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Insights

July/August Hoosier Banker: Acquisition of Voting Shares Through Inheritance

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Question: Our largest shareholder passed away last week after a long illness. She owned approximately 35 percent of the outstanding shares of our holding company. We expect that all of her shares will be left to her only child. Do we need to notify anyone of this under Indiana law?

Answer: Yes, although the kind of notification required will vary, based on who actually receives and/or benefits from the stock transfer. Generally, if an ownership interest in excess of 25 percent is left to a single beneficiary, regulatory approval of a change of control is required by all regulatory agencies with oversight responsibility for the bank.

- Ind. Code § 28-1-2-23(a) provides: "A corporation or an individual acting directly, indirectly, or through or in concert with one (1) or more other corporations or individuals may not acquire control of any bank, trust company, stock savings bank, holding company, corporate fiduciary, or industrial loan and investment company unless the department has received and approved an application for change in control."
- Ind. Code § 28-1-2-23(e) defines "control" to mean: "[p]ossession of the power directly or indirectly to: (1) direct or cause the direction of the management or policies of a bank, a trust company, a holding company, a corporate fiduciary, or an industrial loan and investment company, whether through the beneficial ownership of voting securities, by contract, or otherwise; or (2) vote at least twenty-five percent (25%) of voting securities of a bank, a trust company, a holding company, a corporate fiduciary, or an industrial loan and investment company, whether the voting rights are derived through the beneficial ownership of voting securities, by contract, or otherwise."

If the shareholder does in fact leave all of her stock to her only child, then the beneficiary will be considered in control of the bank, and a change of control application would be required.

Indiana law does, however, provide some latitude with respect to timing of approval in situations involving the acquisition of voting shares through inheritance. Ind. Code § 28-1-2-23(i) provides: "In a transaction to which this subsection applies,[1] the acquiring person shall use the person's best effort to comply with the requirements of this section. However, it is not a violation of this section if the acquiring person is not able to satisfy the requirements of this section and notifies the department of the acquisition not later than thirty (30) calendar days after the acquisition and provides any relevant information requested by the department. This subsection does not limit the authority of the department to conduct any investigation necessary to approve or disapprove the transaction under subsection (c)."

In addition to requirements under Indiana law, it is important to review the change in control provisions applicable to bank holding companies under 12 C.F.R. §225.42,[2] and provisions applicable to covered institutions under 12 C.F.R. § 303.83.[3] Both of these provide exemptions from the prior notice requirements for a change of control filing with the Federal Reserve and the Federal Deposit Insurance Corp., respectively, provided notification is provided within 90 calendar days of the acquisition, and the applicant provides any relevant information requested.

1 Ind. Code § 28-1-2-23 (i) This subsection applies to a transaction described in 12 CFR 303.83(b)(1), including the following: (1) The acquisition of voting shares through inheritance; (2) The acquisition of voting shares through a bona fide gift; (3) The acquisition of voting shares in satisfaction of a debt previously contracted in good faith, other than the acquisition of a defaulted loan secured by a controlling amount of the voting securities of a bank, trust company, stock savings bank, bank holding company, corporate fiduciary, or industrial loan and investment company.

2 12 C.F.R. § 225.42 (a) Exempt transactions. The following transactions do not require notice to the Board under this subpart: (b) Prior notice exemption. (1) The following acquisitions of voting securities of a state member bank or bank holding company, which would otherwise require prior notice under this subpart, are not subject to the prior notice requirements if the acquiring person notifies the appropriate Reserve Bank within 90 calendar days after the acquisition and provides any relevant information requested by the Reserve Bank: (i) Acquisition of voting securities through inheritance; (ii) Acquisition of voting securities as a bona fide gift; and (iii) Acquisition of voting securities in satisfaction of a debt previously contracted (DPC) in good faith.

3 12 C.F.R. §303.83(a) Notice within 90 days after the acquisition. The following acquisitions of voting securities of a covered institution, which otherwise would require prior notice under this subpart, instead require the acquirer to provide to the appropriate FDIC office within 90 calendar days after the acquisition all relevant information requested by the FDIC: (1) The acquisition of voting securities as a bona fide gift; (2) The acquisition of voting securities in satisfaction of a debt previously contracted in good faith, except as provided in §303.82(c); and (3) The acquisition of voting securities through inheritance.

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