

Delaware's Administrative Code

Title 5

Banking

101 Retention of Financial Institution Records

5 Del.C. §141

Formerly Regulation No.: 5.141.0001.NC

Effective Date: September 22, 1995

Section 141 of Title 5 of the **Delaware Code**, as amended, provides that the State Bank Commissioner may from time to time issue regulations classifying and setting minimum retention periods for the records of financial institutions which are subject to the supervision of the Commissioner's Office and of federally chartered financial institutions in Delaware.

This regulation rescinds the previous record retention Regulation No. 5.141.0001.NC and establishes a new regulation in its place.

1.0 Scope

1.1 The following are subject to this regulation:

1.1.1 State chartered financial institutions;

1.1.2 Federally chartered financial institutions, insofar as the regulation does not contravene paramount federal law;

1.1.3 State licensed financial businesses including, but not limited to, Licensed Lenders, Licensed Mortgage Loan Brokers, Licensed Motor Vehicle Sales Finance Companies, and Licensed Cashers of Checks, Drafts, or Money Orders.

1.2 The Office of the State Bank Commissioner requires that financial institutions subject to this Regulation maintain certain books and records for examination, compliance, regulatory and other purposes consistent with any applicable federal law or regulation and the requirements set forth below. Such financial institutions are obligated to ensure compliance with this Regulation and may do so by agreement with other entities that may maintain certain of their records, such as a service provider, data processor or storage facility, wherever located within or without the State of Delaware.

1.3 Records that are not covered by either federal law or regulation or this Regulation should be maintained at the financial institution's discretion and with the advice of counsel.

2.0 Form of Records

2.1 All records required to be maintained under this Regulation must be retained in a form and manner that is consistent with reasonable business practices for financial institutions, and any applicable federal law or regulation. Without limiting the foregoing, all such records (even those which must be maintained permanently as indicated in Schedule A of this Regulation), may be maintained in either original form, as a copy thereof, or as part of any electronic, computer, mechanized or other data storage or retrieval or transmission system or device that can accurately reproduce, regenerate or

transmit the original record, a copy of the record or all pertinent information from the original or any copy. Examples of appropriate forms of records include: copies produced from the same impression or process as the original by carbon or other chemical or substance or process (e.g. carbon copies); film, prints, reproduction and facsimiles of an original or copy produced by photographic, microphotographic, photostatic, xerographic, or other process (e.g. photocopies, microfilm, microfiche); and data or other information comprising a record reproduced, regenerated or transmitted from any electronic, computer, mechanized or other datastorage or retrieval or transmission system or device (e.g. magnetic tape, optical disk); and such other forms of records as may be approved by the Office of the State Bank Commissioner. The records requirements contained herein are designed to facilitate records retention for examination purposes only; reproductions of records as an alternative to retaining original documents, as permitted herein, may not satisfy other legal requirements.

3.0 Availability and Location of Records

3.1 All records required to be maintained under this Regulation or applicable federal law must be readily available within a reasonable time period upon request by the Office of the State Bank Commissioner for supervisory examination or other authorized purposes. Such records may be maintained at any location wherever located within or without the State of Delaware that is suitable to the financial institution.

4.0 Status of Records

4.1 All records maintained by a financial institution subject to this Regulation, whether in original form or as a copy thereof or as part of a data storage or retrieval or transmission system, which are duly certified, authenticated, or identified by a responsible officer, employee or agent of the financial institution under whose supervision the records are kept, shall in all cases and in all courts and places be admitted and received in evidence with like force and effect as the original record, whether or not the original record is in existence, to the fullest extent permitted by law.

5.0 Retention Periods

5.1 All records required to be maintained pursuant to this Regulation must be maintained consistent with the retention periods set forth in this Regulation and/or any applicable federal law or regulation. More specifically, the retention periods set forth in Schedule A of this Regulation must be adhered to if there is no applicable federal retention period. If there is an applicable federal retention period, the federal retention period should be adhered to even if such federal period is longer or shorter than the retention period set forth in this Regulation. After the applicable retention period expires, the records may be destroyed. In the attached schedule of retention periods, all retention periods begin with the final transaction date appearing on the record unless otherwise noted.

Schedule A

RECORDS RETENTION SCHEDULE

Banks and Trust Companies

(Periods of retention are in years, unless otherwise indicated)

0001.01 PERMANENT RECORDS

1.0101 Annual reports

1.0102 Bank call reports

1.0103 Bank examination reports

1.0104 Bank charter, Certificate of Incorporation, by laws, amendments, minutes of meetings of

Directors, executive and other committees

1.0105 Capital stock - Certificates, Ledger, Transfer Ledger

1.0106 Certificate of Authority - approved branch locations

1.0107 General Ledger

1.0108 Internal security investigation reports

0001.02 OTHER RECORDS

1.0201 Advices from correspondents (due from banks)	1
1.0202 Advices of correction (proof, clearing and transit)	2
1.0203 Advices of debits or credits	1
1.0204 Bank investments - broker confirmations, invoices statements, securities buy and sell orders	6
1.0205 Bank investments - safekeeping receipts	6
1.0206 Bank statements (due from banks)	5
1.0207 Bond ledger	6
1.0208 Budget records (corporate)	1
1.0209 Canceled checks	6
1.0210 Cash item records	1
1.0211 Deposit activity register (after maturity, if applicable)	1
1.0212 Certified checks, activity register, money orders, official checks	6
1.0213 Clearinghouse settlement sheets	1
1.0214 Closed account report	1
1.0215 Collection activity register	3
1.0216 Correspondence (customer dispute)	3

1.0217 Currency shipment books		3
1.0218 Currency transaction reports		5
1.0219 Customer's deposit ledgers		5
1.0220 Daily statement of condition		1
1.0221 Debit and credit tickets		1
1.0222 Departmental or teller's proof sheets		2
1.0223 Deposit tickets		2
1.0224 Drafts, draft activity register		6
1.0225 Dividend check, paid (capital)		6
1.0226 Dividend check activity register (capital)		6
1.0227 Escheat records, after escheatment		1
1.0228 FDIC assessment base records		5
1.0229 General ledger tickets		6
1.0230 Insurance records (after expiration of policy)		3
1.0231 International - cable and mail transfers		6
1.0232 International - letter of credit records		6
1.0233 Large transaction report, over \$10,000 (deposits)		5
1.0234 Liability ledger		6
1.0235 Loan and note activity register		6

1.0236 Loan application (all evaluation material)	3
1.0237 Loan payment record	6
1.0238 Name and address change report	2
1.0239 Night depository agreements	1
1.0240 Outgoing cash letter	1
1.0241 Overdraft/NSF report (deposit)	1
1.0242 Personnel records (after termination of employment and pension rights)	6
1.0243 Personnel records - declined applications	2
1.0244 Proof tapes, sheets	1
1.0245 Proxies	3
1.0246 Records of outside business interests of bank's executive officers, directors and principal shareholders and their transactions with bank	3
1.0247 Reconcilements (due to banks) (due from banks)	3
1.0248 Registered mail return receipt cards	6
1.0249 Remittances, serviced mortgages	1
1.0250 Reports of accounts opened or closed (due to banks)	1
1.0251 Repossession and foreclosure log	6
1.0252 Reserve computations daily	2
1.0253 Resolutions, authorizations (corporate - deposit/loan)	6
1.0254 Return item letters	1
1.0255 Safe deposit contracts (after termination of contract)	6

1.0256 Safe deposit records and receipts	6	
1.0257 Security - camera surveillance log	1	
1.0258 Security devices checklist, inspection records	2	
1.0259 Service charge report	6	
1.0261 Statements	2	
1.0262 Stop payment orders	2	
1.0263 Taxpayer information (deposits)	5	
1.0264 Tax records (corporate)	10	
1.0265 Tellers activity register	2	
1.0266 Transaction journal	6	
1.0267 Transit letters (due from banks)	1	
1.0268 Trial balance	1	
1.0269 Travelers checks register	2	
1.0270 Utility payment records (customer)	6	
1.0271 Vault records, access and maintenance	2	

0001.03 TRUST RECORDS

1.0301 Bonds of indemnity	21*
1.0302 Canceled stock certificates	Permanent
1.0303 Legal papers	21*
1.0304 Mail receipts	7*

1.0305 Paid dividend checks	7
1.0306 Registration records	7*
1.0307 Stock certificates	7*
1.0308 Stockholder records	7*
1.0309 Tax returns	7*
1.0310 Transfer records	7*
1.0311 Transmittal letters	7*

* After trust is terminated or account closed

Schedule B

RECORDS RETENTION SCHEDULE

Licensees

(Periods of retention are in years, unless otherwise indicated)

Licensed Lenders (Chapter 22, Title 5, **Delaware Code**)

1. Loan Register	2*
2. Individual Accounts with Borrowers	2*
3. File of All Original Paper (including applications)	2*
4. File of All Original Paper/Denials	25 mos.
5. Daily Transaction Journal	2
6. Index of Borrowers, Endorsers, Comakers, etc.	2
7. Record of Loans in Litigation and Repossessions	5**
8. Credit Insurance Claims Register	2

Mortgage Loan Brokers (Chapter 21, Title 5, **Delaware Code**)

1. Applicant Register	2
2. Individual Records of Applicants/Closed Loans	2
3. Individual Records of Applicants/Denials	25 mos.
4. Record of Litigation	5**
5. Advertising	2

Motor Vehicle Sales Finance (Chapter 29, Title 5, **Delaware Code)**

1. Retail Installment Contract Applicant Register	2
2. Individual Accounts with Borrowers	2
3. Files of All Original Paper	2*
4. Files of All Paper/Denials	25 mos.
5. Daily Transaction Record	2
6. Index of Borrowers, Endorsers, Comakers, etc.	2
7. Record of Loans in Litigation and Repossessions	5**
8. Credit Insurance Claims Register	2

Cashers of Checks, Drafts, or Money Orders (Chapter 27, Title 5, **Delaware Code)**

1. Transactions Journal	2
2. Record of Deposits	2
3. Summary of Business	2

Transportation of Money and Valuables (Chapter 32, Title 5, **Delaware Code)**

1. Contracts for Transportation/Handling/Storage Services (after expiration)	2
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Preneed Funeral Contracts (Chapter 3, Title 5, **Delaware Code)**

1. Preneed Trust Agreements (file of all original paper)	2*
2. Record of All Payments Received	2*
3. Record of All Contracting Parties	2*
4. Record of Depository Institution Used	2*

* After Account is Closed

** After Litigation or Repossession is Completed

102 Procedures Governing the Creation and Existence of an Interim Bank

Formerly Regulation No.: 5.121.0002

Effective Date: December 11, 1998

This regulation establishes procedures governing the creation and existence of an Interim Bank, which shall have no authority to conduct a banking business until merged with an Insured Bank.

1.0 Definitions

"Articles of Association" means the articles of association described in Section 723 of Title 5 of the **Delaware Code**.

"Articles of Organization" means the articles of organization described in Section 728 of Title 5 of the **Delaware Code**.

"Bank" means a Delaware State Bank, Out-of-State State Bank, Delaware National Bank or Out-of-State National Bank.

"Bank Holding Company" has the meaning specified in the Bank Holding Company Act of 1956, as amended (12 U.S.C. § 1841 et seq.).

"Certificate Authorizing the Transaction of Business" means the certificate described in Section 733 of Title 5 of the **Delaware Code**.

"Delaware Bank" means a Delaware National Bank or a Delaware State Bank.

"Delaware National Bank" means a national banking association created under the National Bank Act (12 U.S.C. § 21 et seq.) that is located in this State.

"Delaware State Bank" means a bank (as defined in § 101 of Title 5 of the **Delaware Code**) chartered under the laws of this State.

"Insured Bank" means a bank that is an insured depository institution, as defined in the Federal Deposit Insurance Act at 12 U.S.C. § 1813(c).

"Interim Bank" means a bank established exclusively for the temporary purposes set forth in this regulation.

"Interim Bank Agreement" means an agreement that expressly provides, among other things, for the creation of an Interim Bank and its merger with an Insured Delaware Bank.

"Located in this State" means, with respect to a state-chartered bank, a bank created under the laws of this State and, with respect to a national banking association, a bank whose organization certificate identifies an address in this State as the place at which its discount and deposit operations are to be carried out.

"Notice of Intent" means a notice of the intention of the incorporators to form an Interim Bank, as provided in Section 5 of this regulation.

"Out-of-State Bank" means an Out-of-State State Bank or an Out-of-State National Bank.

"Out-of-State Bank Holding Company" has the meaning specified in the Bank Holding Company Act of 1956, as amended (12 U.S.C. § 1841 et seq.).

"Out-of-State National Bank" means a national bank association created under the National Bank Act (12 U.S.C. § 21 et seq.) that is not located in this State.

"Out-of-State State Bank" means a State bank, as defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. § 1813(a), that is not chartered under the laws of this State.

"Public Notice" means a public notice, as provided in Section 5 of this regulation.

2.0 Scope

2.1 An Interim Bank may only be formed to facilitate:

2.1.1 The establishment of a Bank Holding Company by an Insured Delaware Bank's stockholders. The proposed Bank Holding Company, once incorporated, applies in the manner set forth at Section 5 of this regulation for an Interim Bank charter for a subsidiary to be newly formed. An agreement is executed between the proposed Bank Holding Company and the Insured Delaware Bank that provides, among other things, that the Insured Delaware Bank will be merged or consolidated with the Interim Bank and become a subsidiary of the Bank Holding Company upon the receipt of all necessary federal and state approvals for the proposed Bank Holding Company so to act; or

2.1.2 The acquisition of an Insured Delaware Bank by another Insured Delaware Bank or Bank Holding Company (e.g., pursuant to Subchapter VI of Chapter 7 or Subchapters IV or V of Chapter 8 of Title 5 of the **Delaware Code**). In such instances, the Interim Bank is used to assure that the to-be-acquired Insured Delaware Bank will become wholly-owned through a merger or consolidation pursuant to an agreement between the Insured Delaware Banks or between an Insured Delaware Bank and a Bank Holding Company that provides, among other things, for an Insured Delaware Bank to merge or consolidate with the Interim Bank.

2.1.3 The merger of one or more Out-of-State Banks with or into one or more Delaware Banks to result in a Delaware State Bank, in accordance with Section 795D or Section 795G of Title 5 of the **Delaware Code**.

3.0 Interim Bank Agreement Required

3.1 An Interim Bank may not be chartered unless there is an Interim Bank Agreement.

4.0 Who May Incorporate

4.1 An Interim Bank may be incorporated, in accordance with Section 722 of Title 5 of the **Delaware Code**, by three or more individual persons, at least two of whom must be citizens and residents of Delaware.

5.0 Application Procedures

5.1 An application to form an Interim Bank shall be submitted as follows, except as otherwise provided

in connection with a contemporaneous application in accordance with another regulation (e.g., Regulation 804 (formerly 5.844.0009), "Application by an Out-of-State Bank Holding Company to Acquire a Delaware Bank or Bank Holding Company"):

5.1.1 The Notice of Intent shall be filed in duplicate in the Office of the Commissioner and shall state:

5.1.1.1 the purpose for forming an Interim Bank;

5.1.1.2 the proposed name of the Interim Bank;

5.1.1.3 the name and address of the incorporators; and

5.1.1.4 the amount of the capital stock of the Interim Bank.

5.1.2 The Notice of Intent shall attach as exhibits:

5.1.2.1 the Interim Bank Agreement;

5.1.2.2 a copy of the proposed Articles of Association of the Interim Bank;

5.1.2.3 a copy either of the certificate of public convenience and advantage or the legislative and/or corporate instruments of banking authority for the Insured Bank which is to be merged with the Interim Bank pursuant to the Interim Bank Agreement.

5.1.3 Upon notification by the Commissioner that the Notice of Intent to form an Interim Bank is complete, the applicant shall cause to be published in a newspaper of general circulation throughout the State of Delaware, once a week for two (2) consecutive weeks, a Public Notice of its intention to form an Interim Bank. The Public Notice shall include the proposed name of the Interim Bank, the names of the incorporators, the amount of the capital stock of the Interim Bank, and a brief summary of the purpose of the Interim Bank, shall identify this regulation under which the Interim Bank is to be formed, and shall inform interested persons of their right to comment on the application before the Commissioner decides whether to approve the Interim Bank.

6.0 Decision of Commissioner; Incorporation

6.1 Within two weeks of the last publication of the Public Notice, the Commissioner shall issue a decision as to whether to charter the Interim Bank. This two week period may be extended by two additional weeks if the Commissioner requires more time or information.

6.2 Upon the Commissioner's approval, the Incorporator shall take the necessary steps to form the Articles of Organization and the Commissioner shall endorse the Articles. The Incorporator shall then incorporate the Interim Bank and file the necessary documents with the Secretary of State.

6.3 A Certificate Authorizing the Transaction of Business shall not be issued until the Interim Bank has been merged with the Insured Bank.

7.0 Powers of Interim Bank Before Merger

7.1 An Interim Bank may not engage in any banking activity or operate as a bank until it has merged with an Insured Bank. An Interim Bank may take only those corporate and fiduciary steps and actions reasonably incidental and necessary to facilitate and complete the merger. Such limitation shall not preclude the Commissioner from granting a certificate of public convenience and advantage, and to otherwise facilitate and authorize the formation and incorporation of the Interim Bank, provided that no Certificate Authorizing the Transaction of Business pursuant to §733 of Title 5 of the **Delaware Code** shall be issued prior to the consummation of the merger of the Interim Bank with an Insured Bank.

7.2 The receipt by the Commissioner of an Interim Bank Agreement and a copy of either the certificate of public convenience and advantage or the legislative and/or corporate instruments pursuant to which

the Insured Bank with which the Interim Bank will merge derives its banking powers shall constitute sufficient authority for the Commissioner to issue a certificate of public convenience and advantage to the Interim Bank.

8.0 Proof of Merger: Revocation of Certificate

8.1 From the date an Interim Bank is authorized pursuant to this regulation, the parties to the Interim Bank Agreement shall have six (6) months in which to effect the merger with the Insured Bank. Proof of the merger must be timely supplied to the Commissioner.

8.2 Upon proof of the consummation of the merger of the Interim Bank with the Insured Bank, a Certificate Authorizing the Transaction of Business, as required by § 733 of Title 5 of the **Delaware Code** shall be issued immediately by the Commissioner to the surviving entity if the Interim Bank is the survivor.

8.3 Extensions may be granted by the Commissioner if the parties to the Interim Bank Agreement can show good cause as to why an extension is needed to complete the merger.

8.4 The Commissioner may revoke the certificate of public convenience and advantage of the Interim Bank (and may take such other steps he deems appropriate at any time) if proof of the merger between the Interim Bank and the Insured Bank has not been provided to the Commissioner at the end of the authorized time, if the Interim Bank actually conducts any banking business prior to its proposed merger, or if any related merger or acquisition application is denied or withdrawn.

9.0 Fees

9.1 A non-refundable investigation fee of \$1,150 to offset the administrative expense of the Commissioner's office shall be included with the Notice of Intent; provided, however, that such fee shall be considered as part of and not in addition to any fee being paid at the same time to the Commissioner's office in connection with a contemporaneous application for a merger or acquisition. In addition, depending on the structure of the transaction, other fees may be required in accordance with applicable statutes or regulations (e.g., Section 735 of Title 5 of the **Delaware Code**).

701 Procedures for Applications to Form a Bank, Bank and Trust Company or Limited Purpose Trust Company Pursuant to Chapter 7 of Title 5 of the Delaware Code

Formerly Regulation No.: 5.701/774.0001

Effective Date: December 11, 1998

1.0 Scope

1.1 This Regulation establishes procedures for filing an application to organize a bank or bank and trust company (hereinafter collectively referred to as a "Bank") or limited purpose trust company pursuant to Chapter 7 of Title 5 of the **Delaware Code** and the manner in which determinations will be made by the State Bank Commissioner (the "Commissioner") respecting such applications.

2.0 Notice of Intent

2.1 Notice of the intention ("Notice of Intent") of the incorporators (the "Incorporators") to form a Bank or limited purpose trust company shall be filed with the Commissioner. All filings must be in duplicate.

2.2 A \$1,150 non-refundable investigation fee shall be submitted with the Notice of Intent, payable to

"Office of the State Bank Commissioner."

2.3 The Notice of Intent shall specify: (i) the names of all Incorporators; (ii) the name of the proposed Bank or limited purpose trust company (note: the word "trust" may be used only if a limited purpose trust company or a bank with trust powers is being formed); (iii) the city or town in which the Bank or limited purpose trust company will be located; and (iv) the amount of capital stock of the proposed Bank or limited purpose trust company.

2.4 The Notice of Intent shall have attached as exhibits: (i) a copy of the application for a Certificate of Public Convenience and Advantage (the "Application") in the form the Incorporators intend to file pursuant to Section 4 of this Regulation; (ii) a copy of the proposed form of written agreement in which the subscribers thereto associate themselves with the intent of forming a Bank or limited purpose trust company (the "Articles of Association"); (iii) a proposed form of public notice as provided for in Section 3 of this Regulation (the "Public Notice"); and, (iv) where the Incorporators are acting on behalf of a corporate entity in the application process, a copy of the corporate resolution, sworn to and subscribed by a president or vice-president and certified by the secretary or an assistant secretary, authorizing the Incorporators to execute and file the Notice of Intent and Application on behalf of the corporation.

3.0 Public Notice

3.1 If the Notice of Intent and the attached exhibits filed with the Commissioner are in the form required by this Regulation, conform to applicable provisions of law and are approved by the Commissioner, the Commissioner shall schedule a formal, public evidentiary hearing to receive testimony and documentary evidence relevant to determining whether the public convenience and advantage would be promoted by the establishment of the Bank or limited purpose trust company and whether the Articles of Association are in compliance with applicable provisions of law (such hearing to be held within 60 days following the second publication of Public Notice in accordance with Section 3.2 of this Regulation, but not prior to the expiration of twenty days following the date of the second publication).

3.2 The Incorporators shall cause a Public Notice in such form as the Commissioner shall have approved to be published at least once a week, for two successive weeks, in at least two Delaware newspapers of general circulation designated by the Commissioner, at least one of which newspapers shall be published in the county where it is proposed to establish the Bank.

3.3 The Public Notice shall (i) specify the names of all Incorporators; (ii) set forth the name of the proposed Bank or limited purpose trust company; (iii) identify the city or town where the Bank or limited purpose trust company is to be located; (iv) specify the amount of the Bank's capital stock; (v) describe the subject matter of the proceedings; (vi) give the date, time and place fixed for a hearing on the Application; (vii) cite the law (5 Del. C. § 726 for a Bank, and 5 Del. C. § 777 for a limited purpose trust company) and regulations (State Bank Commissioner Regulations 701 (formerly 5.701/774.0001) and 703 (formerly 5.725/726.0003.P/A) for a Bank, and 701 (formerly 5.701/774.0001) and 702 (formerly 5.777.0002) for a limited purpose trust company) giving the Commissioner authority to act; (vii) inform interested parties of their right to present evidence, to be represented by counsel and to appear personally or by other representatives; and (ix) state the Commissioner's obligation to reach his decision based upon the evidence received.

4.0 Application For A Determination of Public Convenience and Advantage

4.1 Within sixty days following the second publication of Public Notice, and prior to or on the date of the public hearing, but not prior to the expiration of twenty days following the date of the second publication, the Incorporators shall file the definitive fully executed Application in the form prescribed

by the Commissioner. See Commissioner's Regulation No. 703 (formerly 5.725/726.0003.P/A) for a Bank, and 702 (formerly 5.777.0002) for a limited purpose trust company.

4.2 The Application shall include the information specifically requested in the form of application supplied by the Commissioner and any supplemental information requested by the Commissioner.

5.0 Public Hearing

5.1 The public hearing provided for in this Regulation may be conducted by the Commissioner or his designee. At such hearing, the Commissioner or his designee shall accept all relevant, non-cumulative evidence offered by or on behalf of the Incorporators or by any interested person. Interested parties may appear at the public hearing, in person or by counsel or by other representative. Anyone wishing to present testimony is requested to register with the Commissioner in advance of the hearing.

5.2 A record from which a verbatim transcript can be prepared shall be made. The Incorporators shall be responsible for arranging for a certified court reporter to be present at the public hearing and shall bear the expense of an original written transcript for the Commissioner's use (which shall be supplied to the Commissioner as promptly as practical following the public hearing). Additional transcripts provided to any interested person shall be at the expense of the person requesting the transcript.

5.3 The Commissioner or his designee may request the Incorporators or any other party or parties who appear at the public hearing to submit proposed findings of fact and conclusions of law.

6.0 Record

6.1 With respect to each Application, all notices, correspondence between the Commissioner and the Incorporators or other interested parties, all exhibits, documents and testimony admitted into evidence and all recommended orders, summaries of evidence and findings, and all interlocutory and final orders shall be included in the Commissioner's record of the matter and shall be retained for a period of at least five (5) years following final action on the Application.

6.2 A copy of the proposed order shall be mailed or hand delivered to the Incorporators (or their agent) and to each person who presented data, views or argument at the public hearing, each of whom shall thereafter have twenty (20) days to submit in writing to the Commissioner exceptions, comments and arguments respecting the proposed order.

6.3 If the decision on the Application is not adverse to the Incorporators, the Commissioner may waive the entry of a proposed order and may instead proceed directly to the entry of a final order under Section 7.0 of this Regulation.

7.0 Decision and Final Order

7.1 Every decision on an Application shall be incorporated in a final order which shall include: (i) a brief summary of the evidence; (ii) findings of fact based upon the evidence; (iii) conclusions of law; (iv) any other conclusions or findings required by law; and (v) a concise statement of the determination or action on the case.

7.2 Every final order shall be authenticated by the signature of the Commissioner and shall be mailed or delivered to (i) the Incorporators (or their agent); (ii) each person that presented data, views or argument at the hearing; and (iii) any other person requesting a copy of the final order.

8.0 Organization Meeting of Incorporators

8.1 The first meeting of the Incorporators shall be called by a notice signed by the Incorporator designated in the Articles of Association for that purpose or by a majority of Incorporators (see 5 Del. C. § 727). The statutory purpose of the first meeting is to organize by: (i) choosing by ballot a temporary secretary; (ii) adopting bylaws; and (iii) electing in such manner as the bylaws may

determine directors, a president, a secretary, and such other officers as the bylaws may prescribe. All of the officers elected shall be sworn to the faithful performance of their duties. Action permitted to be taken at the organization meeting may be taken without a meeting if each Incorporator signs a written consent in lieu of meeting which states the action so taken.

8.2 The President and a majority of directors elected at the organization meeting of the Incorporators shall make, sign and make oath to a certificate (hereinafter the "Articles of Organization") setting forth: (i) a true copy of the Articles of Association; (ii) the names of the subscribers thereto; (iii) the name, residence, and mailing address of each officer; and (iv) the date of the first meeting of the Incorporators (see 5 Del. C. § 728).

8.3 The Articles of Organization and attachments shall be submitted to the Commissioner. The Commissioner may require such amendments or additional information as he may consider proper or necessary. The Commissioner shall endorse approval upon the Articles of Organization at such time as he has determined that the applicable provisions of law have been complied with (see 5 Del. C. § 729).

9.0 Incorporation and Commencement of Business

9.1 The Articles of Organization shall be filed with the Secretary of State within 30 days after the date of the Commissioner's endorsement (see 5 Del. C. § 730).

9.2 Upon issuance of a Certificate of Incorporation by the Secretary of State and compliance with all provisions of law, a certified copy of the Certificate of Incorporation together with the endorsed Articles of Organization shall be recorded in the Office of the Recorder of Deeds for the county in which the place of business of the Bank or limited purpose trust company is to be located (see 5 Del. C. § 731).

9.3 A certified copy of the Bank's or limited purpose trust company's Certificate of Incorporation together with its bylaws and its Articles of Organization shall be filed with the Commissioner together with the \$5,750 fee for the certificate to transact business. No transaction of business can begin until authorized by the Commissioner by the issuance of a certificate to transact business (see 5 Del. C. §§ 733, 735, 902, 903).

9.4 An application for a certificate to transact business shall include a certification as to the issuance of the whole capital stock of the Bank or limited purpose trust company (unless the Articles of Organization otherwise specifically provide) and receipt of payment therefor in cash; a list of stockholders (including the number of shares held by each and the residence and post office address of each stockholder), which list shall be certified by the president and the cashier or treasurer of the Bank; evidence of the deposit of the proceeds of the sale of capital stock in an account for the benefit of the Bank or limited purpose trust company; and, for a Bank, evidence satisfactory to the Commissioner demonstrating that FDIC deposit insurance for the Bank has been approved by the FDIC.

9.5 The Commissioner shall review the application and, in the case of a Bank, the status of the applicant's FDIC insurance. If the above referenced \$5,750 fee has been paid and it appears that all requirements of this Regulation and applicable law have been complied with, the Commissioner shall issue a certificate authorizing the Bank or limited purpose trust company to begin the transaction of business.

