# **SUPPLEMENT TO INTERAGENCY BANK MERGER ACT APPLICATION**

# **General Information**

Contact the bank analyst assigned to the institution at (515)-281-4014 prior to the submission of the completed application.

The applicant should contact its primary Federal regulatory authority to determine any Federal requirements for the application.

The bank may consult an attorney to draft or review the applicable legal documents, if desired.

All correspondence will be sent to the contact person listed on the Interagency Bank Merger Act Application.

# **Fees and Submission**

Submit one executed copy of the completed Interagency Bank Merger Act Application and applicable supplemental documents through the online submission portal on the Iowa Division of Banking website. All information, including items deemed confidential, is to be sent in **one** file in Microsoft Word or Adobe PDF format. The file size cannot exceed 25 megabytes\*. Once uploaded, instructions will be provided regarding payment of the application fee via credit card or e-check. The application fee is $3,050 for the merger of two banks, with an additional $1,500 required for each additional bank. The application fee will be refunded if the application is not accepted. After the application is accepted, the fee is not refundable.

*\*Tips to reduce File Size:*

Adobe Acrobat Pro can be utilized. With the PDF file open select File>Save As>Check box that says “reduce file size”>choose file save location>Save.

If scanning a document, reducing the resolution can help decrease file size.

# **Public Disclosure of Information**

The Superintendent of Banking (Superintendent) may treat all information submitted with this application as public information unless the applicant properly requests that information be treated as confidential at the time of submitting the application. The Superintendent’s release of information is governed by Iowa Code Chapters 22 and 524 and Iowa Administrative Code Chapter 187-7. The Superintendent will copy public records as required to comply with the public records laws.

Any request for confidential treatment of information must be included in a cover letter submitted with the application. In addition, the applicant must enumerate the specific grounds in Iowa Code Chapter 22 or other applicable law which supports treatment of the material as confidential.

Each page of the application upon which confidential information appears must be conspicuously marked as containing confidential information. **Applicants may not identify the entire application as confidential.**

If the applicant designates any portion of the application as confidential, the applicant must submit a “public” copy of the application from which the confidential information has been excised. The public copy must be clearly marked as “Public Copy — Excludes Confidential Information” and will be made available for public inspection and copying in accordance with the Iowa Division of Banking’s fee schedule. The confidential material must be excised from the public copy in such a way as to allow the public to determine the general nature of the material removed.

The Superintendent will treat the information marked confidential as confidential information if the Superintendent or a court of competent jurisdiction determines the information is entitled to confidential treatment under Iowa Code Chapter 22 or other applicable law. The Superintendent reserves the right to release information designated as confidential if the Superintendent determines there is no legal basis to withhold the information from public inspection.

It is the applicant’s responsibility to identify and properly excise the information it believes to be confidential from the public copy. The applicant’s failure to request confidential treatment of material or failure to provide a public copy with the confidential information excised will be deemed by the Superintendent as a waiver of any right to confidentiality which the applicant may have had and shall relieve the Superintendent from any responsibility if the information is viewed by the public or a competitor.

# **Actions by Applicant**

* All parties prepare and agree on a Plan of Merger per Iowa Code 524.1402(1). Items to cover in the plan are provided below under “Plan of Merger.”
* The board of directors of each party approve the Plan of Merger by a majority vote and resolve to submit the plan to the shareholders per Iowa Code Sections 524.1402(2) and 490.1103. A template is provided below under “Resolution of the Board of Directors.”
* The shareholders of each entity are given notice of a special meeting to vote on the Plan of Merger. Notice is to be given no less than 10 days prior to the meeting and copies of the Plan of Merger should be provided per Iowa Code Section 490.1103. The rights of dissenting shareholders should also be set forth in the notice per Iowa Code Chapter 490, Division XIII, and Iowa Code Section 524.1406. A template is provided below under “Notice to Shareholders.”
* The shareholders of each entity adopt the Plan of Merger and sign the Articles of Merger. Templates of the articles and shareholder resolution are provided below under “Articles of Merger” and “Resolution of Shareholders.”
* Submit the above items and the completed Interagency Bank Merger Application as instructed above. The Articles of Merger will be filed and recorded with the Secretary of State. Include a recorder cover sheet with enough margin space for recording at the various government agencies.
* If the transaction is a merger of a holding company into a state bank, submit the following additional items: (1) executed Affidavit and Agreement of Indemnity, (2) current holding company statement, and (3) statement describing any other activities, subsidiaries, or liabilities of the holding company. A template for the affidavit is provided below under “Affidavit and Agreement of Indemnity.”
* If the application is approved by the Superintendent, the surviving bank will need to submit updated forms if the merger involves changes in the directorate, officers, or shareholders. These forms include the Oath of Directors, Election of Officers, List of Shareholders, and/or Affiliate Shareholders List. The Oath of Directors is to be signed by any new member prior to the first meeting of the board of directors following the effective date of the merger. The List of Shareholders is to be completed as of the effective date of the merger.

