from whom money is accepted, including each agreement called for in Section 10.3477(a)(3) of this Chapter, if applicable.

(4) Copies of all documents used in connection with the solicitation or acceptance of post-incorporation pre-opening funds.

(b) A subject institution shall preserve the records called for in Subdivision (a) of this Section for a period of not less than four years after the account is closed.

(c) A subject institution shall, upon request, make the records called for in Subdivision (a) of this Section available for inspection and copying by the Commissioner, any person from whom pre-opening funds have been accepted by the subject institution, and, in case any pre-opening funds were transferred from the pre-incorporation pre-opening funds account for the subject institution to the post-incorporation pre-opening funds account of the subject institution, any person from whom pre-opening funds were accepted before incorporation of the subject institution by a then proposed director, proposed officer, or organizer of the then proposed subject institution.

NOTE: Authority cited: Section 215, Financial Code. Reference: Sections 350 and 362, Financial Code.

**HISTORY**

1. Change without regulatory effect amending section and adding new NOTE filed 8-19-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).
2. New subsection (a)(4) and amendment of NOTE filed 4-14-98; operative 5-14-98 (Register 98, No. 16).

**§ 10.3482. Reports.**

On or before the 15th day of each calendar quarter, commencing with the first calendar quarter after incorporation of a subject institution and continuing until the post-incorporation pre-opening funds account of such subject institution is closed in accordance with the provisions of Section 10.3483 of this Chapter, the subject institution shall file with the Commissioner a report stating, with respect to the last calendar quarter:

- (1) Opening balance of the account.
- (2) Total amount deposited in the account during the calendar quarter.
- (3) Total amount disbursed from the account during the month.
- (4) Closing balance of the account.

NOTE: Authority cited: Section 215, Financial Code. Reference: Sections 350, 362, 401 and 1934, Financial Code.

**HISTORY**

1. Amendment of subsection (a)(5) and new NOTE filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).
2. Change without regulatory effect amending section filed 8-19-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).
3. Amendment of section and NOTE filed 4-14-98; operative 5-14-98 (Register 98, No. 16).

**§ 10.3483. Disposition.**

In case the right to organize a subject institution automatically terminates pursuant to Financial Code Section 404 or in case a subject institution commences business, such subject institution shall, after making all disbursements authorized under the terms of agreements with persons from whom pre-opening funds were accepted, including any agreement called for in Section 10.3402(a)(3) or 10.3477(a)(3) of this Chapter, if applicable, pay the balance of its post-incorporation pre-opening funds account on a pro rata basis to the persons from whom pre-opening funds were accepted by the subject institution and, in case any pre-opening funds were transferred from the pre-incorporation pre-opening funds account for the subject institution to the post-incorporation pre-opening funds account, the persons from whom pre-opening funds were accepted before incorporation of the subject institution by the then proposed direc-

tors, proposed officers, or organizers of the then proposed subject institution, and, after making such payments, close such account.

### Subpart 3. Other Post-Incorporation Matters

#### § 10.3500. Scope.

This Subpart contains regulations relating to matters (other than matters relating to solicitation and acceptance of pre-opening funds) in the post-incorporation period in the establishment of a subject institution.

#### § 10.3501. Name.

No subject institution shall, at any time before commencing business, use its name in any document unless the designation "In Organization" is appended to such name.

#### § 10.3502. Advertisements.

No subject institution shall, at any time before commencing business, publish any advertisement regarding itself unless it shall have filed a copy of such advertisement with the Commissioner not less than five business days before such publication.

NOTE: Authority cited: Section 215, Financial Code.

#### HISTORY

1. Change without regulatory effect amending section and adding new NOTE filed 8-19-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

#### § 10.3503. Contracts.

No subject institution shall, at any time before commencing business, enter into any contract for the acquisition, construction, or lease of real property or any contract by the terms of which such subject institution is obligated to pay an aggregate total amount in excess of 5% of its proposed contributed capital unless it shall have filed a copy of such contract with the Commissioner not less than five business days before entering into such contract.

NOTE: Authority cited: Section 215, Financial Code.

#### HISTORY

1. Change without regulatory effect amending section and adding new NOTE filed 8-19-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

#### § 10.3504. Articles.

A subject institution shall file with the Commissioner a copy of its articles certified by the Secretary of State.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 400, Financial Code.

#### HISTORY

1. Change without regulatory effect amending section and adding new NOTE filed 8-19-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

#### § 10.3505. By-Laws.

#### HISTORY

1. Repealer filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

#### § 10.3506. Directors.

(a) Except with the prior approval of the Commissioner, no person shall be elected as a director of a subject institution at any time before such subject institution commences business other than a person named as a proposed director in the application for authority to organize the subject institution.

(b) An application by a subject institution for approval for the election of a person as a director shall contain:

- (1) Name of the proposed director.
- (2) Personal financial statement in the form of Department Form 2, containing the information called for therein, dated as of a date within 90 days before the filing of the application, and signed by the proposed director.

(3) Confidential resume in the form of Department Form 3, containing the information called for therein, dated as of a date within 90 days before the filing of the application and signed by the proposed director.

(4) Statement dated as of a date within 90 days before the filing of the application and signed by the proposed director, stating:

(A) Amount of shares of the subject institution for which the proposed director has subscribed or intends to subscribe, the source of funds with which he intends to pay for such subscription, and, if any of such funds are to be borrowed, the amount to be borrowed and the source of funds with which he intends to repay such amount.

