

# STREAMLINED BUSINESS COMBINATION APPLICATION

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## General Information and Instructions

### Preparation and Use

An “eligible” bank<sup>1</sup> may use this form as an alternative to the [“Interagency Bank Merger Application”](#) to apply for a merger, consolidation, or other transfer of deposit liabilities (collectively, combination) that qualifies for streamlined processing. See the Authority To File a Streamlined Submission section on page iv to determine whether a particular combination qualifies for streamlined filing.

An affiliate transaction refers to a merger, consolidation, other combination, or transfer of any deposit liabilities, between depository institutions that are controlled by the same holding company. It includes a business combination between an eligible bank and an affiliated interim bank. Applicants proposing affiliate transactions are not required to complete questions 12 through 14 of this application.

The questions in the form are posed to solicit “yes” or “no” answers. Applicants should explain completely and accurately any “yes” answers. The questions in the application are not intended to limit the applicant's presentation nor are they designed to duplicate information supplied on another form or in an exhibit. For such information, a cross reference to the information is acceptable. Any such cross reference must be made to a specific cite or location in the documents, so that the information can be located easily. Supporting information for all relevant factors, setting forth the basis for applicant's conclusions, should accompany the application. The OCC may request additional information.

For additional information on the processing procedures and guidelines and any supplemental information that may be required, refer to the [“Business Combinations”](#) booklet of the *Comptroller's Licensing Manual (Manual)* or contact the appropriate [OCC District Licensing Office](#) directly for specific instruction or visit the OCC's [web site](#).

### Interim Charters and Federal Deposit Insurance

An interim national bank may be used to facilitate a merger or consolidation when the resultant institution will be a national bank. An interim national bank is one that does not operate independently, but exists, usually for a short period of time, solely as a vehicle to accomplish a combination (for example, to facilitate the acquisition of 100 percent of the voting shares of an existing depository institution). The processing procedures and guidelines for chartering an interim institution may be found in the “Business Combinations” booklet of the *Manual*.

Interim national banks that will combine with existing FDIC-insured depository institutions are deemed to be insured depository institutions under 12 USC 1815(a)(2) upon being granted a charter by the OCC. Therefore, applicants need not apply to the FDIC for insurance for an

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<sup>1</sup> An eligible bank is a national bank that: (1) is well capitalized as defined in 12 CFR 6.4(b); (2) has a composite CAMELS rating of “1” or “2;” (3) has a CRA rating of “Outstanding” or “Satisfactory,” and, (4) is not subject to a cease and desist order, consent order, formal written agreement, or prompt corrective action directive (12 CFR 5.3(g)).

interim national bank that will be used in a combination transaction with another insured depository institution, including when the resultant institution will operate under the charter of the interim national bank.

### **Question 11)**

In response to question 11(d), provide the following financial information for the applicant, target, and resultant bank as of the most quarter:

Balance sheet including: (1) each principal group of assets, liabilities, and capital accounts and (2) debit and credit adjustments (explained by footnotes) reflecting the proposed acquisition. Also indicate amortization period and method used for any intangible asset and the accretion period for any purchase discount on the balance sheet.

Regulatory capital schedule should including: (1) each component item for Tier 1 and Tier 2 capital, subtotal for Tier 1 and Tier 2 capital (less any investment in unconsolidated or non-includable subsidiaries), total capital (include Tier 3, if applicable); (2) total risk weighted assets; and (3) the following capital ratios: (i) Tier 1 capital to total risk-weighted assets; (ii) Total capital to total risk-weighted assets; and (iii) Tier 1 capital to average total consolidated assets (leverage ratio).

### **Establishment of Branches and Branch Closings**

This application will be deemed to constitute an application pursuant to 12 CFR 5.30 and 12 USC 36 to establish and maintain the branches listed in the application. If a branch is closed as a result of a merger, consolidation, or other combination, refer to the Joint Policy Statement on Branch Closing Notices and Policies, that can be found in the Appendix of the "Branch Closings" booklet of the *Manual*, and applicable law for branch closure notice requirements (12 USC 1831r-1).