See 2 DE Reg. 1020 (12/1/98)

704 Procedures Governing the Establishment or Acquisition of a Subsidiary Engaged in the Securities Business

Formerly Regulation No.: 5.761.0004.P/A

Effective Date: July 31, 1989

1.0 Required Notice. Every bank or bank and trust company which intends to acquire or establish a subsidiary that (1) engages in the sale, distribution or underwriting of stocks, bonds, debentures, notes or other securities; (2) acts as an investment advisor to any investment company; (3) conducts any activity for which the subsidiary is required to register with the Securities and Exchange Commission as a broker/dealer; or (4) engages in any other securities activity shall notify the Commissioner of such intent. Notice shall be in writing and must be received in the office of the Commissioner at least 60 days prior to consummation of the acquisition or commencement of the operation of the subsidiary, whichever is earlier. The bank or bank and trust company shall also notify the Commissioner in writing within 10 days after the consummation of the acquisition or commencement of the operation of the subsidiary, whichever is earlier. The 60-day notice requirement may be waived or shortened in the discretion of the Commissioner.

2.0 Contents of Notice. The notice required by the first sentence of section 1.0 shall include the following information:

2.1 The corporate name of the subsidiary and, if different, the name in which it will conduct business.

2.2 The address location of the office of the subsidiary.

2.3 The amount of capital which the subsidiary will have upon acquisition or commencement of operations.

2.4 The name, address, age and current business occupation of the proposed directors and officers of the subsidiary.

2.5 A description of the proposed activities of the subsidiary including the specific type of securities which will be underwritten by the subsidiary.

2.6 The amount of outstanding capital stock of the subsidiary to be owned by the bank or bank and trust company.

2.6.1 The notice required by section 1.0 shall also contain the written undertaking of the bank or bank and trust company to operate the subsidiary in accordance with all existing applicable laws and regulations, including the regulations, if applicable, of the Federal Deposit Insurance Corporation and the Securities and Exchange Commission, and such supplemental regulations as may be issued from time to time by the Commissioner.

3.0 Additional Notices. Every bank or bank and trust company which owns a subsidiary engaged in the securities business shall provide additional notice to the Commissioner in the event the subsidiary commences any securities activity not disclosed in the notice provided pursuant to paragraph (a) of this regulation. Any such notice must be received in the office of the Commissioner within 30 days after the subsidiary commences the new activity.

4.0 Capital. The direct investment of a bank or bank and trust company in a subsidiary engaged in any of the activities described in paragraph (1) hereof will not be counted toward the capital of the bank or bank and trust company, provided, however, this paragraph shall not apply to the direct investment of a bank or bank and trust company in a subsidiary engaged only in those securities activities which would be permissible for an FDIC insured non-member bank under Sections 16 and 21 of the Glass-Steagall Act (12 U.S.C. 24 (Seventh) and 378).

705 Procedures Governing Applications to Open Branch Offices Outside the State of Delaware

Formerly Regulation No.: 5.771.0005

Effective Date: January 12, 1998

This regulation establishes procedures for the consideration and determination of applications under § 771(a) of Title 5 of the **Delaware Code** for permission to open branch offices outside of the State of Delaware.

1.0 Branch Offices In the United States Outside the State of Delaware

1.1 Application

1.1.1 An application to open a branch office in the United States outside the State of Delaware pursuant to Section 771(a) of Title 5 of the **Delaware Code** shall be in writing and shall include the following:

1.1.1.1 Name of applying bank or trust company.

1.1.1.2 Location of proposed branch, including address.

1.1.1.3 The name, address and phone number of the person(s) to whom inquiries may be directed.

1.1.1.4 Explanation of the necessity for the opening of the branch.

1.2 Fee

1.2.1 The application shall be accompanied by a non-refundable investigation fee of two hundred and fifty dollars (\$250.00). Checks shall be made payable to the Office of the State Bank Commissioner.

1.3 Notice

1.3.1 Upon notification by the Commissioner that the application to open a branch office in the United States outside the State of Delaware conforms to the requirements for applications pursuant to Section 771(a) of Title 5 of the **Delaware Code** and this regulation, the applicant shall cause a single notice of such application to be published in a newspaper of general circulation in the locality of the proposed branch. The notice shall provide a brief synopsis of the application, and state that interested persons may present their views in writing to the Office of the State Bank Commissioner, and shall be in a form to be approved by the Commissioner before publication.

1.4 Additional Information, Investigation and Hearing

1.4.1 In addition to the documents filed in accordance with this regulation, the Commissioner at his discretion may require additional information, conduct an investigation, or hold a public hearing in accordance with the Administrative Procedures Act, Chapter 101 of Title 29 of the **Delaware Code**.

1.5 Decision

1.5.1 No earlier than 20 days after publication of the Notice described in section I.C. of this regulation, the Commissioner shall issue a written Order approving or disapproving the application.

1.6 Certificate of Authority

1.6.1 A Certificate of Authority shall be issued by the Commissioner for each approved branch office in the United States outside the State of Delaware.

1.7 Time to Open Approved Branch Office In the United States Outside the State of Delaware

1.7.1 Branch offices in the United States outside the State of Delaware approved in accordance with Section 771(a) of Title 5 of the **Delaware Code** and this regulation shall open within one year of the

date when the Commissioner issues the Certificate of Authority. The Commissioner may upon review of the application for such branch extend the initial opening date to a date greater than one year. Any Certificate of Authority issued by the Commissioner shall be void and of no effect at the expiration of the time prescribed for the opening of the branch unless the branch is actually opened for business.

2.0 Branch Offices in Foreign Countries

2.1 This section applies to applications under § 771(a) of Title 5 of the **Delaware Code** for permission to open branch offices in foreign countries where the applicant has no existing foreign branch office.

2.1.1 Application

2.1.1.1 An application to open a branch office in a foreign country pursuant to § 771(a) of Title 5 of the **Delaware Code** shall be in writing, signed by the President of the applicant, and include the following information.

2.1.1.1.1 Name of the applying bank or trust company.

2.1.1.1.2 Location (city and country) of the proposed branch, including the address, if available.

2.1.1.1.3

2.1.1.1.3.1 Existing representation in the foreign country, if any;

2.1.1.1.3.2 Reasons for the proposed branch, including the ways in which it is believed the branch would further the development of the applying bank or trust company's international or foreign business.

2.1.1.1.4 The type of business to be conducted and types of services to be offered, including:

2.1.1.1.4.1 Volume of business now conducted through subsidiaries or parents for customers in the proposed market;

2.1.1.1.4.2 Whether any existing or planned future business will be transferred to the proposed branch, indicating the volume and type of such business;

2.1.1.1.4.3 Whether the branch will engage in trust activities, and whether that business will be conducted on behalf of customers in the United States.

2.1.1.1.5

2.1.1.1.5.1 Where appropriate, if there has been more than a 25% change in the Bank's (and its affiliates') consolidated exposure in the country of the proposed branch from that reported in the most recently filed Federal Reserve Board Country Exposure Report (F.R. 2036), show the consolidated direct and indirect exposure to borrowers from this country. The exposure in question is both: (a) cross-border exposure (which may be calculated for this purpose by adding the figures under columns 4, 10 and 12 of the form and subtracting the sum of columns 9 and 11); and (b) local currency exposure (column 18 of the form);

2.1.1.1.5.2 If projections indicate that at the end of the third year of operations of the proposed branch, the direct and indirect exposure, as calculated above, will increase by more than 25% from present levels and this amount is greater than 10% of consolidated capital, show the projected consolidated country exposure.

2.1.1.1.6 Estimated start-up costs and projected balance sheets and income statements for at least three years, or until the break-even point is reached if longer.

2.1.1.1.7 Management of the proposed branch.

2.1.1.1.8 Description of the competitive situation in the foreign country, including representation of other U.S. financial institutions, any existing representation of applicant, its subsidiaries, or parent bank holding company.

2.1.1.1.9 Status of foreign government approvals, if any.

2.1.1.1.10 A summary of the bank or trust company's experience in international banking or trust activities, including the volume and character of present international business, a description of the foreign or international department, the number of its staff, and background of its officers.

2.1.1.1.11 Details of any locally imposed capital requirements and any other special requirements relating to the utilization of capital funds.

2.1.2 Fee

2.1.2.1 The application shall be accompanied by a non-refundable investigation fee of two hundred and fifty dollars (\$250.00). Checks shall be made payable to the Office of the State Bank Commissioner.

2.1.3 Notice

2.1.3.1 Upon receipt of any application pursuant to Section II of this regulation, the State Bank Commissioner will afford notice of the filing of such application to such persons as he deems appropriate.

2.1.4 Additional Information

2.1.4.1 In addition to the foregoing, the State Bank Commissioner may, in a particular case, request any additional information he deems appropriate.

2.1.5 Decision

2.1.5.1 The Commissioner shall issue a written Order approving or disapproving the application.

2.1.6 Certificate of Authority

2.1.6.1 If, on the basis of the information submitted, the State Bank Commissioner concludes that the application for the proposed branch office in a foreign country should be approved, he shall issue a Certificate of Authority permitting such office to be opened; such Certificate may contain such conditions as the State Bank Commissioner deems appropriate.

2.1.7 Time to Open Approved Branch Office In a Foreign Country

2.1.7.1 Branch offices in foreign countries approved in accordance with Section 771(a) of Title 5 of the **Delaware Code** and this regulation shall open within one year of the date when the Commissioner issues the Certificate of Authority. The Commissioner may upon review of the application for such branch extend the initial opening date to a date greater than one year. Any Certificate of Authority issued by the Commissioner shall be void and of no effect at the expiration of the time prescribed for the opening of the branch unless the branch is actually opened for business.

See 1 DE Reg. 867 (01/01/98)

706 Notice Requirements for Certain Delaware Banks and Trust Companies Engaging In the Business of Insurance

5 Del.C. §121(b)

Formerly Regulation No.: 5.761.0007.NC

Effective Date: November 1, 1990

The Bank and Trust Company Insurance Act of 1989 (67 Del. Laws C. 223) (the "Act") imposes certain capitalization and other requirements upon Delaware banks and trust companies engaging in the business of insurance thereunder. This regulation, promulgated pursuant to the authority of this office under **5 Del. C. §121(b)**, sets forth the information that must be provided to this office by a bank or trust company first acting as an insurer or transacting the business of insurance in accordance with the provisions of Title 18 pursuant to the authority conferred by the Act, in order to insure compliance with its provisions and other provisions of the Delaware Banking Code. The requirements set forth in this regulation are to be applied in conjunction with and not exclusive of all applicable regulations of the Delaware Insurance Commissioner.

1.0 Notice Requirements

1.1 Notice Required

1.1.1 Any bank or trust company intending to transact the business of insurance in Delaware under the authority of **5 Del. C. §761(a)(14)**, whether itself (through a division) or through a subsidiary, must notify this office in writing of its intention to do so.

1.2 Time of Notice

1.2.1 The notice required by section 1.1 of these regulations must be filed with this office by the bank or trust company prior to its transaction of any insurance activities pursuant to the authority conferred by **5 Del. C. §761(a)(14)**, whether through a division or subsidiary.

1.3 Form of Notice

1.3.1 The notice required by section 1.1 of these regulations shall be an identical copy of that notice required to be filed with the Delaware State Insurance Commissioner by the proposed insurance division of the bank itself or the subsidiary of the bank or trust company pursuant to regulations promulgated by the Insurance Commissioner under the Act. In addition, such notice shall be supplemented with the following additional information:

1.3.1.1 Complete information regarding the capitalization of each of the bank or trust company and its insurance division or subsidiary (to the extent not contained in the financial statements included in the notice filed with the State Insurance Commissioner), including the following:

1.3.1.1.1 the amount and sources of paid-in capital and surplus for each of the bank or trust company and its insurance division or subsidiary;

1.3.1.1.2 the allocations of capital, surplus and undivided profits made by such bank and trust company to its insurance division or subsidiary in each of the three (3) years preceding the filing of the notice required under these regulations;

1.3.1.1.3 the relationship, expressed as a percentage, between the capital, surplus and undivided profits of the bank or trust company and those of its insurance subsidiary or division; and

1.3.1.1.4 the allocations of capital, surplus and undivided profits expected to be made by such bank or trust company to its insurance division or subsidiary in the one(1) year period following the filing of

the notice required under these regulations.

1.3.1.2 The location of any office in Delaware to be open to the public and at which such bank and trust company proposes to engage in the business of insurance, whether itself (through a division) or through a subsidiary, and, if applicable, a copy of the lease agreement, mortgage, or deed by which such division or subsidiary occupies each such office.

1.3.1.3 In addition, if such bank or trust company proposes to act as insurer then there shall be filed with this office a copy of a written communication from the bank or trust company to the Federal Deposit Insurance Corporation ("FDIC"), informing the FDIC of the nature and scope of the proposed activity.

1.4 Supplementary Notices

1.4.1 A supplementary notice in the form set forth in section 1.3 of these regulations, subject to such timeframes as may be applicable, shall be filed with this office each time, subsequent to the filing of the notice requirement by section 1.1 of these regulations, that: (1) the insurance subsidiary or division of the filing bank or trust company proposes to engage in any insurance activity authorized by **5 Del. C. §761(a)(14)** not previously disclosed to this office; or (2) the filing bank or trust company proposes to allocate any additional amount of its capital, surplus and undivided profits to its insurance subsidiary or division. Any such supplementary notice shall be filed prior to the commencement of any activity described herein. If, at the time such supplementary notice is to be filed with this office, a similar supplementary notice has not been filed with the State Insurance Commissioner in the form described in the regulations promulgated by the Insurance Commissioner under the Act, the supplementary notice to be filed with this office shall contain, in addition to the specific information set forth in section 1.3 above, all information required to be contained in any original application to the Insurance Commissioner by the insurance subsidiary or division of a bank or trust company to transact the business of insurance under the authority of **5 Del. C. §761(a)(14)**.

2.0 Response to Notice

2.1 Within thirty (30) days following the filing of the notice required by section 1.3 or 1.4 of these regulations, the State Bank Commissioner shall determine whether the proposed activities therein should be approved or disapproved in whole or in part. If approved in whole or in part, the Commissioner shall forthwith issue a certificate of authority to engage in those activities which have been approved to the bank or trust company filing such notice. If disapproved in whole or in part, the Commissioner shall, pursuant to §10131(c) of Title 29 of the **Delaware Code**, give written notice to the bank or trust company of such disapproval and the reasons therefor. Such notice shall also:

2.1.1 inform the bank or trust company that it has a right to demand a hearing on its previously filed notice, at which hearing (a) the bank or trust company would have the right to present relevant evidence, (b) to be represented by counsel, and (c) to appear personally or by other representative; and that the Commissioner is obligated to reach his decision based upon substantial evidence of record; and

2.1.2 inform the bank or trust company of the period, not less than ten (10) days from the date of such notice, during which it may request a hearing on its previously filed notice.

2.2 Should the bank or trust company request a hearing under this paragraph, the Commissioner shall fix a date for such hearing and shall provide at least twenty (20) days' advance notice of such hearing date to the bank or trust company.

3.0 Capital

3.1 The direct investment of a bank or trust company in a subsidiary or division engaged in any of the activities authorized by **5 Del. C. §761(a)(14)** will not be counted toward the capital or surplus of the

bank or trust company for the purposes of the Delaware Banking Code.

707 Limitation on the Accretion of Debt for Purposes of Increasing Capital or Surplus by a Division or Subsidiary of a Bank or Trust Company Engaged in Insurance Activities

Formerly Regulation No.: 5.761.0008

Effective Date: February 15, 1993

1.0 The purpose of this regulation is to set limits on the amount of debt a bank or trust company engaging in insurance activities may incur for the purpose of increasing its capital or surplus.

2.0 No division or subsidiary of any bank or trust company engaged in activities authorized by §761(a) (14) of Title 5 shall incur debt for the purpose of increasing its capital or surplus, including, but not limited to, debt incurred through the sale or issuance of capital notes, debentures or other forms of securitized debt, in an amount in excess of one percent of the total capital, surplus and undivided profits of the bank or trust company in any one year without the prior approval of the State Bank Commissioner and shall, in no event, incur such debt in an amount which, in the aggregate, exceeds ten percent of the total capital, surplus and undivided profits of the bank or trust company.

708 Establishment of a Branch Office by a Bank or Trust Company

5 Del.C. §770(a)

Formerly Regulation No.: 5.770.0009

Effective Date: January 12, 1998

1.0 Scope

1.1 This regulation establishes procedures for the filing of an application to establish a branch office of a bank or trust company pursuant to Section 770(a) of Title 5 of the **Delaware Code** and states the manner in which the State Bank Commissioner (the "Commissioner") will review and act upon such applications. An application to establish a mobile branch office pursuant to Section 770(c) of Title 5 is covered separately under Regulation No. 714.

2.0 Application

2.1 An application pursuant to Section 770(a) of Title 5 of the **Delaware Code** shall be in writing; shall be submitted on such forms the Commissioner may designate from time-to-time for that purpose, and shall include the following:

- 2.1.1 Name of applying bank or trust company.
- 2.1.2 Location of proposed branch, including address.
- 2.1.3 Explanation of the necessity for the opening of the branch office.
- 2.1.4 Name, address and phone number of the person(s) to whom inquiries may be directed.

2.2 The Commissioner may designate portions of the application as non-public and confidential.

2.3 The Commissioner will not deem any application to be filed until the Commissioner has determined that all of the information and documents required by the application have been provided, that the application has been properly executed, and that all fees have been paid.

3.0 Fee

3.1 The application shall be accompanied by a non-refundable investigation fee of two hundred and fifty dollars (\$250.00). Checks shall be made payable to the Office of the State Bank Commissioner.

4.0 Notice

4.1 Upon notification by the Commissioner that the application conforms to the requirements for applications pursuant to Section 770(a) of Title 5 of the **Delaware Code** and this regulation, the applicant shall cause a single notice of such application to be published in at least two Delaware newspapers of general circulation. The notice shall provide a brief synopsis of the application and state that interested persons may present their views in writing to the Office of the State Bank Commissioner, and shall be in a form to be approved by the Commissioner before publication.

5.0 Additional Information, Investigation and Hearing

5.1 In addition to the documents filed in accordance with this regulation, the Commissioner has discretion to require additional information, conduct an investigation, or hold a public hearing in accordance with the Administrative Procedures Act, Chapter 101 of Title 29 of the **Delaware Code**.

6.0 Decision

6.1 No earlier than 20 days after publication of the Notice described in section 4 of this regulation, the Commissioner shall issue a written Order approving or disapproving the application. In determining whether to approve the application, the Commissioner shall consider the convenience of the public of this State, and whether there is good and sufficient reason that the bank or trust company should have the branch office.

7.0 Certificate of Authority

7.1 A Certificate of Authority shall be issued by the Commissioner for each approved branch office.

8.0 Time to Open Approved Branch Office

8.1 Branch offices approved in accordance with Section 770(a) of Title 5 of the **Delaware Code** and this regulation shall open within one year of the date when the Commissioner issues the Certificate of Authority. The Commissioner may upon review of the application for such branch office extend the initial opening date to a date greater than one year upon a determination that the proposed completion date will exceed one year. In no instance shall the initial opening date exceed the planned completion date by ninety (90) days. Any Certificate of Authority issued by the Commissioner shall be void and of no effect at the expiration of the initial opening date prescribed on approval of the branch office unless that office is actually opened for business. Unavoidable delay in opening the branch office due to construction problems or other matters beyond the control of the bank or trust company may be taken into consideration and the Commissioner may extend the Certificate of Authority for periods of six months in the event of such circumstances.

¹ DE Reg. 866 (01/01/98)

⁸ DE Reg. 472 (09/01/04)

709 Revocation of Charter for Failure to Commence Business Within a Reasonable Time

Formerly Regulation No.: 5.734.0011.P

Effective Date: April 1, 1991

1.0 Scope

1.1 This regulation applies to every Bank and Trust Company, or Limited Purpose Trust Company (hereinafter referred to as a "Bank") chartered under Chapter 7 of Title 5.

1.2 The purpose of this regulation is to prescribe the criteria to be applied by the State Bank Commissioner (the "Commissioner") in determining what constitutes a reasonable period of time within which a corporation created pursuant to Chapter 7 of Title 5 shall be actively engaged in the business for which it was created.

2.0 Reasonable Period of Time

2.1 Within a reasonable period of time, every corporation chartered under Chapter 7 of Title 5 shall be actively engaged in the business for which it was created. A reasonable period of time has elapsed at the expiration of one year as measured from the date of incorporation.

2.2 If the Commissioner initially determines that the planned completion date for the banking facility proposed in the application for a Bank will exceed one year, the Commissioner may approve an actual opening date that extends beyond one year.

2.3 The Commissioner may grant extensions for periods of six months in the event of unavoidable delay in opening due to construction problems or other events beyond the control of the Bank.

710 Procedures Governing the Dissolution of a State Chartered Bank or Trust Company

5 Del.C. §§750-751

Formerly Regulation No.: 5.751.0013

Effective Date: August 13, 1998

The procedure governing the dissolution of a state chartered bank or trust company are set forth in Chapter 1 of Title 8 (§§103 and 275) of the **Delaware Code**. In addition, no bank or trust company shall file a Certificate of Dissolution of the Bank with the Secretary of State until approval, both in form and substance, is granted by the State Bank Commissioner. The Commissioner may require such information as to the assets and liabilities and condition of the bank(s) concerned as necessary.

1.0 Letter of Intent

1.1 A letter stating the intent to dissolve a bank or trust company and the target date for dissolution shall be filed with the Commissioner thirty (30) days prior to the anticipated dissolution. Included in the letter shall be a detailed description of the method used to dissolve the bank, including, but not limited to, the following:

1.1.1 Proposed or contracted terms of all asset sales including: loans, securities, fixed assets and other assets;

- 1.1.2 Proposed or contracted terms for the assumption of deposit liabilities;
- 1.1.3 Proposed or contracted terms for disposition of other liabilities including contingent liabilities;
- 1.1.4 Proposed disposition of capital accounts including, if any, settlements with dissenting shareholders.

1.2 In addition, the Applicant shall provide in timely manner verified copies of the following:

- 1.2.1 Consent of shareholders of the dissolution;
- 1.2.2 Letter of intent regarding the purchase and assumption of assets and liabilities as submitted to the Federal Deposit Insurance Corporation or other federal regulatory authorities;
- 1.2.3 Letters of approval from appropriate federal regulatory authorities.

2.0 Findings and Decision of the Commissioner

2.1 A review and analysis of the proposed dissolution shall be performed by the State Bank Commissioner. Upon making a determination, the Commissioner shall issue his approval of dissolution pursuant to **5 Del. C. §751**, if appropriate.

3.0 Certificate of Dissolution

3.1 Applicant shall file in timely manner a certified copy of the Certificate of Dissolution, signed by the Secretary of State, with the Office of the State Bank Commissioner.

See **2 DE Reg. 296 (08/01/98)**

711 Application for Approval of the Conversion or Simultaneous Conversion and Acquisition of a Building and Loan Association to a Bank

5 Del.C. §794

Formerly Regulation No.: 5.794.0015

Effective Date: December 31, 1993

1.0 Scope

1.1 This regulation applies to every building and loan association regulated pursuant to Chapter 17, Title 5, **Delaware Code**. The purpose of this regulation is to provide the procedures and application for the conversion or the simultaneous conversion and acquisition (the "Simultaneous Transaction") of a building and loan association to a bank (the "Bank") which shall be deemed as having been formed under and which shall be governed by the provisions of Chapter 7 of Title 5 as provided for in Section 794 of Title 5, **Delaware Code**. If an application is made for conversion of a building and loan association pursuant to Section 794 of Title 5, **Delaware Code**, in connection with an application for acquisition pursuant to Subchapter IV of Chapter 8 of Title 5, **Delaware Code**, the application may cross-reference documents so that duplication is not necessary.

2.0 Notice of Intent

2.1 Notice of the intention of the directors of the building and loan association (the "Applicant") to convert a building and loan association to a bank or to engage in a Simultaneous Transaction ("Notice of Intent") shall be filed with the Commissioner.

2.2 A \$1,000 non-refundable investigation fee shall be submitted with the Notice of Intent, payable to the "Office of the State Bank Commissioner."

2.3 The Notice of Intent shall specify: (1) the names of all directors of the Bank at conversion or at the completion of the Simultaneous Transaction; (2) the name of the Bank; (3) the city or town of the building and loan association and the location of the Bank; (4) the capital stock and paid-in-surplus of the Bank at conversion or at the completion of the Simultaneous Transaction; (5) the identity of the Delaware bank holding company or out-of-state bank holding company in a Simultaneous Transaction.

2.4 The Notice of Intent of the directors shall have attached as exhibits: (1) a copy of an application in such form as the Commissioner may from time to time prescribe, submitted and sworn to by the directors of the Applicant (**Form A**); (2) a copy of the proposed Articles of Association; (3) a proposed form of public notice as provided for under Section 4.0 of this Regulation (the "Public Notice"); (4) a copy of a corporate resolution, sworn to and certified by the Corporate Secretary, authorizing the directors to execute and file the Notice of Intent and Application on behalf of the Applicant; and (5) a copy of the Application for Determination of Public Convenience and Advantage (**Form B**), executed by the proposed directors of the Bank.

3.0 Application for Determination of Public Convenience and Advantage (Form B)

3.1 The Applicant shall file with the Notice of Intent an Application for Determination of Public Convenience and Advantage set forth in subsection **Form B** of this Regulation.

3.2 The Commissioner will not deem any application as filed until the Commissioner has determined that all of the information requested in the application has been provided; that the application has been properly executed; that all required exhibits are attached; and that the \$1,000 investigation fee has been paid.

3.3 Supplemental information may be requested by the Commissioner.

4.0 Public Notice

4.1 At least once during each of the first two weeks following the filing of an application pursuant to Section 794 and this regulation, the Commissioner will cause to be published in a newspaper having state-wide circulation, at the expense of the Applicant, a notice of the filing of such application, which notice shall invite public inspection and comment thereon prior to the expiration of a 45-day period.

4.2 If the Notice of Intent and the attached exhibits filed with the Commissioner are in the form required by this Regulation and are approved by the Commissioner, the Commissioner will schedule a formal, evidentiary hearing not to be held prior to the end of the 45 day comment period. Notice of the hearing will be given at least 20 days before the day the hearing is to be held.

5.0 Public Hearing

5.1 The public hearing provided for in this Regulation may be conducted by the Commissioner or by a Deputy Commissioner or Deputy Attorney General designated for that purpose. At such hearing, the Commissioner or his designate shall accept all relevant, non-cumulative evidence offered by or on behalf of the Applicant or by any interested person. Interested parties may appear at the public hearing, in person or by counsel or by other representative.

5.2 A record from which a verbatim transcript can be prepared shall be made. The Applicant shall be responsible for arranging for a certified court reporter to be present at the public hearing and shall bear the expense of an original written transcript for the Commissioner's use (which shall be supplied to the Commissioner as promptly as practical following the public hearing). Additional transcripts provided to any interested person shall be at the expense of the person requesting the transcript.

6.0 Commissioner's Determination

6.1 If the Commissioner has cause to believe that because of the conversion or Simultaneous

Transaction, accessible banking services will be significantly diminished or that the Applicant would not satisfy one or more of the criteria for the issuance of a Certificate of Public Convenience and Advantage in accordance with Section 726 of Title 5, **Delaware Code**, the Commissioner will, not later than 45 days after the close of the comment period, advise the Applicant of such objection, together with the grounds therefore. At the request of the Applicant, the Commissioner will proceed to give notice and conduct a hearing in accordance with the Administrative Procedures Act, Chapter 101, Title 29, **Delaware Code**.

6.2 If the Commissioner or Deputy Commissioner presides at a public hearing conducted pursuant to this Regulation and if the decision on the Application is not adverse to the Applicant, the Commissioner may waive the entry of a proposed order and may instead proceed directly to the entry of a final order.

7.0 Decision and Final Order

7.1 Every decision on an Application shall be incorporated in a final order which shall include: (1) a brief summary of the evidence; (2) findings of fact based upon the evidence; (3) conclusions of law; (4) any other conclusions or findings required by law; and (5) a concise statement of the determination or action on the case.

7.2 Every final order shall be authenticated by the signature of the Commissioner and shall be mailed or delivered to: (1) the Incorporators (or their agent); (2) each person that presented data, views or arguments at the hearing; and (3) any other person requesting a copy of the final order.

8.0 Amendment of Name on Certificate of Incorporation and Commencement of Business

8.1 At any time after the Commissioner's decision approving the application for conversion or approving the Simultaneous Transaction, the Applicant shall submit for the Commissioner's endorsement the proposed Articles of Association attached as an exhibit to the Notice of Intent. The Articles of Association shall be filed with the Secretary of State within 30 days after the Commissioner's endorsement.