(B) Whether or not, to the knowledge or information and belief of the proposed director, any consociate of the proposed director has subscribed or intends to subscribe for shares of the subject institution and, if so, the name, business address, home address, and business or occupation of the consociate, the amount of shares of the subject institution for which the consociate has subscribed or intends to subscribe, the source of funds with which he intends to pay for such subscription, and, if any of such funds are to be borrowed, the amount to be borrowed and the source of funds with which he intends to repay such amount.

(C) Commercial banking, trust, other financial, and other business experience of the proposed director, including, with respect to each position held, title, description of duties, name and address of employer, period of employment, and reason for leaving.

(D) Whether or not the proposed director has had in the past or has presently any relationship with any bank as director, officer, employee, adviser, 15 percent equity security owner, or in any other capacity (other than solely as a customer), and, if so, the name of the bank and a description of the relationship, and, in the case of any present relationship, whether the proposed director intends to continue, change, or terminate such relationship if and when the subject institution commences business.

NOTE: Authority cited: Section 215, Financial Code. Reference: Chapter 3, Division 1, Financial Code.

#### HISTORY

1. Amendment of subsection (b)(4)(D), repealer of subsections (b)(4)(E) and (b)(4)(F), and new NOTE filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).
2. Change without regulatory effect amending section filed 8-19-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

#### § 10.3507. Officers and Employees.

(a) (1) Except with the prior approval of the Commissioner, no subject institution shall, at any time before commencing business, appoint as an officer any person not named as such proposed officer in the application for authority to organize such subject institution.

(2) An application by a subject institution for approval to appoint a person as an officer shall contain:

- (A) Name of the proposed officer.
- (B) Proposed title.
- (C) Description of duties to be performed by the proposed officer.
- (D) Amount of salary and description of other compensation to be paid to the proposed officer.

(E) Personal financial statement in the form of Department Form 2, containing the information called for therein, dated as of a date within 90 days before the filing of the application, and signed by the proposed officer.

(F) Confidential resume in the form of Department Form 3, containing the information called for therein, dated as of a date within 90 days before the filing of the application, and signed by the proposed officer.

(G) Statement dated as of a date within 90 days before the filing of the application and signed by the proposed officer, stating:

1. Amount of shares of the subject institution for which the proposed officer has subscribed or intends to subscribe, the source of funds with which he intends to pay for such subscription, and, if any of such funds are to be borrowed, the amount to be borrowed and the source of funds with which he intends to repay such amount.

(b) The application called for in Subdivision (a) of this Section shall be accompanied by the fee prescribed in Financial Code Section 400(c).  
NOTE: Authority cited: Section 215, Financial Code.

**HISTORY**

1. Change without regulatory effect amending section and adding new NOTE filed 8-19-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

**§ 10.3520. Deposit Insurance.**

No subject institution which is a commercial bank shall commence business unless it is an insured bank.

**§ 10.3521. Report Regarding Commencement of Business.**

Not more than five business days after commencing business, a subject institution shall file with the Commissioner a report stating the date on which it commenced business.

NOTE: Authority cited: Section 215, Financial Code.

**HISTORY**

1. Change without regulatory effect amending section and adding new NOTE filed 8-19-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

**§ 10.3522. Reports Regarding Transaction of Business.**

**HISTORY**

1. Repealer filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

**§ 10.3523. Refinancing Purchase of Shares.**

**HISTORY**

1. Repealer filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

**§ 10.3524. Payment of Pre-Opening Noncapital Expenditures.**

(a) After commencing business, a subject institution may file with the Commissioner an application for approval to pay pre-opening noncapital expenditures. Such an application shall contain:

(1) Total amount and itemized schedule of pre-opening noncapital expenditures proposed to be paid.

(2) Itemized schedule of proposed payments of pre-opening noncapital expenditures showing, with respect to each person to whom the aggregate total amount proposed to be paid, directly or indirectly, is \$5,000 or more and, with respect to each director, officer, organizer, 25 percent (including consociates) equity security owner of the subject institution, to whom any amount is proposed to be paid, directly or indirectly:

(A) Name of the person.

(B) Aggregate amount proposed to be paid to the person.

(C) Description of purpose of payment to the person.

(b) As an administrative standard, the Commissioner generally will not grant an application by a subject institution for approval to pay a pre-opening noncapital expenditure if he finds that such pre-opening noncapital expenditure is not a usual, ordinary, and lawful noncapital expenditure for the purpose of organizing a subject institution.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 406, Financial Code.

**HISTORY**

1. Amendment of subsection (a)(2) and new NOTE filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

2. Change without regulatory effect amending section filed 8-19-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

**§ 10.3525. Winding Up and Dissolution.**

In case the right of a subject institution to transact business automatically terminates pursuant to Financial Code Section 405, such subject institution shall promptly surrender its certificate of authorization to the Commissioner for cancellation. Also, the subject institution shall be promptly wound up and dissolved, and the subject institution shall file with the Commissioner:

(a) Copy of a certificate of election to wind up and dissolve filed with the Secretary of State pursuant to Corporations Code Section 1901, certified by the Secretary of State.

(b) Either (1) a copy of a certificate of dissolution filed with the Secretary of State pursuant to Corporations Code Section 1905, certified by the Secretary of State, or (2) a copy of an order entered by a superior court pursuant to Corporations Code Section 1907, certified by the clerk of such superior court.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 405, Financial Code.

**HISTORY**

1. Change without regulatory effect amending section and adding new NOTE filed 8-19-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

## Subarticle 3. Establishment of Trust Department by California State Commercial Bank

### Part 1. General Provisions

**§ 10.3700. Definition of "Applicant" and Scope.**

(a) In this Subarticle, "applicant" means a California state commercial bank which applies to the Commissioner for authority to engage in trust business.