### **Notice of Publication**

An applicant must publish notice of the proposed acquisition in a newspaper of general circulation in the community or communities in which the main office of each of the parties to the transaction is located (refer to 12 USC 1828(c)(3), 12 USC 215 or 215a).

### **Confidentiality**

Any applicant desiring confidential treatment of specific portions of the application must submit a request in writing with the application. The request must discuss the justification for the requested treatment. The applicant'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 USC 552). Information for which confidential treatment is requested should be: (1) specifically identified in the public portion of the application (by reference to the confidential section); (2) separately bound; and (3) labeled "Confidential." The applicant should follow the same procedure when requesting confidential treatment for the subsequent filing of supplemental information to the application.

The applicant should contact the appropriate OCC District Licensing office for specific

instructions regarding requests for confidential treatment. The OCC will determine whether the information will be treated as confidential and will advise the applicant of any decision to make available to the public information labeled as "Confidential."

## STREAMLINED BUSINESS COMBINATION APPLICATION

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### Checklist

#### Authority To File a Streamlined Submission

Check the following to certify the appropriateness of a streamlined submission. [NOTE: One or more must be checked to qualify for a streamlined submission. Otherwise, a complete "Interagency Bank Merger Act Application" is required.]

- 1. The transaction is a business combination between eligible banks, or between an eligible bank and an eligible depository institution, that are controlled by the same holding company, or that will be controlled by the same holding company prior to the combination.
- 2. The transaction is a business combination between an eligible bank and an interim bank chartered in a transaction in which a person or group of persons exchanges its shares of the eligible bank for shares of a newly formed holding company and receives after the transaction substantially the same proportional share interest in the holding company as it held in the eligible bank (except for changes in interests resulting from the exercise of dissenters' rights), and the reorganization involves no other transactions involving the bank.
- 3. At least one party to the transaction is an eligible bank, and all other parties to the transaction are eligible banks or eligible depository institutions, the resultant national bank will be well capitalized immediately following consummation of the transaction, and the total assets of the target institutions combined are no more than 50 percent of the total assets of the acquiring bank, as reported in each institution's Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application.
- 4. The acquiring bank is an eligible bank, the target is not an eligible bank or an eligible depository institution, the resultant national bank will be well capitalized immediately following consummation of the transaction, and the applicants in a prefiling communication request and obtain approval from the appropriate district office to use the streamlined application.<sup>2</sup>
- 5. The acquiring bank is an eligible bank, the target bank is not an eligible bank or an eligible depository institution, the resultant bank will be well capitalized immediately following consummation of the transaction, and the total assets acquired do not

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<sup>2</sup> Approval of the use of the streamlined process by the district office under standard 4 may not be used for a transaction that exceeds the size test in standard 3.

exceed 10 percent of the total assets of the acquiring national bank, as reported in each institution's Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application.

## Checklist of Attached Information

- Format of Submission
  - Complete paper submission or
  - Combination paper and compact disk (CD) submission along with (1) a cover letter identifying the filer, the filing, the filename on the CD, and the word processing program used; and (2) any original page(s) of the application or attachments requiring signatures.
- Request for confidentiality, if applicable
- Other corporate requests
- Filing fee

## Specific Information for Streamlined Application (as appropriate)

- Copy of the following documents:
  - Draft or, if available, executed merger or transaction agreement, including any amendments
  - Any board of directors' resolutions related to the transaction
  - Interim charter's Articles of Association, names of organizers, and related documents, if applicable
- Financial Information as of the end of the most recent quarter for the applicant, target, and resultant institution:
  - Balance sheet
  - Regulatory capital schedule
- Confirmation of the public notice publication, including a statement containing the name and address of the newspaper in which the notice was published and dates of publication.
- Merger Screen for combinations where the acquiring national bank and target depository institution compete in any relevant geographic banking market.

