

§355. Acquisition of assets; assumption of liabilities

A financial institution organized under the laws of this State may acquire the assets of, or assume the liabilities of, any other financial institution authorized to do business in this State, in accordance with the procedures and subject to the conditions and limitations set forth in this section. [PL 1997, c. 398, Pt. G, §6 (AMD).]

1. Adoption of plan. The governing body of the acquiring or assuming institution and the governing body of the transferring institution shall adopt by majority vote a plan for acquisition, assumption or sale on terms that are mutually agreed upon. The plan must include:

- A. The names and types of the institutions involved; [PL 1975, c. 500, §1 (NEW).]
- B. A statement setting forth the material terms of the proposed acquisition, assumption or sale, including, if applicable, the plan for disposition of all assets and liabilities not subject to the plan; [PL 1991, c. 386, §8 (AMD).]
- C. A statement, if applicable, of the plan governing liquidation of the transferring institution pursuant to section 364 upon execution of the plan, with that liquidation being a required provision of the plan; [PL 1991, c. 386, §8 (AMD).]
- D. A statement that the entire transaction is subject to written approval of the superintendent and, if the transaction involves all or substantially all of the assets or liabilities of the transferring institution, the approval of the transferring institution's investors or mutual voters; [PL 1997, c. 398, Pt. G, §6 (AMD).]
- E. If an investor-owned institution is the transferring institution and the proposed sale is not for cash, a clear and concise statement that investors of the institution voting against the proposed sale are entitled to rights set forth in section 352, subsection 5; and [PL 1997, c. 398, Pt. G, §6 (AMD).]
- F. The proposed effective date of the acquisition, assumption or sale and all other information and provisions that are necessary to execute the transaction or that are required by the superintendent. [PL 1991, c. 386, §8 (AMD).]

[PL 1997, c. 398, Pt. G, §6 (AMD).]

2. Superintendent's approval.

[PL 1997, c. 398, Pt. G, §6 (RP).]

2-A. Superintendent's approval. The superintendent shall approve the plan of merger or consolidation in accordance with section 351, subsection 3.

[PL 1997, c. 398, Pt. G, §6 (NEW).]

3. Vote of investors or mutual voters. If the transaction involves all or substantially all of the assets or liabilities of the transferring institution or if the transferring institution's organizational documents require, the plan of acquisition, assumption or sale must be presented to the investors or mutual voters of the transferring institution for their approval, and their approval must be obtained in accordance with section 351, subsection 4. If the approval of investors is required, then investors dissenting to the transaction have the rights set forth in section 352, subsection 5.

[PL 1997, c. 398, Pt. G, §6 (AMD).]

4. Executed plan; certificate; effective date.

A. If the plan is approved by the investors or mutual voters of the transferring institution, the chief executive officer, president or vice-president and the clerk or secretary of such institution shall submit the executed plan to the superintendent, together with a copy of the resolution of the investors or mutual voters approving it, each certified by these officers. [PL 1997, c. 398, Pt. G, §6 (AMD).]

B. Upon receipt of the items set forth in paragraph A and evidence that the participating institutions have complied with all applicable federal law and regulations, the superintendent shall certify, in writing, to the participants that the plan has been approved and is in compliance with the provisions of this Title. [PL 1975, c. 500, §1 (NEW).]

C. Notwithstanding approval of the investors or mutual voters or certification by the superintendent, the transferring institution's governing body may, in its discretion, abandon such a transaction without further action or approval by the investors or mutual voters, subject to the rights of 3rd parties under any contracts relating to the transaction. [PL 1997, c. 398, Pt. G, §6 (AMD).]
[PL 1997, c. 398, Pt. G, §6 (AMD).]

5. Federally chartered institution as participant. If one of the participants in a transaction under this section is a federally chartered institution, all participants shall comply with such requirements as may be imposed by federal law for such an acquisition, assumption or sale and provide evidence of such compliance to the superintendent as a condition precedent to the issuance of a certificate in subsection 4, paragraph B relating to such acquisition, assumption or sale; provided that if the purchasing or assuming institution is a federally chartered institution, approval by the superintendent is not required.
[PL 1997, c. 398, Pt. G, §6 (AMD).]

6. Investor-owned institution acquiring mutual financial institution. A mutual financial institution may not sell all or substantially all of its assets to an investor-owned institution without prior compliance with section 344 and all rules adopted under section 344.
[PL 1997, c. 398, Pt. G, §6 (AMD).]

7. Other sections. Sections 357 and 358 apply to acquisitions, assumptions and sales made pursuant to this section.
[PL 1997, c. 398, Pt. G, §6 (AMD).]

8. Applicability. This section does not apply to a transfer of assets of a financial institution in the ordinary course of business that does not include any assumption of deposit liabilities.
[PL 1991, c. 386, §10 (NEW).]

SECTION HISTORY

PL 1975, c. 500, §1 (NEW). PL 1979, c. 663, §40 (AMD). PL 1991, c. 386, §§7-10 (AMD). PL 1997, c. 398, §G6 (AMD).

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