(b) This Subarticle contains regulations relating to the establishment by an applicant of a trust department pursuant to Financial Code Section 1500.1. This Part contains general provisions relating to the establishment by an applicant of a trust department. Part 2 (commencing with Section 10.3750) of this Subarticle contains regulations relating to an application by an applicant for authority to engage in trust business. Part 3 (commencing with Section 10.3800) of this Subarticle contains regulations which set forth administrative standards and procedures relating to an application by an applicant for authority to engage in trust business. Part 4 (commencing with Section 10.3850) of this Subarticle contains regulations relating to matters after an application by an applicant for authority to engage in trust business is approved by the Commissioner.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 1500.1, Financial Code.

**HISTORY**

1. Change without regulatory effect amending section and adding new NOTE filed 8-19-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

**§ 10.3701. Other Definition.**

In this Subarticle, "proposed branch office," when used with respect to an applicant, means a branch office which such applicant has applied to the Commissioner for authority to establish, with respect to which the Commissioner has either approved or not yet decided such application, and which the applicant has not yet established.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 1500.1, Financial Code.

**HISTORY**

1. Change without regulatory effect amending section and adding new NOTE filed 8-19-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

**§ 10.3702. Commencement of Trust Business.**

For purposes of this Article, an applicant shall be deemed to commence trust business at the time when, the Commissioner having issued to such applicant a certificate of authority authorizing it to transact trust business, the applicant opens its trust department for the purpose of engaging in trust business.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 1500.1, Financial Code.

## HISTORY

1. Change without regulatory effect amending section and adding new NOTE filed 8-19-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

## Part 2. Application

### § 10.3750. Scope.

This Part contains regulations relating to an application by an applicant for authority to engage in trust business.

### § 10.3751. Information Required.

An application for authority to engage in trust business shall contain the information called for in Sections 10.3752 to 10.3765, inclusive, of this Chapter.

### § 10.3752. Information Regarding Proposed Locations.

(a) (1) State the address or vicinity of, or otherwise identify (such as by reference to an office of the applicant), each place at which the applicant proposes to establish a trust administration office.

(2) No applicant shall propose to establish a trust administration office at any place other than a place at which it maintains its head office or a branch office unless:

(A) Prior to or concurrently with the filing of the application for authority to engage in trust business, such applicant files with the Commissioner an application for authority to establish a branch office at such place. (For regulations relating to an application for authority to establish a branch office, refer to Part 2 (commencing with Section 10.6700), Subarticle 3, of this Subchapter.); or

(B) The establishment by the applicant of a branch office at such place is exempt from the authorization requirement of Financial Code Section 500(b) pursuant to Financial Code Section 490.

(b) (1) State the address or vicinity of, or otherwise identify (such as by reference to an office of the applicant), each place (other than a trust administration office) at which the applicant proposes to engage in trust business, and describe the trust business which the applicant proposes to conduct at such place.

(2) No applicant shall propose to engage in trust business at any place (other than a trust administration office) unless:

(A) Such applicant maintains its head office, a branch office, or, if the trust business proposed to be conducted at such place does not constitute branch banking business, a place of business at such place;

(B) Prior to or concurrently with the filing of the application for authority to engage in trust business, the applicant files with the Commissioner an application for authority to establish a branch office or a place of business, as the case may be, at such place (For regulations relating to an application for authority to establish a branch office, refer to Part 2 (commencing with Section 10.6700), Subarticle 3, of this Subchapter. For regulations relating to an application for authority to establish a place of business, refer to Part 2 (commencing with Section 10.9100), Subarticle 4, Article 5 of this Subchapter.); or

(C) The establishment by the applicant of a branch office or a place of business, as the case may be, at such place is exempt from the authorization requirement of Financial Code Section 500(b) or 541 pursuant to Financial Code Section 490.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 1500.1, Financial Code.

## HISTORY

1. Amendment of section and new NOTE filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).
2. Change without regulatory effect amending section filed 8-19-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

### § 10.3753. Information Regarding Proposed Market.

(a) Describe the principal trust services which are proposed to be offered by the trust department.

(b) Describe the market that the trust department is proposed to serve.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 1500.1, Financial Code.

## HISTORY

1. Amendment of section and new NOTE filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15)

### § 10.3754. Information Regarding Marketing Plan.

## HISTORY

1. Repealer filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

### § 10.3755. Information Regarding Proposed Officers, Employees, and Advisers.

(a) Provide a table showing, with respect to the proposed senior trust officer and any other proposed officer of the trust department who has been selected:

- (1) Name.
- (2) Business address.
- (3) Home address.
- (4) Age.
- (5) Business or occupation.
- (6) Proposed title.
- (7) Proposed duties.
- (8) Proposed annual salary.

(b) Provide a table showing, with respect to each proposed officer position of the trust department for which no person has been selected, including the positions of principal trust investment officer, principal trust operations officer, and trust administrative officers:

- (1) Proposed title.
- (2) Proposed duties.
- (3) Proposed annual salary.

(c) With respect to each proposed officer of the trust department listed in the table called for in Subdivision (a) of this Section, provide:

(1) Personal financial statement in the form of Department Form 2, containing the information called for therein, dated as of a date within 90 days before the filing of the application, and signed by the proposed officer.

(2) Confidential resume in the form of Department Form 3, containing the information called for therein, dated as of a date within 90 days before the filing of the application, and signed by the proposed officer.

(3) Statement dated as of a date within 90 days before the filing of the application and signed by the proposed officer, stating:

(A) Trust, commercial banking, other financial, and other business experience of the proposed officer, including, with respect to each position held, title, description of duties, name and address of employer, period of employment, and reason for leaving.