8.2 The existing Certificate of Incorporation issued to the Applicant by the Secretary of State shall be amended to reflect the name of the Bank.

8.3 Upon issuance of the amended Certificate of Incorporation by the Secretary of State and compliance with all provisions of law, a certified copy of the amended Certificate of Incorporation shall be recorded in the Office of the Recorder or Deeds for the county in which the Applicant was located and in which the place of business of the Bank is to be located, if not the same.

8.4 A certified copy of the Bank's amended Certificate of Incorporation shall be filed with the Commissioner together with a \$5,000 fee for each certificate to transact business requested. No transaction of business as a Chapter 7 institution can begin until authorized by the Commissioner by the issuance of a Certificate to Transact Business.

8.5 An application for a Certificate to Transact Business shall include a certification as to the issuance of the whole capital stock of the Bank; a list of stockholders (including the number of shares held by each and the residence and post office address of each stockholder), which list shall be certified by the president and the cashier or treasurer of the Bank; evidence of the deposit of the proceeds of any sale of capital stock in an account for the benefit of the Bank; and evidence satisfactory to the Commissioner demonstrating that FDIC deposit insurance for the Bank has been approved by the FDIC; and in a Simultaneous Transaction evidence that the out-of-state bank holding company has established a separate escrow account for an amount representing the capital stock and paid-in surplus to be contributed to the Bank upon the issuance of the Certificate to Transact Business.

8.6 The Commissioner shall review the application and the status of the Applicant's FDIC insurance. If

the above referenced \$5,000 fee has been paid and it appears that all requirements of this Regulation and applicable law have been complied with and the Applicant's building and loan license has been surrendered, the Commissioner shall issue a certificate authorizing the Bank to begin the transaction of business.

712 Merger with Out-of-State Banks*

(§§ 795D, 795F, 795G, 795H)

Formerly Regulation No.: 5.795etal.0016

Effective Date: January 12, 1998

This regulation establishes procedures governing: (i) the merger of one or more out-of-state banks with or into one or more Delaware banks to result in a Delaware state bank, pursuant to § 795D of Title 5, **Delaware Code**; (ii) the merger of one or more Delaware state banks with or into one or more out-of-state banks to result in an out-of-state state bank, pursuant to § 795F of Title 5, **Delaware Code**; (iii) the merger with an out-of-state bank of a Delaware state bank that is in default or in danger of default, pursuant to § 795G of Title 5, **Delaware Code**; and (iv) the approval by the Commissioner, pursuant to § 795H of Title 5, **Delaware Code**, of a merger in accordance with §§ 795C, 795D, 795E, 795F or 795G of Title 5, **Delaware Code**, even though the resulting bank (including all insured depository institutions, as defined in the Federal Deposit Insurance Act at 12 U.S.C. § 1813(c), which would be affiliates of the resulting bank), upon consummation of the transaction, would control 30 percent or more of the total amount of deposits of insured depository institutions in this State. This regulation is to be used in conjunction with statutory provisions included by reference in §§ 795D, 795F, 795G and 795H of Title 5, **Delaware Code**, and the merger procedure prescribed in Subchapter IX of Chapter 1 of Title 8, **Delaware Code**, for the merger or consolidation of domestic and foreign corporations.

1.0 Merger Application By A Delaware State Bank

1.1 A merger application by a Delaware state bank in accordance with § 795D, § 795F and § 795G of Title 5, **Delaware Code**, in which the resulting bank will be a state bank, shall be filed with the Commissioner. Such application shall include: a merger agreement in the same form as that prescribed in § 784 of Title 5, **Delaware Code**; certified copies of the authorizing resolutions of each board of directors showing approval by a majority of the entire board and evidence of proper action by the board of directors of any merging national bank, as provided in § 784(b) of Title 5, **Delaware Code**; a copy of the complete application as submitted to the Federal Deposit

1.2 Insurance Corporation (the "FDIC"), the Board of Governors of the Federal Reserve System (the "FRB") or the Office of the Comptroller of the Currency (the "OCC"), as applicable; the \$1,150 investigation fee as provided in § 792 of Title 5, **Delaware Code**; a cover letter indicating that the application is made pursuant to § 795D, § 795F or § 795 G of Title 5, **Delaware Code**, as applicable, and providing information about the disposition of existing locations of the merging Delaware state bank, if any; and, when applicable, the information required by regulation 805 (formerly 5.803.0011).

2.0 Application For Waiver Of The 30% Concentration Limit

2.1 A Delaware bank that is a party to a merger in accordance with §§ 795D or 795F (with a resulting state bank) or § 795G (with a resulting state or national bank) of Title 5, **Delaware Code**, in which the resulting bank, upon consummation of the transaction, would control 30% or more of the total amount of deposits of insured depository institutions in this State, may apply for a waiver of the 30% concentration limit in accordance with § 795H of Title 5, **Delaware Code**, as part of the merger

application to the Commissioner.

2.2 A Delaware bank that is a party to a merger in accordance with §§ 795C or 795E of Title 5, **Delaware Code**, in which the resulting bank would be a national bank and, upon consummation of the transaction, would control 30% or more of the total amount of deposits of insured depository institutions in this State, may apply for a waiver of the 30% concentration limit in accordance with § 795H of Title 5, **Delaware Code**, by submitting to the Commissioner a copy of the complete application as submitted to the FDIC, the FRB or the OCC, as applicable, and a cover letter indicating that the application is made pursuant to § 795H of Title 5, **Delaware Code**, and providing information about the disposition of existing locations of the merging Delaware bank.

3.0 Additional Information, Investigation, Notice, Comment and Hearing

3.1 In addition to the documents filed in accordance with this regulation, the Commissioner at his discretion may require additional information as deemed necessary, conduct an investigation, order public notice of the merger, period for public comment, and/or a public hearing. The application shall not be considered complete until such additional matters, if any, are completed.

4.0 Findings and Decision

4.1 Within 30 days of receipt of the completed application, the Commissioner shall issue Findings and Decision approving or disapproving the application. Any merging bank whose application is disapproved shall receive an opportunity to amend its application to satisfy the objections of the Commissioner.

5.0 Filing Of Merger Agreement With The Secretary Of State

5.1 Upon receipt of approval of the merger by the FDIC, the FRB or the OCC, as applicable, and verification that the provisions of § 252 of Title 8, **Delaware Code**, have been complied with, the Commissioner shall affix his signature of approval to the merger agreement for filing with the Secretary of State.

See 1 DE Reg. 869 (01/01/98)

* Terms used in this regulation are as defined in §795 of Title 5, **Delaware Code**, unless otherwise noted.

713 Incidental Powers

5 **Del.C.** §761(a)(17)

Formerly Regulation No.: 5.761.0017

Effective Date: June 11, 2001

1.0 Purpose and Scope

1.1 This regulation specifies certain activities that are within the scope of the powers incident to a banking corporation under 5 **Del.C.** §761(a)(17) and also establishes the procedure for a bank to exercise its powers under that section by engaging in those and other activities, either directly or through a subsidiary.

1.2 This regulation is not intended to limit, restrict or define any other powers granted to a bank or any of its subsidiaries by any other Delaware statute, legislative charter, or regulation.

2.0 Definitions

"Bank" means any bank as defined by 5 **Del.C.** §101 that is established pursuant to 5 **Del. C.** Chapter 7,

or pursuant to any other law of this State if the bank is entitled to amend its charter or certificate of incorporation in accordance with 5 **Del.C.** §749.

"Commissioner" means the State Bank Commissioner.

3.0 Specified Activities

3.1 Any bank that desires to exercise its incidental powers under 5 **Del.C.** §761(a)(17) by engaging in any of the following specified activities, either directly or through a subsidiary, shall notify the Commissioner in writing before commencing that activity:

3.1.1 Any activity that is permissible for a national bank as principal.

3.1.2 Any activity that is permissible for a bank holding company pursuant to Section 4(c)(8) of the Bank Holding Company Act of 1956, as amended (12 USC §1843(c)(8)).

3.1.3 Any activity that is permissible in accordance with Part 362.3 of the Rules and Regulations of the Federal Deposit Insurance Corporation (the "FDIC") (12 CFR §362.3), which implements provisions of Section 24 of the Federal Deposit Insurance Act (12 USC §1831a), other than activities that are otherwise specifically limited or prohibited under Delaware law.

3.1.4 The provision of travel agency services. Banks chartered by the Delaware General Assembly before 1933 traditionally provided travel agency services to their customers, in reliance on the broad grants of agency power typically conferred by their charters. Delaware bank customers historically relied upon Delaware banks as providers of travel agency services, and continue to look to Delaware banks for such services. Accordingly, the Commissioner has concluded that travel agency services constituted part of the generally accepted business of banking when Delaware's Corporation Law for State Banks and Trust Companies was enacted in 1933, and that the provision of travel agency services continues to be authorized by the powers incident to a banking corporation pursuant to 5 **Del.C.** §761(a)(17).

3.1.5 The provision of general management consulting services. Many banks chartered by the Delaware General Assembly before 1933 were given broad powers to act in a fiduciary capacity, and the fulfillment of fiduciary duties in the context of banking affairs ordinarily involves the provision by banks of disinterested advice on many business and financial matters. Accordingly, the Commissioner has concluded that general management consulting services constituted part of the generally accepted business of banking when Delaware's Corporation Law for State Banks and Trust Companies was enacted in 1933, and that the provision of general management consulting services continues to be authorized by the powers incident to a banking corporation pursuant to 5 **Del.C.** §761(a)(17).

3.2 Any bank that desires to exercise its incidental powers under 5 **Del.C.** §761(a)(17) by engaging in any of the following specified activities through a subsidiary shall notify the Commissioner in writing before commencing that activity:

3.2.1 Any activity that is permissible for a financial subsidiary of a national bank pursuant to Section 5136A of the Revised Statutes of the United States, as amended (12 USC §24a), other than activities that are otherwise specifically limited or prohibited under Delaware law;

3.2.2 Any activity that is permissible in accordance with Part 362.3 or Part 362.4 of the Rules and Regulations of the FDIC (12 CFR §362.3 or §362.4), which implement provisions of Section 24 of the Federal Deposit Insurance Act (12 USC §1831a), other than activities that are otherwise specifically limited or prohibited under Delaware law.

3.3 If the Commissioner does not object in writing to the proposed activity within 30 days of receiving the notice, the bank may then exercise its incidental powers by engaging in the specified activity

described in the notice. The Commissioner may also permit the bank to engage in the specified activity before the end of the 30-day notice period.

3.4 The Commissioner may require the bank to conduct the specified activity only through a subsidiary, and may also impose any conditions related to the conduct of that activity that are necessary or appropriate for the bank's safety and soundness, as the Commissioner may determine.

3.5 If the Commissioner objects in writing to the proposed activity within 30 days of receiving the bank's notice, the bank may not engage in that activity either directly or through a subsidiary, until the Commissioner issues a written order approving such activity.

3.6 The bank or its subsidiary may submit an application to the Commissioner seeking approval of the proposed activity. The Commissioner has discretion to require any additional information deemed necessary and the application shall not be considered complete until such additional information is provided. Within 30 days of receiving the completed application, the Commissioner shall issue an order approving or disapproving the application.

4.0 Other Activities

4.1 A bank may apply to the Commissioner for permission to exercise its incidental powers under 5 **Del.C. §761(a)(17)** by engaging, either directly or through a subsidiary, in any activity that is not specified in Section 3.0 of this regulation.

4.1.1 The bank's application must describe the proposed activity in detail and demonstrate that the activity is within the powers, rights, privileges and franchises incident to a banking corporation, and is also necessary and proper to the transaction of the business of the corporation within the meaning of 5 **Del.C. §761(a)(17)**.

4.1.2 Upon receipt of the application, the Commissioner may require additional information appropriate to evaluate the request, and the application shall not be considered complete until such additional information is received.

4.1.3 Within 30 days of receiving the completed application, the Commissioner shall issue a written order approving or disapproving the bank's application. In issuing that order, the Commissioner shall consider all information that the bank has provided as well as the bank's general financial condition and performance.

4.1.4 The Commissioner may require that the activity be conducted only through a subsidiary, and may also impose any conditions related to the conduct of the activity that are necessary or appropriate to the bank's safety and soundness, as the Commissioner may determine.

4 DE Reg. 1995 (06/01/01)

714 Establishment of a Mobile Branch Office by a Bank or Trust Company

5 **Del.C. §770(c)**

1.0 Scope

1.1 This regulation establishes procedures for the filing of an application to establish a mobile branch office of a bank or trust company pursuant to Section 770(c) of Title 5 of the **Delaware Code** and states the manner in which the State Bank Commissioner (the "Commissioner") will review and act upon such applications. An application to establish a branch office pursuant to Section 770(a) of Title 5 that is not a mobile branch is covered separately under Regulation No. 708.

2.0 Application

2.1 An application pursuant to Section 770(c) of Title 5 of the **Delaware Code** shall be in writing; shall be submitted on such form as the Commissioner may designate from time-to-time for that purpose, and shall include the following:

- 2.1.1 Name of applying bank or trust company.
- 2.1.2 The area in which the mobile branch office will operate.
- 2.1.3 The manner of operation of the mobile branch office.
- 2.1.4 An explanation of the necessity for the opening of the mobile

branch office.

2.1.5 Name, address and phone number of the person(s) to whom inquiries may be directed.

2.2 The Commissioner may designate portions of the applications as non-public and confidential.

2.3 The Commissioner will not deem any application to be filed until the Commissioner has determined that all of the information and documents required by the application have been provided, that the application has been properly executed, and that all fees have been paid.

3.0 Fee

3.1 The application shall be accompanied by a non-refundable investigation fee of two hundred and fifty dollars (\$250.00). Checks shall be made payable to the Office of the State Bank Commissioner.

4.0 Notice

4.1 Upon notification by the Commissioner that the application conforms to the requirements for applications pursuant to Section 770(c) of Title 5 of the **Delaware Code** and this regulation, the applicant shall cause a single notice of such application to be published in at least two Delaware newspapers of general circulation. The notice shall provide a brief synopsis of the application and state that interested persons may present their views in writing to the Office of the State Bank Commissioner, and shall be in a form to be approved by the Commissioner before publication.

5.0 Additional Information, Investigation and Hearing

5.1 In addition to the documents filed in accordance with this regulation, the Commissioner has discretion to require additional information, conduct an investigation, or hold a public hearing in accordance with the Administrative Procedures Act, Chapter 101 of Title 29 of the **Delaware Code**.

6.0 Decision

6.1 No earlier than 20 days after publication of the notice described in Section 4 of this regulation, the Commissioner shall issue a written order approving or disapproving the application. In determining whether to approve the application, the Commissioner shall consider the convenience of the public of this State, and whether there is good and sufficient reason that the bank or trust company should have the mobile branch office.

7.0 Certificate of Authority

7.1 A Certificate of Authority shall be issued by the Commissioner for each approved mobile branch office.

8.0 Time to Open Approved Mobile Branch Office

8.1 Mobile branch offices approved in accordance with Section 770(c) of Title 5 of the **Delaware Code** and this regulation shall open within one year of the date when the Commissioner issued the Certificate of Authority. The Commissioner may upon review of the

application for such mobile branch office extend the initial opening date to a date greater than one year upon a determination that the proposed completion date will exceed one year. In no such instance shall the initial opening date exceed the planned completion date by more than ninety (90) days. Any Certificate of Authority issued by the Commissioner shall be void and of no effect at the expiration of the initial opening date prescribed on approval of the mobile branch office unless the mobile branch is actually opened for business. Unavoidable delay in opening the mobile branch office due to construction problems or other matters beyond the control of the bank or trust company may be taken into consideration and the Commissioner may extend the Certificate of Authority for periods of six months in the event of such circumstances.

9.0 Changes in Manner or Area of Operation

9.1 A bank or trust company that is operating an approved mobile branch office shall notify the Commissioner, in writing, in advance of any change in the manner or area of operation of the mobile branch office. Any such change shall be deemed approved unless the Commissioner notifies the bank or trust company otherwise within 20 days of the Commissioner's receipt of that notice. The Commissioner may decline to approve any of the changes, or may direct the bank or trust company to submit a new application in accordance with this regulation.

10.0 Operations Log

After the mobile branch begins operations, the bank or trust company operating that branch must maintain a log of operations, indicating the date, specific location, and a description of each stop (e.g., office, store, residence).

8 DE Reg. 473 (09/01/04)

801 Application to Become a Delaware Bank Holding Company

5 Del.C. §852

Formerly Regulation No.: 5.852.0002

Effective Date: August 13, 1998

1.0 Scope of Regulation

1.1 This regulation establishes procedures governing the creation of a Delaware bank holding company. A bank holding company with bank subsidiaries in Delaware whose operations are principally conducted within this state is required to become a Delaware bank holding company. A bank holding company is deemed to be principally conducting operations in Delaware when the total deposits of all bank subsidiaries in this State are greater than in any other state (See 5 Del. C. §851(3)). Except as provided in §852(a), no bank holding company other than a Delaware bank holding company may own a Delaware bank.

2.0 Application

2.1 Notice of Intent to become a Delaware Bank Holding Company constitutes an application. Said Notice of Intent shall be filed in duplicate with the Office of the State Bank Commissioner. The Notice of Intent shall include:

2.1.1 Name of Applicant and address of principal office.

2.1.2 The State in which the Applicant is (or will be) incorporated. If the Applicant is incorporated outside of the State of Delaware, identify the name and address of a resident of Delaware designated as

the Applicant's agent for the service of any paper or notice of legal process.

2.1.3 If applicable, the corporate title and the address of the bank to be acquired; the number of voting shares to be acquired; and the percentage of said shares this number represents.

2.1.4 The name, address and telephone number of the person(s) to whom inquiries may be directed.

2.1.5 The Notice of Intent shall include the following exhibits:

2.1.5.1 A copy of the Resolution by the Board of Directors of the Applicant authorizing the establishment of a Delaware bank holding company.

2.1.5.2 A description of the Applicant and the transaction.

2.1.5.3 A description of the financial and managerial resources of the proposed Delaware bank holding company.

2.1.5.4 The future prospects of the bank holding company and the bank whose assets or shares it will acquire, if applicable, to include a statement in narrative form of a three (3) year business plan of the Applicant for the proposed bank holding company and, if applicable, the bank to be acquired.

2.1.5.5 The financial history of the Applicant:

2.1.5.5.1 Provide a narrative description of the financial history of the Applicant and its bank and deposit taking non-bank subsidiaries over the past three (3) years. Include as exhibits all annual statements of income and condition filed with the bank regulatory authority or authorities in each state where the bank holding company maintains a bank subsidiary or, in the case of a national bank, with the Comptroller of the Currency; provided that such filings shall not be required with respect to any bank subsidiary under the jurisdiction of the Delaware State Bank Commissioner.

2.1.5.5.2 Provide for the past three calendar years, copies of all Form 10-Ks.

2.1.5.5.3 Describe regulatory action taken or anticipated or any agreements in lieu thereof entered into with a regulatory agency, either federal or state, with regard to any bank subsidiary within the holding company.

2.1.5.6 The effects of the proposed acquisition on competition in Delaware.

2.1.5.7 Describe how this transaction will better meet the needs and convenience of the public in the State of Delaware.

2.1.5.8 A copy of the application filed with the Board of Governors of the Federal Reserve System to become a Bank Holding Company.

3.0 Publication

3.1 A proposed form of public notice shall be filed at the time the Notice of Intent (Application) is submitted for the Commissioner's approval. Said public notice shall include: the name and address of the Applicant, the subject matter of the application, the name and address of the bank to be acquired, and a statement indicating: a) for a period of 20 days commencing with the second date of publication, interested parties may submit written comments to the State Bank Commissioner at 555 E. Loockerman Street, Dover, Delaware 19901; and b) the application is on file in the Office of the State Bank Commissioner and the non-confidential portions thereof will be available for examination by interested parties during regular office hours.

3.2 Upon written notice from the Commissioner that the proposed public notice is satisfactory, the Applicant shall cause said public notice to be published once a week for two consecutive weeks in a newspaper of general circulation in the community in which the head office of the bank of which

shares are to be acquired is located. An affidavit of publication shall be submitted to the Commissioner for the record.

4.0 Additional Information

4.1 Upon review and consideration of the application, the Commissioner may require any additional information deemed necessary.

5.0 Confidential Information

5.1 An Applicant may request that specific information included in the Notice of Intent be treated as confidential. Any information or exhibits of which the applicant claims the designation of confidential shall be segregated at the end of the application as a separate exhibit designated as "confidential". The Commissioner, in his sole discretion, shall determine whether any or all of the information for which the "confidential" designation is requested by the Applicant meets the criteria for confidentiality set forth in 29 **Del. C.** §10112(b)(4). All portions of the Notice of Intent which the Commissioner does not designate as "confidential" shall be made available for public inspection and copying in the manner provided by law with the exception of the copy of the Application filed with the Federal Reserve.

6.0 Fees

6.1 The Notice of Intent (Application) shall be accompanied by a filing fee in the amount of five thousand seven hundred and fifty dollars (\$5,750.00) for the use of the State and a non-refundable processing fee in the amount of one thousand one hundred and fifty dollars (\$1,150.00). Checks shall be made payable to the Office of the State Bank Commissioner.

7.0 Hearing

7.1 If, after the twenty (20) day comment period, the Commissioner determines a public hearing should be conducted, such determination shall be made within ten (10) days after the conclusion of the 20-day comment period. Notice fixing the time, place and date for the holding of a hearing on the application shall be published at least twenty (20) days prior to the day it is to be held. The hearing shall be conducted in accordance with Chapter 101 of Title 29 of the **Delaware Code**.

8.0 Findings and Decision of the Commissioner

8.1 The Findings and Decision approving or disapproving the Application will be issued in accordance with Chapter 101 of Title 29, **Delaware Code**.

See 2 DE Reg. 297 (08/13/98)

803 Application by an Out-of-State Bank Holding Company to Acquire a Delaware Bank or Bank Holding Company

5 Del.C. §844

Formerly Regulation No.: 5.844.0009

Effective Date: December 11, 1998

1.0 Instructions

1.1 This Application is to be filed by an "out-of-state bank holding company" (as defined in Section 801 of Title 5 of the **Delaware Code**) for the purpose of acquiring a Delaware bank or bank holding company pursuant to the Delaware Interstate Banking Act (5 Del.C. §841 et seq.).

1.2 This Application is to be completed, executed and acknowledged by a lawfully empowered officer of the out-of-state bank holding company. The completed

Application and required exhibits should be filed with the Office of the State Bank Commissioner, Dover, Delaware in duplicate, accompanied by a non-refundable filing fee made payable to the State of Delaware in the amount of five thousand seven hundred and fifty dollars (\$5,750.00), together with a non-refundable processing fee made payable to the Office of the State Bank Commissioner in the amount of one thousand one hundred and fifty dollars (\$1,150.00). THE COMMISSIONER WILL NOT DEEM ANY APPLICATION AS FILED UNTIL THE COMMISSIONER HAS DETERMINED THAT ALL OF THE INFORMATION REQUESTED IN THE APPLICATION HAS BEEN PROVIDED; THAT THE CERTIFICATE HAS BEEN PROPERLY SIGNED AND ACKNOWLEDGED; THAT ALL REQUIRED EXHIBITS ARE ATTACHED; AND THAT ALL FEES HAVE BEEN PAID.

2.0 Application Process

2.1 Upon notification by the Commissioner that this Application is deemed as filed, the applicant shall cause to be published in a newspaper of general circulation throughout the State of Delaware, once a week for two (2) consecutive weeks, a notice of its intention to acquire a Delaware bank holding company or bank, and, if applicable, to form an interim bank in connection therewith. Such notice shall include the date, time and location of the public hearing on the application as established by the Commissioner. Such notice shall expressly invite members of the public to examine the Application on file with the Office of the State Bank Commissioner and to submit comments regarding the Application to the Office of the State Bank Commissioner. A public hearing will be conducted by the Commissioner or his designee in accordance with Chapter 101 of Title 29, **Delaware Code** to review the Application and to take such testimony and to gather such evidence as the Commissioner or his designee deems necessary to determine whether the proposed acquisition (and, where applicable, the formation of the proposed interim bank) will serve the public convenience and advantage pursuant to the criteria set forth in 5 **Del.C.** §844(b). When applicable, the Commissioner or his designee will also consider whether a proposed acquisition should be approved even though the acquiring out-of-state bank holding company, or any subsidiary thereof, would control, together with any affiliated insured depository institution, 30 percent or more of the total amount of deposits of insured depository institutions in this State, as provided in 5 **Del.C.** § 843(b). A record from which a verbatim transcript can be prepared shall be made of all hearings. The expense of any transcription of the proceedings requested by the Commissioner or his designee shall be borne by the applicant; in all other instances, the expense of such transcription shall be borne by the person requesting it. The Commissioner or his designee will issue preliminary findings of fact and law and make the same available for comment to the applicant and all parties having presented data, views or argument at the hearing. Said parties shall have thereafter twenty (20) days to submit in writing to the Commissioner exceptions, comments and arguments respecting the preliminary findings. If the Commissioner or his designee presides at a hearing conducted pursuant to this regulation and if the decision on the Application is not adverse to the applicant, the Commissioner or his designee has the right to waive the preliminary findings of fact and law and may instead proceed directly to the entry of a final order.

3.0 Confidential Information

3.1 An applicant may request that specific information included in this Application be treated as confidential. Any information or exhibits for which the applicant claims the designation of confidential shall be segregated at the end of the Application as a separate exhibit which the applicant shall designate as "confidential". The Commissioner, in his sole discretion, shall determine whether any or all of the information for which the "confidential" designation is requested by the applicant meets the criteria for confidentiality set

forth in 29 **Del.C.** §10112(b)(4). All portions of this Application which the Commissioner shall not designate as "confidential" shall be made available for public inspection and copying in the manner provided by law.

**APPLICATION FOR AUTHORITY OF AN OUT-OF-STATE
BANK HOLDING COMPANY
TO ACQUIRE A DELAWARE BANK OR BANK HOLDING COMPANY**

3.2 Certification

The undersigned,

(Name and Title)

(Name of Bank Holding Company)

having first been duly authorized, does hereby make application on behalf of
to acquire

(Name of

Delaware Bank or Bank Holding Company)

The undersigned acknowledges that he/she has read and is familiar with the provisions of the Delaware Interstate Banking Act and all rules and regulations issued in connection therewith; that all of the information provided as part of this Application is, to the best of the knowledge and belief of the undersigned, true and accurate; and that he/she is duly authorized to execute this certification on behalf of the applicant.

WITNESS

Sworn to and subscribed before me, a Notary Public of the State of ,
this day of , .

3.3. Identification of Applicant

3.3.1 State formal name and state of incorporation of applicant.

3.3.2 Identify the name and address of a resident of the State of Delaware who is designated as agent of the applicant for the service of any paper, notice or legal process upon applicant in connection with any matter arising out of Subchapter IV, Chapter 8, Title 5, **Delaware Code**.

3.4. Acquisition

3.4.1. Identify the Delaware bank or bank holding company to be acquired (if a bank holding company, further identify the bank subsidiary or subsidiaries of such holding company).

3.4.1.2 Describe the method of acquisition of the Delaware bank holding company or bank (if not otherwise included as part of the Application for Formation of an Interim Bank, enclose as an exhibit to this Application a copy of the acquisition agreement between the applicant and the Delaware bank or bank holding company).

3.4.1.3. Indicate whether this Application is the only pending application for the acquisition of a Delaware bank or bank holding company. If not, identify and attach a copy of any other application pending.

3.4.1.4 Attach as an exhibit a statement of counsel that the Delaware bank holding company and/or Delaware bank are not prohibited by its articles of incorporation, charter, or legislative act from being acquired.

3.4.1.5 If not previously filed, attach as exhibits the most recent statement of income and condition, together with the three most recent annual statements of income and condition of each bank subsidiary of the Delaware bank holding company to be acquired filed with the Office of the State Bank Commissioner or, if a national bank, the

Comptroller of the Currency.

3.4.1.6 State whether the proposed acquisition has received: (1) the necessary approval of the stockholders of the out-of-state bank holding company and the Delaware bank holding company or bank (if so, attach certified copies of the resolutions of such approval; if not, describe the status of such approval processes); and (2) whether all necessary federal regulatory approvals have been obtained (if so, provide copies of such approvals; if not, describe the status of the application process for such approvals and attach actual or pro forma applications without exhibits except for transmittal correspondence, and any responses from the federal regulatory authorities).

3.5 Information regarding formation of interim bank (OPTIONAL).

3.5.1 If applicant is seeking a certificate of public convenience and advantage from the Commissioner for an interim bank as part of this Application, then applicant should comply with the provisions of Regulation No. 102 with respect to the formation of such interim bank as part of this Application; provided, however, that an application for authorization to form an interim bank which is filed as part of this Application by an out-of-state bank holding company shall be governed by the notice, publication and hearing requirements of this Application as described in the section captioned "Application Process", rather than the notice and publication requirements of Regulation No.102.

