

## Sample Agreements — Merger

(This sample agreement may not be applicable entirely to transactions involving interim national banks.)

### Agreement To Merge

between

\_\_\_\_\_

and

\_\_\_\_\_

under the charter of

\_\_\_\_\_

under the title of

\_\_\_\_\_

This agreement made between \_\_\_\_\_ (hereinafter referred to as "\_\_\_\_\_"), a banking association organized under the laws of the United States, being located at \_\_\_\_\_, county of \_\_\_\_\_, in the state of \_\_\_\_\_, with a capital of \$\_\_\_\_\_, divided into \_\_\_\_\_ shares of common stock, each of \$\_\_\_\_\_, surplus of \$\_\_\_\_\_, and undivided profits, including capital reserves, of \$\_\_\_\_\_, as of \_\_\_\_\_, 19\_\_\_\_, and \_\_\_\_\_ (hereinafter referred to as "\_\_\_\_\_"), a banking association organized under the laws of the \_\_\_\_\_, being located at \_\_\_\_\_, county of \_\_\_\_\_, in the state of \_\_\_\_\_, with a capital of \$\_\_\_\_\_, divided into \_\_\_\_\_ shares of common stock, each of \$\_\_\_\_\_, surplus of \$\_\_\_\_\_, and undivided profits, including capital reserves, of \$\_\_\_\_\_, as of \_\_\_\_\_, 19\_\_\_\_, each acting pursuant to a resolution of its board of directors, adopted by the vote of a majority of its directors, pursuant to the authority given by and in accordance with the provisions of the Act of November 7, 1918, as amended (12 USC 215a), witnessed as follows:

#### Section 1.

\_\_\_\_\_ shall be merged into \_\_\_\_\_ under the charter of the latter.

#### Section 2.

The name of the receiving association (hereinafter referred to as the "association") shall be \_\_\_\_\_.

### Section 3.

The business of the association shall be that of a national banking association. This business shall be conducted by the association at its main office to be located at \_\_\_\_\_, and at its legally established branches.

### Section 4.

The amount of capital stock of the association shall be \$ \_\_\_\_\_, divided into \_\_\_\_\_ shares of common stock, each of \$ \_\_\_\_\_ par value, and at the time the merger shall become effective, the association shall have a surplus of \$ \_\_\_\_\_, and undivided profits, including capital reserves, which when combined with the capital and surplus will be equal to the combined capital structures of the merging banks as stated in the preamble of this agreement, adjusted however, for normal earnings and expenses (and if applicable, purchase accounting adjustments) between \_\_\_\_\_, 19\_\_\_\_, and the effective time of the merger.

(If be a partial or full cash payout or cash dividend payment will be made to shareholders as a consideration to the proposed merger, add at the close of the foregoing provision—"and, for cash payment of \$\_\_\_\_\_ as set forth under Section 7 and/or Section 8 of this agreement.")

### Section 5.

All assets as they exist at the effective time of the merger shall pass to and vest in the association without any conveyance or other transfer. The association shall be responsible for all of the liabilities of every kind and description, including liabilities arising from the operation of a trust department, of each of the merging banks existing as of the effective time of the merger. A committee of \_\_\_\_\_, three to be appointed by the board of directors of each bank at the time of the merger shall have satisfied themselves, that the statement of condition of each bank as of \_\_\_\_\_, fairly presents its financial condition and since such date there has been no material adverse change in the financial condition or business of either bank.

### Section 6.

\_\_\_\_\_ shall contribute to the association acceptable assets having a book value, over and above its liability to its creditors, of at least \$ \_\_\_\_\_, and having an estimated fair value over and above its liability to its creditors, of at least \$ \_\_\_\_\_, or \_\_\_\_ % of the estimated fair value of excess acceptable assets over and above liabilities to creditors, to the association, adjusted, however, for normal earnings and expenses between \_\_\_\_\_, 19\_\_\_\_, and the effective time of the merger, for allowances of cash payments, if any, permitted under this agreement.

The difference between the book value and the estimated fair value of the assets to be contributed is made up as follows:

(List the main items and dollar amounts that make up the difference.)

At the effective time of the merger, \_\_\_\_\_ shall have on hand acceptable assets having book value of at least \$ \_\_\_\_\_ over and above its liabilities to its creditors, and having a fair value, over and above its liability to its creditors, of at least \$ \_\_\_\_\_, or \_\_\_\_\_% of the estimated fair value of excess acceptable assets, over and above its liabilities to its creditors, of the association, adjusted, however, for normal earnings and expenses between \_\_\_\_\_, 19 \_\_\_\_, and the effective time of the merger, and for allowances of cash payments, if any, permitted under this agreement.