(B) Whether or not the proposed officer has had in the past or has presently any relationship with any bank as director, officer, employee, adviser, 15 percent equity security owner, or in any other capacity (other than solely as a customer), and, if so, the name of the bank and a description of the relationship, and, in the case of any present relationship, whether the proposed officer intends to continue, change, or terminate such relationship if and when he becomes an officer of the trust department.

(C) Whether or not the proposed officer has ever been discharged or requested to resign from any position, and, if so, an account of the circumstances.

(d) State the amount of salary and describe any other compensation which the applicant proposes to pay to each officer of the trust department and to all employees, as a group, or the trust department during each of the first three years of business of the trust department.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 1500.1, Financial Code.

## HISTORY

1. Amendment of subsection (c)(3)(B), repealer of subsections (c)-(g)5, and new NOTE filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

## FINANCIAL CODE

### SECTION 1020-1027

1020. The request for authority to organize and establish a corporation to engage in the banking or trust business shall be set forth in an application in such form and containing such information as the commissioner may require and shall be accompanied by a fee of five thousand dollars (\$5,000).

1021. Upon receiving a request for an application, the commissioner shall inform the prospective applicant in writing that the commissioner is available to confer with such prospective applicant in advance of the filing of an application for the purpose of discussing questions relating to such application. However, no application shall be decided in advance of filing.

1022. Upon the filing of an application the commissioner shall make or cause to be made a careful investigation and examination relative to the following:

- (a) The character, reputation, and financial standing of the organizers or incorporators and their motives in seeking to organize the proposed bank or trust company.
- (b) The need for banking or trust facilities or additional banking or trust facilities, as the case may be, giving particular consideration to the adequacy of existing banking or trust facilities and the need for further banking or trust facilities.
- (c) The character, financial responsibility, banking or trust experience, and business qualifications of the proposed officers of the bank or trust company.
- (d) The character, financial responsibility, business experience, and standing of the proposed stockholders and directors.
- (e) Other facts and circumstances bearing on the proposed bank or trust company and its relation to the locality as in the opinion of the commissioner may be relevant.

1023. The commissioner may give or withhold his or her approval of the application in his or her discretion, but he or she shall not approve the application until he or she has ascertained to his or her satisfaction:

- (a) That the public convenience and advantage will be promoted by the establishment of the proposed bank or trust company.
- (b) That the proposed bank or trust company will have a reasonable promise of successful operation.
- (c) That the bank is being formed for no other purpose than the legitimate objects contemplated by this division.
- (d) That the proposed capital structure is adequate.
- (e) That the proposed officers and directors have sufficient banking or trust experience, ability, and standing to afford reasonable promise of successful operation.
- (f) That the name of the proposed bank or trust company does not resemble, so closely as to be likely to cause confusion, the name of

any other bank or trust company transacting business in this state or which had previously transacted business in this state.

(g) That the applicant has complied with all of the applicable provisions of this division.

1024. (a) In this section:

(1) "Control" has the meaning set forth in Section 1250.

(2) "Officer" has the meaning set forth in Section 33057.

(b) For purposes of Section 1023, the commissioner may find:

(1) That a proposed officer or director of a proposed bank or trust company does not have sufficient standing to afford reasonable promise of successful operation if such person has been convicted of, or has pleaded nolo contendere to, any crime involving fraud or dishonesty.

(2) That the establishment of a proposed bank or trust company will not promote the public convenience and advantage if any person who is proposed to control the proposed bank or trust company or any director or officer of such person has been convicted of, or has pleaded nolo contendere to, any crime involving fraud or dishonesty.

(c) Subdivision (b) shall not be deemed to be the only grounds upon which the commissioner may find, for purposes of Section 1023, that a proposed officer or director of a proposed bank or trust company does not have sufficient standing to afford reasonable promise of successful operation or that the establishment of a proposed bank or trust company will not promote the public convenience and advantage.

1025. At least 30 days before denying an application, the commissioner shall by mail or other method of service give written notice of the intended denial of an application and of the right of the applicant to meet with the commissioner regarding the reasons for such denial. The request for such meeting shall be in writing and delivered to the commissioner within 20 calendar days of the date of giving of the notice of intended denial. If a request is made for such meeting, the application may not be denied until after the meeting.

1026. The commissioner may, in approving an application to organize and establish a corporation to engage in the banking or trust business pursuant to Section 362, impose any conditions the commissioner deems reasonable or necessary or advisable in the public interest.

1027. (a) With the approval of the commissioner, a bank may be formed to facilitate a merger or an acquisition of control. The new bank may survive the merger or acquisition of control.

(b) Sections 1020, 1021, 1022, 1023, and 1024 shall not apply to the formation of a bank pursuant to subdivision (a).

(c) Article 4 (commencing with Section 370) of Chapter 3 of Division 1 shall apply to a bank formed pursuant to subdivision (a).

(d) A request for approval to form a bank in accordance with subdivision (a) shall be accompanied by a fee of two thousand five hundred dollars (\$2,500).

DEPARTMENT OF BUSINESS OVERSIGHT (DBO)  
SUPPLEMENTAL INSTRUCTIONS  
FOR THE  
INTERAGENCY BIOGRAPHICAL AND FINANCIAL REPORT

The Department of Business Oversight accepts the **Interagency Biographical and Financial Report** (used by the federal regulatory agencies of financial institutions) in lieu of California Department of Business Oversight **Form 2 (Personal Financial Statement)** and **Form 3 (Confidential Resume)**.