# **Application Processing**

* The Superintendent reviews the submitted application and supplemental items. The application is accepted for processing once the information is deemed accurate and complete.
* Modifications of the original plan, if any, are to be made as outlined in Iowa Code Section 524.1402(3)(c).
* The IDOB will conduct an examination of the applicant and make additional investigation as may be necessary to satisfy the requirements of Iowa Code Section 524.1403. The investigation will ensure the following:
  + The Articles of Merger and supporting items are satisfactory.
  + The Plan of Merger adequately protects the interest of the depositors, other creditors, and shareholders.
  + The requirements for merger have been satisfied and the surviving state bank would satisfy the requirements of Iowa Code Chapter 524 that are applicable.
  + The resulting state bank will possess an adequate capital structure.
  + The convenience and needs of the public will be served.
  + Management and the board of directors have adequate character.
  + There is no negative potential effect from the merger on competition.
* The Superintendent notifies the applicants in writing of approval or denial. If approved, an Order will be prepared and signed by the Superintendent. Superintendent approval is contingent on approval being granted by the appropriate Federal agency. If denied by a Federal agency, the Superintendent rescinds approval for that reason as described in Iowa Code Section 524.1404.
* The applicant shall notify the Superintendent of the effective date of the merger. The Superintendent will then deliver the Articles of Merger to the Secretary of State for filing and recording. The merger will be effective as of the date of the filing of the Articles of Merger, unless a later date is specified in the Articles of Merger. The Articles of Merger can be filed with the Secretary of State up to 90 days prior to the effective date.

**The Superintendent reserves the right to request additional information beyond the items noted above.**

# **PLAN OF MERGER**

The Plan of Merger shall cover the following items:

* Names of the banks, associations, or corporations which are parties, (including the jurisdiction of formation/incorporation of each entity) identifying the resulting Iowa state bank.
* Any preliminary agreement reached between the parties to the merger.
* The rights of the shareholders of each of the parties and the rights of dissenting shareholders to the plan.
* The method, terms, and conditions of the merger, including, for example:
* The number of shares to be exchanged and the method by which the exchange is to be accomplished.
* Fractional shares and how they will be handled.
* Method of disposition of shares acquired from dissenting shareholders.
* Directors and officers of the resulting state bank and their addresses.
* Conduct of business during pendency of the merger application.
* Need for amendment to the Articles of Incorporation covering location, increase in capital, and related matters.
* The effective date.
* Proforma balance sheet of resulting state bank.
* Disposition of excess realty and personal property.
* Any adjustment to pension and deferred payment plans.
* Tax aspects.
* Closing out the corporate existence of the disappearing bank, association, or corporation.
* Location of principal office and any bank offices.
* Other provisions with respect to the proposed merger which are deemed necessary or desirable.

# **ARTICLES OF MERGER**

**ARTICLE I**

Pursuant to Iowa Code Sections 524.1401 and 524.1402, ***(bank, association, or corporation) (Include jurisdiction of formation, e.g., Iowa bank or national bank)*** is hereby merged with and into ***(bank) (include jurisdiction of formation)***, with ***(bank)*** being the resulting state bank.

**ARTICLE II**

The location and post office address of the principal place of business of ***(bank, association, or corporation)*** is ***(physical address), (city/town), (zip code), (county)*** *County*,Iowa. The location and post office address of the principal place of business of ***(bank)*** is ***(physical address), (city/town), (zip code), (county)*** County, Iowa.