3.5.2. If applicant has previously applied for a certificate of public convenience and advantage for an interim bank from the Comptroller of the Currency, attach the certificate of public convenience and advantage issued with respect to such interim bank. If such certificate has not been issued, provide a copy of the application to form such interim bank without exhibits other than the transmittal letter and any responses received from the Office of the Comptroller of the Currency.

3.6. Information addressing the criteria for approving or disapproving an acquisition provided for at 5 Del.C. §844(b).

3.6.1 Financial history of the applicant.

3.6.1.1. Describe in narrative fashion the financial history of the applicant, its affiliates, and its bank and non-bank subsidiaries over the past three (3) years. Include as exhibits all annual statements of income and condition filed with the bank regulatory authority or authorities in each state where the bank holding company maintains a bank subsidiary or, in the case of a national bank, with the Comptroller of the Currency; provided, that such filings shall not be required with respect to any bank subsidiary under the jurisdiction of a bank regulatory authority with whom the State Bank Commissioner shall have entered into a cooperative agreement for the provision of such reports pursuant to the provisions of 5 Del.C. §845 or any other provision of Title 5.

3.6.1.2 Provide for the past three calendar years, copies of all Form 10-K's and quarterly reports filed on Form 10-Q (or their state equivalents) (if required) with respect to the bank holding company, together with all proxy statements, tender offer materials, other disclosure documents, etc. relating to the proposed application (if required), or any other acquisition undertaken by applicant.

3.6.1.3 If an applicant is not required to file any report under the Securities Exchange Act of 1934 (15 U.S.C. §78 et seq. as amended), or an equivalent state filing, the applicant shall file information substantially equivalent to the information which would otherwise be contained in such reports in a form reasonably satisfactory to the Commissioner, including the previous three years' statements of condition and a three year income statement, statements of changes in shareholders' equity, all as prepared in accordance with generally accepted accounting principles.

3.6.2. Provide a statement in narrative form of a three (3) year business

plan of applicant for the Delaware bank holding company and its bank and non-bank subsidiaries, or the Delaware bank to be acquired. Such plan should include but is not limited to a description of:

3.6.2.1 In detail, any proposed change during the first year of operation in the products or services offered by the Delaware bank or the subsidiary or subsidiaries of the Delaware bank holding company;

3.6.2.2 In detail, any contemplated or proposed change during the first year after the effective date of the acquisition in the executive officers of the Delaware bank or the Delaware bank holding company, with specific reference to the termination, transfer, or reduction of authority or responsibilities of any such executive officers;

3.6.2.3. Using the current table of organization of the Delaware bank or bank subsidiary, describe proposed changes in levels of employment among non-management personnel.

3.6.2.4 Any change in the geographic market to be served by the Delaware bank or the subsidiary of the Delaware bank holding company (with specific reference to the opening, closing or expansion of branches);

3.6.2.5 Additional products or services which the Delaware bank or subsidiary of the Delaware bank holding company will provide after the acquisition;

3.6.2.6 For the next three (3) years, proposed changes in the capitalization of the Delaware bank or the Delaware bank holding company and any subsidiary thereof.

3.6.2.7 With respect to each of the above subject areas, include specific references, if any, to any relevant sections of the acquisition agreement, merger agreement with an interim bank, any other agreement or understanding (with any person or party) not incorporated in such acquisition or merger agreements or any exhibits or supplements as to any of such items.

3.7 State whether the applicant, or any subsidiary thereof, would control, together with any affiliated insured depository institution (as defined in the Federal Deposit Insurance Act at 12 U.S.C. §1813(c)), 30 percent or more of the total amount of deposits of insured depository institutions in this State after the proposed acquisition. If so, explain why the Application should be approved in accordance with the convenience and needs of the public of this State.

3.7.1 If applicant has acquired or has made application to acquire any other Delaware bank holding company or Delaware bank, describe in detail the extent to which the acquisition which is the subject of this Application will affect present competition between the banks or bank subsidiaries of a Delaware bank holding company to be acquired under this Application and the Delaware bank or bank subsidiary of a Delaware bank holding company previously acquired or pending acquisition approval.

3.7.2 Describe in detail the activities which applicant proposes for fostering economic development and employment within the State of Delaware. By way of historical background, and as part of such description, include the following information:

3.7.2.1 With respect to the commercial loan activity of the bank subsidiaries of both the applicant and the Delaware bank or bank subsidiary of the bank holding company to be acquired, the total dollar value, and the percentage of total commercial loans outstanding, of the following categories of commercial loans:

3.7.2.1.1 Small business loans (SBA)

3.7.2.1.2 Other small business loans

3.7.2.1.3 Industrial authority development loans

3.7.2.1.4 Financing of ESOP's and leveraged buy-outs

3.7.2.1.5. Financing directly or indirectly of non-profit, community development projects

3.7.2.2 Loans in other categories designed to stimulate industrial growth and employment

3.7.2.3 Enclose for both the bank subsidiary or subsidiaries of applicant and the Delaware bank or bank subsidiaries of the bank holding company to be acquired copies of the most recent report filed pursuant to the Home Mortgage Disclosure Act, 12 U.S.C. §2801 et seq.

804 Application for Waiver of Section 803 Conditions

5 Del.C. §803(c)

Formerly Regulation No.: 5.803.0011

Effective Date: October 23, 1995

A bank seeking a waiver pursuant to Section 803(c) of Title 5, **Delaware Code**, of any or all of the conditions specified in subsections (a)(1), (a)(2), (a)(3) and (a)(4) of Section 803 of Title 5, **Delaware Code**, shall apply for such waiver in accordance with this regulation.* Until such waiver is approved by the State Bank Commissioner (the "Commissioner"), the conditions specified in subsections (a)(1), (a)(2), (a)(3) and (a)(4) of Section 803 of Title 5, **Delaware Code**, will be strictly enforced.

1.0 Application.

1.1 The applicant shall clearly identify the conditions specified in subsections (a)(1), (a)(2), (a)(3) and (a)(4) of Section 803 of Title 5, **Delaware Code**, for which the bank seeks a waiver. The applicant shall provide the following information, as applicable:

1.2 Waiver of condition under 5 Del. C. § 803(a)(1) relating to a single office in this State open to the public for the conduct of banking business.

1.3 The applicant shall specify whether the bank seeks a waiver of the condition under Section 803(a)(1) of Title 5, **Delaware Code**, that it have no more than a single office located in this State open to the public for the conduct of banking business. The applicant shall identify the number and proposed locations, if any, of additional offices located in this State that the bank proposes to open to the public for the conduct of banking business within the next two years, and shall submit a business plan relating to such additional offices. (A separate application to open a branch office must be filed in accordance with Section 770 of Title 5, **Delaware Code**.)

1.4 Waiver of condition under 5 Del. C. § 803(a)(2) relating to minimum capital stock and paid-in surplus.

1.5 The applicant shall specify whether the bank seeks a waiver of the condition under Section 803(a)(2) of Title 5, **Delaware Code**, relating to minimum capital stock and paid-in surplus. The applicant shall specify the bank's planned amounts of capital stock and paid-in surplus for the next two years. The applicant shall submit a business plan explaining, in detail, the reasons for the planned change, if any, from the bank's current amounts of capital stock and paid-in surplus and the expected effect of such change on the bank's operations and safe and sound condition.

1.6 Waiver of condition under 5 Del. C. § 803(a)(3) relating to employment of persons within this State.

1.7 The applicant shall specify whether the bank seeks a waiver of the condition under Section 803(a)

(3) of Title 5, **Delaware Code**, relating to employment of persons within this State. The applicant shall specify the bank's planned employment of persons within this State for the nexttwo years. The applicant shall submit a business plan explaining, in detail, the reasons for the planned change, if any, from the bank's current employment of persons in this State and the expected effect of such change on the bank's operations and safe and sound condition.

1.8 Waiver of condition under 5 **Del. C.** § 803(a)(4) relating to manner and location of operation in this State.

1.9 The applicant shall specify whether the bank seeks a waiver of the condition under Section 803(a)(4) of Title 5, **Delaware Code**, relating to operating in a manner and at a location that is not likely to attract customers from the general public in this State to the substantial detriment of existing banking institutions located in this State. The applicant shall specify the bank's planned manner and location of operation in this State during the next two years. The applicant shall submit a business plan explaining, in detail, the reasons for the planned change, if any, from the bank's current manner and location of operation in this State and the expected effect of such change on the bank's operations and safe and sound condition.

2.0 Fee.

2.1 The application shall be accompanied by a fee of \$6,000, payable to the Office of the State Bank Commissioner.

3.0 Notice.

3.1 Upon receipt of an application conforming to the requirements for applications pursuant to Section 803(c) of Title 5, **Delaware Code**, and this regulation, the Commissioner shall cause a single notice of such application to be published in at least two Delaware newspapers of general circulation. The notice shall provide a brief synopsis of the application, and state that interested persons may present their views in writing to the Office of the State Bank Commissioner.

4.0 Additional Information, Investigation and Hearing.

4.1 In addition to the documents filed in accordance with this regulation, the Commissioner at his discretion may require additional information, conduct an investigation, or hold a public hearing in accordance with the Administrative Procedures Act, Chapter 101 of Title 29, **Delaware Code**.

5.0 Findings and Decision.

5.1 No earlier than 20 days after publication of the Notice described in section III of this regulation, the Commissioner shall issue Findings and Decision approving or disapproving the application. In determining whether to approve the application, the Commissioner shall consider the convenience and needs of the public of this State.

** Notwithstanding the foregoing, a bank seeking a waiver pursuant to Section 803(c) of Title 5, Delaware Code, of any or all of the conditions specified in subsections (a)(1), (a)(2), (a)(3) and (a)(4) of Section 803 of Title 5, Delaware Code, may apply for such waiver as part of an application to merge with an out-of-state bank as provided in regulation 712 (formerly 5.795etal.0016) by including in that application all of the information required by this regulation 805 (formerly 5.803.0011). In such case, banks required to pay the \$5,750 fee and \$1,150 investigation fee provided in Section 792 of Title 5, Delaware Code, will not be required to pay in addition the \$6,000 fee otherwise required by Section 803(c) of Title 5, Delaware Code.*

901 Reporting of Reserves Against Deposits

5 **Del.C.** §907

Formerly Regulation No.: 5.907.0001

Effective Date: June 22, 1995

1.0 Institutions subject to §907 which are not members of the Federal Reserve System shall maintain reserves against deposits as required by Regulation D of the Federal Reserve Board and in so doing shall meet the requirement of 5 **Del. C.** §907.

2.0 Reserves being held against deposits under this section need not be reported to the Commissioner except upon request of the Commissioner.

902 Loans to Affiliated Bidcos

5 Del.C. §909, §910

Formerly Regulation No.: 5.909/910.0002

Effective Date: February 15, 1993

1.0 A bank which lends to an affiliated Bidco or to a Bidco in which a bank has an interest shall:

1.1 Make loans to such Bidco on substantially the same basis as any other loan subject to the loan limitations imposed by 5 **Del. C.** §909.

1.2 A bank shall not in any manner extend credit, lease or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing on the condition or requirement:

1.2.1 that the Bidco obtain some additional credit, property, or service from such bank other than a loan, discount, deposit, or trust service;

1.2.2 that the Bidco provide some additional credit, property, or service from a bank holding company of such bank, or from any other subsidiary of such bank holding company;

1.2.3 that the Bidco not obtain some other credit, property, or service from a competitor of such bank, a bank holding company of such bank or any subsidiary of such bank holding company, other than a condition or requirement that such bank reasonably impose in a credit transaction to assure the soundness of the credit.

1.3 Bank investments in a Bidco are subject to investment limitations set forth in 5 **Del. C.** §910.

903 Mandatory Disclosure of Certain Information by Delaware Banks or Trust Companies Engaging in the Business of Insurance

5 Del.C. §929, §930, §930A

Formerly Regulation No.: 5.929/930/930A.0003

Effective Date: February 15, 1993

The Bank and Trust Company Insurance Act of 1989, (67 Del. Law C. 223) requires banks and trust companies engaging in the business of insurance to disclose certain information to their customers. Such banks and trust companies acting as insurers and transacting the business of insurance pursuant to 5 **Del. C.** §761(a)(14) are generally bound by Title 18 of the **Delaware Code**. (See also Regulation 66 promulgated by the Department of Insurance, which governs the mandatory disclosure of certain information by such banks or trust companies.)

1.0 Generally

1.1 All information required to be disclosed by this regulation shall be set out conspicuously and under appropriate captions of such prominence that it shall not be minimized, rendered obscure or presented in an ambiguous fashion or intermingled with the context of other information so as to be confusing or misleading.

2.0 Specific Disclosures Required

2.1 Prohibitions on "Tying"

2.1.1 Any bank or trust company directly or indirectly engaging in the sale of insurance whether pursuant to the authority conferred by 5 **Del. C.** §761(a)(14) or otherwise, shall make written disclosure simultaneously with every application for any loan, credit, product or service to be purchased or obtained from such bank or trust company or any of its affiliates in conjunction with which the institution offers to sell, directly or through an affiliate, an insurance product, that the approval of such loan, credit, product or service may not be conditioned upon:

2.1.1.1 The agreement of applicant to obtain additional credits, products or services from such bank or trust company or from any company or person affiliated with such bank or trust company;

2.1.1.2 Applicant's agreement to provide additional credits, products or services to such bank or trust company or to any company or person affiliated with such bank or trust company; or

2.1.1.3 Applicant's agreement not to obtain other credits, products or services from any person or company that competes with such bank or trust company or with any company or person affiliated with such bank or trust company.

Such disclosure shall be in addition to any disclosures required by the applicable laws of other appropriate jurisdictions.

2.1.2 Any bank or trust company first authorized to transact the business of insurance in Delaware pursuant to 5 **Del. C.** §761(a)(14) and directly or indirectly engaging in the sale of insurance pursuant to such grant of authority shall make written disclosure, immediately following the disclosure required by section 2.1.1 of this regulation, in every application for any loan, credit, product or service (other than insurance) to be purchased or obtained from such bank or trust company or its insurance division or subsidiary that unless and until bank or trust company approves an application, neither it nor any person or company affiliated with it can accept an application from the applicant on application for any insurance policy which directly relates to the products or services for which the applicant has applied.

2.2 Cancellation Rights

2.2.1 Any bank or trust company first authorized to transact the business of insurance in Delaware pursuant to 5 **Del. C.** §761(a)(14), and directly or indirectly engaging in the sale of insurance pursuant to such grant of authority, must deliver copies of the following written notice form or its substantial equivalent to any "individual borrower" (as defined in 5 **Del. C.** §930(f)) who has purchased insurance from such bank or trust company or any subsidiary thereof under circumstances where the procurement of such insurance (whether from the bank or trust company or from any other source) is lawfully made an express condition of any extension of credit by such bank or trust company. Such notice form shall be delivered to the individual borrower not later than the date of delivery of the policy.

"NOTICE OF INSURANCE CANCELLATION RIGHTS"

1. You have purchased insurance from us for a total premium of \$____ per (mo/yr) in connection with an extension of credit.

2. You may cancel the insurance you have purchased from us at any time until midnight of the 30th day following our delivery of this notice and the accompanying cancellation form to you (the "Cancellation

Period"). If you exercise your right to cancel the insurance within the Cancellation Period, you are entitled to a refund of some or all of the premium you have paid for such insurance, as follows:

- a. If, within the first ten (10) days of the Cancellation Period, you exercise your right to cancel the insurance, we will unconditionally refund all of the premium you have paid.
- b. If, at any time after the 10th day of the Cancellation Period and before the end of the Cancellation Period, you exercise your right to cancel the insurance you have purchased from us, we will, at your option:
 - (i) refund the unearned portion of the premium you have paid (as computed in accordance with applicable law); or
 - (ii) issue you a credit for the unearned portion of the premium you have paid, and, where we have financed the premium over time, with interest, issue you a credit for the unearned portion of the finance charge attributable to the insurance (as computed in accordance with your contract documents).

All refunds under this Paragraph 2.b. will be calculated as of the date of your cancellation of the insurance you have purchased from us. As set forth in Paragraph 3 of this notice, the date of your cancellation of this insurance depends upon the method you use to send the accompanying cancellation form to us.

3. You must exercise your right to cancel the insurance you have purchased from us by delivering the accompanying cancellation form to us (or our assignee) within the Cancellation Period. If you send the accompanying form to us by first class mail, postage prepaid, at the address shown on such form, the form will be considered to have been delivered to us (and your insurance will be considered to have been cancelled) when you mailed it. The postmark on the envelope in which the cancellation form is mailed to us will be conclusive evidence of the date on which you mailed it. **IF THE CANCELLATION FORM IS SENT TO US BY ANY OTHER MEANS, IT WILL BE CONSIDERED TO HAVE BEEN DELIVERED WHEN ACTUALLY RECEIVED BY US, AND YOUR INSURANCE WILL BE CONSIDERED TO HAVE BEEN CANCELLED AT THAT TIME.**

4. You have the right to choose the person or company through which you wish to obtain the insurance you have purchased from us. In other words, you do not have to purchase this insurance from us. During the Cancellation Period, you may obtain price quotations on the insurance you have purchased from us from other sources.

5. If the insurance you have purchased from us is against loss of, damage to, or liability arising out of ownership or use of property which you have pledged or otherwise used to secure an extension of credit from us or any of our affiliates, and that extension of credit was conditioned on your purchase of such insurance, you may not cancel such insurance as provided in this notice unless at the same time you deliver the accompanying cancellation form to us, you deliver evidence to us that you have obtained other adequate insurance against such risks. For reasonable cause, we may refuse to accept the insurance obtained by you.

6. You will not be subject to any fee cancellation charge, or penalty payment if you exercise your right to cancel the insurance you have purchased from us, as specified herein.

7. You may have rights in addition to those described above under the terms of your insurance policy or applicable State law.

The foregoing notice form must be delivered to an "individual borrower" only upon his initial purchase of insurance, and not upon his subsequent renewal of that insurance. In the absence of proof to the contrary, receipt of this notice by the "individual borrower" shall be deemed to have occurred ten (10) days after the date of mailing as established by an adequate record maintained by the insurance division

or subsidiary.

2. Contemporaneously with the delivery of the notice form described in Paragraph 2.2.1 of this regulation, a bank or trust company described in such Paragraph shall deliver the following written cancellation form or its substantial equivalent to any "individual borrower" (as defined in 5 **Del. C.** §930(f)) who has purchased insurance from such bank or trust company or any subsidiary thereof under circumstances where the procurement of such insurance (whether from the bank or trust company or from any other source) is lawfully made an express condition of any extension of credit by such bank or trust company:

CANCELLATION NOTICE

The undersigned, pursuant to the provisions of 5 **Del. C.** §930, hereby cancels the purchase of insurance obtained from [insert name of insurance division or subsidiary], and requests a refund or credit of the premium paid for such insurance, as follows (check only one of the following 3 alternatives):

Unconditional Refund of Premium. YOU ARE ONLY ENTITLED TO SUCH A PREMIUM REFUND IF THIS CANCELLATION FORM IS DELIVERED TO (insert name of insurance subdivision or subsidiary) WITHIN THE FIRST TEN (10) DAYS OF THE CANCELLATION PERIOD (see Paragraph 2.a of the "Notice of Insurance Cancellation Rights" provided to you with this Cancellation Form).

Refund of Unearned Portion of Premium (see Paragraph 2.b.(i) of the "Notice of Insurance Cancellation Rights" provided to you with this Cancellation Form).

Credit of Unearned Portions of Premium and Applicable Finance Charges (see Paragraph 2.b.(ii) of the "Notice of Insurance Cancellation Rights" provided to you with this Cancellation Form).

If the insurance I am cancelling is against loss of, damage to, or liability arising out of the ownership of use or, property which I pledged or otherwise used to secure an extension of credit from [insert name of insurance division or subsidiary], I have enclosed with this Cancellation Form a certificate of insurance showing that I have obtained other adequate insurance against such risks, and I understand that [insert name of insurance division or subsidiary] has no obligation to honor this Cancellation Form if I have not enclosed such a certificate of insurance.

Purchaser Signature

Date of Signature

IMPORTANT NOTICE: THIS CANCELLATION FORM IS EFFECTIVE WHEN DELIVERED TO [insert name of insurance division or subsidiary] AT THE FOLLOWING ADDRESS;

[insert address]

IF THIS CANCELLATION FORM IS SENT BY FIRST-CLASS MAIL, POSTAGE PREPAID, IT WILL BE DEEMED TO HAVE BEEN DELIVERED WHEN MAILED. THE POSTMARK ON THE ENVELOPE IN WHICH THIS FORM IS MAILED WILL BE CONCLUSIVE EVIDENCE OF THE DATE ON WHICH YOU MAILED IT. IF THE CANCELLATION FORM IS SENT BY ANY OTHER MEANS, IT WILL BE DEEMED TO HAVE BEEN DELIVERED WHEN RECEIVED BY [insert name of insurance division or subsidiary].

The foregoing cancellation form must be delivered to an "individual borrower" only upon his initial purchase of insurance, and not upon his subsequent renewal of that insurance. Such cancellation form may be appended to, incorporated in, or otherwise made a part of the notice form described in Paragraph II.B.1 of this regulation.

2.3 Separation of Bank and Trust Company and its Insurance Operations

2.3.1 Any bank or trust company issuing policies of insurance, either directly or through an affiliate, shall make the following disclosure to all applicants for an insurance policy at the time of applicable or as soon thereafter as possible:

PAYMENT OF ANY INSURANCE POLICY IS
CONTROLLED BY DELAWARE LAW

1. Delaware banks and trust companies are NOT liable for any insurance policies issued by their subsidiaries or divisions; such policies are not insured by the Federal Deposit Insurance Corporation.
2. If the subsidiary or division of a bank or trust company that has issued an insurance policy becomes insolvent or is otherwise unable to fulfill its obligations under that policy, the policyholder has no claim against the assets of the bank or trust company itself, but only against the assets of the issuing subsidiary or division.

904 Exceptions to Tying Restrictions

[5 Del.C. §929]

Effective Date: December 11, 2005

1.0 Purpose.

This Regulation authorizes certain conduct as exceptions to the anti-tying restrictions of Section 929 of the State Banking Code (5 Del.C. §929), pursuant to Section 929(f). These exceptions are in addition to those elsewhere in Section 929.

2.0 Exceptions to statute.

Subject to the limitations of paragraph 3.0 of this Regulation, a bank may:

2.1 Safe harbor for combined-balance discounts. Vary the consideration for any product or package of products based on a customer's maintaining a combined minimum balance in certain products specified by the bank (eligible products), if:

2.1.1 The bank offers deposits, and all such deposits are eligible products; and

2.1.2 Balances in deposits count at least as much as nondeposit products toward the minimum balance.

2.2 Safe harbor for foreign transactions. Engage in any transaction with a customer if that customer is:

2.2.1 A corporation, business, or other person (other than an individual) that:

2.2.1.1 Is incorporated, chartered, or otherwise organized outside the United States; and

2.2.1.2 Has its principal place of business outside the United States; or

2.2.2 An individual who is a citizen of a foreign country and is not resident in the United States.

3.0 Limitations on exceptions.

Any exception authorized pursuant to this Regulation shall terminate upon a finding by the Commissioner that the arrangement is resulting in anti-competitive practices. The eligibility of a bank to operate under any exception authorized pursuant to this Regulation shall terminate upon a finding by the Commissioner that its exercise of this authority is resulting in anti-competitive practices.

1102 Regulations Governing the Organization, Chartering, Supervision, Operation and Authority of a Delaware Foreign Bank Limited Purpose Branch, a Delaware Foreign Bank Agency and a Delaware Foreign Bank Representative Office

Formerly Regulation No.: 5.1403/1101.0003

Effective Date: August 13, 1998

1.0 Statement of Authority.

1.1 These regulations are promulgated pursuant to the authority vested in the Commissioner under the provisions of Chapter 14, Title 5, **Delaware Code**, including without limitation §1403 (relating to the foreign bank limited purpose branch or foreign bank agency application process); §1404(a)(2) (relating to the taking and maintenance of deposits by a foreign bank limited purpose branch or foreign bank agency); §1405 (maintenance of assets by a foreign bank limited purpose branch or foreign bank agency within Delaware); §1406(a) (relating to the making of written reports to the Commissioner by a foreign bank limited purpose branch or foreign bank agency); §1407 (relating to the rule-making power of the Commissioner generally); §1420 (relating to the licensing and operation of a foreign bank representative office); §1422(a) (relating to the application fee); and §1424(b) (relating to the fee which must accompany certain reports). The Commissioner is authorized to adopt appropriate regulations regarding the computation of tax liability of a foreign bank limited purpose branch or foreign bank agency or federal branch or agency located in Delaware pursuant to the provisions of §1101(a) of Title 5. Additionally, §121(b) authorizes the Commissioner to prescribe regulations to carry out the purposes of Title 5.

2.0 General Powers.

2.1 Foreign Bank Agency.

2.1.1 A "foreign bank agency", as defined in §101 of Title 5 of the **Delaware Code**, shall be entitled to engage within the State of Delaware in the general business of banking in the State of Delaware, subject, however, to the limitations set forth in 5 **Del. C.** §1404(a)(1). The deposit taking authority of such agency, in addition to the authority expressly granted under §1404, shall be co-extensive with the full authority which a federal agency operating in this State would have pursuant to the provisions of the International Banking Act of 1978 as amended.

2.2 Foreign Bank Limited Purpose Branch

2.2.1 A "foreign bank limited purpose branch", as defined in §101 of Title 5 of the **Delaware Code**, shall be entitled to engage in all the activities of a foreign bank agency and, in addition, may accept such deposits as would be permissible for a corporation organized under §25A of the Federal Reserve Act (12 U.S.C. §611 *et seq.*).

2.3 Foreign Bank Representative Office.

2.3.1 A foreign bank representative office may conduct within the State of Delaware representative activities intended to promote banking services offered by and originating from an office or offices of the foreign bank located outside the State of Delaware. A foreign bank representative office is prohibited from either offering or contracting for any product or service within the State of Delaware which would constitute the doing of a general banking business in Delaware.

3.0 General Regulations

3.1 Application Fees.

3.1.1 A foreign bank shall apply for a certificate of authority for a foreign bank limited purpose branch

or foreign bank agency on such forms and in such manner as the Commissioner shall from time to time prescribe. The application shall be accompanied by a filing fee in the amount of \$2,000.00 for the use of the State made payable to the State of Delaware.

3.1.2 A foreign bank shall apply for a license to establish a representative office on such forms and in such manner as the Commissioner shall from time to time prescribe. The application shall be accompanied by a license fee of \$500.00 and a processing fee of \$500.00 made payable to the State of Delaware.

3.2 Records.

3.2.1 In addition to such records as the Commissioner may from time to time require with respect to the computation of tax liability of a foreign bank limited purpose branch or foreign bank agency, each foreign bank limited purpose branch, foreign bank agency and foreign bank representative office shall maintain at its place of business in Delaware in the English language and in United States dollar equivalents a correct and complete set of books and records of account of all business transacted by such office.

3.3 Reports.

3.3.1 Whenever the Commissioner shall require, the foreign bank limited purpose branch or foreign bank agency shall make a written report in the English language and in United States dollar equivalents in such form as he shall from time to time prescribe and verified by a duly authorized executive officer of the foreign bank limited purpose branch or foreign bank agency. Such report shall show the actual financial condition of the business of the foreign bank limited purpose branch or foreign bank agency in the State of Delaware at the close of any past day designated by the Commissioner. The verification of such Report shall state that the person making it on behalf of the foreign bank limited purpose branch or foreign bank agency solemnly swears or affirms that the information set forth therein is a true and correct statement of the condition of the Delaware foreign bank limited purpose branch or foreign bank agency to the best of his knowledge, information and belief.

3.3.1.1 Additionally, the Commissioner may from time to time request from a foreign bank limited purpose branch or foreign bank agency a copy of any report of condition or the like filed by the foreign bank of which the foreign bank limited purpose branch or foreign bank agency is a part with any other State, the Federal Deposit Insurance Corporation, or the Federal Reserve Board.

3.3.2 Every licensed foreign bank representative office shall file annually a written report of activities conducted during the previous twelve-month period, in the English language and in United States dollar equivalents in such form as the Commissioner shall prescribe. Said report shall be accompanied by a \$500.00 fee.