It is recommended that the **Interagency Biographical and Financial Report** (copy attached) be used to respond to **Item II.C2** of the **Instructions for Form 2110** pertaining to applications to engage in the business of transmitting money. Specifically, each director, executive owner, and 10% equity security owner is requested to complete the attached interagency Biographical and Financial Report – using additional sheets as necessary.

The terms business, company, and enterprise are referenced in various items on the Interagency Report. Please note that these terms include all business entities, including (but are not limited to) proprietorships, partnerships, corporations.

A response to item 4(c) may be omitted.

## ***INTERAGENCY BIOGRAPHICAL AND FINANCIAL REPORT***

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Public reporting burden for this collection of information is estimated to average two hours for biographical information and two hours for financial information. This estimate includes time to gather and maintain data in the required form, to review instructions, and to complete the information collection. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Paperwork Reduction Act, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429; Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551; Licensing Activities Division, Comptroller of the Currency, 250 E Street, S.W., Washington, DC 20219; or Office of Supervision Policy, Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552; and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

An organization or a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

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### **GENERAL INFORMATION AND INSTRUCTIONS**

This *Interagency Biographical and Financial Report* (report) is used by **individuals**<sup>1</sup> in conjunction with other corporate filings to the appropriate regulatory agency. This report is *not* a stand-alone document.

#### **Preparation**

Use of this report format is not mandatory. If an alternative format is used, it must provide all requested information, including the certification. All questions must be answered with complete and accurate information that is subject to verification. If the answer is “none,” “not applicable,” or “unknown,” so state. Answers of “unknown” or “yes” should be explained.

The questions are not intended to limit the presentation nor are the questions intended to duplicate information supplied on another form or in an exhibit. For example, a cross-reference to the information is acceptable. *Any cross-reference must be made to a specific cite or location in the documents, so the information can be located easily.* Use additional sheets as necessary. Each regulatory agency will provide additional instructions for use and preparation. If the report is not complete, the regulatory agency may either request additional information or return the filing. If you are a foreign national or a United States citizen who currently resides in a foreign country, additional information may be necessary.

Financial statements from individuals must have “as of” dates of not more than 90 days prior to the date the financial report is submitted. All amounts in this report must be based on current

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<sup>1</sup> A **company** seeking to acquire direct or indirect control of a bank or thrift should consult with the appropriate regulatory agency for filing instructions.

market value in United States dollars<sup>2</sup> and agree with any totals in the supplementary schedules.

In addition to the sample financial schedules, you may wish to provide supplementary schedules for other items on the financial statement. If the sample financial statement is used, an answer is required to each item. If you submit an alternative Financial Report format, the information must respond to each request for information contained in the sample Financial Report.

In addition, each regulatory agency specifically reserves the right to require up to five years of financial data from any acquiring person as well as the filing of additional information and/or statements, such as a federal income tax return or a current appraisal to support an asset's value.

If you have been convicted of any criminal offense involving dishonesty, breach of trust, or money laundering, or have agreed to enter into a pretrial diversion or similar program in connection with a prosecution of such offense (12 U.S.C. § 1829), you must obtain approval from the FDIC before you can own, control, participate in the affairs of, or become an institution-affiliated party of a depository institution.

Each individual must report promptly any material change in the biographical report or financial condition that occurs during the review period for the filing. For additional information regarding the processing procedures and guidelines and any supplemental information that may be required, refer to the appropriate regulatory agency's procedural guidelines (that is, the *Comptroller's Licensing Manual*, the FDIC's Rules and Regulations (12 C.F.R. Part 303), or the OTS' *Application Processing Handbook*), contact the agency directly for specific instruction, or visit its Web site at [www.occ.treas.gov](http://www.occ.treas.gov), [www.fdic.gov](http://www.fdic.gov), [www.ots.treas.gov](http://www.ots.treas.gov), or [www.federalreserve.gov](http://www.federalreserve.gov).

## **Definitions**

For purposes of this document:

*Affiliate* means any company that owns or controls, is owned or controlled by, or is under common ownership or control with a depository institution or depository institution holding company.

*Associated* means associated as an officer, director, organizer, partner, trustee, or principal shareholder or owner.

*Company* means any corporation, association, partnership, limited liability company, business trust, sole proprietorship, joint venture, or other similar organization.

*Depository institution* means any bank (including a national, state, district, or foreign bank), savings association, savings bank, savings and loan association, building and loan association, homestead association, cooperative bank, trust company, industrial bank or loan company, or

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<sup>2</sup> Provide the foreign currency exchange rate and conversion date, if applicable.

credit union. A United States office, including a branch or agency, of a foreign bank is a depository institution.

*Management official* includes a senior executive officer; director; advisory or honorary director of a depository institution with total assets of \$100 million or more; branch manager; trustee of a depository organization under the control of trustees; and any person who has a representative or nominee serving in any of those capacities.

*Principal shareholder or owner* means a person who directly or indirectly owns, controls, or holds (either individually or as a member of a group) the power to vote 10 percent or more of any class of voting securities or other voting equity interest of the entity.

### **Confidentiality**

Any individual desiring confidential treatment of specific portions of the report must submit a request in writing with the report. The request must discuss the justification for the requested treatment. The individual's reasons for requesting confidentiality should specifically demonstrate the harm (for example, loss of competitive position, invasion of privacy) that would result from public release of information (5 U.S.C. section 552). Information for which confidential treatment is requested should be: (1) specifically identified in the public portion of the report (by reference to the confidential section); (2) separately bound; and (3) labeled "Confidential." The individual should follow the same procedure for a request for confidential treatment for the subsequent filing of supplemental information to the report.