**Desired Action Date:** 1/17/2019

## **STREAMLINED BUSINESS COMBINATION APPLICATION**

Check all that apply:

<b>Type of Filing</b>	<b>Form of Transaction</b>	<b>Filed Pursuant To</b>
<input type="checkbox"/> Affiliate/Business Reorganization	<input type="checkbox"/> Merger	<input checked="" type="checkbox"/> 12 USC 1828(c)
<input type="checkbox"/> Combination with Interim Depository Institution	<input type="checkbox"/> Consolidation	<input type="checkbox"/> 12 USC 1815(a)
<input checked="" type="checkbox"/> Nonaffiliate Combination	<input checked="" type="checkbox"/> Purchase and Assumption	<input type="checkbox"/> 12 USC 215, 215a
<input type="checkbox"/> Other _____	<input type="checkbox"/> Purchase of Assets Only	<input type="checkbox"/> 12 USC 215a-1
	<input type="checkbox"/> Other _____	<input type="checkbox"/> 12 USC 215a-3
		<input type="checkbox"/> 12 USC 215c
		<input type="checkbox"/> Other _____

### **Applicant Depository Institution**

Axos Bank 716456  
Name Charter/Docket Number

4350 LA Jolla Village Drive, Ste 140  
Street

San Diego CA 92122  
City State ZIP Code

### **Target Institution**

Charter/Docket No.	Name	City	State
<u>717935</u>	<u>Mwabank</u>	<u>Rock Island</u>	<u>IL</u>

### **Resultant Institution (if different than applicant)**

Axos Bank 716456  
Name Charter/Docket Number

4350 LA Jolla Village Drive, Ste 140  
Street

San Diego CA 92122-0000  
City State ZIP Code

### **Contact Person**

John Tolla  
Name Title/Employer

4350 La jolla village drive, suite 100  
Street

san diego CA 92122  
City State ZIP Code

858-649-2176 x1244

Telephone Number

858-649-2880

Fax Number

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**STREAMLINED BUSINESS COMBINATION APPLICATION**

1. Are there any material aspects of the transaction (for example, financing arrangements) that are not reflected in the agreement, or any features (for example, structure and significant terms and conditions) that are not customary or usual in the agreement? Yes  No

If the answer is yes, explain.

2. Are there any issues regarding the permissibility under applicable state or federal laws or regulations of the proposed transaction (for example, nonbank activities, branching, qualified thrift lender's test, investment in bank premises)? Yes  No

If the answer is yes, describe the issues.

3. Will the applicant or resultant bank retain any nonconforming or impermissible assets or activities?

Yes  No

If the answer is yes, describe them, including the method of and anticipated time period for divestiture or disposal.

4. Does the applicant anticipate any significant changes in products or services, including fee increases or branch closings, that would result from the consummation of the proposed transaction?

Yes  No

If the answer is yes, list those changes, including the anticipated effect on the community to be served. If any products or services will be discontinued, branches will be closed, or fees increased, describe and explain reasons.

5a. Will the proposed transaction affect the applicant's ability to meet the existing or anticipated needs of its community(ies) under the applicable criteria of the Community Reinvestment Act (CRA), including the needs of low- and moderate-income geographies and individuals?

Yes  No

If the answer is yes, discuss the effect.

5b. Will the applicant's assessment area change?

Yes  No

If the answer is yes, describe the change.

5c. At its most recent federal regulatory examination, did any of the combining institutions receive a CRA rating of "needs to improve" or "substantial noncompliance" institution-wide, or where applicable in a state or a multi-state MSA, or receive an evaluation of less than satisfactory performance in an MSA or in the non-MSA portion of a state in which the acquiring bank is expanding as a result of the consolidation?

Yes  No

If the answer is yes, describe what actions, if any, have been taken to redress deficiencies in the institution's CRA record of performance since the examination.

6. Is the transaction subject to the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994?

Yes  No

If the answer is yes, discuss authority; compliance with state age limits and host state(s) filing requirements; and applicability of nationwide and statewide concentration limits. In addition, discuss any other restrictions that the states seek to apply (including state antitrust restrictions).

