CHAPTER 13-02-13
MERGERS

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13-02-13-01. Consolidation or merger.

Any two or more banking institutions may consolidate or merge upon making application and subject to approval by the state banking board. An application to consolidate or merge is not required when a state-chartered banking institution is not the survivor. A banking institution proposing to purchase assets and assume the liabilities of another banking institution must be considered a consolidation or merger and subject to an application under this chapter.

History: Effective October 1, 1991.
General Authority: NDCC 6-01-04, 6-03-11
Law Implemented: NDCC 6-03-11

13-02-13-02. Application.

An original and ten copies of the application to consolidate or merge must be filed with the board. In lieu of an original application, the state banking board will accept a copy of the application submitted to the federal deposit insurance corporation. An application must contain the following.

1. Plan of reorganization or merger;
2. Copy of notice of shareholder meeting to ratify merger or consolidation;
3. Copy of shareholders' minutes showing ratification of merger by the shareholders who own at least two-thirds of the outstanding capital stock;
4. Pro forma balance sheet of the resultant bank;
5. Any proposed changes of executive officers;
6. Description of any proposed changes to the bank's business plan, hours of operation, fees, terms for deposit and loan accounts, board of directors; and
7. Any other information determined by the commissioner or board to be necessary.

The board or commissioner may return an application whenever it is determined that the application fails to address in a prima facie manner the requirements of North Dakota Century Code section 6j03-11 and 6j03-14.1 or this section. When an application is so returned by the board or commissioner, it does not constitute a filing of an application.

History: Effective October 1, 1991.
General Authority: NDCC 6-01-04, 6-03-11
Law Implemented: NDCC 6-03-11

13-02-13-03. Publication.

Upon filing a completed application, the secretary of the board shall cause to be published notice of application for two successive weeks in the official newspaper of the county where the proposed

consolidated or merged banking institutions are located including the locations of any paying and receiving stations, or banking houses or offices. The notice of application must also be sent by certified mail by the secretary of the board to all banks located within the trade area of the banking institutions proposed to be consolidated or merged. Within ten days of the final notice provided under this section, any bank or party may submit to the board written comments concerning the application or a written request for an opportunity to be heard before the board, or both. In the case where a failing banking institution is to be consolidated or merged, the board or commissioner may waive the notice of application requirements.

History: Effective October 1, 1991.
General Authority: NDCC 6-01-04, 6-03-11
Law Implemented: NDCC 6-03-11

13-02-13-03.1. Joint federal and state publication.

Notwithstanding section 13-02-13-03, an applicant may elect to publish joint federal and state notice of the application pursuant to the procedural requirements of federal law. Before publication, the applicant shall submit the proposed notice of application to the commissioner for prior approval.

History: Effective January 1, 1999.
General Authority: NDCC 6-01-04, 6-03-11
Law Implemented: NDCC 6-03-11

13-02-13-04. Criteria for state banking board consideration for approval.

When deciding whether to approve an application to consolidate or merge, the board shall examine and consider all relevant factors including:

1. Whether proper notification has been given to all shareholders;
2. Whether at least two-thirds of the shareholders have ratified the plan of reorganization or merger;
3. Whether the resultant bank has adequate capital;
4. Whether the needs of the community to be served will still be met; and
5. The adequacy and competence of management.

When a hearing has not been conducted and the board denies the application to consolidate or merge, the applicant may, within fifteen days after receipt of disapproval, petition the board for a hearing. Unless the board determines that the application to consolidate or merge is frivolous or incomplete, the petition for hearing must be granted. After the hearing is conducted, the board shall issue an order to approve or disapprove the application on the basis of the record made at the hearing.

History: Effective October 1, 1991.
General Authority: NDCC 6-01-04, 6-03-11
Law Implemented: NDCC 6-03-11

13-02-13-05. Hearing.

A public hearing by the board may be required on applications to merge or consolidate whenever the board or commissioner determines that it is in the public interest to hold such a hearing or whenever a bank or party's request for an opportunity to be heard is granted. Notice of hearing on an application will, if required, be issued at least thirty days prior to the hearing on the application. The notice of hearing must be published by the secretary of the board for two successive weeks in the official newspaper of the county where the proposed consolidated or merged banking institutions are

located, including the locations of any paying and receiving stations, or banking houses or offices. The notice of hearing must also be sent by certified mail by the secretary of the board to all banks located within the trade area of the banking institutions proposed to be consolidated or merged.

History: Effective October 1, 1991.
General Authority: NDCC 6-01-04, 6-03-11
Law Implemented: NDCC 6-03-11