The individual should contact the appropriate regulatory agency for specific instructions regarding requests for confidential treatment. The agency will determine whether the information will be treated as confidential and will advise the individual of any decision to make available to the public information labeled "Confidential."

**INTERAGENCY BIOGRAPHICAL AND FINANCIAL REPORT**

This is filed with respect to:

\_\_\_\_\_  
Name of Subject Institution or Holding Company, Location

Type of Filing	Position
<input type="checkbox"/> Bank or Thrift Charter	<input type="checkbox"/> Organizer
<input type="checkbox"/> Bank or Thrift Holding Company	<input type="checkbox"/> Director
<input type="checkbox"/> Change in Bank Control	<input type="checkbox"/> Senior Executive Officer
<input type="checkbox"/> Change in Senior Executive Officer or Director	<input type="checkbox"/> Title: _____
<input type="checkbox"/> Citizenship Waiver	<input type="checkbox"/> Principal Shareholder
<input type="checkbox"/> Charter Conversion	<input type="checkbox"/> Trustee
<input type="checkbox"/> Deposit Insurance	<input type="checkbox"/> Manager
<input type="checkbox"/> Federal Branch or Agency	<input type="checkbox"/> Manager
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

**BIOGRAPHICAL REPORT**

**1. Personal Information**

(a) Name \_\_\_\_\_  
Last First (Middle-no initials)

(b) Residence \_\_\_\_\_  
(Street Address)  
\_\_\_\_\_  
(City) (State) (ZIP Code) (Country)

(c) If at residence less than five years, list addresses and dates occupied for past five years.

Date From   Date To   Number and Street   State   ZIP Code   Country

(d) Date of Birth:   Month: \_\_\_\_\_   Day: \_\_\_\_\_   Year: \_\_\_\_\_

(e) Place of Birth: \_\_\_\_\_  
(City) (State) (Country)

(f) United States Social Security Number: \_\_\_\_\_

(g) Citizenship \_\_\_\_\_  
Country (Date, if Naturalized)

(h) If not a United States citizen, provide:

Passport Number: \_\_\_\_\_

Home Country Identification Number: \_\_\_\_\_

Immigration File Number: \_\_\_\_\_

Father's full name \_\_\_\_\_

Mother's full name, including maiden name \_\_\_\_\_

(i) Telephone and fax numbers where you may be reached during business hours and an e-mail address:

\_\_\_\_\_  
(Area Code, Telephone Number, including Country Code if outside U.S.)

\_\_\_\_\_  
(Fax Number)

\_\_\_\_\_  
E-mail Address

(j) List other names you used and the period of time you used them (for example, your maiden name, name by a former marriage, former name, alias, or nickname). If the other name is your maiden name, put "nee" in front of it.

## 2. Employment Record

(a) List employment in reverse chronological order for the last five years. The list should include the beginning and ending dates of employment, the employer's name and location (city, state), nature of business, title or position, nature of duties, and reason for leaving.

(b) Have you ever been dismissed or asked to resign from any past employment, including a less than honorable discharge from military service?  Yes  No

If "yes," provide the employer's name, address, and telephone number; title or position; date of discharge; and explanation.

**3. Education and Professional Credentials**

(a) List each diploma or degree from high schools, colleges, universities, or other schools.

<u>School's Name/Location</u>	<u>From</u>	<u>To</u>	<u>Degree</u>
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(b) List each professional license or similar certificate you now hold or have held (for example, Attorney, Physician, CPA, NASD or SEC registration).

<u>License</u>	<u>Issuing Authority</u>	<u>Date Issued</u>	<u>Status</u>	<u>Expiration</u>
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**4. Business and Banking Affiliations**

(a) List any company with which you are associated, providing the company name, location, nature or type of business, position held or relationship to the company, ownership percentage, and beginning date of the relationship.

(b) List the name of any depository institution or depository institution holding company with which you are or were associated. Also list the location, nature of banking activity, position held or relationship, ownership percentage, and beginning and ending dates of the relationship.

- (c) Are you in the process of being considered for a senior executive officer or director position at another depository institution or depository institution holding company?  Yes  No

If “yes,” provide the name of the depository institution or depository institution holding company and the position. If the application has been submitted for regulatory review, provide the name of the regulatory agency.

- (d) Are you now or are you proposed to be a “management official” of another insured depository institution or depository institution holding company?  Yes  No

If “yes,” explain either why the potential interlock is not a violation of the Depository Institution Management Interlocks Act (12 U.S.C. §§ 3201-3208) or what action will be taken to prevent a violation.

## 5. Legal and Related Matters

- (a) Have you been involved in any of the following filings where the filing was denied, disapproved, withdrawn, or otherwise returned without favorable action by a federal or state regulatory authority or a self-regulatory organization:
- (1) A charter or license application, a depository institution holding company application, or a federal deposit insurance application, in which you were listed as an organizer, director, senior executive officer, or a person that would own or control (either individually or as a member of a group) 10 percent or more of any class of voting securities or other voting equity interest of the institution, or similar position?  Yes  No
  - (2) A merger application in which you were listed as a director, senior executive officer, or similar position?  Yes  No