The difference between the book and fair value of excess acceptable assets, as set forth above, is made up as follows:

(List the main items and dollar amounts that make up the difference.)

Section 7.

Of the capital stock of the association, the presently outstanding \_\_\_\_\_ shares of common stock \_\_\_\_\_ each of \$ \_\_\_\_\_ par value, and the holders of it shall retain their present rights, and the shareholders of \_\_\_\_\_ in exchange for the excess acceptable assets contributed by their bank to the association shall be entitled to receive \_\_\_\_\_ shares of common stock of the association, each of \$ \_\_\_\_\_ par value, being \_\_\_\_\_% of the total outstanding common stock of the association, to be distributed on the basis of \_\_\_\_\_ shares, each of \$ \_\_\_\_\_ par value, for each share of common stock of \_\_\_\_\_, each of \$ \_\_\_\_\_ par value, now held by them.

(If a partial cash payout will be made to shareholders as a consideration to the proposed merger, the foregoing provision should be revised accordingly.)

(If fractional shares will result from the allocation of stock of the association, and the association desires to avoid the issuance of fractional shares, the following provision may be made a part of the agreement.)

No fractional shares shall be issued, but each shareholder entitled to a fractional share shall receive a scrip certificate, expiring as of a fixed date, in such form as the directors may determine, evidencing the right to such fractional share, or the right to receive cash in lieu of such fractional share, and full shares shall be issued as provided in this agreement in exchange for the surrender of such scrip certificates aggregating a full share or shares.

The association shall enter into an agreement with a named trustee and will issue to such trustee a stock certificate covering the aggregate of the fractional shares represented by

the transferable scrip certificates issued and outstanding. Such agreement shall provide that during the life of the scrip certificates any individual acquiring a sufficient amount of fractions to equal one or more whole shares may exchange same through the trustee, for stock certificates representing whole shares; that after     (insert date)     the expiration date of such scrip certificates, that portion of stock remaining in the hands of the trustee will be disposed of by him/her under sealed bid, following appropriate public notice, or at public auction, to the highest bidder, or in such manner as may be determined by the board of directors of the association, but as not less than the market value on the date of sale; that the proceeds of such sale shall then be distributed pro rata to the holders of scrip certificates outstanding and not presented for exchange, upon its surrender.

Section 8.

Neither of the banks shall declare nor pay any dividend to its shareholders between the date of the agreement and the time at which the merger shall become effective, nor dispose of any of its assets in any other manner, except in the normal course of business and for adequate value.

(Note any exception in detail.)

Section 9.

The present board of directors of \_\_\_\_\_ shall continue to serve as the board of directors of the association until the next annual meeting or until such time as their successors have been elected and have qualified.

(If any such additions or changes will be made in the present directorate, the provisions should be revised to read:)

The following named persons shall serve as the board of directors of the association to serve until the next annual meeting of its shareholders or until such time as their successors have been elected and qualified:

(Insert the names of directors.)

Section 10.

Effective as of the time this merger shall become effective as specified in the merger approval to be issued by the Comptroller of the Currency, the Articles of Association of the resulting bank shall read in their entirety as follows:

(Attach Articles of Association of resulting bank.)

Section 11.

This agreement may be terminated by the unilateral action of the board of directors of any participant prior to the approval of the stockholders of the participant or by the mutual consent of the board of all participants after any shareholder group has taken affirmative action. Since time is of the essence to this agreement, if for any reason the transaction shall not have been consummated by \_\_\_\_\_, this agreement shall terminate automatically as of that date unless extended, in writing, prior to this date by mutual action of the boards of directors of the participants.

Section 12.

This agreement shall be ratified and confirmed by the affirmative vote of shareholders of each of the merging banks owning at least two-thirds of its capital stock outstanding, at a meeting to be held on the call of the directors; and the merger shall become effective at the time specified in a merger approval to be issued by the Comptroller of the Currency of the United States. (If one of the merging banks is a state bank and the laws of the state require a larger affirmative vote for ratification, such larger vote shall be obtained.)

WITNESS, the signatures and seals of the merging banks this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_, each set by its president or a vice president and attested to by its cashier or \_\_\_\_\_, pursuant to a resolution of its board of directors, acting by a majority.

Attest: \_\_\_\_\_  
(name of national bank)

By \_\_\_\_\_  
President

\_\_\_\_\_  
Cashier

Attest: \_\_\_\_\_