3.4 Maintenance of Assets in Delaware; Separate Assets.

3.4.1 A foreign bank limited purpose branch or foreign bank agency shall maintain within the State of Delaware currency, real estate (at net book value or appraised value, whichever is less), precious metals (to the extent of 75% of market value), bonds, notes, debentures, drafts, bills of exchange or other evidence of indebtedness, including loan participation agreements or certificates, or other obligations payable in the United States or in United States funds, or, with the prior approval of the Commissioner, in funds freely convertible into United States funds, or also with the prior approval of the Commissioner, such other assets as the Commissioner may permit, in an amount which shall be equal to one hundred percent (100%) of the liabilities of the foreign bank of which the foreign bank limited purpose branch or foreign bank agency is a part which are payable at or through the foreign bank limited purpose branch or foreign bank agency, including acceptances, but excluding (without duplication) (1) accrued expenses, (2) amounts due and other liabilities to other offices, agencies or

branches of, and wholly-owned (except for a nominal number of directors' shares) subsidiaries of, such foreign bank, (3) liabilities maintained on the books of an international banking facility located at such foreign bank limited purpose branch or foreign bank agency, and (4) such other liabilities as the Commissioner shall determine. The valuation of securities shall be in the manner provided in §1405. Each foreign bank limited purpose branch or foreign bank agency shall keep the assets of its business in this State separate and apart from the assets of its business outside this State.

3.5 Deposit of Assets.

3.5.1 The Commissioner may by order direct a foreign bank limited purpose branch or foreign bank agency to deposit all or a portion of the assets which the foreign bank limited purpose branch or foreign bank agency is required to maintain in this State with such banks or trust companies or national banks located in this State as the Commissioner may from time to time designate where the Commissioner finds such order necessary or desirable for the maintenance of the sound financial condition of the foreign bank limited purpose branch or foreign bank agency, the protection of depositors, creditors and the public interest, and the maintenance of public confidence in the business of a foreign bank limited purpose branch or foreign bank agency.

3.5.2 Where deposits constituting liabilities for purposes of section 3.4 are fully insured by the Federal Deposit Insurance Corporation, such deposits shall be excluded from the definition of liabilities for the purpose of determining the amount of assets which must be maintained by the foreign bank limited purpose branch or foreign bank agency within the State of Delaware.

4.0 Revocation of Certificate of Authority or License.

4.1 Revocation of Foreign Bank Limited Purpose Branch or Foreign Bank Agency Certificate of Authority.

4.1.1 Determination of Cause.

4.1.1.1 Whenever the Commissioner shall have cause to believe that a foreign bank limited purpose branch or foreign bank agency has engaged in conduct which, pursuant to Section 1410, would constitute cause for the revocation of the certificate of authority of such foreign bank limited purpose branch or foreign bank agency, he shall notify such foreign bank limited purpose branch or foreign bank agency in writing of the alleged violation, and, by means of informal fact-finding, determine whether an order should be issued directing such foreign bank limited purpose branch or foreign bank agency to cease and desist from the conduct giving rise to the violation by a date certain.

4.1.2 Violation of Order.

4.1.2.1 If the Commissioner shall determine that a foreign bank limited purpose branch or foreign bank agency which is the subject of a cease and desist order has not, within the time established, discontinued or rectified the conduct which was the subject of the violation order, he shall give written notice in the manner provided by the provisions of 29 **Del.C.** §10122 to the foreign bank limited purpose branch or foreign bank agency of the date, time and place of a formal hearing at which the foreign bank limited purpose branch or foreign bank agency shall appear and show cause why its certificate of authority should not be revoked. In addition to witnesses appearing on behalf of the foreign bank limited purpose branch or foreign bank agency, the Commissioner shall, by either informal or formal fact finding, take such testimony and gather such evidence as he deems necessary and appropriate in reaching a decision. Within thirty (30) days following the adjournment of such hearing, the Commissioner shall issue his findings and order revoking the certificate of authority, imposing a lesser sanction, or determining that the order to show cause should be retired without action. The foreign bank limited purpose branch or foreign bank agency shall have such right of appeal from such findings and order as is provided for in Subchapter V of Chapter 101, Title 29, **Delaware**

Code.

4.2 Revocation of Foreign Bank Representative Office License.

4.2.1 Upon a preliminary determination by the Commissioner that a foreign bank representative office may have engaged in conduct which would constitute cause for the revocation of the license of such foreign bank representative office under the provisions of §1425, he shall give notice in writing to such foreign bank representative office setting forth the alleged violation, and directing such foreign bank representative office to appear at a place, on a date and at a time certain to show cause why its license should not be revoked. At such hearing, the foreign bank representative office shall be accorded the right to appear and be heard. The Commissioner shall, by either informal or formal fact finding and within thirty (30) days from the adjournment of such hearing, issue findings and order directing the revocation of the license of the foreign bank representative office, some lesser sanction, or the retirement of the notice to show cause without action. The foreign bank representative office shall have such rights of appeal from such findings and order as are provided in Subchapter V of Chapter 101, Title 29, **Delaware Code**.

5.0 Allocation of Income and Expenses for Purposes of Determining Delaware Tax Liability of Foreign Bank Limited Purpose Branch or Foreign Bank Agency.

5.1 Method of Allocation.

5.1.1 Although technically a part of the foreign bank, a Delaware foreign bank limited purpose branch or foreign bank agency is to be treated for purposes of assessing and collecting the Delaware Bank Franchise Tax on taxable income (5 Del. C. §1101 et seq.) as if it were a bank having separate corporate existence (§1101(a)). To that end, and in order to derive the amount of "net operating income before taxes" for purposes of §1101(a), a foreign bank limited purpose branch or foreign bank agency shall maintain at all times separate books of account in its Delaware office which fully segregate and portray:

5.1.1.1 With respect to income:

5.1.1.1.1 all receipts directly attributable to an asset carried on the books of the foreign bank limited purpose branch or foreign bank agency; and

5.1.1.1.2 all receipts arising from a transaction entered into or a service provided by the foreign bank limited purpose branch or foreign bank agency within the State of Delaware;

5.1.1.1.3 provided, that the foreign bank limited purpose branch or foreign bank agency may exclude from its accounting of income otherwise properly allocated to Delaware such receipts as are directly or indirectly subject to taxation in any state other than Delaware by reason of either: (1) the existence of a taxable nexus under the laws of any such state between such state and the transaction of service giving rise to such receipts; or (2) the required inclusion under the laws of any such state of such receipts in the numerator of a receipts factor of a formula used to calculate the income of the foreign bank subject to tax in such state.

5.1.1.2 With respect to expenses:

5.1.1.2.1 all costs directly incurred in the start up, maintenance and operation of the Delaware office;

5.1.1.2.2 all other costs attributable to the generation of income allocated to Delaware pursuant to subsection 5.1.1.1 above; and

5.1.1.2.3 to the extent not included in paragraph 5.1.1.2.1 and 5.1.1.2.2 of this subsection 5.1.1.2 above, an aliquot portion of indirect costs incurred by the foreign bank (in both the United States and the home country) with respect to the start up, maintenance and operation of the foreign bank limited purpose

branch or foreign bank agency.

Costs under subparagraphs 5.1.1.2.2 and 5.1.1.2.3 of subsection 5.1.1.2 shall be allocated to Delaware in the same ratio as the gross receipts of the foreign bank are allocated to Delaware, or in such other fair, equitable and consistent manner as the Commissioner shall, upon request of a foreign bank limited purpose branch or foreign bank agency, approve.

5.2 Commissioner's Right of Examination

5.2.1 The Commissioner shall have the right from time to time to examine the books and records of a foreign bank limited purpose branch or foreign bank agency for the purpose of determining whether all or any portion of the income of the foreign bank limited purpose branch or foreign bank agency has been properly allocated to Delaware, and to issue such findings and orders as he deems necessary and appropriate regarding the reallocation of income which he shall find to have been improperly allocated to a state or states other than Delaware.

6.0 Change of Location, Name or Business.

6.1 A foreign bank limited purpose branch or foreign bank agency may, pursuant to the provisions of §1408, make written request of the Commissioner to change its place of business (accompanied by a filing fee of \$500.00) or to change its corporate name for the duration of its corporate existence (no filing fee required). Upon the receipt of such application, the Commissioner shall grant such application within twenty (20) days thereof unless he shall have determined by informal fact finding or otherwise that there exists cause for denying such application. If the Commissioner should determine that facts or circumstances exist constituting cause for denying such application, he shall provide notice and opportunity to be heard to the applicant foreign bank limited purpose branch or foreign bank agency in the manner provided for under the provisions of 29 **Del. C.** §10123. Not less than thirty (30) days after the adjournment of such hearing, the Commissioner shall issue his final order and findings with respect to the grant or denial of the requested change of location or change of name. An applicant foreign bank limited purpose branch or foreign bank agency aggrieved by the determination of the Commissioner shall have such right of appeal as is granted pursuant to the provisions of Subchapter V, Chapter 101, Title 29, **Delaware Code**.

See 2 DE Reg. 312 (08/01/98)

1103 Instructions for Preparation of Franchise Tax

5 Del.C. Ch. 11

Formerly Regulation No.: 5.1101etal.0002

Effective Date: September 11, 2001

1.0 This regulation applies to banking organizations and trust companies, other than resulting branches in this State of out-of-state banks or federal savings banks not headquartered in this state but maintaining branches in this State. The estimated and final franchise tax reports that accompany this regulation are found in regulations 1104 (formerly 5.1101etal.0003) and 1105 (formerly 5.1101etal.0004), respectively. Regulations 1106, 1107 and 1108 (formerly 5.1101etal.0005, 5.1101etal.0006 and 5.1101etal.0007) are applicable to federal savings banks not headquartered in this State but maintaining branches in this State. Regulations 1110, 1111 and 1112 (formerly 5.1101etal.0009, 5.1101etal.0010 and 5.1101etal.0011) are applicable to resulting branches in this State of out-of-state banks.

2.0 Definitions

"Bank" means every bank and every corporation conducting a banking business of any kind or plan whose principal place of business is in this State, except a national bank.

"Banking organization" means:

- A bank or bank and trust company organized and existing under the laws of this State;
- A national bank, including a federal savings bank, with its principal office in this State;
- An Edge Act corporation organized pursuant to §25(a) of the Federal Reserve Act, 12 U.S.C. §611 et seq. (an "Edge Act Corporation"), or a state chartered corporation exercising the powers granted thereunto pursuant to an agreement with the Board of Governors of the Federal Reserve System (an "Agreement Corporation"), and maintaining an office in this State;
- A federal branch or agency licensed pursuant to §4 and §5 of the International Banking Act of 1978, 12 U.S.C. §3101 et seq., to maintain an office in this State;
- A foreign bank branch, foreign bank limited purpose branch or foreign bank agency organized pursuant to Chapter 14 of Title 5, or a resulting branch in this State of a foreign bank authorized pursuant to Chapter 14 of Title 5; or
- A resulting branch in this State of an out-of-state bank, or a branch office in this State of an out-of-state bank.

"International Banking Transaction" shall mean any of the following transactions, whether engaged in by a banking organization, any foreign branch thereof (established pursuant to 5 **Del. C.** §771 or federal law) or any subsidiary corporation directly or indirectly owned by any banking organization:

- The financing of the exportation from, or the importation into, the United States or between jurisdictions abroad of tangible property or services;
- The financing of the production, preparation, storage or transportation of tangible personal property or services which are identifiable as being directly and solely for export from, or import into, the United States or between jurisdictions abroad;
- The financing of contracts, projects or activities to be performed substantially abroad, except those transactions secured by a mortgage, deed of trust or other lien upon real property located in this State;
- The receipt of deposits or borrowings or the extensions of credit by an international banking facility, except the loan or deposit of funds secured by mortgage, deed of trust or other lien upon real property located in this State;
- The underwriting, distributing and dealing in debt and equity securities outside of the United States and the conduct of any activities permissible to an Edge Act Corporation or an Agreement Corporation described above, or any of its subsidiaries, in connection with the transaction of banking or other financial operations; or
- The entering into foreign exchange trading or hedging transactions in connection with the activities described in paragraphs (1) through (5) above.

"International Banking Facility" means a set of asset and liability accounts, segregated on the books of a banking organization, that includes only international banking facility deposits, borrowings and extensions of credit.

"National Bank" means a banking association organized under the authority of the United States and having a principal place of business in this State.

"Net Operating Income Before Taxes" means the total net interest income plus total non-interest income, minus provision for loan and lease losses, provision for allocated transfer risk, and total non-interest expense, and adjustments made for securities gains or losses and other appropriate adjustments.

"Out-of-state bank" has the same meaning as in §795 of Title 5 of the **Delaware Code**, which is (i) a State bank, as defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. §1813(a), that is not chartered under Delaware law, or (ii) a national bank association created under the National Bank Act (12 U.S.C. §21 et seq.) whose organization certificate identifies an address outside Delaware as the place at which its discount and deposit operations are to be carried out.

"Resulting branch in this State of an out-of-state bank" has the same meaning as in §1101(a) of Title 5 of the **Delaware Code**, which is a branch office in this State of an out-of-state bank resulting from a merger as provided in Subchapter VII of Chapter 7 of Title 5 of the **Delaware Code**, and, in addition, a branch office in this State of an out-of-state bank.

"Securities Business" means to engage in the sale, distribution and underwriting of, and deal in, stocks, bonds, debentures, notes or other securities.

"Trust Company" means a trust company or corporation doing a trust company business which has a principal place of business in this State.

3.0 Estimated Franchise Tax

3.1 A banking organization or trust company whose franchise tax liability for the current year is estimated to exceed \$10,000 shall file an estimated franchise tax report with the State Bank Commissioner and pay estimated franchise tax:

3.1.1 Filing. The estimated franchise tax report shall be filed with the State Bank Commissioner on the first day of March of the current year.

3.1.2 Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the estimated franchise tax report required above in section 3.1.1., unless the State Bank Commissioner is satisfied that such failure was not willful.

3.1.3 Form. The estimated franchise tax report shall be in the form set out in Regulation 1104 (formerly No. 5.1101etal.0003);

3.1.4 Calculation of estimated tax. The total estimated annual franchise tax shall be calculated as follows:

3.1.4.1 The estimated net operating income before taxes, which includes the income of any corporation making an election as provided in Regulation No. 1101 (formerly 5.1101(f).0001);

3.1.4.2 Adjusted for any estimated income from an insurance division or subsidiary;

3.1.4.3 Less any deductions set forth in 5 **Del. C.** §1101;

3.1.4.4 Multiplied by .56 to arrive at estimated taxable income;

3.1.4.5 The appropriate rate of taxation set forth in 5 **Del. C.** §1105 shall be applied;

3.1.4.6 The subtotal estimated annual franchise tax shall be adjusted for tax credits applicable pursuant to 5 **Del. C.** §1105, which are calculated in accordance with Regulation No. 1109 (formerly 5.1105.0008).

3.1.4.7 The subtotal estimated annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements.

3.1.4.8 The subtotal estimated annual franchise tax shall be adjusted for Historic Preservation Tax Credits calculated in accordance with 30 **Del. C.** §§1811 et seq. and the regulations thereunder. Claimed credits must be accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that the credits have been properly earned, in accordance with 5 **Del. C.** §1105(g). If the credits have been transferred, sold or assigned to the taxpayer by another person, a Certificate of Transfer must also be attached, in accordance with 30 **Del. C.** §1814(c).

3.1.5 Payment of estimated tax. The estimated tax liability shall be due and payable as follows:

3.1.5.1 40% due on or before June 1 of the current taxable year;

3.1.5.2 20% due on or before September 1 of the current taxable year;

3.1.5.3 20% due on or before December 1 of the current taxable year.

See 5 DE Reg. 647 (9/1/01)

4.0 Final Franchise Tax

4.1 Filing. The December 31 call report, verified by oath, setting forth the net operating income of the banking organization and the final franchise tax report, setting forth the "taxable income" of the banking organization or trust company, shall be filed with the Office of the State Bank Commissioner on or before January 30 each year; provided, however, that a banking organization entitled to take an additional 15 days to submit its Report of Condition and Income to the appropriate federal bank supervisory authority shall file the December 31 call report and the final franchise tax report with the Office of the State Bank Commissioner on or before February 15 of each year, except as otherwise required by 5 **Del. C.** §904.

4.2 Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the final franchise tax report required above in subsection 4.1, unless the State Bank Commissioner is satisfied that such failure was not willful.

4.3 Form. The final franchise tax report shall be in the form set out in Regulation No. 1105 (formerly 5.1101etal.0004).

4.4 Calculation of final tax. The total final franchise tax shall be calculated as follows:

4.4.1 The net operating income before taxes, which includes the income of any corporation making an election as provided in Regulation No. 1101 (formerly 5.1101(f).0001);

4.4.2 Adjusted for any income from an insurance division or subsidiary; (include a report of income showing the name and federal employer identification number of the division or subsidiary)

4.4.3 Less any deduction set forth in 5 **Del. C.** §1101; (include a report of income showing the name and federal employer identification number of each subsidiary taken as a deduction)

4.4.4 Multiplied by .56 to arrive at "taxable income";

4.4.5 The appropriate rate of taxation set forth in 5 **Del. C.** §1105 shall be applied to the taxable income to arrive at subtotal annual franchise tax;

4.4.6 The subtotal annual franchise tax shall be adjusted for tax credits applicable pursuant to 5 **Del. C.** §1105, which are calculated in accordance with Regulation No. 1109 (formerly 5.1105.0008).

4.4.7 The subtotal annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements.

4.4.8 The subtotal estimated annual franchise tax shall be adjusted for Historic Preservation Tax Credits

calculated in accordance with 30 **Del. C.** §§1811 et seq. and the regulations thereunder. Claimed credits must be accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that the credits have been properly earned, in accordance with 5 **Del. C.** §1105(g). If the credits have been transferred, sold or assigned to the taxpayer by another person, a Certificate of Transfer must also be attached, in accordance with 30 **Del. C.** §1814(c).

See 5 DE Reg. 647 (9/1/01)

5.0 Payment of Final Franchise Tax

5.1 Taxes owed for the previous calendar year are due and payable on or before March 1 of the following year. Checks or other forms of payment should be made payable or directed to the State of Delaware.

5.2 The amount due and payable on or before March 1 for the previous calendar year shall be the final franchise tax, less any estimated tax payments made for the taxable year, plus any additional tax due to underpayment of estimated franchise tax or installment. If the final franchise tax is not paid by March 1, a penalty for late payment of the final franchise tax shall be assessed.

6.0 Additional Tax Due to Underpayment of Estimated Franchise Tax or Installment

6.1 In the case of any underpayment of estimated franchise tax or installment of estimated tax required by Chapter 11 of Title 5 of the **Delaware Code**, there shall be added to the tax for the taxable year an amount determined at the rate of 0.05 percent per day upon the amount of the underpayment for the period of the underpayment. The amount of the underpayment shall be the excess of:

6.1.1 The amount of the estimated franchise tax or installment payment which would be required to be made if the estimated tax were equal to 80 percent of the tax shown on the final return for the taxable year, or if no return were filed, 80 percent of the tax for such year, over;

6.1.2 The amount, if any, of the estimated tax or installment paid on or before the last date prescribed for payment.

6.2 The period of the underpayment shall run from the date the estimated franchise tax or installment was required to be paid to the earlier of the date when such estimated tax or installment is paid or the date of the final payment of tax for the year;

6.3 Notwithstanding the above, the addition to the tax with respect to any underpayment of estimated franchise tax or any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment thereof equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were the tax shown on the final return of the banking organization or trust company for the preceding taxable year.

7.0 Penalty - Late Payment of Final Franchise Tax

7.1 In the case of a late payment of final franchise tax as required by Chapter 11 of Title 5 of the **Delaware Code**, there shall be added to the tax a penalty in an amount determined at the rate of 0.05 percent per day until required payment is made.

8.0 Election to be listed as a "Subsidiary Corporation"

8.1 Any corporation which has elected to be treated as a "subsidiary corporation" of a banking organization or trust company pursuant to §1101(f) and filed with the State Bank Commissioner the required election form in accordance with Commissioner's Regulation No. 1101 (formerly 5.1101(f).0001) shall provide (a) a tentative report of income for the electing corporation covering estimated bank franchise tax liability for the current income year to be submitted in conjunction with the estimated franchise tax report due March 1 for a banking organization or trust company whose

franchise tax liability for the current year is estimated to exceed \$10,000, and (b) a report of income for the electing corporation as of December 31 of each year to be submitted in conjunction with the final franchise tax report due January 30 or February 15, as applicable.

8.2 As long as the election remains in effect, the ownership and employment tests must be met. Therefore, the election form in Regulation No. 1101 (formerly Regulation 5.1101(f).0001) must be completed each year for each Electing Corporation and submitted with the final franchise tax report.

1106 Instructions for Preparation of Franchise Tax for Federal Savings Banks Not Headquartered in this State but Maintaining Branches in this State

5 Del.C. Ch. 11

Formerly Regulation No.: 5.1101etal.0005

Effective Date: September 11, 2001

1.0 This regulation applies only to federal savings banks not headquartered in this State but maintaining branches in this State. The estimated and final franchise tax reports that accompany this regulation are found in regulations 1107 (formerly 5.1101etal.0006) and 1108 (formerly 5.1101etal.0007), respectively.

2.0 Definitions

"Net operating income before taxes" means the total net income calculated in accordance with Section 8.0 of this Regulation, with adjustments made for securities gains or losses and other appropriate adjustments.

3.0 Estimated Franchise Tax

3.1 A federal savings bank not headquartered in this State whose franchise tax liability for the current year is anticipated to exceed \$10,000 shall file an estimated franchise tax report with the State Bank Commissioner and pay estimated franchise tax.

3.1.1 **Filing.** The estimated franchise tax report shall be filed with the State Bank Commissioner on the first day of March of the current year.

3.1.2 **Penalty for late filing.** A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the estimated franchise tax report required above in section 3.1.1, unless the State Bank Commissioner is satisfied that such failure was not willful.

3.1.3 **Form.** The estimated franchise tax report shall be in the form set out in Regulation No. 1107 (formerly 5.1101etal.0006);

3.1.4 **Calculation of estimated tax.** The total estimated annual franchise tax shall be calculated as follows:

3.1.4.1 The estimated net operating income before taxes of the branch or branches located in Delaware;

3.1.4.2 Less the interest income from obligations of volunteer fire companies;

3.1.4.3 The appropriate rate of taxation set forth in **5 Del. C. §1105** shall be applied;

3.1.4.4 The subtotal estimated annual franchise tax shall be adjusted for tax credits applicable pursuant to **5 Del. C. §1105**, which are calculated in accordance with Regulation No. 1109 (formerly 5.1105.0008).

3.1.4.5 The subtotal estimated annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements.

3.1.4.6 The subtotal estimated annual franchise tax shall be adjusted for Historic Preservation Tax Credits calculated in accordance with 30 **Del. C.** §§1181 et seq. and the regulations thereunder. Claimed credits must be accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that the credits have been properly earned, in accordance with 5 **Del. C.** §1105(g). If the credits have been transferred, sold or assigned to the taxpayer by another person, a Certificate of Transfer must also be attached, in accordance with 30 **Del. C.** §1814(c).

3.1.5 Payment of estimated tax. The estimated tax liability shall be due and payable as follows:

3.1.5.1 40% due on or before June 1 of the current year;

3.1.5.2 20% due on or before September 1 of the current year;

3.1.5.3 20% due on or before December 1 of the current year.

See 5 DE Reg. 647 (9/1/01)

4.0 Final Franchise Tax

4.1 Filing. The December 31 call report, verified by oath, setting forth the net operating income of the Delaware branch or branches of the federal savings bank not headquartered in this State and the final franchise tax report shall be filed with the Office of the State Bank Commissioner on or before January 30 each year;

4.2 Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the final franchise tax report required above in section 4.1, unless the State Bank Commissioner is satisfied that such failure was not willful.

4.3 Form. The final franchise tax report shall be in the form set out in Regulation No. 1108 (formerly 5.1101etal.0007).

4.4 Calculation of final tax. The total final franchise tax shall be calculated as follows:

4.4.1 The net operating income before taxes of the branch or branches located in Delaware;

4.4.2 Less the interest income from obligations of volunteer fire companies;

4.4.3 The appropriate rate of taxation set forth in 5 **Del. C.** §1105 shall be applied;

4.4.4. The subtotal annual franchise tax shall be adjusted for tax credits applicable pursuant to 5 **Del. C.** §1105, which are calculated in accordance with Regulation No. 1109 (formerly 5.1105.0008).

4.4.5 The subtotal annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements.

4.4.6 The subtotal annual franchise tax shall be adjusted for Historic Preservation Tax Credits calculated in accordance with 30 **Del. C.** §§1811 et seq. and the regulations thereunder. Claimed credits must be accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that the credits have been properly earned, in accordance with 5 **Del. C.** §1105(g). If the credits have been transferred, sold or assigned to the taxpayer by another person, a Certificate of Transfer must also be attached, in accordance with 30 **Del. C.** §1814(c).

See 5 DE Reg. 647 (9/1/01)

5.0 Payment of Final Franchise Tax

5.1 Taxes owed for the previous calendar year are due and payable on or before March 1 of the

following year. Checks or other forms of payment should be made payable or directed to the State of Delaware.

5.2 The amount due and payable on or before March 1 for the previous calendar year shall be the final franchise tax, less any estimated tax payments made for the taxable year, plus any additional tax due to underpayment of estimated franchise tax or installment. If the final franchise tax is not paid by March 1, a penalty for late payment of the final franchise tax shall be assessed.

6.0 Additional Tax Due to Underpayment of Estimated Franchise Tax or Installment

6.1 In the case of any underpayment of estimated franchise tax or installment of estimated franchise tax required by Chapter 11 of Title 5 of the **Delaware Code**, there shall be added to the tax for the taxable year an amount determined at the rate of 0.05 percent per day upon the amount of the underpayment for the period of the underpayment. The amount of the underpayment shall be the excess of:

6.1.1 The amount of the estimated franchise tax or installment payment which would be required to be made if the estimated tax were equal to 80 percent of the tax shown on the final return for the taxable year, or if no return were filed, 80 percent of the tax for such year, over;

6.1.2 The amount, if any, of the estimated tax or installment paid on or before the last date prescribed for payment.

6.2 The period of the underpayment shall run from the date the estimated franchise tax or installment was required to be paid to the earlier of the date when such estimated tax or installment is paid or the date of the final payment of tax for the year;

6.3 Notwithstanding the above, the addition to the tax with respect to any underpayment of estimated franchise tax or any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date for the payment thereof equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were the tax shown on the final return of the federal savings bank not headquartered in this State for the preceding taxable year.

7.0 Penalty - Late Payment of Estimated Franchise Tax or Installment or Final Franchise Tax

7.1 In the case of a late payment of final franchise tax as required by Chapter 11 of Title 5 of the **Delaware Code**, there shall be added to the tax a penalty in an amount determined at the rate of 0.05 percent per day until required payment is made.

8.0 Separate Accounting by Delaware Branches

8.1 Books and Records. Each branch in this State of a federal savings bank not headquartered in this State must keep a separate set of books and records as if it were an entity separate from the rest of the federal savings bank that operates such Delaware branch. These books and records must reflect the following items attributable to the Delaware branch:

8.1.1 Assets and the credit equivalent amounts of offbalance sheet items used in computing the riskbased capital ratio under 12 C.F.R. part 567;

8.1.2 Liabilities;

8.1.3 Income and gain;

8.1.4 Expense and loss.

8.2 Consolidation of Delaware Branches. If a federal savings bank not headquartered in this State operates more than one Delaware branch, it may treat all Delaware branches as a single separate entity for purposes of computing the assets, liabilities, income, gain, expense, and loss referred to above.

8.3 Determining Assets Attributable to a Delaware Branch

8.3.1 General Principle of Asset Attribution. The general principle will be to attribute assets to a Delaware branch if personnel at the Delaware branch actively and materially participate in the solicitation, investigation, negotiation, approval, or administration of an asset.

8.3.2 Loans and Finance Leases. These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the solicitation, investigation, negotiation, final approval, or administration of a loan or financing lease. Loans include all types of loans, including credit and travel card accounts receivable.

8.3.3 Stocks and Debt Securities. These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the acquisition of such assets.

8.3.4 Foreign Exchange Contracts and Futures Options, Swaps, and Similar Assets. These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the solicitation, investigation, negotiation, acquisition, or administration of such assets.

8.3.5 Patents, Copyrights, Trademarks, and Similar Intellectual Property. These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the licensing of such asset.

8.3.6 Currency. U.S. and foreign currency will be attributed to a Delaware branch if physically stored at the Delaware branch.

8.3.7 Tangible Personal and Real Property. These assets (including bullion and other precious metals) will be attributed to a Delaware branch if they are located at or are part of the physical facility of a Delaware branch.

8.3.8 Other Business Assets. Other business assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the acquisition of such assets.