- (3) A notice of change in director or senior executive officer, or similar form, in which you were listed as a director, senior executive officer, or similar position?  
 Yes  No
- (4) A notice of change in control for a depository institution or other company, or a similar form, in which you were listed (either individually or as a member of a group) as an acquirer or transferee?  
 Yes  No
- (5) Any other application, notice, or other regulatory or administrative request which was filed with a federal or state regulatory authority or a self-regulatory organization in which you were listed in some capacity?  
 Yes  No
- (b) Have you or any depository institution or depository institution holding company with which you are or were associated been subject to any supervisory agreement, enforcement action, civil money penalty, prohibition or removal order, or other supervisory or administrative action taken or imposed by any federal or state regulatory authority or other governmental entity?  
 Yes  No
- (c) Has any depository institution with which you are or were associated:
- (1) Been placed into conservatorship or receivership or otherwise failed?  
 Yes  No
- (2) Received financial assistance from a federal agency or instrumentality (for example, FDIC, Resolution Trust Corporation, Federal Savings and Loan Insurance Corporation)?  
 Yes  No
- (3) Merged with or been acquired by an institution that received financial assistance from a federal agency or instrumentality in connection with the transaction?  
 Yes  No
- (d) Have you or any company with which you are or were associated:
- (1) Filed a petition under any chapter of the Bankruptcy Code or had an involuntary bankruptcy petition filed against you or the company?  
 Yes  No
- (2) Defaulted on a loan or financial obligation of any sort, whether as obligor, cosigner, or guarantor?  
 Yes  No
- (3) Forfeited property in full or partial satisfaction of any financial obligation?  
 Yes  No

- (4) Had a lien placed against property for failure to pay taxes or other debts?  Yes  No
- (5) Had wages or income garnished for any reason?  Yes  No
- (6) Failed or refused to pay any outstanding judgments?  Yes  No
- (e) Have you or any company or depository institution with which you are or were associated been involved in any lawsuit, formal or informal investigation, examination, or administrative proceeding that may result in, or resulted in, any penalty (including, but not limited to, any sanction, fine, order to pay damages, loss of right or benefit, forfeiture of property interest, or revocation of license), agreement, undertaking, consent, judgment, or order imposed by or entered into with any of the following entities:
- (1) Any federal or state court?  Yes  No
- (2) Any department, agency, or commission of the United States government?  Yes  No
- (3) Any state, municipal, or foreign governmental entity?  Yes  No
- (4) Any self-regulatory organization (for example, NASD, FASB, state bar)?  Yes  No
- (f) Have you or any company or depository institution with which you are or were associated been arrested for, charged with, indicted for, or convicted of (including a conviction where the record was expunged), or ever pleaded *nolo contendere* to, any criminal matter (other than minor traffic violations)?  Yes  No
- (g) If you answer “yes” to any question in 5(a) through 5(f), provide your explanation by identifying the number of the question, describing the situation in detail, and, where relevant, including the:
- Name and location of any institution, company, party, court, regulatory agency, or self-regulatory organization involved.
  - Nature of your association with any institution or company (for example, officer, director, organizer, principal shareholder, or owner).
  - Type of any application, notice, or other regulatory or administrative request.
  - Nature of any supervisory, enforcement, or administrative action.
  - Direct and indirect debt terms, defaulted amount, and creditor regarding any financial obligation.
  - Date of any relevant event.
  - Nature of any lawsuit, charge, or proceeding.
  - Jurisdiction in which any legal proceeding occurred.
  - Resolution or disposition of the matter.

## **6. Additional Information**

Present any other information you believe is important to evaluate your filing. If you are involved in the organization of a new depository institution or depository institution holding company, discuss your specific role.

## FINANCIAL REPORT

FINANCIAL STATEMENT AS OF \_\_\_\_\_, \_\_\_\_\_

ASSETS		LIABILITIES AND NET WORTH	
Cash on hand and in depository institutions	\$ _____	Accounts payable	\$ _____
Marketable securities (Schedule A)	_____	Notes payable and other loans (Schedule F)	_____
Notes receivable (Schedule B)	_____	Real estate mortgages (Schedule C)	_____
Real estate (Schedule C)	_____	Other liabilities (Schedule G)	_____
Proprietary interests and other securities (Schedule D)	_____	TOTAL LIABILITIES	_____
Retirement funds and other assets (Schedule E)	_____	Net worth (Total assets less total liabilities)	_____
<b>TOTAL ASSETS</b>	<b>\$</b>	<b>TOTAL LIABILITIES AND NET WORTH</b>	<b>\$</b>

### CONTINGENT LIABILITIES

In addition to the liabilities listed on the Financial Statement, have you endorsed, guaranteed, or become otherwise indirectly or contingently liable for the debts of others or through a pending lawsuit?

Yes  No

If "yes," complete the following:

Name and Address of Debtor or Obligor	Name and Address of Creditor or Oblige	Description and Value of Collateral	Date Due	Current Amount
TOTAL				\$

## SUPPORTING SCHEDULES

Schedules must agree in total with the appropriate item contained in the Financial Statement on page 8 of this report.

### Schedule A – Marketable Securities

Indicate all debt and equity securities listed on an exchange or otherwise regularly traded in an open market. Separate debt and equity securities. Securities of closely held corporations should be listed on Schedule D—Proprietary Interests. The description should include the name of the issuer, the principal amount or number of shares held, and the interest rate, if applicable. Small holdings may be aggregated and shown as “other” provided that they account for no more than 10 percent of marketable securities.

Description	Market Value
	\$
TOTAL	\$

### Schedule B – Notes Receivable

The description should include the name of the obligor, the note's maturity and terms of repayment, and a description of any collateral. If the note is payable to you and others jointly, indicate only your beneficial interest under Current Balance.

Description	Current Balance
	\$
TOTAL	\$

**Schedule C – Real Estate and Related Loans**

List all real estate in which you hold a beneficial interest. Submit year-end financial statements, including profit and loss statements, for the last two years for each investment (exclude residence) in which you have an interest equal to 10 percent or more of your net worth. Also submit a cash flow statement on any investment property valued at 10 percent or more of net worth.

