

## CERTIFICATE OF MERGER INSTRUCTIONS FOR FILING

### Plan of Merger

The requirements of a plan of merger are set forth in section 10.151 of the Texas Business Organizations Code and are incorporated into the Texas Finance Code (TFC), pursuant to the provisions of Section 182.301 of the TFC. The provisions of section 10.151 apply to Texas state trust companies as if they are domestic corporations. Texas state trust companies are hereinafter referred to as “state trust companies,” “trust institutions,” or “corporations.” All other entities, including domestic corporations, are hereinafter referred to as “other entities,” unless specifically identified as a Texas business corporation or domestic corporation.

The plan **must** include:

1. The names of the corporations or other entities proposing to merge;
2. The names of any surviving corporations or other entities, and the names of any new corporations or other entities to be created by the terms of the plan;
3. The terms and conditions of the merger (specific items concerning allocation of property, payment to shareholders, and allocation of liabilities must be included if more than one corporation or entity is to survive or be created by the merger.);
4. The manner and basis of converting the shares or other evidences of ownership of each corporation or other entity; and if any shares or other evidences of ownership of any holder of a class or series of shares or other evidence of ownership is to be converted in a manner or basis different than any other holder of such class or series or evidence of ownership, the manner and basis of conversion applicable to such holder;
5. As an exhibit or attachment, the certificate of formation of any new Texas trust company to be created by the merger; and
6. The certification of formation or other organizational documents of each other entity that is to survive the merger or is to be created by the merger.

The plan of merger **may** include:

1. Any amendments to the certificate of formation of any surviving state trust company or other entity;
2. Provisions relating to a share exchange; and
3. Any other provisions relating to the merger.

The plan of merger **may** be set forth as an attachment to the certificate of merger.

## **Alternative Certified Statement**

In lieu of a plan of merger, the certificate of merger may include a statement certifying to the following information:

1. The name and state of incorporation or organization of each domestic or foreign trust institution, corporation or other entity that is a party to the plan of merger or that is to be created by the plan;
2. That a plan of merger has been approved;
3. Any amendments or changes to the certificate of formation of each state trust company or certificate of formation of each domestic surviving corporation, *or if no such amendments are desired to be effected by the merger, a statement to that effect*;
4. That the certificate of formation of each new state trust company or other organizational documents of each other entity (including certificates of formation of each new domestic corporation) to be created pursuant to the terms of the plan of merger are being filed with the Banking Commissioner, Secretary of State or other applicable authority as exhibits to the certificate of merger;
5. That an executed plan of merger is on file at the principal place of business of each surviving or new state trust company or other entity and the address of each; and
6. That a copy of the plan of merger will be furnished by each surviving, or new state trust company or other entity, on written request and without cost, to any shareholder of each state trust company or other entity that is a party to or created by the plan of merger, and if there are multiple surviving entities to the merger, to any creditor or obligee of the parties to the merger at the time of the merger if such obligation is then outstanding.

## **Changes to Certificate of Formation of Surviving Corporation**

If the certificate of merger provides an alternative certified statement in lieu of a plan of merger, any amendments or changes to the certificate of formation of a surviving Texas state trust company or changes to the certificate of formation or any resulting other entity must be set forth in the alternative statement. In addition, it is helpful to the Banking Commissioner and the Secretary of State if any changes to the certificate of formation of a surviving state trust company or certificate of formation of a surviving Texas business corporation are referenced in a transmittal letter, respectively. This will ensure that changes to corporate name, registered agent/office, and capital stock are properly recorded in the computer data base of the respective authority.

If no amendments to the certificate of formation or other organizational documents are to be effected by the merger, the alternative statement must include a statement that the merger does not effect any amendments or changes to the certificate of formation or other organizational documents of any surviving Texas state trust company or other entity, respectively.

The Certificate of Merger must include, as an Exhibit, the restated or amended and restated Certificate of Formation of any resulting Texas Trust Company.

**CERTIFICATE OF MERGER - COMBINATION OF MULTIPLE ENTITIES**

**CERTIFICATE OF MERGER**

OF

\_\_\_\_\_  
[INSERT: *Name of Target Entity*]

with and into

\_\_\_\_\_  
[INSERT: *Name of Surviving State Trust Company*]

\_\_\_\_\_  
[INSERT: *City and State of Surviving State Trust Company's Home Office*]  
a Texas State Trust Company

Pursuant to the provisions of Section 182.301 of the Texas Finance Code and section 10.151 of the Texas Business Organizations Code, the undersigned [INSERT EITHER: trust institutions, **OR** trust institution(s), corporation(s) or other entities] (the "Merging Parties") certify the following certificate of merger adopted for the purpose of effecting a merger in accordance with the provisions of Section 182.301 of the Texas Finance Code and Chapter 10 of the Texas Business Organizations Code.

1. The **name** of each of the trust company(s), trust institution(s), corporation(s) and other entity or entities stated below that are a party to the plan of merger or that are to be created by the plan of merger, the **type** of such trust company, trust institution, corporation or other entity and the **laws** (state) under which such trust institution, corporation or other entity are organized are:

<u>Name of Trust institution, Corporation or Other Entity</u>	<u>Type of Entity</u>	<u>State</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

2. A **plan of merger** (the "Plan of Merger") was approved and adopted in accordance with the provisions of section 10.001 of the Texas Business Organizations Code providing for:

[INSERT: the *names* of merging parties]

the **combination** of \_\_\_\_\_, and \_\_\_\_\_

[INSERT: the *name(s)* of surviving state trust company, corporation or other entity]

and **resulting** in \_\_\_\_\_,

[OPTIONAL - INSERT: the *name(s)* of any new trust company, trust institution, corporation or other entity created in the merger, if any]

and **creating** \_\_\_\_\_

being the surviving and/or new corporations and other entities in the merger.

