**§ 519. Acquisition of control of investment companies.** 1. Subject to such regulations as the superintendent may prescribe, prior to the acquisition of control of an investment company by means of the acquisition of the capital stock or equity interests in such investment company or in any company which directly or indirectly controls such investment company, the acquiring company shall make written application to the superintendent for permission to acquire such control. Such application shall be in such form and shall contain such information as the superintendent may require and such applicant, at the time of making such application, shall pay to the superintendent an investigation fee as prescribed pursuant to section eighteen-a of this chapter.

The superintendent shall disapprove the proposed exercise of control of an investment company if, after notice to and an opportunity to be heard by the applicant and such investment company, he finds the acquisition of control therein contrary to law or determines that disapproval is reasonably necessary to protect the interests of the people of this state. In making such determination, the superintendent shall only consider (a) whether the character, responsibility and general fitness of the company which seeks to control such investment company are such as to command confidence and warrant belief that the business of such investment company will be honestly and efficiently conducted in a manner consistent with the public interest, the interests of depositors and creditors of such investment company, and (b) whether the exercise of control may impair the safe and sound conduct of the business of such investment company, the conservation of its assets or public confidence in its business. Unless the superintendent shall have denied such application in writing within ninety days of the filing thereof, or shall have advised the applicant in writing before the expiration of ninety days of his determination to extend such period an additional sixty days, such application shall be deemed approved.

As used in this subdivision one, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether by means of the ownership of the voting stock or equity interests of such person or of one or more persons controlling such person, by means of a

contractual arrangement, or otherwise. Control shall be presumed to exist if any company, directly or indirectly, owns, controls or holds with the power to vote ten per centum or more of the voting stock of any investment company or of any company which owns, controls or holds with power to vote ten per centum or more of the voting stock of such investment company, but no person shall be deemed to control an investment company solely by reason of his being an officer or director of such investment company. The superintendent may in his discretion, upon the application of an investment company or any company which, directly or indirectly, owns, controls or holds with power to vote or seeks to own, control or hold with power to vote any voting stock of such investment company, determine whether or not the ownership, control or holding of such voting stock constitutes or would constitute control of such investment company for purposes of this section.

The provisions of this subdivision shall not apply to (1) a company which has submitted a plan of acquisition to the superintendent pursuant to subdivision two of this section or (2) any action taken pursuant to article thirteen of this chapter.

2. Any company, whether or not it is in control of the business of an investment company as provided in subdivision one of this section, which desires to acquire all, or substantially all of the capital stock of an investment company shall, together with such investment company, submit in duplicate to the superintendent a written plan of acquisition of such stock together with such other information as the superintendent may determine. Such plan shall be in form satisfactory to the superintendent, shall specify each investment company the stock of which is to be acquired by the company and shall prescribe the terms and conditions of the acquisition and the mode of carrying it into effect, including the manner of exchanging the shares of the investment company for shares or other securities or cash of the company. Any such plan may provide for the payment of cash in lieu of the issuance of fractional shares of the company.

At the time of submission to the superintendent of the written plan of acquisition of stock, an investigation fee as prescribed pursuant to

section eighteen-a of this chapter shall be paid to the superintendent.

There shall be submitted, in duplicate, to the superintendent with the plan of acquisition of stock, a certificate of the president or secretary of the company, certifying that such plan has been approved by the board of directors or other governing body of his company by a majority vote of all the members thereof, and a certificate of the president, secretary or cashier of the investment company, the acquisition of all the capital stock of which is provided for, certifying that such plan has been approved by the board of directors of his corporation by a majority vote of all the members thereof, and that such plan was thereafter submitted to the stockholders of such corporation at a meeting thereof held upon notice of at least fifteen days, specifying the time, place and object of such meeting and addressed to each stockholder at the address appearing upon the books of the corporation and published at least once a week for two successive weeks in one newspaper in the county in which such corporation has its principal place of business and that such plan has been approved at such meeting by the vote of the stockholders owning at least two-thirds in amount of the stock of such corporation.

The superintendent shall approve or disapprove of a proposed plan of acquisition within one hundred twenty days after the submission of such plan of acquisition to him, and in determining whether or not to approve any such plan the superintendent shall take into consideration the declaration of policy contained in section ten of this chapter. If the superintendent shall approve such plan of acquisition, the superintendent shall file the plan, together with such certificates and the original of the approval of the superintendent, in the office of the superintendent. Upon such filing in the office of the superintendent the plan, and the acquisitions provided for therein, shall become effective, unless a later date is specified in the plan, in which event the plan and such acquisitions shall become effective upon such later date.

Any stockholder of any such corporation, entitled to vote on such plan of acquisition, who does not assent thereto shall, subject to and by complying with section six thousand twenty-two of this chapter, have the

right to receive payment of the fair value of his shares and the other rights and benefits provided by such section.

The provisions of this subdivision shall not apply to any action taken pursuant to article thirteen of this chapter.

3. For a period of six months from the date of qualification thereof and for such additional period of time as the superintendent may prescribe in writing, the provisions of this section shall not apply to a transfer of control by operation of law to the legal representative, as hereinafter defined, of one who has control of an investment company. Thereafter, such legal representative shall comply with the provisions of subdivision one of this section. The provisions of subdivision one of this section shall be applicable to an application made under such section by a legal representative.

The term "legal representative," for the purposes of this section, shall mean one duly appointed by a court of competent jurisdiction to act as executor, administrator, trustee, committee, conservator or receiver, including one who succeeds a legal representative and one acting in an ancillary capacity thereto in accordance with the provisions of such court appointment.

4. For purposes of this section the term "company" shall be given the same meaning as is contained in its definition in section one hundred forty-one of this chapter.

5. Notwithstanding the provisions of subdivision three of section two-a of this chapter, when applying this section to limited liability investment companies, the term "capital stock" shall mean the equity interest of a member as set forth in the company's articles of organization or, in the absence of such a provision, the equity interest represented by a member's right to a proportionate share of the profits of the company.