7. This application will be deemed to constitute an application pursuant to 12 USC 36, 12 CFR 5.30 and 5.31 to establish and maintain the branches listed in the application. Will any banking offices that have not been certified as banking offices by the OCC be:

a. Established or retained as branches, including the main or home office, and branches of the target institution;

Yes  No

*If "Yes," provide the following information in the Manage Branch section of this application: the popular name, street address, city, county, state, and ZIP code for each location being established or retained (branches acquired in a Purchase and Assumption transaction).*

b. Approved, but unopened branch(es) of the target institution

Yes  No

*If "Yes," please list each approved, but unopened branch in the space below. Provide the popular name, street address, city, county, state, and ZIP code. Include the date the current federal and state agencies granted approval(s).*

- c. (National Banks) Be retained as branches in the applicant's original home state in the event the applicant is relocating its main office to another state

Yes  No

- d. Will any banking office, including branches and/or the main or home office, be closed or consolidated:

Yes  No

*If a branch is closed as a result of a merger, consolidation, or other combination, refer to the Joint Policy Statement on Branch Closing Notices and Policies, which can be found in the Appendix of the "Branch Closings" booklet of the Manual, and applicable law for branch closure notice requirements (12 USC 1831r-1).*

If "Yes," please list the banking office(s) to be closed or consolidated in the space below. Provide the branch certificate number, popular name, street address, city, county, state, and ZIP code. In addition, indicate the date you sent to anticipate sending the Advance Branch Closing and Customer Notices to the OCC and the customer.

8. Will the resultant national bank acquire any subsidiaries with activities or investments not previously approved by the OCC for either the acquiring or target banks? Yes  No

If "Yes," provide the information and analysis for the activities of each subsidiary or investment that would be required if it were established pursuant to 12 CFR 5.34, 5.35, 5.36, 5.38, 5.39, 5.58, or 5.59.

9. Will the resultant bank avoid any commitments entered into by any of the combining institutions with community organizations, civic associations, or similar entities to provide banking services to the community?

Yes  No

If the answer is yes, describe the commitment, explain the reasons for not assuming the commitment, and the effect on the relevant community.

10. Will the applicant be or become affiliated with a company engaged in insurance activities that is subject to supervision by a state insurance regulator as a result of the transaction?

Yes  No

If the answer is yes, provide:

- a. The name of company.
  
- b. A description of the insurance activity in which the company is engaged and plans to conduct.

- c. A list of each state and the lines of business in that state in which the company holds, or will hold, an insurance license. Indicate the state where the company holds a resident license or charter, as applicable.

- 11. Provide a copy of (a) the draft or, if available, executed merger or transaction agreement, including any amendments; (b) any board of directors' resolutions related to the transaction; and (c) interim charter, names of organizers, and related documents, if applicable; and (d) a copy of the pro forma balance sheet and regulatory capital schedule. (See instructions for explanation of the information to include.)

**Applicants for a nonaffiliate transaction also must complete items 12 through 14.**

12. Do the acquiring bank and target compete in any relevant geographic market (see [Bank Merger Screen](#))? Yes  No

If the answer is yes,

- a. Does the HHI for any relevant banking market increase by more than 200 points with a post-acquisition HHI of at least 1800? Yes  No
- b. Excluding markets in which the acquiring bank has 35 percent or more of the deposits, will the resultant bank have greater than 35 percent of the deposits in a relevant market? Yes  No

A "yes" answer for either question will result in the application being removed from expedited processing for additional competitive review. In such circumstances, the applicant may consult the Competitive Review Appendix in the "Business Combinations" booklet of the *Comptroller's Licensing Manual* for guidance on addressing competitive issues or contact the appropriate OCC District Licensing office directly for specific instructions.

13. Does the proposed transaction involve a branch sale or any other divestiture of all or any portion of the bank, savings association, or nonbank company, or any other action to mitigate competitive effects?

Yes  No

If the answer is yes, discuss the timing of the branch sale or divestiture, purchaser, and other specific information.

14. Will any management interlocking relationships (12 USC 3201-3208) exist following consummation?

Yes  No

If the answer is yes, describe the management interlocking relationship, including a discussion of the permissibility of the interlock for relevant laws and regulations.