8.3.9 Credit Equivalent Amounts of Regulatory Off Balance Sheet Items Taken Into Account in Determining RiskBased Capital Ratio. These are the credit equivalent amounts of offbalance sheet items described in 12 C.F.R. part 567 not otherwise addressed above (e.g., guarantees, standby letters of credit, commercial letters of credit, risk participations, sale and repurchase agreements and asset sales with recourse if not already included on the balance sheet, forward agreements to purchase assets, securities lent (if the lending federal savings bank is exposed to risk of loss), bid and performance bonds, commitments, revolving underwriting facilities). These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the solicitation, investigation, negotiation, acquisition, or administration of such assets.

8.4 Liabilities Attributable to a Delaware Branch.

8.4.1 The liabilities attributable to a Delaware branch shall be the deposits recorded on the books of the Delaware branch plus any other legally enforceable obligations of the Delaware branch recorded on the books of the Delaware branch or the federal savings bank not headquartered in this State.

8.5 Income of a Delaware Branch.

8.5.1 Income from Assets. Income and gain from assets (including fees from offbalance sheet items) attributed to a Delaware branch in accordance with the rules in subsection C above will be attributed to the Delaware branch.

8.5.2 Income from Fees. Fee income not attributed to a Delaware branch in accordance with subsection 1 above will be attributed to the Delaware branch depending on the type of fee income.

8.5.2.1 Fee income from letters of credit, travelers checks, and money orders will be attributed to the Delaware branch if the letters of credit, travelers checks, or money orders are issued by the Delaware branch, except to the extent that subsection 1 above requires otherwise.

8.5.2.2 Fee income from services (e.g., trustee and custodian fees) will be attributed to the Delaware branch if the services generating the fees are performed by personnel at the Delaware branch. If services are performed both within and without Delaware, the fees from such services must be allocated between Delaware and other states based on the relative value of the services or upon the time spent in rendering the services or on some other reasonable basis. The basis for allocation must be disclosed and applied consistently from period to period.

8.6 Determining the Expenses of a Delaware Branch.

8.6.1 Interest. The amount of interest expense of a Delaware branch shall be the actual interest booked by the Delaware branch, which should reflect market rates.

8.6.2 Direct Expenses of a Delaware Branch. Expenses or other deductions that can be specifically identified with the gross income, gains, losses, deductions, assets, liabilities or other activities of the Delaware branch are direct expenses of such Delaware branch. Examples of such expenses are payroll, rent, depreciation and amortization of assets attributed to the Delaware branch, some taxes, insurance, the cost of supplies and fees for services rendered to the Delaware branch.

8.6.3 Indirect Expenses of a Delaware Branch. Expenses or other deductions that cannot be specifically identified with the gross income, gains, losses, deductions, assets, liabilities, or other activities of a Delaware branch must be allocated between the Delaware branch and the rest of the federal savings bank operating the Delaware branch. If the federal savings bank makes such an allocation on any reasonable basis, and applies such basis consistently from period to period, the allocation likely will be respected. If the federal savings bank makes no such allocation, such expenses could be allocated on the basis of the ratio of assets of the Delaware branch to the assets of the entire federal savings bank or based on the ratio of gross income of the Delaware branch to gross income of the entire federal savings bank.

1110 Instructions for Preparation of Franchise Tax for Resulting Branches in this State of Out-of-State Banks

5 Del.C. Ch. 11

Formerly Regulation No.: 5.1101etal.0009

Effective Date: September 11, 2001

1.0 This regulation applies only to resulting branches in this State of out-of-state banks. The estimated and final franchise tax reports that accompany this regulation are found in regulations 1111 (formerly 5.1101etal.0010) and 1112 (formerly 5.1101etal.0011), respectively.

2.0 Definitions

"Bank" means every bank and every corporation conducting a banking business of any kind or plan whose principal place of business is in this State, except a national bank.

"Banking organization" means:

- A bank or bank and trust company organized and existing under the laws of this State;
- A national bank, including a federal savings bank, with its principal office in this State;

- An Edge Act corporation organized pursuant to §25(a) of the Federal Reserve Act, 12 U.S.C. §611 et seq. (an "Edge Act Corporation"), or a state chartered corporation exercising the powers granted thereunto pursuant to an agreement with the Board of Governors of the Federal Reserve System (an "Agreement Corporation"), and maintaining an office in this State;
- A federal branch or agency licensed pursuant to §4 and §5 of the International Banking Act of 1978, 12 U.S.C. §3101 et seq., to maintain an office in this State;
- A foreign bank branch, foreign bank limited purpose branch or foreign bank agency organized pursuant to Chapter 14 of Title 5, or a resulting branch in this State of a foreign bank authorized pursuant to Chapter 14 of Title 5; or
- A resulting branch in this State of an out-of-state bank, or a branch office in this State of an out-of-state bank.

"International Banking Transaction" shall mean any of the following transactions, whether engaged in by a banking organization, any foreign branch thereof (established pursuant to 5 **Del. C.** §771 or federal law) or any subsidiary corporation directly or indirectly owned by any banking organization:

- The financing of the exportation from, or the importation into, the United States or between jurisdictions abroad of tangible property or services;
- The financing of the production, preparation, storage or transportation of tangible personal property or services which are identifiable as being directly and solely for export from, or import into, the United States or between jurisdictions abroad;
- The financing of contracts, projects or activities to be performed substantially abroad, except those transactions secured by a mortgage, deed of trust or other lien upon real property located in this State;
- The receipt of deposits or borrowings or the extensions of credit by an international banking facility, except the loan or deposit of funds secured by mortgage, deed of trust or other lien upon real property located in this State;
- The underwriting, distributing and dealing in debt and equity securities outside of the United States and the conduct of any activities permissible to an Edge Act Corporation or an Agreement Corporation described above, or any of its subsidiaries, in connection with the transaction of banking or other financial operations; or
- The entering into foreign exchange trading or hedging transactions in connection with the activities described in paragraphs (1) through (5) above.

"International Banking Facility" means a set of asset and liability accounts, segregated on the books of a banking organization, that includes only international banking facility deposits, borrowings and extensions of credit.

"National Bank" means a banking association organized under the authority of the United States and having a principal place of business in this State.

"Net Operating Income Before Taxes" means the total net income calculated in accordance with Section 9.0 of this Regulation, with adjustments made for securities gains or losses and other appropriate adjustments.

"Out-of-state bank" has the same meaning as in §795 of Title 5 of the **Delaware Code**, which is (i) a State bank, as defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. §1813(a), that is not chartered under Delaware law, or (ii) a national bank association created under the National Bank Act (12 U.S.C. §21 et seq.) whose organization certificate identifies an address outside Delaware as the place at which its discount and deposit operations are to be carried out.

"Resulting branch in this State of an out-of-state bank" has the same meaning as in §1101(a) of Title 5 of the **Delaware Code**, which is a branch office in this State of an out-of-state bank resulting from a merger as provided in Subchapter VII of Chapter 7 of Title 5 of the **Delaware Code**, and, in addition, a branch office in this State of an out-of-state bank.

"Securities Business" means to engage in the sale, distribution and underwriting of, and deal in, stocks, bonds, debentures, notes or other securities.

"Trust Company" means a trust company or corporation doing a trust company business which has a principal place of business in this State.

3.0 Estimated Franchise Tax

3.1 A resulting branch or branches in this State of an out-of-state bank whose franchise tax liability for the current year, on a consolidated basis, is estimated to exceed \$10,000 shall file an estimated franchise tax report with the State Bank Commissioner and pay estimated tax.

3.1.1 Filing. The estimated franchise tax report shall be filed with the State Bank Commissioner on the first day of March of the current year.

3.1.2 Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the estimated franchise tax report required above in section 3.1.1, unless the State Bank Commissioner is satisfied that such failure was not willful.

3.1.3 Form. The estimated franchise tax report shall be in the form set out in Regulation 1111 (formerly No. 5.1101etal.0010);

3.1.4 Calculation of estimated tax. The total estimated annual franchise tax shall be calculated as follows:

3.1.4.1 The estimated net operating income before taxes of the resulting branch or branches in this State of the out-of-state bank, which includes the income of any corporation making an election as provided in Regulation No. 1101 (formerly 5.1101(f).0001);

3.1.4.2 Increased by the resulting branch imputed capital addback for the preceding income year (calculated in accordance with Section 4.4.2 of this Regulation).

3.1.4.3 Adjusted for any estimated income from an insurance division or subsidiary;

3.1.4.4 Less any deductions set forth in 5 **Del. C.** §1101;

3.1.4.5 Multiplied by .56 to arrive at estimated taxable income;

3.1.4.6 The appropriate rate of taxation set forth in 5 **Del. C.** §1105 shall be applied;

3.1.4.7 The subtotal estimated annual franchise tax shall be adjusted for tax credits applicable pursuant to 5 **Del. C.** §1105, which are calculated in accordance with Regulation No. 1109 (formerly 5.1105.0008).

3.1.4.8 The subtotal estimated annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements.

3.1.4.9 The subtotal estimated annual franchise tax shall be adjusted for Historic Preservation Tax Credits calculated in accordance with 30 **Del. C.** §§1811 et seq. and the regulations thereunder.

Claimed credits must be accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that the credits have been properly earned, in accordance with 5 **Del. C.** §1105(g). If the credits have been transferred, sold or assigned to the taxpayer by another person, a Certificate of Transfer must also be attached, in accordance with 30 **Del. C.** §1814(c).

3.1.5 Payment of estimated tax. The estimated tax liability shall be due and payable as follows:

3.1.5.1 40% due on or before June 1 of the current taxable year;

3.1.5.2 20% due on or before September 1 of the current taxable year;

3.1.5.3 20% due on or before December 1 of the current taxable year.

See 5 DE Reg. 647 (9/1/01)

4.0 Final Franchise Tax

4.1 Filing. The December 31 call report, verified by oath, setting forth the net operating income, on a consolidated basis, of the resulting branch or branches in this State of the out-of-state bank and the final franchise tax report, setting forth the "taxable income", on a consolidated basis, of the resulting branch or branches in this State of the out-of-state bank, shall be filed with the Office of the State Bank Commissioner on or before January 30 each year; provided, however, that a resulting branch of an out-of-state bank that is entitled to take an additional 15 days to submit its Report of Condition and Income to the appropriate federal bank supervisory authority shall file the December 31 call report and the final franchise tax report with the Office of the State Bank Commissioner on or before February 15 of each year.

4.2 Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the final franchise tax report required above in subsection 4.1, unless the State Bank Commissioner is satisfied that such failure was not willful.

4.3 Form. The final franchise tax report shall be in the form set out in Regulation No. 1112 (formerly 5.1101etal.0011).

4.4 Calculation of final tax. The total final franchise tax shall be calculated as follows:

4.4.1 The net operating income before taxes of the resulting branch or branches in this State of the out-of-state bank, which includes the income of any corporation making an election as provided in Regulation No. 1101 (formerly 5.1101(f).0001);

4.4.2 Increased by the resulting branch imputed capital addback, which is the product of the greater of the products determined under subparagraphs (a) and (b) of this subsection (2) and the average of the monthly shortterm applicable federal rates, as determined under §1274(d) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §1274(d)), or any successor provisions thereto, and as published each month in the Internal Revenue Bulletin, for the twelve-month period preceding the date on which the resulting branch imputed capital addback is being determined.

4.4.2.1 The product of (i) the deposits recorded on the books of the resulting branch in this State, and (ii) the minimum risk-based capital ratio (expressed as a decimal fraction) that a resulting branch in this State would be required to maintain, if it were a bank, in order to be deemed "adequately capitalized" pursuant to 12 C.F.R. Part 325.

4.4.2.2 The product of (i) the value of that portion of the total risk-weighted assets (as defined in 12 C.F.R. Part 325) of the out-of-state bank operating the resulting branch in this State that are attributable to such resulting branch in accordance with section 9.3 of this regulation, and (ii) the minimum riskbased capital ratio (expressed as a decimal fraction) that a resulting branch in this State would be required to maintain, if it were a bank, in order to be deemed 'adequately capitalized' pursuant to 12 C.F.R. Part 325.

4.4.3 Adjusted for any income from an insurance division or subsidiary; (include a report of income showing the name and federal employer identification number of the division or subsidiary)

4.4.4 Less any deduction set forth in **5 Del. C.** §1101; (include a report of income showing the name and federal employer identification number of each subsidiary taken as a deduction)

4.4.5 Multiplied by .56 to arrive at "taxable income";

4.4.6 The appropriate rate of taxation set forth in **5 Del. C.** §1105 shall be applied to the taxable income to arrive at subtotal annual franchise tax;

4.4.7 The subtotal annual franchise tax shall be adjusted for tax credits pursuant to **5 Del. C.** §1105, which are calculated in accordance with Regulation No. 1109 (formerly 5.1105.0008).

4.4.8 The subtotal annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements.

4.4.9 The subtotal annual franchise tax shall be adjusted for Historic Preservation Tax Credits calculated in accordance with **30 Del. C.** §§1811 et seq. and the regulations thereunder. Claimed credits must be accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that the credits have been properly earned, in accordance with **5 Del. C.** §1105(g). If the credits have been transferred, sold or assigned to the taxpayer by another person, a Certificate of Transfer must also be attached, in accordance with **30 Del. C.** §1814(c).

See 5 DE Reg. 647 (9/1/01)

5.0 Payment of Final Franchise Tax

5.1 Taxes owed for the previous calendar year are due and payable on or before March 1 of the following year. Checks or other forms of payment should be made payable or directed to the State of Delaware.

5.2 The amount due and payable on or before March 1 for the previous calendar year shall be the final franchise tax, less any estimated tax payments made for the taxable year, plus any additional tax due to underpayment of estimated franchise tax or installment. If the final franchise tax is not paid by March 1, a penalty for late payment of the final franchise tax shall be assessed.

6.0 Additional Tax Due to Underpayment of Estimated Franchise Tax or Installment

6.1 In the case of any underpayment of estimated franchise tax or installment of estimated tax required by Chapter 11 of Title 5 of the **Delaware Code**, there shall be added to the tax for the taxable year an amount determined at the rate of 0.05 percent per day upon the amount of the underpayment for the period of the underpayment. The amount of the underpayment shall be the excess of:

6.1.1 The amount of the estimated franchise tax or installment payment which would be required to be made if the estimated tax were equal to 80 percent of the tax shown on the final return for the taxable year, or if no return were filed, 80 percent of the tax for such year, over;

6.1.2 The amount, if any, of the estimated tax or installment paid on or before the last date prescribed for payment.

6.2 The period of the underpayment shall run from the date the estimated franchise tax or installment was required to be paid to the earlier of the date when such estimated tax or installment is paid or the date of the final payment of tax for the year;

6.3 Notwithstanding the above, the addition to the tax with respect to any underpayment of estimated franchise tax or any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment thereof equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were the tax shown on the final return of the resulting branch(es) of the out-of-state bank for the preceding taxable

year.

6.4 Notwithstanding the above, the addition to the tax with respect to any underpayment of estimated franchise tax or any installment shall not be imposed if the addition is attributable to the difference between the imputed capital addback for the current and preceding income years.

7.0 Penalty - Late Payment of Final Franchise Tax

7.1 In the case of a late payment of final franchise tax as required by Chapter 11 of Title 5 of the **Delaware Code**, there shall be added to the tax a penalty in an amount determined at the rate of 0.05 percent per day until required payment is made.

8.0 Election to be listed as a "Subsidiary Corporation"

8.1 Any corporation which has elected to be treated as a "subsidiary corporation" of the resulting branch(es) of the out-of-state bank pursuant to §1101(f) and filed with the State Bank Commissioner the required election form in accordance with Commissioner's Regulation No. 1101 (formerly 5.1101(f).0001) shall provide (a) a tentative report of income for the electing corporation covering estimated bank franchise tax liability for the current income year to be submitted in conjunction with the estimated franchise tax report due March 1 for the resulting branch(es) of the out-of-state bank whose franchise tax liability for the current year is estimated to exceed \$10,000, and (b) a report of income for the electing corporation as of December 31 of each year to be submitted in conjunction with the Final Franchise Tax Report due January 30 or February 15, as applicable.

8.2 As long as the election remains in effect, the ownership and employment tests must be met. Therefore, the election form in Regulation 1101 (formerly Regulation No. 5.1101(f).0001) must be completed each year for each Electing Corporation and submitted with the final franchise tax report.

See 5 DE Reg. 647 (9/1/01)

9.0 Separate Accounting by Resulting Branches

9.1 Books and Records. Each resulting branch must keep a separate set of books and records as if it were an entity separate from the rest of the bank that operates such resulting branch. These books and records must reflect the following items attributable to the resulting branch:

9.1.1 Assets and the credit equivalent amounts of offbalance sheet items used in computing the riskbased capital ratio under 12 C.F.R. part 325;

9.1.2 Liabilities;

9.1.3 Income and gain;

9.1.4 Expense and loss.

9.2 Consolidation of Delaware Branches. If a bank operates more than one resulting branch, it may treat all resulting branches as a single separate entity for purposes of computing the assets, liabilities, income, gain, expense, and loss referred to above.

9.3 Determining Assets Attributable to a Resulting Branch

9.3.1 General Principle of Asset Attribution. The general principle will be to attribute assets to a resulting branch if personnel at the resulting branch actively and materially participate in the solicitation, investigation, negotiation, approval, or administration of an asset.

9.3.2 Loans and Finance Leases. These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the solicitation, investigation, negotiation, final approval, or administration of a loan or financing lease. Loans include all types of loans, including

credit and travel card accounts receivable.

9.3.3 Stocks and Debt Securities. These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the acquisition of such assets.

9.3.4 Foreign Exchange Contracts and Futures, Options, Swaps, and Similar Assets. These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the solicitation, investigation, negotiation, acquisition, or administration of such assets.

9.3.5 Patents, Copyrights, Trademarks, and Similar Intellectual Property. These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the licensing of such asset.

9.3.6 Currency. U.S. and foreign currency will be attributed to a resulting branch if physically stored at the resulting branch.

9.3.7 Tangible Personal and Real Property. These assets (including bullion and other precious metals) will be attributed to a resulting branch if they are located at or are part of the physical facility of a resulting branch.

9.3.8 Other Business Assets. Other business assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the acquisition of such assets.

9.3.9 Credit Equivalent Amounts of Regulatory Off-Balance Sheet Items Taken Into Account in Determining Risk-Based Capital Ratio. These are the credit equivalent amounts of off-balance sheet items described in Appendix A to 12 C.F.R. part 325 (the "Appendix") not otherwise addressed above (e.g., guarantees, surety contracts, standby letters of credit, commercial letters of credit, risk participations, sale and repurchase agreements and asset sales with recourse if not already included on the balance sheet, forward agreements to purchase assets, securities lent (if the lending bank is exposed to risk of loss), bid and performance bonds, commitments, revolving underwriting facilities, note issuance facilities described in the Appendix). These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the solicitation, investigation, negotiation, acquisition, or administration of such assets.

9.4 Liabilities Attributable to a Resulting Branch. The liabilities attributable to a resulting branch shall be the deposits recorded on the books of the resulting branch plus any other legally enforceable obligations of the resulting branch recorded on the books of the resulting branch or its parent.

9.5 Income of a Resulting Branch.

9.5.1 Income from Assets. Income and gain from assets (including fees from off-balance sheet items) attributed to a resulting branch in accordance with the rules in section 9.3 above will be attributed to the resulting branch.

9.5.2 Income from Fees. Fee income not attributed to a resulting branch in accordance with 1. above will be attributed to the resulting branch depending on the type of fee income.

9.5.2.1 Fee income from letters of credit, travelers checks, and money orders will be attributed to the resulting branch if the letters of credit, travelers checks, or money orders are issued by the resulting branch, except to the extent that 1. requires otherwise.

9.5.2.2 Fee income from services (e.g., trustee and custodian fees) will be attributed to the resulting branch if the services generating the fees are performed by personnel at the resulting branch. If services are performed both within and without Delaware, the fees from such services must be allocated between Delaware and other states based on the relative value of the services or upon the time spent in rendering the services or on some other reasonable basis. The basis for allocation must be disclosed and

applied consistently from period to period.

9.6 Determining the Expenses of a Resulting Branch.

9.6.1 Interest. The amount of interest expense of a resulting branch shall be the actual interest booked by the resulting branch, which should reflect market rates.

9.6.2 Direct Expenses of a Resulting Branch. Expenses or other deductions that can be specifically identified with the gross income, gains, losses, deductions, assets, liabilities or other activities of the resulting branch are direct expenses of such resulting branch. Examples of such expenses are payroll, rent, depreciation and amortization of assets attributed to the resulting branch, some taxes, insurance, the cost of supplies and fees for services rendered to the resulting branch.

9.6.3 Indirect Expenses of a Resulting Branch. Expenses or other deductions that cannot be specifically identified with the gross income, gains, losses, deductions, assets, liabilities, or other activities of a resulting branch must be allocated between the resulting branch and the rest of the bank operating the resulting branch. If the bank makes such an allocation on any reasonable basis, and applies such basis consistently from period to period, the allocation likely will be respected. If the bank makes no such allocation, such expenses could be allocated on the basis of the ratio of assets of the resulting branch to the assets of the entire bank or based on the ratio of gross income of the resulting branch to gross income of the entire bank.

1401 Procedures Governing Filings and Determinations Respecting Applications for a Foreign Bank Limited Purpose Branch Or Foreign Bank Agency

5 Del.C. §1403

Formerly Regulation No.: 5.1403.0001

Effective Date: August 13, 1998

1.0 Application Process

1.1 Form of Application - An Applicant to establish a limited purpose branch or agency of a foreign bank in Delaware shall complete the "Application for Chartering of a Delaware Foreign Bank Limited Purpose Branch or Foreign Bank Agency" (Regulation No. 1402 Formerly 5.1403.0002). Such Application shall not be regarded as having been received by the Commissioner for the purposes of these regulations unless (1) all information solicited is provided in satisfactory form; (2) all documents which are required are attached to the application; (3) a duly empowered executive officer has signed and certified to the Application; and the Application is accompanied by a certified check made payable to the "State of Delaware" in the amount of \$2,000.00.

1.2 Notice of Receipt of Application - Within seven (7) days of the date on which the Commissioner shall deem an Application to have been received, he shall cause to be published, at the expense of the Applicant, once a week for two consecutive weeks in a publication of general circulation within the County where the office of said Agency is to be located a notice acknowledging receipt of the Application, which further recites:

1.2.1 The location of the proposed office of the Foreign Bank Limited Purpose Branch or Agency;

1.2.2 A statement regarding where members of the general public may view, for a period of twenty (20) days, a copy of that portion of the Application which is not deemed to be "confidential".

1.2.3 A statement requesting any objections to the application be filed with the State Bank

Commissioner in writing within twenty (20) days of the first publication.

2.0 Hearing

2.1 If after the twenty (20) day comment period, the Commissioner determines a public hearing shall be conducted:

2.1.1 Such determination shall be made within ten (10) days after the conclusion of the 20-day comment period;

2.1.2 The Commissioner shall fix a time, place, and date for the holding of a hearing for the presentation of data, views or arguments pertinent to the application. In no event may the date fixed be less than twenty (20) days after publication of notice of the hearing. The hearing shall be conducted in accordance with Chapter 101 of Title 29 of the **Delaware Code**.

3.0 Findings and Decision of the Commissioner

3.1 The Commissioner shall issue his Findings and Decision relative to the application within sixty (60) days from the receipt of an Application, or within thirty (30) days of a hearing on such Application, whichever shall later occur.

See 2 DE Reg. 295 (08/01/98)

1403 Regulations Governing the Organization, Chartering, Supervision, Operation and Authority of a Delaware Foreign Bank Limited Purpose Branch, a Delaware Foreign Bank Agency and a Delaware Foreign Bank Representative Office

Formerly Regulation No.: 5.1403/1101.0003

Effective Date: August 13, 1998

1.0 Statement of Authority.

1.1 These regulations are promulgated pursuant to the authority vested in the Commissioner under the provisions of Chapter 14, Title 5, **Delaware Code**, including without limitation §1403 (relating to the foreign bank limited purpose branch or foreign bank agency application process); §1404(a)(2) (relating to the taking and maintenance of deposits by a foreign bank limited purpose branch or foreign bank agency); §1405 (maintenance of assets by a foreign bank limited purpose branch or foreign bank agency within Delaware); §1406(a) (relating to the making of written reports to the Commissioner by a foreign bank limited purpose branch or foreign bank agency); §1407 (relating to the rule-making power of the Commissioner generally); §1420 (relating to the licensing and operation of a foreign bank representative office); §1422(a) (relating to the application fee); and §1424(b) (relating to the fee which must accompany certain reports). The Commissioner is authorized to adopt appropriate regulations regarding the computation of tax liability of a foreign bank limited purpose branch or foreign bank agency or federal branch or agency located in Delaware pursuant to the provisions of §1101(a) of Title 5. Additionally, §121(b) authorizes the Commissioner to prescribe regulations to carry out the purposes of Title 5.

2.0 General Powers.

2.1 Foreign Bank Agency.

2.1.1 A "foreign bank agency", as defined in §101 of Title 5 of the **Delaware Code**, shall be entitled to engage within the State of Delaware in the general business of banking in the State of Delaware,

subject, however, to the limitations set forth in 5 **Del.C.** §1404(a)(1). The deposit taking authority of such agency, in addition to the authority expressly granted under §1404, shall be co-extensive with the full authority which a federal agency operating in this State would have pursuant to the provisions of the International Banking Act of 1978 as amended.

2.2 Foreign Bank Limited Purpose Branch

2.2.2 A "foreign bank limited purpose branch", as defined in §101 of Title 5 of the **Delaware Code**, shall be entitled to engage in all the activities of a foreign bank agency and, in addition, may accept such deposits as would be permissible for a corporation organized under §25A of the Federal Reserve Act (12 U.S.C. §611 *et seq.*).

2.3 Foreign Bank Representative Office.

2.3.1 A foreign bank representative office may conduct within the State of Delaware representative activities intended to promote banking services offered by and originating from an office or offices of the foreign bank located outside the State of Delaware. A foreign bank representative office is prohibited from either offering or contracting for any product or service within the State of Delaware which would constitute the doing of a general banking business in Delaware.

3.0 General Regulations.

3.1 Application Fees.

3.1.1 A foreign bank shall apply for a certificate of authority for a foreign bank limited purpose branch or foreign bank agency on such forms and in such manner as the Commissioner shall from time to time prescribe. The application shall be accompanied by a filing fee in the amount of \$2,000.00 for the use of the State made payable to the State of Delaware.

3.1.2 A foreign bank shall apply for a license to establish a representative office on such forms and in such manner as the Commissioner shall from time to time prescribe. The application shall be accompanied by a license fee of \$500.00 and a processing fee of \$500.00 made payable to the State of Delaware.

3.2 Records.

3.2.1 In addition to such records as the Commissioner may from time to time require with respect to the computation of tax liability of a foreign bank limited purpose branch or foreign bank agency, each foreign bank limited purpose branch, foreign bank agency and foreign bank representative office shall maintain at its place of business in Delaware in the English language and in United States dollar equivalents a correct and complete set of books and records of account of all business transacted by such office.

3.3 Reports.

3.3.1 Whenever the Commissioner shall require, the foreign bank limited purpose branch or foreign bank agency shall make a written report in the English language and in United States dollar equivalents in such form as he shall from time to time prescribe and verified by a duly authorized executive officer of the foreign bank limited purpose branch or foreign bank agency. Such report shall show the actual financial condition of the business of the foreign bank limited purpose branch or foreign bank agency in the State of Delaware at the close of any past day designated by the Commissioner. The verification of such Report shall state that the person making it on behalf of the foreign bank limited purpose branch or foreign bank agency solemnly swears or affirms that the information set forth therein is a true and correct statement of the condition of the Delaware foreign bank limited purpose branch or foreign bank agency to the best of his knowledge, information and belief.

Additionally, the Commissioner may from time to time request from a foreign bank limited purpose branch or foreign bank agency a copy of any report of condition or the like filed by the foreign bank of which the foreign bank limited purpose branch or foreign bank agency is a part with any other State, the Federal Deposit Insurance Corporation, or the Federal Reserve Board.

3.3.2 Every licensed foreign bank representative office shall file annually a written report of activities conducted during the previous twelve-month period, in the English language and in United States dollar equivalents in such form as the Commissioner shall prescribe. Said report shall be accompanied by a \$500.00 fee.