Description and Location (City and State)	Owner of Property	Percent Ownership	Mortgage Holder	Maturity Date	Current Market Value*	Current Balance**
					\$	\$
TOTAL					\$	\$

- \* Carry TOTAL forward to Assets - Real estate
- \*\* Carry TOTAL forward to Liabilities - Real estate mortgages

**Schedule D – Proprietary Interests and Other Securities**

List all companies, the shares of which are not listed on a securities exchange or otherwise regularly traded, in which you hold a beneficial interest. (Submit year-end financial statements, including profit and loss and cash flow statements, for the last two years for each business interest in which you have an interest equal to 10 percent or more of your net worth.)

Name and Address of Company	Legal Form of Company	Nature of Business	Percent Ownership	Current Value
				\$
TOTAL				\$

**Schedule E - Other Assets**

Include retirement funds (for example, 401K, IRA, Keogh), accounts receivable, merchandise and inventory at lower of cost or market value, machinery and equipment (less depreciation), and life insurance at its cash surrender value.

Description	Basis for Valuation	Current Value
		\$
TOTAL		\$

**Schedule F – Notes Payable and Other Loans**

Indicate all loans or notes payable, including loans on life insurance and retirement funds (but not real estate mortgages listed in Schedule C). Loan origination information must include the original date, loan amount, and co-makers, if any, and their percent obligation. Small obligations may be aggregated and shown as “other,” provided that they account for no more than 20 percent of other loans and notes payable. Indicate any debt that is contractually delinquent by an asterisk next to the current balance.

Name and Address of Creditor and Loan Origination Information	Description and Value of Collateral	Maturity Date	Current Balance
			\$
TOTAL			\$

**Schedule G - Other Liabilities**

Include interest and taxes due and unpaid, other debts accrued, and other liabilities.

Payable To	Description	Maturity Date	Current Balance
			\$
TOTAL			\$

### Cash Flow Statement\*

<u>Sources of Cash</u>	20	20	Projected Current Year 20	Projected Next Year 20
Salaries, wages, commissions, and other employment income	\$	\$	\$	\$
Rents, royalties, and investments				
Income from dividends and interest				
Income and other distributions from partnerships				
Other sources**				
Total cash received				
<b><u>Uses of Cash</u></b>				
Personal living expenses (rent, household)				
Fixed obligations***				
Income taxes				
Capital contributions to partnerships				
Other uses**				
Total cash outlay				
NET CASH FLOW (deficit)	\$	\$	\$	\$

\* Discuss any significant changes on a separate page.

\*\* Itemize on a separate page any items amounting to 10 percent or more of total cash received or total cash outlay.

\*\*\* Fixed obligations include debt service on all loans and any budgeted capital improvement expenditures for real estate investments. Any loan proceeds or debt service related to this transaction should be included in projections for other sources or uses.

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**Privacy Act Notice**

The solicitation and collection of this information, including a Social Security Number, is authorized by those statutes that require an appropriate federal banking agency to determine the competence, experience, integrity, and financial ability of individuals proposing to serve a federally regulated financial institution in an official capacity – that is, as a director, officer, employee, or principal shareholder. These statutes include: 12 U.S.C. § 27 (national bank charters); 12 U.S.C. § 1464 (federal savings bank charters); 12 U.S.C. § 1815 (federal deposit insurance); 12 U.S.C. § 1817(j) (changes in control of insured depository institutions); and 12 U.S.C. § 1831(i) (agency disapproval of directors and senior executive officers of insured depository institutions or depository institution holding companies). The provision of requested information, including a Social Security Number, is voluntary. However, the failure to provide any requested information may result in denial, disapproval, or delay in the processing of an application or notice.

Depending on the manner in which an appropriate federal banking agency maintains solicited information, some or all of that information may be subject to the Privacy Act of 1974, 5 U.S.C. § 552a. In such instances, disclosures of covered information may be made to: (1) third parties to complete background checks; (2) financial institutions for supervisory purposes; (3) governmental, tribal, self-regulatory, or professional organizations when information is relevant to either a known or suspected violation of law or licensing standard or relevant and necessary to the governmental or self-regulatory organization’s regulation or supervision of financial service providers; (4) the Department of Justice, a court, an adjudicative body, a party in litigation, or a witness when relevant and necessary to a legal or administrative proceeding; (5) congressional offices when the information is relevant to an inquiry initiated on behalf of its provider; (6) an agency’s contractors or agents; and (7) other third parties when mandated or authorized by statute.

Additionally, while certain of the solicited information is exempt from disclosure under the Freedom of Information Act because disclosure would constitute a clearly unwarranted invasion of personal privacy, other information is not exempt. Nonexempt information will ordinarily include the names of individuals, the financial institutions that they propose to serve, the statutory context in which information has been provided, and prior bank-related employment and affiliation.

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**CERTIFICATION**

*\*If a joint financial statement is being submitted, both parties should complete the "Certification."*

I understand that the appropriate regulatory agency may conduct extensive checks into my background, experience, and related matters in conjunction with my application or filing. I certify that the information contained in the biographical report and financial report, including all attachments, has been carefully examined by me and is true, correct, and complete. I acknowledge that any misrepresentation or omission of a material fact constitutes fraud in the inducement and may subject me to legal sanctions provided by 18 U.S.C. §§ 1001 and 1007.

Signed this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Signature	Signature*
Print or type name	Print or Type name
Title (if applicable)	Title (if applicable)