## CERTIFICATION

We hereby certify that our board of directors, by resolution, has authorized the filing of this application, and that to the best of our knowledge, it contains no misrepresentations or omissions of material facts. In addition, we agree to notify the agency if the facts described in the filing materially change prior to receiving a decision or prior to consummation. Any misrepresentation or omission of a material fact constitutes fraud in the inducement and may subject us to legal sanctions provided by 18 USC 1001 and 1007.

We acknowledge that approval of this application is in the discretion of the appropriate federal banking agency. Actions or communications, whether oral, written, or electronic, by an agency or its employees in connection with this filing, including approval of the application if granted, do not constitute a contract, either express or implied, or any other obligation binding upon the agency, other federal banking agencies, the United States, any other agency or entity of the United States, or any officer or employee of the United States. Such actions or communications will not affect the ability of any federal banking agency to exercise its supervisory, regulatory, or examination powers under applicable law and regulations. We further acknowledge that the foregoing may not be waived or modified by any employee or agent of a federal banking agency or of the United States.

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

Axos Bank by  
(Applicant)

\_\_\_\_\_  
(Signature of Authorized Officer)<sup>1</sup>

Andy Michletti  
(Typed Name)

EVP and CFO  
(Title)

Mwabank by  
(Target)

\_\_\_\_\_  
(Signature of Authorized Officer)<sup>1</sup>

Steven Ollenburg  
(Typed Name)

President & CEO  
(Title)

<sup>1</sup> In multiple-step combinations, applicants should ensure that authorized officers of the combining institutions sign.

\_\_\_\_\_ by  
(Target)

\_\_\_\_\_  
(Signature of Authorized Officer)<sup>2</sup>

\_\_\_\_\_  
(Typed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_ by  
(Target)

\_\_\_\_\_  
(Signature of Authorized Officer)

\_\_\_\_\_  
(Typed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_ by  
(Target)

\_\_\_\_\_  
(Signature of Authorized Officer)

\_\_\_\_\_  
(Typed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_ by  
(Target)

\_\_\_\_\_  
(Signature of Authorized Officer)

\_\_\_\_\_  
(Typed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_

<sup>2</sup> In multiple-step combinations, applicants should ensure that authorized officers of the combining institutions sign.

OCC Certification

We hereby certify that our board of directors, by resolution, has authorized the filing of this application, and that to the best of our knowledge, it contains no misrepresentations or omissions of material facts. In addition, we agree to notify the agency if the facts described in the filing materially change prior to receiving a decision or prior to consummation. Any misrepresentation or omission of a material fact constitutes fraud in the inducement and may subject us to legal sanctions provided by 18 USC 1001 and 1007.

We acknowledge that approval of this application is in the discretion of the appropriate federal banking agency. Actions or communications, whether oral, written, or electronic, by an agency or its employees in connection with this filing, including approval of the application if granted, do not constitute a contract, either express or implied, or any other obligation binding upon the agency, other federal banking agencies, the United States, any other agency or entity of the United States, or any officer or employee of the United States. Such actions or communications will not affect the ability of any federal banking agency to exercise its supervisory, regulatory, or examination powers under applicable law and regulations. We further acknowledge that the foregoing may not be waived or modified by any employee or agent of a federal banking agency or of the United States.

**[Electronically Signed]**

Elizabeth Mikhalsky

\_\_\_\_\_  
Electronically Signed By

Vice President

\_\_\_\_\_  
Title

12/17/2018 6:34 PM GMT+00:00

\_\_\_\_\_  
Date and Time

Axos Bank

\_\_\_\_\_  
Institution

Business Combination -  
Non-Affiliate Purchase and  
\_\_\_\_\_  
Filing Type

716456

\_\_\_\_\_  
Institution Charter Number

2018-WE-Combination-306606

\_\_\_\_\_  
Filing Control Number

# **Documents Provided by Bank at Time of Submission**

If no documents follow this page, the submitted application did not include any public attachments.