3.4 Maintenance of Assets in Delaware; Separate Assets.

3.4.1 A foreign bank limited purpose branch or foreign bank agency shall maintain within the State of Delaware currency, real estate (at net book value or appraised value, whichever is less), precious metals (to the extent of 75% of market value), bonds, notes, debentures, drafts, bills of exchange or other evidence of indebtedness, including loan participation agreements or certificates, or other obligations payable in the United States or in United States funds, or, with the prior approval of the Commissioner, in funds freely convertible into United States funds, or also with the prior approval of the Commissioner, such other assets as the Commissioner may permit, in an amount which shall be equal to one hundred percent (100%) of the liabilities of the foreign bank of which the foreign bank limited purpose branch or foreign bank agency is a part which are payable at or through the foreign bank limited purpose branch or foreign bank agency, including acceptances, but excluding (without duplication) (1) accrued expenses, (2) amounts due and other liabilities to other offices, agencies or branches of, and wholly-owned (except for a nominal number of directors' shares) subsidiaries of, such foreign bank, (3) liabilities maintained on the books of an international banking facility located at such foreign bank limited purpose branch or foreign bank agency, and (4) such other liabilities as the Commissioner shall determine. The valuation of securities shall be in the manner provided in §1405. Each foreign bank limited purpose branch or foreign bank agency shall keep the assets of its business in this State separate and apart from the assets of its business outside this State.

3.5 Deposit of Assets.

3.5.1 The Commissioner may by order direct a foreign bank limited purpose branch or foreign bank agency to deposit all or a portion of the assets which the foreign bank limited purpose branch or foreign bank agency is required to maintain in this State with such banks or trust companies or national banks located in this State as the Commissioner may from time to time designate where the Commissioner finds such order necessary or desirable for the maintenance of the sound financial condition of the foreign bank limited purpose branch or foreign bank agency, the protection of depositors, creditors and the public interest, and the maintenance of public confidence in the business of a foreign bank limited purpose branch or foreign bank agency.

Where deposits constituting liabilities for purposes of 3.5 of Section 3.0 are fully insured by the Federal Deposit Insurance Corporation, such deposits shall be excluded from the definition of liabilities for the purpose of determining the amount of assets which must be maintained by the foreign bank limited purpose branch or foreign bank agency within the State of Delaware.

4.0 Revocation of Certificate of Authority or License.

4.1 Revocation of Foreign Bank Limited Purpose Branch or Foreign Bank Agency Certificate of Authority.

4.1.1 Determination of Cause.

4.1.1.1 Whenever the Commissioner shall have cause to believe that a foreign bank limited purpose

branch or foreign bank agency has engaged in conduct which, pursuant to Section 1410, would constitute cause for the revocation of the certificate of authority of such foreign bank limited purpose branch or foreign bank agency, he shall notify such foreign bank limited purpose branch or foreign bank agency in writing of the alleged violation, and, by means of informal fact-finding, determine whether an order should be issued directing such foreign bank limited purpose branch or foreign bank agency to cease and desist from the conduct giving rise to the violation by a date certain.

4.1.2 Violation of Order.

4.1.2.1 If the Commissioner shall determine that a foreign bank limited purpose branch or foreign bank agency which is the subject of a cease and desist order has not, within the time established, discontinued or rectified the conduct which was the subject of the violation order, he shall give written notice in the manner provided by the provisions of 29 **Del.C.** §10122 to the foreign bank limited purpose branch or foreign bank agency of the date, time and place of a formal hearing at which the foreign bank limited purpose branch or foreign bank agency shall appear and show cause why its certificate of authority should not be revoked. In addition to witnesses appearing on behalf of the foreign bank limited purpose branch or foreign bank agency, the Commissioner shall, by either informal or formal fact finding, take such testimony and gather such evidence as he deems necessary and appropriate in reaching a decision. Within thirty (30) days following the adjournment of such hearing, the Commissioner shall issue his findings and order revoking the certificate of authority, imposing a lesser sanction, or determining that the order to show cause should be retired without action. The foreign bank limited purpose branch or foreign bank agency shall have such right of appeal from such findings and order as is provided for in Subchapter V of Chapter 101, Title 29, **Delaware Code**.

4.2 Revocation of Foreign Bank Representative Office License.

4.2.1 Upon a preliminary determination by the Commissioner that a foreign bank representative office may have engaged in conduct which would constitute cause for the revocation of the license of such foreign bank representative office under the provisions of §1425, he shall give notice in writing to such foreign bank representative office setting forth the alleged violation, and directing such foreign bank representative office to appear at a place, on a date and at a time certain to show cause why its license should not be revoked. At such hearing, the foreign bank representative office shall be accorded the right to appear and be heard. The Commissioner shall, by either informal or formal fact finding and within thirty (30) days from the adjournment of such hearing, issue findings and order directing the revocation of the license of the foreign bank representative office, some lesser sanction, or the retirement of the notice to show cause without action. The foreign bank representative office shall have such rights of appeal from such findings and order as are provided in Subchapter V of Chapter 101, Title 29, **Delaware Code**.

5.0 Allocation of Income and Expenses for Purposes of Determining Delaware Tax Liability of Foreign Bank Limited Purpose Branch or Foreign Bank Agency.

5.1 Method of Allocation.

5.1.1 Although technically a part of the foreign bank, a Delaware foreign bank limited purpose branch or foreign bank agency is to be treated for purposes of assessing and collecting the Delaware Bank Franchise Tax on taxable income (5 **Del.C.** §1101 et seq.) as if it were a bank having separate corporate existence (§1101(a)). To that end, and in order to derive the amount of "net operating income before taxes" for purposes of §1101(a), a foreign bank limited purpose branch or foreign bank agency shall maintain at all times separate books of account in its Delaware office which fully segregate and portray:

5.1.1.1 With respect to income:

5.1.1.1.1 all receipts directly attributable to an asset carried on the books of the foreign bank limited purpose branch or foreign bank agency; and

5.1.1.1.2 all receipts arising from a transaction entered into or a service provided by the foreign bank limited purpose branch or foreign bank agency within the State of Delaware; provided, that the foreign bank limited purpose branch or foreign bank agency may exclude from its accounting of income otherwise properly allocated to Delaware such receipts as are directly or indirectly subject to taxation in any state other than Delaware by reason of either: (1) the existence of a taxable nexus under the laws of any such state between such state and the transaction of service giving rise to such receipts; or (2) the required inclusion under the laws of any such state of such receipts in the numerator of a receipts factor of a formula used to calculate the income of the foreign bank subject to tax in such state.

5.1.1.2 With respect to expenses:

5.1.1.2.1 all costs directly incurred in the start up, maintenance and operation of the Delaware office;

5.1.1.2.2 all other costs attributable to the generation of income allocated to Delaware pursuant to subsection 5.1.1.1 above; and

5.1.1.2.3 to the extent not included in paragraph 5.1.1.2.1 and 5.1.1.2.2 of this subsection 5.1.1.2 above, an aliquot portion of indirect costs incurred by the foreign bank (in both the United States and the home country) with respect to the start up, maintenance and operation of the foreign bank limited purpose branch or foreign bank agency.

Costs under subparagraphs 5.1.1.2.2 and 5.1.1.2.3 of this subsection 5.1.1.2 shall be allocated to Delaware in the same ratio as the gross receipts of the foreign bank are allocated to Delaware, or in such other fair, equitable and consistent manner as the Commissioner shall, upon request of a foreign bank limited purpose branch or foreign bank agency, approve.

5.2 Commissioner's Right of Examination

5.2.1 The Commissioner shall have the right from time to time to examine the books and records of a foreign bank limited purpose branch or foreign bank agency for the purpose of determining whether all or any portion of the income of the foreign bank limited purpose branch or foreign bank agency has been properly allocated to Delaware, and to issue such findings and orders as he deems necessary and appropriate regarding the reallocation of income which he shall find to have been improperly allocated to a state or states other than Delaware.

6.0 Change of Location, Name or Business.

6.1 A foreign bank limited purpose branch or foreign bank agency may, pursuant to the provisions of §1408, make written request of the Commissioner to change its place of business (accompanied by a filing fee of \$500.00) or to change its corporate name for the duration of its corporate existence (no filing fee required). Upon the receipt of such application, the Commissioner shall grant such application within twenty (20) days thereof unless he shall have determined by informal fact finding or otherwise that there exists cause for denying such application. If the Commissioner should determine that facts or circumstances exist constituting cause for denying such application, he shall provide notice and opportunity to be heard to the applicant foreign bank limited purpose branch or foreign bank agency in the manner provided for under the provisions of 29 **Del. C.** §10123. Not less than thirty (30) days after the adjournment of such hearing, the Commissioner shall issue his final order and findings with respect to the grant or denial of the requested change of location or change of name. An applicant foreign bank limited purpose branch or foreign bank agency aggrieved by the determination of the Commissioner shall have such right of appeal as is granted pursuant to the provisions of Subchapter V,

Chapter 101, Title 29, **Delaware Code**.

See 2 DE Reg. 295 (08/01/98)

1501 Procedures Governing the Filing and Determination of an Application for a Certificate of Public Convenience and Advantage to Form a Credit Card Institution

Formerly Regulation No.: 5.1513.0001

Effective Date: December 8, 1995

1.0 Scope of Regulation

1.1 This regulation establishes procedures governing the filing of an application for a Certificate of Public Convenience and Advantage to form a Credit Card Institution (hereinafter referred to as a "Bank") pursuant to Chapter 15 of Title 5 of the **Delaware Code**, and the manner in which determinations will be made respecting such applications by the State Bank Commissioner (the "Commissioner").

2.0 Application Procedures

2.1 Notice of the intention of the incorporator(s) to form a Bank ("Notice of Intent") shall be filed in duplicate in the Office of the Commissioner. The Notice of Intent shall specify: (i) the proposed name of the Bank; (ii) the name and address of the incorporator(s) of the Bank (the "Incorporator"); (iii) the city or town in which the Bank will be located; and (iv) the amount of the capital stock of the Bank.

2.2 The Notice of Intent shall attach as exhibits: (i) a copy of the application for a Certificate of Public Convenience and Advantage (the "Application") in the form intended to be filed by the Incorporator pursuant to Section 4.0 of this regulation; (ii) a copy of the proposed Articles of Association of the Bank and (iii) a copy of the resolution of the Board of Directors referred to in 2.3 of this section.

2.3 The Notice of Intent shall be sworn to and subscribed by the Incorporator or by the Incorporator's duly authorized representative.

3.0 Hearing; Notice of Hearing

3.1 If a Notice of Intent and the exhibits thereto filed with the Commissioner are in the form required by this regulation and otherwise conform to applicable provisions of law, the Commissioner shall fix a time, place and date (which shall be within 90 days of the receipt of the Notice of Intent, but not before the expiration of 35 days from the date of the second publication referred to in paragraph (b) of this section) for the holding of a hearing on the Application. Within five days following the filing of a Notice of Intent, the Commissioner shall notify the Incorporator making such filing of the date, time and place fixed for the hearing, and shall inform the Incorporator of the right to present evidence, to be represented by counsel or other representatives and of the Commissioner's obligation to reach a decision based upon evidence of record. Thereafter, the Commissioner shall direct the Incorporator to publish a notice of the filing of the Notice of Intent and of the holding of a hearing thereon, in such form as the Commissioner shall approve and containing the information required under 3.2 of this section. Such notice shall be published at least once a week for two successive weeks in one or more newspapers of general circulation designated by the Commissioner, at least one of which newspapers shall be published in the county where it is proposed to establish the Bank.

3.2 The published notice required under paragraph 3.1 of this section shall: describe the subject matter

of the proceedings; list the name of the Incorporator; set forth the name of the proposed Bank; specify the city or town where the Bank is to be located; specify the amount of its capital stock; give the date, time and place fixed for a hearing on the application; cite the law (5 **Del. C.** § 1514) and regulation (State Bank Commissioner Regulation No. 1501 (formerly 5.1513.0001) giving the Commissioner authority to act; inform interested persons of an opportunity to present evidence, to be represented by counsel, and to appear personally or by other representatives; and state the Commissioner's obligation to reach a decision based upon evidence of record.

4.0 Filing of Application for a Certificate of Public Convenience & Advantage

4.1 Within sixty days following the second publication of the notice described above in Section 3 of this regulation, but not before the expiration of twenty days following the date of the second publication, the Incorporator shall file with the Office of the Commissioner the Application for a Certificate of Public Convenience and Advantage in the format specified by the Commissioner. The Application shall be signed by the Incorporator and shall be accompanied by a non-refundable investigation fee in the amount of \$1,150.00, payable to the "Office of the State Bank Commissioner." The Application shall include the "Plan of Operation" for the Bank as required under the provisions of 5 **Del. C.** §1514. Such plan shall include:

- 4.1.1 A description of the Bank's Delaware office that accepts deposits (the "Main Office") and all other premises proposed to be occupied by the Bank;
- 4.1.2 A statement of the services that will be available to the public at the Main Office;
- 4.1.3 A description of the types of businesses located in the vicinity of the Main Office;
- 4.1.4 A statement whether the Bank's premises will be owned or leased and, if leased, the material terms of the lease(s);
- 4.1.5 A description of the types of services and products that the Bank plans to offer;
- 4.1.6 A description of the principal geographic and demographic markets within which the Bank will operate;
- 4.1.7 The plans to fund the Bank's proposed credit card operations; and
- 4.1.8 Any other information which the Commissioner deems relevant to the determination of the Bank's Plan of Operation.

4.2 The Plan of Operation submitted to the Commissioner as a part of the Application may not be materially altered without the prior consent of the Commissioner.

5.0 Hearing Procedures

5.1 The hearing contemplated by this regulation may be conducted by the Commissioner or his designee. At such hearing, the Commissioner or his designee shall accept all relevant, non-cumulative evidence offered by or on behalf of the Incorporator or by any interested person who appears in person or by counsel or other representative.

5.2 The burden of proof at any hearing shall be upon the Incorporator.

5.3 A record from which a verbatim transcript can be prepared shall be made of all hearings. The expense of any transcription of the proceedings requested by the Commissioner or his designee shall be borne by the Incorporator; in all other instances, the expense of such transcription shall be borne by the person requesting it.

5.4 The Commissioner or his designee may request the Incorporator or any other party or parties who appear at a hearing to submit proposed findings of fact and conclusions of law.

6.0 Record

6.1 With respect to each Application, all notices, correspondence between the Commissioner and the Incorporator or other interested parties, all exhibits, documents and testimony admitted into evidence and all recommended orders, summaries of evidence and findings and all interlocutory and final orders shall be included in the Commissioner's record of the matter and shall be retained for a period of at least three years following final action on the Application.

7.0 Proposed Orders

7.1 Following completion of a hearing conducted pursuant to this regulation, the Commissioner or his designee shall prepare a proposed order which shall include:

7.1.1 A brief summary of the proceedings and evidence, and recommended findings of fact based upon the evidence;

7.1.2 Recommended conclusions of law; and

7.1.3 Recommended decision.

7.2 A copy of the proposed order shall be mailed or hand delivered to the Incorporator (or to the Incorporator's designated representative) and to each person who presented data, views or argument at the hearing, each of whom shall thereafter have 20 days to submit in writing to the Commissioner exceptions, comments and arguments respecting the proposed order.

7.3 If the Commissioner presides at a hearing conducted pursuant to this regulation and if the decision on the Application is not adverse to the Incorporator, the Commissioner shall have the right to waive the entry of a proposed order and may instead proceed directly to the entry of a final order under Section 8 of this regulation.

8.0 Decision and Final Order

8.1 The Commissioner shall make his determination whether approval of an Application would promote the public convenience and advantage based upon the entire record and any applicable statutory criteria, and upon the summaries and recommendations of subordinates based upon the record.

8.2 Every determination on an Application shall be incorporated in a final order which shall include, where appropriate:

8.2.1 A brief summary of the proceedings and evidence;

8.2.2 Findings of fact based upon the evidence;

8.2.3 Conclusions of Law;

8.2.4 Any other conclusions or findings required by law; and

8.2.5 A concise statement of the Commissioner's determination of the Application.

8.3 Every final order shall be signed by the Commissioner and shall be mailed or hand delivered to the Incorporator (or to the Incorporator's designated representative) and to each person that presented data, views, or arguments at the hearing and to any other person requesting a copy of the final order.

1503 Minimum Books and Records for Credit Card Institutions

5 Del.C. §1542

Formerly Regulation No.: 5.1542.0003

Effective Date: December 8, 1995

This regulation provides for the minimum books and records requirements for Credit Card Institutions.

§1542 of Title 5 of the **Delaware Code** provides that the State Bank Commissioner may issue regulations prescribing the minimum books and records required to be maintained by and at the institution's Delaware office that accepts deposits.

All records must be easily accessible for supervisory examination purposes. In addition, records, with the exception of those that are considered to be of a permanent nature, may be copied (i.e. - microfilmed, photographed) at the institution's discretion and such copy retained for the designated period of time.

1.0 Corporate Records

1.1 Annual Reports

1.2 Charter, certificate of incorporation, bylaws, amendments, minutes of meetings of directors, executive and other committees

1.3 FDIC Assessment base records

1.4 Records of loans to executive officers, directors and principal shareholders

1.5 Records of outside business interests of bank's executive officers, directors and principal shareholders and their transactions with the bank

2.0 Capital

2.1 Capital Stock Certificates, records and stubs

2.2 Capital Stock Ledger

2.3 Capital Stock Transfer Ledger

2.4 Dividend Check Register

2.5 Dividend Checks paid

2.6 Proxies

3.0 Accounting and Auditing

3.1 Accrual and Bond Amortization Records

3.2 Audit Reports - External & Internal

3.3 Bank Reports of Condition and Income

3.4 Bank Franchise Tax Returns

3.5 Bank Examiner Supervision Reports

3.6 Budget Worksheets

3.7 Charged-off asset records

- 3.8 Daily Reserve Computation
- 3.9 Difference Record
- 3.10 Reconcilements of bank asset and liability accounts, i.e., due to and due from, loans, etc.
- 4.0 General Ledger
 - 4.1 Daily Statement of Condition
 - 4.2 General ledger and any subsidiary ledgers
 - 4.3 Transactions journals, general ledger sheets/cards and general ledger tickets - debits and credits
- 5.0 Insurance
 - 5.1 Banker's Blanket Bond
 - 5.2 Records of Policies in force
 - 5.3 Insurance schedules, records of premium payments and recoveries
- 6.0 Investments
 - 6.1 Securities ledger
 - 6.2 Brokers' Confirmations and Invoices
 - 6.3 Brokers' Statements
 - 6.4 Safekeeping Receipts
 - 6.5 Securities Buy and Sell orders
- 7.0 Loans
 - 7.1 Customer applications
 - 7.2 Customer collateral and register, if any
 - 7.3 Correspondence: customer, dealer and general
 - 7.4 Credit files
 - 7.5 Trial Balance - Account number, name, balance, cycles past due (if applicable), etc.
 - 7.6 Delinquency Report - account number, name, balance cycles past due, etc.
 - 7.7 Cardholder agreements and merchants agreements
 - 7.8 Statements - Cardholders and Merchants
 - 7.9 Transaction Journals
 - 7.10 Overdraft loan agreement, where applicable
 - 7.11 Records of extensions of credit over \$5,000
 - 7.12 Collection letters; incoming and outgoing
- 8.0 Compliance - Evidence of compliance with the following federal regulations:
 - 8.1 Truth-in-Lending Act
 - 8.2 Fair Credit Reporting Act
 - 8.3 Fair Debt Collection Practices Act

8.4 Bank Secrecy Act
9.0 Taxes - All tax records
10.0 Due From Banks
10.1 Advice from correspondents
10.2 Bank statements
10.3 Drafts and Draft Register
10.4 Reconcilement letters
10.5 Transit letters
11.0 Certificates of Deposits and Other Time Deposits
11.1 Certificate Register
11.2 Signature Cards
11.3 Taxpayer Information
11.4 Trial Balance
11.5 Withdrawal request
12.0 Registered Mail
12.1 Registered mail records - incoming, outgoing, air & sea
12.2 Return receipt cards

1701 Filings by Federally-insured Savings/Building & Loan Associations

Formerly Regulation No.: 5.1701etal.0001.P/A

Effective Date: August 15, 1986

1.0 All State-chartered savings/building and loan associations insured by the Savings Association Fund shall submit all filings required by the Office of Thrift Supervision simultaneously with this office. Examples of such filings are the quarterly financial reports and any submissions requested as a result of an examination.

1801 Instructions for Preparation of Franchise Tax

5 Del.C. Ch. 18

Formerly Regulation No.: 5.1801.0001

Effective Date: January 1, 1993

1.0 Definitions

"Building and loan association" means any corporation, person, firm partnership, association, trustee or combination of persons whatsoever within the purview of Chapter 17, Title 5, **Delaware Code**, and includes savings and loan associations.

"Net operating income before taxes" means the total operating income minus total operating expense.

2.0 Certification of Tax; tax Due

2.1 Within 75 days after the end of its fiscal year, the building and loan association shall file with the Office of the State Bank Commissioner a statement of net income for the prior taxable period verified by oath. The statement of net income shall be of the form set forth in Regulation No. 1802 (formerly 5.1801.0002).

2.2 At the same time the building and loan association shall file with the Office of the State Bank Commissioner a Final Franchise Tax Report, verified by oath, of the form set forth in Regulation No. 1803 (formerly 5.1801.0003) and shall pay the final franchise tax due. Checks should be made payable to the State of Delaware.

2.3 The total franchise tax due shall be calculated as follows:

2.3.1 Net operating income before taxes reduced by any deduction set forth in §1801 of Title 5, **Delaware Code**;

2.3.2 Multiplied by the factor .56 to arrive at taxable income;

2.3.3 The appropriate rate of taxation set forth in subsection 1801(c) of Chapter 18, Title 5, **Delaware Code**, shall be applied to the taxable income to arrive at the total franchise tax due.

3.0 Penalty

3.1 If any building and loan association shall fail to pay any tax due on or before the due date, a penalty of 1½ percent shall be assessed for each month or fraction thereof that the tax remains unpaid.

2101 Mortgage Loan Brokers Operating Regulations

5 Del.C. §2102(b) and §2112

Formerly Regulation No.: 5.2112.0001

Effective Date: November 12, 1999

1.0 Application of Chapter

1.1 Chapter 21 of Title 5 of the **Delaware Code** governs persons who broker extensions of credit secured by a first or second mortgage on any one-to-four family residential owner-occupied property intended for personal, family, or household purposes. Chapter 21 of Title 5 of the **Delaware Code** does not apply to the brokering of commercial mortgage loans, including a first or second mortgage on any income producing property that does not fall into the aforementioned definition.

2.0 Maintenance of Copies of Applicable Regulations

2.1 All licensees shall conduct business in compliance with Chapter 21 of Title 5 of the **Delaware Code**, and all regulations issued thereunder. Each office licensed under Chapter 21 of Title 5 of the **Delaware Code** shall maintain copies of all applicable regulations. These regulations include:

2.1.1 Regulation 2101 (formerly 5.2112.0001) - Mortgage Loan Brokers Operating Regulations;

2.1.2 Regulation 2102 (formerly 5.2111(a).0002) - Mortgage Loan Brokers Minimum Requirements for Content of Books and Records;

2.1.3 Regulation 2103 (formerly 5.2115.0003) - Mortgage Loan Brokers Itemized Schedule of Charges;

2.1.4 Regulation 2104 (formerly 5.2113.0004) - Mortgage Loan Brokers Minimum Disclosure Requirements;

2.1.5 Regulation 2105 (formerly 5.2111(b).0005) - Report of Delaware Loan Volume;

2.1.6 Regulation 2106 (formerly 5.2111/2210/2906.0006) - Report of Delaware Assets; and

2.1.7 Regulation 101 (formerly 5.141.0001.NC) - Retention of Financial Institution Records.

2.2 The manager and staff of each office shall familiarize themselves with all of the aforementioned regulations. The licensee shall inform the Office of the State Bank Commissioner if copies of the regulations are lost or misplaced and replacements will be furnished. Failure to maintain the aforementioned regulations shall constitute a violation of both §2111(a) of Title 5 of the **Delaware Code** and this regulation.

3.0 Fees for Examination and Supervisory Assessment

3.1 Mortgage Loan Broker licensees are subject to examination pursuant to §2110 of Title 5 of the **Delaware Code**. The costs of such examinations are assessed to the licensees in accordance with §127(a) of Title 5 of the **Delaware Code**. A licensee shall remit payment not later than 30 days after the date of the invoice for the fees for examination. In addition, the Commissioner assesses annually each licensee a supervisory assessment, due and payable on August 1 each year, as provided in §127(b) of Title 5 of the **Delaware Code**. Failure of a licensee to remit timely payment of the examination fee or supervisory assessment will result in a penalty of 0.05 percent for each day that the examination fee or supervisory assessment shall remain unpaid after the due date, as provided in §127(a) and §127(b) of Title 5 of the **Delaware Code**.

4.0 Representations at Mortgage Loan Closings

4.1 At no time shall a mortgage loan close in the name of the mortgage loan broker except for the sole purpose of satisfying requirements for VA government loans.

See 3 DE Reg. 653 (11/01/99)

2102 Mortgage Loan Brokers Minimum Requirements for Content of Books and Records

5 Del.C. §2111(a)

Formerly Regulation No.: 5.2111(a).0002

Effective Date: November 12, 1999

Each licensed office shall establish and maintain the following books and records, on a current basis, either at the office of the licensed broker, or at a suitable location available within a reasonable time period, upon request. Written approval may be granted for variations that accommodate individual accounting systems, including automated and electronic record processing systems, provided the objectives of this regulation are fulfilled. Requests for such approvals must be in writing and shall provide adequate information about the system to ensure that the minimum record requirements are satisfied and provide the required data on a current and readily available basis to examiners, when requested. The following records shall be maintained in accordance with the time periods provided in Regulation 101 (formerly No. 5.141.0001.NC) Retention of Financial Institution Records.

1.0 Applicant Register - This record shall show the name of the applicant, identifying file number, date application was filed, name of lender, date of commitment, amount of broker's fee, and date fee was

paid. In the case of an applicant denied credit, the register shall contain the name of the applicant, identification number, date application was filed and, if known, date application was denied and reason for denial.

2.0 Individual Records of Applicant - A file of all documents, invoices and/or other obligations for each applicant shall be maintained and shall include the following:

2.1 Name and address of the applicant;

2.2 Identifying number;

2.3 Date of application/broker's agreement;

2.4 A copy of the mortgage loan broker agreement containing original signature(s) of applicant(s), or a certified copy thereof;

2.5 A copy of all invoices or other evidence of expenses incurred in connection with the mortgage loan including, but not limited to, the property appraisal, title certificate, and credit report;

2.6 A copy of all receipts provided to the applicant(s) for amounts paid to the broker;

2.7 A record of all fees collected by the broker in accordance with Regulation No. 2103 (Formerly 5.2115.0003) Mortgage Loan Broker Regulations Itemized Schedule of Charges;

2.8 Name of lender;

2.9 Copy of the commitment;

2.10 Date and amount of broker fee collected; and

2.11 Evidence of any refunds and an explanation of the refunds.

3.0 Record of Litigation - All files on applicants who initiate litigation against the licensee or who are sued by the licensee, shall be maintained in a separate litigation section of the files and shall include the following:

3.1 All original paper or a certified copy thereof;

3.2 Date and terms of judgment.

4.0 Advertising - Copies of all printed or other advertising materials circulated by the mortgage loan broker.

See 3 DE Reg. 653 (11/01/99)

2103 Mortgage Loan Broker Regulations Itemized Schedule of Charges

5 Del.C. §2115

Formerly Regulation No. 5.2115.0003

Effective Date: November 12, 1999

1.0 Notification - Every licensee shall make available for review to every applicant, a copy of this regulation at the time when such application is made. Posting of this regulation in the office of the licensee in a place both prominent and easily visible to all potential applicants shall satisfy this requirement. An explanation as to the contents and limitations contained herein shall satisfy this requirement when transactions occur telephonically. An informational screen containing these limitations with an affirmative acknowledgement by the consumer prior to application shall satisfy this

requirement for internet transactions.

2.0 Fees Permissible for Collection Prior to Receipt of a Written Commitment - In connection with the application for credit and on behalf of the borrower, the following fees subject to the limitations enumerated herein may be collected prior to the receipt of a written commitment from a bona fide lender:

2.1 Property appraisal fees shall be limited to the amount paid to a third-party for such appraisal and shall be limited to those amounts that are customary and reasonable;

2.2 Credit report fees shall be limited to the actual cost of the report, the amount of which was paid to a third-party. Such amounts shall be customary and reasonable;

2.3 Title examination fees and/or title insurance shall be limited to those amounts actually expended for such purposes. Such amounts shall be customary and reasonable;

2.4 Returned check charges may be assessed to consumers, provided the amounts of such charges are customary and reasonable for checks that are returned unpaid;

2.5 Other bona fide third-party fees actually and reasonably paid or incurred on behalf of the borrower. Such other fees shall not be incurred without the express permission of the borrower and shall be limited to amounts actually paid or incurred. Such amounts shall be customary and reasonable;

2.6 An application fee may be imposed in lieu of the fees itemized above (excluding item 2.4) provided the amount of such application fee reasonably reflects the anticipated amounts of all appropriate fees and amounts collected in excess of such actual costs shall be refunded. Those fees which reasonably exceed the anticipated amounts shall be payable by the borrower.