The location and post office address of the office(s) maintained by ***(bank, association, or corporation)*** are as follows:

***(list addresses with zip code and include county)***

The location and post office address of the office(s) maintained by ***(bank)*** are as follows:

***(list addresses with zip code and include county)***

The location and post office address of the principal place of business of the resulting state bank is ***(physical address), (city/town), (zip code), (county)*** County, Iowa. The resulting state bank will maintain offices at the following locations:

***(list addresses with zip code and include county)***

**ARTICLE III**

The Plan of Merger was submitted to the board of directors of ***(bank, association, corporation)*** and adopted by at least a majority of the directors on ***(date)***. The Plan of Merger was submitted to the shareholders of ***(bank, association, or corporation)*** at a meeting held at ***(place)***on ***(date).*** There were ***(number)*** shares entitled to vote at the meeting. **(*number*)** shares voted in favor of the Plan of Merger and ***(number)*** shares voted against the Plan of Merger.

The Plan of Merger was submitted to the board of directors of ***(bank)*** and adopted by at least a majority of the directors on ***(date)***. The Plan of Merger was submitted to the shareholders of ***(bank)*** at a meeting held at ***(place)*** on ***(date)***. There were ***(number)*** shares entitled to vote at the meeting. **(*number*)** shares voted in favor of the Plan of Merger and ***(number)*** shares voted against the Plan of Merger.

**ARTICLE IV**

The number of directors constituting the board of directors of the resulting bank shall be ***(number)***, who shall serve as directors until the next annual meeting of the shareholders or until their successors are elected and qualified. The names of the individuals who shall serve as directors are as follows:

| NAME |
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**ARTICLE V**

The Articles of Incorporation of ***(bank)*** shall continue in full force and effect as the Articles of Incorporation of the resulting state bank, except that the Articles of Incorporation of ***(bank)*** shall be amended as follows:

***(insert amendment(s))***

**ARTICLE VI**

The effective date of the merger is ***(date)***. [May be filed with the Secretary of State up to 90 days prior to the effective date.]

The foregoing statements are verified by each party to the merger and the resulting state bank.

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|  |
| Name of Bank, Association, or Corporation Adopting the Articles of Merger |
|  |
| Signature and Title |
|  |
| Date |

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| --- |
|  |
| Name of Resulting State Bank |
|  |
| Signature and Title |
|  |
| Date |

Note: Must be signed by one duly authorized officer.

Note: Complete notarization for each corporation.

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| State of Iowa |  | ) |  |
|  |  | ) | SS |
| County of |  | ) |  |

On this ***(date)***, before me, a Notary Public in and for the State of Iowa, personally appeared ***(name****)*, who, being by me duly sworn, did say that they are the ***(title)***, respectively, of the corporation executing the within and foregoing instrument; that **(*the seal affixed thereto is the seal of the corporation* or *the corporation has no seal*)**; that said instrument was signed *(and sealed)* on behalf of the corporation by the authority of its board of directors; and that ***(name)*** as officer, acknowledged the execution of said instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.

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| Notary Public in and for Said County and State | | | | |
| State of Iowa |  | ) |  |
|  |  | ) | SS |
| County of |  | ) |  |

On this ***(date)***, before me, a Notary Public in and for the State of Iowa, personally appeared ***(name)***, who, being by me duly sworn, did say that they are the ***(title)***, respectively, of the corporation executing the within and foregoing instrument; that **(*the seal affixed thereto is the seal of the corporation* or *the corporation has no seal*)**;that said instrument was signed *(and sealed)* on behalf of the corporation by the authority of its board of directors; and that ***(name)***, as officer, acknowledged the execution of said instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.

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| Notary Public in and for Said County and State |

# **RESOLUTION OF THE BOARD OF DIRECTORS MERGER INTO A STATE BANK**

Resolved, that the board of directors of ***(bank, association, or corporation)*** do hereby adopt the Plan of Merger which is set forth as attached for the merger of ***(bank, association, or corporation)*** with and into ***(bank)***, with ***(bank)*** being the resulting Iowa state bank.

It is further resolved that a special meeting of the shareholders be called on ***(date)***, and the notice for the meeting shall contain the following resolution to be presented and be accompanied by a copy of the Plan of Merger:

Resolved, that the shareholders of ***(bank, association, or corporation)*** do hereby adopt the Plan of Merger and direct the directors and officers of said ***(bank, association, or corporation)*** to make an application to the Superintendent of Banking for approval of the Plan of Merger with ***(bank)***, with ***(bank)*** being the resulting state bank.

Upon approval by the Superintendent of Banking, the officers and directors are directed to proceed to carry out the Plan of Merger.

The ***(title)*** is authorized to prepare and sign the appropriate documents.