3. An executed copy of the **Plan of Merger** is attached hereto as Exhibit A.

**[OR]**

3. An executed copy of the **Plan of Merger** is on file at the principal place of business of

[INSERT: the *name* and *address* of each surviving, acquiring, or new domestic or foreign corporation or other entity]

\_\_\_\_\_ and a copy of the Plan of Merger will be furnished by such entity[ies], on written request and without cost, to any shareholder of each domestic trust company, trust institution, corporation or other entity that is a party to or created by the plan of merger and to any creditor or obligee of the parties to the merger at the time of the merger if such obligation is then outstanding.

4. The **restated certificate of formation** of

[INSERT: the *name* of the surviving state trust company]

\_\_\_\_\_ are attached hereto as Exhibit \_\_\_\_\_. No amendments to the certificate of formation of any domestic surviving trust company are to be effected by the merger.

**[OR]**

4. The **amended and restated certificate of formation** of

[INSERT: the *name* of the surviving state trust company]

\_\_\_\_\_ are attached hereto as Exhibit \_\_\_\_\_. Amendments to the certificate of formation of the surviving domestic trust company are to be effected by the merger.

5. No new domestic trust company, trust institution, corporation or other entity will be created pursuant to the plan of merger.

**[OR]**

5. One or more new domestic trust company, trust institution, corporation or other entity will be created pursuant to the plan of merger. The **certificate of formation** of

[INSERT: the *name* of each **new** domestic trust company, trust institution, corporation or other entity]

\_\_\_\_\_ which is to be **created** pursuant to the plan of merger are being filed with the Banking Commissioner / Secretary of State with the certificate of merger.

6. As to each of the listed Merging Parties, the approval of whose shareholders is required, the number of outstanding shares of each class or series of stock of such merging party entitled to vote, with other shares or as a class, on the Plan of Merger, are as follows:

<u>Name of Merging Party</u>	<u>Number of Shares Outstanding</u>	<u>Class or Series</u>	<u>Number of Shares Entitled to Vote as a Class or Series</u>
_____	_____	_____	_____
_____	_____	_____	_____

7. As to each of the undersigned Merging Parties, the approval of whose shareholders is required, the number of shares, not entitled to vote only as a class, voted for and against the Plan of Merger, respectively, and, if the shares of any class or series are entitled to vote as a class, the number of shares of each such class or series voted for and against the plan of merger, are as follows:

<u>Name of Corporation</u>	<u>Total Voted For</u>	<u>Total Voted Against</u>	<u>Class or Series</u>	<u>Number of Shares Entitled to Vote as Class or Series Voted For</u>	<u>Number of Shares Entitled to Vote as Class or Series Voted Against</u>
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

8. The Plan of Merger and the performance of its terms were duly authorized by all action required by the laws under which each foreign corporation or other entity that is a party to the merger was incorporated or organized and by its constituent documents.

9. The surviving state trust company or trust institution will be responsible/obligated to pay all fees and franchise taxes of each Merging Party if the same are not timely paid.

**[OR]**

9. \_\_\_\_\_ [INSERT: the *name* of applicable surviving trust company, trust institution, corporation or other entity] will be responsible/obligated to pay all fees and franchise taxes of each Merging Party if the same are not timely paid.

**[OR]**

9. Evidence of the timely payment of all fees and franchise taxes of each Merging Party are attached hereto as Exhibit C.

**[EITHER]**

[NOTE: Trust Companies Merging – The merger of two or more state trust companies will become effective upon the issuance of the certificate of merger by the Banking Commissioner in accordance with Section 182.303 of the Texas Finance Code and section 10.007 of the Texas Business Organizations Code, unless the merger's effective date is delayed to a subsequent date and time or conditioned upon the occurrence of a future event pursuant to the provisions of section 4.052 of the Texas Business Organizations Code. The following wording may be used when the merger's effective date is delayed to a subsequent date and time:]

10. The merger will become effective on \_\_\_\_\_ at \_\_\_\_\_ a.m. in accordance with the provisions of section 4.052 of the Texas Business Organizations Code. [Time cannot be 12 A.M. or 12 P.M.]

**[OR]**

[NOTE: State Trust Company and Texas Business Corporation Merging – The certificate of merger regarding the merger of a Texas Business Corporation with and into a Texas State Trust Company must be filed with the Secretary of State of the State of Texas **prior to submission** to the Banking Commissioner for approval. The certificate of merger or the plan of merger must include a provision conditioning the effective date of the merger upon the approval of the Banking Commissioner. The provision must contain the wording substantially as follows:]

10. This merger shall become effective upon the final approval and filing of the certificate of merger by the Secretary of State of the State of Texas and the Banking Commissioner of Texas which shall be on or before [INSERT: *Date*]\_\_\_\_\_, which is the 90<sup>th</sup> day after the date of filing of such certificate of merger with the Secretary of State of the State of Texas.

Dated \_\_\_\_\_, \_\_\_\_\_.

_____ (Name of Merging Trust Company, Institution, Corporation or Other Entity)	Trust	_____ (Name of Merging Trust Company, Institution, Corporation or Other Entity)	Trust
By _____		By _____	
Its _____		Its _____	