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| Chairperson |
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| Secretary |
|  |
| Date |

# **NOTICE TO SHAREHOLDERS**

You are notified that a special meeting of the shareholders of ***(bank, association, corporation)***, ***(city/town)***, ***(county)*** County, Iowa, will be held at ***(place)*** on ***(date),*** at **(*time*)**, for the purpose of considering the following resolution:

Resolved, that the shareholders of ***(bank, association, or corporation)*** do hereby adopt the Plan of Merger and direct the directors and officers of said ***(bank, association, or corporation)*** to make an application to the Superintendent of Banking for approval of the Plan of Merger with ***(bank)***, with ***(bank)*** being the resulting state bank.

You may cast your vote, either in person or by proxy, equal to the number of shares registered in your name on **(*date*)**.

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| --- | --- | --- | --- | --- | --- |
| |  | | --- | | Signature and Title of Individual Entitled to Issue Call | |  | | Signature and Title of Individual Entitled to Issue Call | |  | | Date | |

**PROXY**

I, the undersigned shareholder of ***(bank)*** do hereby appoint ***(name)*** my true and lawful attorney with power of substitution for me and in my name to vote at the meeting of the shareholders of ***(bank)*** to be held at ***(place)*** on ***(date)***, or any adjournment thereof, with all the powers I should possess if personally present, ***(except [if limited, here state])*** and hereby revoke all previous proxies.

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|  |  |
| Name (printed) |  |
|  |  |
| Signature |  |
|  |  |
| Date |  |

Note: If signed by attorney-in-fact, attach copy of appointment.

# **RESOLUTION OF SHAREHOLDERS MERGER INTO A STATE BANK**

Resolved, that the shareholders of the ***(bank, association, or corporation)*** do hereby adopt the Plan of Merger and direct the directors and officers of said ***(bank, association, or corporation)*** to submit an application to the Superintendent of Banking for approval of the Plan of Merger, with ***(bank)*** being the resulting state bank.

Upon approval by the Superintendent of Banking, the officers and directors are directed to carry out the Plan of Merger. The ***(title)*** is authorized to prepare and sign the appropriate documents.

On the question of adoption of the resolution, “yes” votes were cast by ***(number)*** shares. “No” votes were cast by ***(number)*** shares. A total of ***(number)*** shares were entitled to vote at the meeting. [If there is more than one class of shares entitled to vote on the resolution, designate each class, the number of shares entitled to vote on the resolution, and the votes for and against the resolution.]

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| Chairperson |  |
|  |  |
| Secretary |  |
|  |  |
| Date |  |

# **AFFIDAVIT AND AGREEMENT OF INDEMNITY**

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| State of Iowa | | ) |  |
|  |  | ) | SS |
| County of |  | ) |  |

For and on behalf of ***(holding company)***, ***(city/town), (county)*** County***, (state)***, I, ***(name)***, ***(title)***, of ***(holding company)***, being duly sworn, depose and state that:

1. ***(holding company)*** is not aware of any existing liabilities of ***(company)*** that have not been adequately provided for and is not aware of any contingent liabilities of ***(company)***.
2. ***(holding company)*** shall indemnify its subsidiary, ***(name), located at (address)***, ***(city/town), (county)***County***, (state)*** and hold it harmless from and against any and all damages, losses, obligations, liabilities, claims, encumbrances, deficiencies, costs and expenses, including, without limitation, reasonable attorney’s fees and other costs and expenses incident to any and all liabilities that may have arisen from the operation of ***(company)*** or in respect of any transactions related to ***(company)***.

The Affidavit and Agreement of Indemnity is being made at the request of the Superintendent of Banking and is given in consideration of the agreement of ***(subsidiary)*** to participate in a merger transaction whereby ***(company)*** will be merged with and into ***(subsidiary)***.

The foregoing statements are true and correct to the best of the knowledge, information, and belief of ***(holding company)*** and its officers and directors.

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|  |
| Name of Bank Holding Company |
|  |
| Signature and Title |
|  |
| Date |

|  |  |  |  |
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| State of Iowa |  | ) |  |
|  |  | ) | SS |
| County of |  | ) |  |

On this ***(date),*** before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared ***(name)***, who, being by me duly sworn, did say that they are the ***(title),*** respectively,of the corporation executing the foregoing instrument; that ***(the seal affixed thereto is the seal of the corporation or the corporation has no seal);*** that said instrument was signed *(and sealed)* on behalf of the corporation by authority of its board of directors; and that ***(name)***, as officer, acknowledged the execution of said instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.

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| Notary Public in and for Said County and State |