2.7 Fees associated with the commitment of a specific interest rate, to be held for a specified period of time, may be collected in accordance with a signed rate lock agreement, provided the fees are payable to the lender.

3.0 Fees Permissible for Collection Upon or After Receipt of a Written Commitment or Pre-Approval and Prior to Consummation of the Mortgage Loan

3.1 Fees associated with loan commitments, if such fees are required by the lender upon receipt of a written commitment, provided the fees are payable to the lender.

3.2 Fees that the lender may require in advance of a loan closing, provided, however, that such fees are paid directly to the lender or third-party provider.

3.3 This section shall not prohibit the collection of fees otherwise permitted under item 2 of this regulation, if such fees are collected after receipt of a written commitment or pre-approval.

4.0 Collection of Fees in the Name of the Mortgage Loan Broker - Notwithstanding the limitations under items 2.7 and 3.0, a mortgage loan broker may collect the fees authorized in items 2.7 and 3.0 of this regulation, in the mortgage loan broker's own name, if required by the lender.

5.0 Fees for Mortgage Loan Broker Services - A fee may be collected from a bona fide lender, in accordance with the mortgage loan broker agreement, at closing or following the rescissionary period (for loans which qualify for rescission under the Federal Truth-in-Lending Act). In no event shall the aggregate points charged to the borrower exceed ten percent of the principal amount of the loan. Such point limitation shall apply to points assessed by the lender on the lender's behalf, together with points charged by the lender on behalf of any other party to the transaction. The total compensation paid to a mortgage loan broker shall reasonably reflect the value of the goods and services provided.

See 3 DE Reg. 653 (11/01/99)

2104 Mortgage Loan Brokers Minimum Disclosure Requirements

5 Del.C. §2113

Formerly Regulation No.: 5.2113.0004

Effective Date: November 12, 1999

1.0 Advertising

1.1 When a licensed mortgage loan broker advertises with respect to a mortgage loan, the advertisement shall clearly and conspicuously state that the broker is a licensed mortgage loan broker.

2.0 Written Agreement

2.1 The mortgage loan broker shall enter into a separate, signed, written agreement with the potential borrower, independent of the loan agreement. The terms of such agreement shall be disclosed to the potential borrower before the payment of any nonrefundable fee. A copy of the agreement shall be provided to the prospective borrower at the time he signs the agreement. The agreement shall contain, at a minimum:

2.1.1 The name of the mortgage loan broker;

2.1.2 The name of the prospective borrower;

2.1.3 The date of the agreement and the period for which it shall remain in effect;

2.1.4 A statement that the mortgage loan broker is not the credit provider;

2.1.5 A complete description of the services the mortgage loan broker undertakes to perform for the prospective borrower;

2.1.6 A specific statement of the circumstances under which the mortgage loan broker will be entitled to obtain or retain consideration from the party with whom the mortgage loan broker contracts;

2.1.7 An estimate of the costs of the broker's services which may be expressed as a dollar amount or range together with the maximum cost of services. Such maximum cost shall be expressed as follows: "In no event shall the cost of these services exceed _____. " Such amounts shall include all compensation paid to the broker whether paid directly or indirectly;

2.1.8 A statement as to which fees are refundable and nonrefundable and under what circumstances a fee may be refundable; and

2.1.9 A statement that the borrower may be entitled to the refund of certain monies paid to the mortgage loan broker if he exercises his right to rescind under the Federal Truth-in-Lending Act.

See 3 DE Reg. 653 (11/01/99)

2201 Licensed Lenders Operating Regulations

5 Del.C. §2210(d)

Formerly Regulation No.: 5.2210(d).0001

Effective Date: November 12, 1998

1.0 Application of Chapter

1.1 Chapter 22 of Title 5 of the **Delaware Code** applies to consumer credit transactions, including, but

not limited to, mortgage lending secured by one to four family residential, owner-occupied property intended for personal, family or household purposes.

2.0 Maintenance of Operating Regulations for Licensed Lenders

2.1 All licensees shall conduct business in compliance with Chapter 22 of Title 5 of the **Delaware Code**. Each office licensed under Chapter 22 of Title 5 of the **Delaware Code** shall possess copies of all applicable regulations. These regulations include:

- 2.1.1 Regulation 2201 (formerly 5.2210(d).0001) Licensed Lenders Operating Regulations;
- 2.1.2 Regulation 2202 (formerly 5.2213.0002) Licensed Lenders Minimum Requirements for Content of Books and Records;
- 2.1.3 Regulation 2203 (formerly 5.2218/2231.0003) Licensed Lenders Itemized Schedule of Charges;
- 2.1.4 Regulation 2204 (formerly 5.2208.0004) Required Amount of Licensed Lender's Surety Bond or Irrevocable Letter of Credit;
- 2.1.5 Regulation 2205 (formerly 5.2210(e).0005) Report of Delaware Loan Volume;
- 2.1.6 Regulation 2206 (formerly 5.2111/2210/2906.0006) Report of Delaware Assets; and
- 2.1.7 Regulation 101 (formerly 5.141.0001.NC) Retention of Financial Institution Records.

2.2 The manager and staff of each office shall familiarize themselves with all of the aforementioned regulations. The licensee shall inform the Office of the State Bank Commissioner if copies of the regulations are lost or misplaced and replacements will be furnished. Failure to maintain the aforementioned regulations shall constitute a violation of both §2213 of Title 5 of the **Delaware Code** and this regulation.

3.0 Fees for Examination and Supervisory Assessment

3.1 Licensed Lenders licensees are subject to examination pursuant to §2210 of Title 5 of the **Delaware Code**. The costs of such examinations are assessed to the licensees in accordance with §127(a) of Title 5 of the **Delaware Code**. A licensee shall remit payment not later than 30 days after the date of the invoice for the examination. In addition, the Commissioner annually assesses each licensee a supervisory assessment, due and payable on August 1 each year, as provided in §127(b) of Title 5 of the **Delaware Code**. Failure of a licensee to remit timely payment of this examination fee or supervisory assessment will result in a penalty of 0.05 percent for each day that the examination fee or supervisory assessment shall remain unpaid after the due date, as provided in §127(a) and §127(b) of Title 5 of the **Delaware Code**.

4.0 Mortgage Satisfaction/Security Interest

4.1 A licensee shall cause an entry of the satisfaction or performance of a debt or duty secured by a mortgage or conveyance in the nature of a mortgage on real estate to be made as required by Chapter 21 of Title 25 of the **Delaware Code**. A licensee shall take the necessary action(s) to discharge or release any other security interest for loans under Chapter 22 of Title 5 of the **Delaware Code** within sixty days from the date the debt secured by such other collateral or security interest is satisfied or performed. Failure of a licensee to take such action within the period prescribed will be a violation of this regulation.

5.0 Principal Reduction

5.1 No loan shall be made under the provisions of this Chapter that does not allow for a reduction of principal over the term of the loan unless it is a product available through federal governmental or quasi-governmental entities.

6.0 Credit Life and Credit Health Insurance

6.1 Any lender may offer credit life and health insurance to qualified borrowers. Such insurance transactions shall conform to all statutes of the Insurance Code of the State of Delaware as well as rules and regulations that the Insurance Commissioner may prescribe from time to time.

6.2 Every lender offering credit life and health insurance whose charges do not conform to those authorized in the Insurance Commissioner's Regulation No. 5 shall maintain in each office a copy of a letter filed with the Insurance Commissioner requesting the deviated rate as well as approval by the Insurance Commissioner of the rate.

6.3 Credit life insurance refunds shall be calculated as of the date of death.

6.4 Credit health insurance payments received by the lender shall be applied to the account for the period the payment actually covers regardless of the date of receipt. Additional interest charges shall not accrue should payment be received after the payment due date.

6.5 The Office of the State Bank Commissioner shall provide a copy of the Insurance Commissioner's Regulation No. 5 and any subsequent applicable regulations promulgated to each licensee.

7.0 Other Insurance

7.1 Any lender may require proof of insurance coverage for any loan secured by a motor vehicle, real property (real estate), or other collateral. Borrower has the right to submit any existing policy(s) naming lender as beneficiary as his/her interest may appear, provided such policy is acceptable to the lender as to coverage, prepaid term and the carrier meets required financial standards. Upon notification to the lender of cancellation of any policy for non-payment, lender may place coverage to secure his/her interest. Borrower shall be informed of such placement and any amount expended shall be due and payable by the borrower before a loan may be satisfied. Any lender may, if requested by the borrower, place such insurance coverage as is necessary to secure his/her interest at the inception of the loan.

7.2 A licensee may offer, but not require, such other insurance products as the State Bank Commissioner may, upon written approval, permit. No such insurance may be offered without the State Bank Commissioner's written approval.

8.0 Borrower-Signed Authorization for Insurance

8.1 Any insurance authorized by this regulation, other than the insurance coverage authorized by section 7.1 of this regulation, must be supported by a specific request signed by the borrower. This request shall be attached to or made a part of the application documents.

9.0 Purchase or Sale of Accounts by Licensed Lenders

9.1 A licensee shall not sell or otherwise transfer contracts to any person or corporation not licensed under Chapter 22 of Title 5 of the **Delaware Code**, except at the discretion of the State Bank Commissioner.

9.2 Purchasers shall be limited to collecting balances due under the existing contract terms and shall be bound by applicable Delaware laws regarding legal fees and usury statutes if a loan is subsequently refinanced.

9.3 This section shall not apply to:

9.3.1 The purchase or transfer of loan contracts between licensees under the same management or control;

9.3.2 The sale or transfer of a loan contract to an out-of-state affiliate for collection or for the

convenience of a consumer;

9.3.3 The transfer of a loan contract by a licensee to any maker or person secondarily liable on the contract; and,

9.3.4 The sale of a participation or a whole loan to a federal, state, or local government agency, or to a federal or state regulated bank, savings and loan association, mortgage banking company, insurance company or investment banking firm or their subsidiaries.

10.0 Origination of Mortgage Loans for Resale

10.1 Solely for the purposes of the loan limitation provisions contained in the last sentence of Section 2228(a) of Title 5 of the **Delaware Code**, the term "loans" shall not be deemed to include loans secured by mortgages on real property located in this state (or secured by certificates of stock or other evidence of ownership interest in, and proprietary leases from corporations or partnerships formed for the purpose of cooperative ownership of real estate in this State) if such loans are originated by a licensee for resale and the licensee in fact sells, assigns or otherwise conveys its entire interest in the loan (except servicing if servicing is retained) within 120 days following the date the loan is made. Additional time may be granted at the discretion of the State Bank Commissioner.

See 2 DE Reg. 781 (11/01/98)

2202 Licensed Lenders Minimum Requirements for Content of Books and Records

5 Del.C. §2213

Formerly Regulation No.: 5.2213.0002

Effective Date: November 12, 1999

Each licensed office shall establish and maintain the following books and records, including automated and electronic record processing systems, on a current basis, either at the office of the licensed lender, or, at a suitable location available within a reasonable time period, upon request. Written approval may be granted for variations that accommodate individual accounting systems, provided the objectives of this regulation are fulfilled. Requests for such approvals must be in writing and shall provide adequate information about the system to ensure that the minimum record requirements are satisfied and provide the required data on a current and readily available basis to examiners, when requested. The following records shall be maintained in accordance with the time periods provided in Regulation No. 101 (formerly regulation 5.141.0001.NC) Retention of Financial Institutions Records:

1.0 Loan Register - This record shall show the account number, date of loan, name of borrower, type of security, contract rate or annual percentage rate, and amount of loan. In the case of an applicant denied credit, the register shall contain the name of the applicant, identification number, date application was filed and, if known, date application was denied and reason for denial.

2.0 Individual Accounts with Borrowers - A record or ledger sheet shall be kept for each borrower and shall include the following:

2.1 Name and address of the borrower;

2.2 Loan number;

2.3 Face amount of loan;

2.4 Date of loan;

- 2.5 Rate of interest charges and the amounts of all charges;
- 2.6 Terms of repayment;
- 2.7 Type of security;
- 2.8 Where and to whom hypothecated;
- 2.9 Names of endorsers, co-makers, guarantors, or sureties;
- 2.10 The actual date of receipt of payment of principal and charges; and,
- 2.11 Name of assignee of mortgage note.

In addition, the record or ledger sheet shall be kept in such manner as to show at once the balance due on principal.

3.0 File of All Original Paper - (or copies thereof). All obligations and disclosure forms signed by the borrower and taken in connection with loans made shall bear the loan number, shall be maintained in one file, and shall be made available to the examiners when requested. Such file, if applicable, shall include evidence that a mortgage of record has been appropriately removed.

4.0 Daily Transaction Record - All transactions involving either the receipt or disbursement of any amount whatsoever shall be recorded. Details of disbursements to, or for the account of, borrowers shall be itemized.

5.0 Record of Loans in Litigation and Repossessions - A record of all loans in litigation, repossession, or voluntary surrenders shall be maintained either on the borrower's account record or a litigation record. If a composite record of such loans is not kept, the loans shall be maintained in a separate litigation and repossession file. The litigation and repossession record shall disclose the following information:

- 5.1 Loan number, original amount of loan and unpaid balance;
- 5.2 Type of security foreclosed, attached, replevined, repossessed, or surrendered;
- 5.3 Date and terms of settlement of account or, if after judgment, prejudgment balance, current balance, unearned charges credited to borrower's account, and legal costs;
- 5.4 Evidence that the terms of sale were fair to the borrower, if the security was sold after repossession; and,
- 5.5 Records of litigation accounts handled by attorneys or corporate collection centers shall be maintained in the branch office and should reflect a correct current balance.

6.0 Credit Insurance Claims Register - A credit insurance claims register or file that is a record of all claims submitted by borrowers to the insurer shall disclose the following:

- 6.1 Date of claim
- 6.2 Amount of claim;
- 6.3 Date and amount of payment by insurer or the date of rejection and the reason therefor;
- 6.4 Borrower's name;
- 6.5 Loan number;
- 6.6 Reason for claim (i.e. death, illness, etc.);
- 6.7 Proof of death;

6.8 A copy of the check(s) issued by, or other record of disbursement by, the insurance company in payment of life, accident, health, or accident and health benefits; and,

6.9 A copy of the check(s) issued by, or other record of disbursement by, the insurance company to rebate unearned insurance premiums, which result from pre-payment of the loan or cancellation of the insurance.

7.0 In the event a loan is sold and no servicing performed, only those items listed in item 6.0 available prior to such sale shall be required.

See 3 DE Reg. 653 (11/01/99)

2203 Licensed Lenders Regulations Itemized Schedule of Charges

5 Del.C. §2218(5) and §2231(3)

Formerly Regulation No. 5.2218/2231.0003

Effective Date: November 12, 1999

1.0 Notification - Every licensee shall furnish to every applicant, a copy of this regulation at the time when such application is made. Posting of this regulation in the office of the licensee in a place both prominent and easily visible to all potential applicants shall satisfy this requirement. An explanation as to the contents and limitations contained herein shall satisfy this requirement when transactions occur telephonically. An informational screen containing these limitations with an affirmative acknowledgement by the consumer, prior to application, shall satisfy this requirement for internet transactions.

2.0 Interest

2.1 A lender may charge and collect interest in respect to a revolving credit plan or closed end loan at such daily, weekly, monthly, annual, or other periodic percentage rate or rates as the agreement governing the plan or loan provides, or as established in the manner provided in such agreement. Periodic interest may be calculated on a revolving credit plan using any balance computation method provided for in the agreement governing the plan. Periodic interest may be calculated on a closed end loan by way of simple interest or such other method as the agreement governing the loan provides.

2.2 If the agreement governing the revolving credit plan or closed end loan so provides, the periodic percentage rate or rates of interest may vary in accordance with a schedule or formula. Such periodic percentage rate or rates may vary from time to time as the rate determined in accordance with such schedule or formula varies and such periodic percentage rate or rates, as so varied, may be made applicable to all or any part of the outstanding unpaid indebtedness or outstanding unpaid amounts. In the case of revolving credit, such rate shall become applicable on or after the first day of the billing cycle that contains the effective date of such variation. In the case of closed end loan transactions, such rate may be made applicable to all or any part of the outstanding unpaid amounts on and after the effective date of such variation. Without limitation, a permissible schedule or formula hereunder may include provisions in the agreement governing the revolving credit plan or closed end loan agreement for a change in the periodic percentage rate or rates of interest applicable to all or any part of outstanding unpaid indebtedness or outstanding unpaid amounts, whether by variation of the then applicable periodic percentage rate or rates of interest, variation of an index or margin or otherwise, contingent upon the happening of any event or circumstance specified in the plan or agreement, which event or circumstance may include the failure of the borrower to perform in accordance with the terms

of the revolving credit plan or loan agreement.

3.0 Additional Fees and Charges; Limitations - If the agreement governing the plan or loan so provides, in addition to, or in lieu of, interest at a periodic percentage rate or rates permitted by Chapter 22, Title 5 of the **Delaware Code**, the licensee may charge and collect the following fees and charges, subject to the limitations provided below, in respect to revolving credit plans or closed end loans:

3.1 Revolving Credit - with respect to a borrower, a lender may charge, collect, or receive one or more of the following fees and charges under plans subject to the provisions of Subchapter II, Chapter 22, Title 5 of the **Delaware Code**:

3.1.1 periodic charges - a daily, weekly, monthly, annual or other periodic charge in such amount or amounts as the agreement may provide for the privileges made available to the borrower under the plan;

3.1.2 transaction charges - a transaction charge or charges in such amount or amounts as the agreement may provide for each separate purchase or loan under the plan;

3.1.3 minimum charges - a minimum charge in such amount or amounts as the agreement may provide for each daily, weekly, monthly, annual or other scheduled billing period under the plan during any portion of which there is an outstanding unpaid indebtedness under the plan;

3.1.4 fees for services rendered or reimbursement of expenses - reasonable fees for services rendered or for reimbursement of expenses incurred in good faith by the licensee or its agent in connection with such loan, including without limitation, commitment fees, official fees and taxes, premiums or other charges for any guarantee or insurance protecting the licensee against the borrower's default or other credit loss, or costs incurred by reason of examination of title, inspection, recording and other formal acts necessary or appropriate to the security of the loan, filing fees, attorney's fees and travel expenses. In the event a borrower defaults under the terms of a plan, the licensee may, if the borrower's account is referred to an attorney (not a regularly salaried employee of the licensee) or to a third party for collection and if the agreement governing the revolving credit plan so provides, charge and collect from the borrower a reasonable attorney's fee. In addition, following a borrower's default, the licensee may, if the agreement governing the plan so provides, recover from the borrower all court, alternative dispute resolution or other collection costs (including, without limitation, fees and charges of collection agencies) actually incurred by the licensee;

3.1.5 overlimit charges - a charge in such amount or amounts as the agreement may provide, for each daily, weekly, monthly, annual or other scheduled billing period under the plan during any portion of which the total outstanding indebtedness exceeds the credit limit established under the plan;

3.1.6 delinquency charges - a late or delinquency charge upon any outstanding unpaid installment payments or portions thereof under the plan which are in default; provided, however, that no more than 1 such late or delinquency charge may be imposed in respect of any single such installment payment or portion thereof regardless of the period during which it remains in default; and provided further, however, that for the purpose only of the preceding provision all payments by the borrower shall be deemed to be applied to satisfaction of installment payments in the order in which they become due;

3.1.7 returned check charges - a returned check charge may be assessed to consumers, in such amount or amounts as the agreement may provide, provided the amount(s) of such charges are customary and reasonable for checks that are returned unpaid;

3.1.8 termination fees - a charge in such amount or amounts as the agreement may provide to terminate a revolving credit plan;

3.1.9 charges incurred in connection with real estate secured transactions - in the case of revolving

credit secured by real estate such additional charges as outlined in item 3.3 of this regulation may also be collected within the limitations stated therein.

3.2 Closed End Credit - with respect to a borrower, a lender may charge, collect, or receive one or more of the following fees and charges for loans subject to the provisions of Subchapter III, Chapter 22, Title 5 of the **Delaware Code**:

3.2.1 fees for services rendered or reimbursement of expenses - reasonable fees for services rendered or for reimbursement of expenses incurred in good faith by the licensee or its agent in connection with such loan, including without limitation, commitment fees, official fees and taxes, premiums or other charges for any guarantee or insurance protecting the licensee against the borrower's default or other credit loss, or costs incurred by reason of examination of title, inspection, recording and other formal acts necessary or appropriate to the security of the loan, filing fees, attorney's fees and travel expenses. In the event a borrower defaults under the terms of the loan, the licensee may, if the borrower's account is referred to an attorney (not a regularly salaried employee of the licensee) or to a third party for collection and if the agreement governing, or the bond, note or other evidence of, the loan so provides, charge and collect from the borrower a reasonable attorney's fee. In addition, following a borrower's default, the licensee may, if the agreement governing, or the bond, note or other evidence of, the loan so provides, recover from the borrower all court, alternative dispute resolution or other collection costs (including, without limitation, fees and charges of collection agencies) actually incurred by the licensee;

3.2.2 deferral charges - a deferral charge may be assessed to a borrower in accordance with an agreement to permit the borrower to defer installment payments of a loan;

3.2.3 delinquency charges - if the agreement governing the loan so provides, a late or delinquency charge may be imposed upon any outstanding unpaid installment payment or portions thereof under the loan agreement which are in default; provided, however, that no more than 1 such delinquency charge may be imposed in respect of any single such installment payment or portion thereof regardless of the period during which it remains in default; and provided further that no such delinquency charge may exceed 5% of the amount of any such installment or portion thereof in default;

3.2.4 returned check charges - if the agreement governing the loan so provides, a returned check charge may be assessed to consumers, for checks that are returned unpaid provided the amount(s) of such charges are customary and reasonable;

3.2.5 charges incurred in connection with real estate secured transactions - in the case of closed end credit secured by real estate such additional charges as outlined in item (3)(c) of this regulation may also be collected within the limitations stated therein.

3.3 Real Estate Secured Transactions - with respect to a borrower, a lender may charge, collect, or receive one or more of the following fees and charges subject to the limitations herein, for loans subject to the provisions of Subchapters II (Revolving Credit) and III (Closed End Credit), Chapter 22, Title 5 of the **Delaware Code** when such loans are secured by real estate:

3.3.1 loan origination points - points charged to the borrower on the lender's behalf for any purpose other than to reduce the periodic interest rate applicable to the mortgage loan may not exceed 10% of the principal amount of the loan. Such points may be deducted from the gross proceeds of the loan. For purposes of this regulation "gross proceeds" is the amount financed as defined in Federal Reserve Regulation Z;

3.3.2 loan discount points - points charged to the borrower as a function of rate for the purpose of reducing the periodic interest rate applicable to the mortgage loan. Such points may be deducted from the gross proceeds of the loan;

3.3.3 property appraisal fees - property appraisal fees shall be limited to the amount paid to a third party for such appraisal and shall be limited to those amounts that are customary and reasonable;

3.3.4 credit report fees - credit report fees shall be limited to the actual cost of the report if paid to a third party, not an employee of the lender or affiliate. Such amounts shall be customary and reasonable;

3.3.5 mortgage loan broker compensation fees - mortgage loan broker compensation may be deducted from the gross proceeds of the loan. Such amounts shall reasonably reflect the value of the goods, services and facilities provided;

3.3.6 tax certification and service fees - fees for agreements to provide certification of the current tax status of the property as well as fees for ongoing monitoring and notice to the lender of all tax and improvement lien payments as they become due shall be limited to those amounts actually expended for such purposes. Such amounts shall be customary and reasonable;

3.3.7 flood hazard certification or determination fees - determination fees may be charged for determining whether the property is or will be located in a special flood hazard area. This fee may also include the cost of life-of-loan monitoring. Such amounts shall be customary and reasonable;

3.3.8 title abstract/search/examination and title insurance premiums - title insurance and/or cost of a title certificate, search, examination and binder shall be limited to those amounts actually expended for such purposes. Such amounts shall be customary and reasonable and may, at the borrower's discretion, include owner's coverage in addition to lender's coverage;

3.3.9 legal fees - legal fees incurred in securing or closing a loan shall be limited to amounts actually paid to an attorney not in the employ of the lender, its parent, or affiliate, and such charges shall not exceed those which are customary and reasonable;

3.3.10 recording/satisfaction fees - recording/satisfaction fees shall be limited to those actually expended by the lender to any governmental authority for protection of interest in collateral tendered. The State Bank Commissioner may approve the payment of alternative fees for this purpose provided the amount of said fee (payable by the borrower) shall not exceed the amount which would be payable to any governmental authority for protection of interest in collateral tendered;

3.3.11 property survey fees - property survey fees to obtain a drawing that delineates the exact boundaries of a property, including lot lines and placement of improvements on the property, shall be limited to those amounts actually expended for such purposes. Such amounts shall be customary and reasonable;

3.3.12 pest inspection fees - pest inspection fees to cover inspections for termites or other pest infestation on the property shall be limited to those amounts actually expended for such purposes. Such amounts shall be customary and reasonable;

3.3.13 fees incidental to loan closing - other fees and charges including but not limited to: odd days interest, hazard and mortgage insurance premiums, escrow reserves, lender's inspection fees, mortgage insurance application fees, assumption fees, underwriting fees, document preparation fees, settlement or closing fees, notary fees, funding fees, fees for lead based paint or other inspections and overnight mail fees may be charged and such amounts shall be customary and reasonable;

3.3.14 prepayment penalties - a charge in such amount or amounts as the agreement so provides imposed in connection with the payoff and termination of a revolving credit plan or closed end loan secured by real estate;

3.3.15 notwithstanding the provisions of item 3.3 of this regulation, Licensed Lenders who are making mortgage loans pursuant to the rules, regulations, guidelines and/or loan forms established by the State

of Delaware or federal governmental or quasi-governmental entity (including, without limitation: the Federal Housing Administration, the Department of Veterans Affairs, the Farmers Home Administration, the Government National Mortgage Association, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation) shall be permitted to charge and collect any fees, charges or sums prescribed to be charged and collected in connection with a mortgage loan originated pursuant to a lending program conducted or supervised by any such entity.

See 3 DE Reg. 653 (11/01/99)

2204 Required Amount of Licensed Lender's Surety Bond or Irrevocable Letter of Credit

Formerly Regulation No.: 5.2208.0004

Effective Date: January 1, 1997

A licensee shall file with the State Bank Commissioner (the "Commissioner") an original corporate surety bond or an irrevocable letter of credit, in a form satisfactory to the Commissioner, in accordance with Section 2208 of Title 5 of the **Delaware Code** ("Section 2208"). The minimum amount of the surety bond or irrevocable letter of credit is based on the factors identified in Section 2208.

A licensee shall obtain a surety bond or irrevocable letter of credit in an amount that correlates with the licensee's volume of Delaware lending for the year ending December 31 that precedes the effective year of the license under Chapter 22 of Title 5 of the **Delaware Code**. A licensee who obtains a surety bond that is effective for more than one year or an irrevocable letter of credit shall annually review the amount of the surety bond or irrevocable letter of credit, as of December 31 of each year, to ensure that the minimum required amount is maintained. The minimum required amount of the surety bond or irrevocable letter of credit is according to the following table:

<u>Annual Volume of Delaware Loans</u>	<u>Minimum Required Amount of Surety Bond or Irrevocable Letter of Credit</u>
not more than \$23,000,000	\$50,000
\$23,000,001 - \$35,000,000	\$75,000
\$35,000,001 - \$47,000,000	\$100,000
\$47,000,001 - \$59,000,000	\$125,000
\$59,000,001 - \$71,000,000	\$150,000
\$71,000,001 - \$83,000,000	\$175,000
\$83,000,001 and over	\$200,000

2207 Exemption of Licensed Lenders

Formerly Regulation No.: 5.2202(b).0007

Effective Date: June 11, 2001

1.0 Purpose

1.1 This regulation governs the procedures and requirements for exemptions pursuant to **5 Del. C. §2202(b)**.

2.0 Definitions

For the purpose of this regulation, the following definitions apply:

"Person" means an individual, corporation, partnership, or any other business entity or group or combination of individuals however organized.

"Statute" means **5 Del.C. Ch. 22**.

"Commissioner" means the State Bank Commissioner.

"Existing exemption" means an exemption from the Statute granted before the effective date of this regulation.

"Exempt person" means a person that has been granted an exemption from the Statute pursuant to **5 Del.C. §2202(b)** and this regulation.

3.0 Applicability

3.1 This regulation and the Statute apply only to persons engaged in consumer credit transactions, including but not limited to mortgage lending secured by one to four family residential, owner occupied property located in Delaware and intended for personal, family or household purposes.

3.2 This regulation and the Statute's licensing requirements do not apply to:

3.2.1 Any person who makes 5 or less loans within any 12 month period;

3.2.2 Any banking organization, as defined by **5 Del.C. §101**;

3.2.3 Any federal credit union;

3.2.4 Any insurance company;

3.2.5 Any person if and to the extent that such person is lending money in accordance with, and as authorized by, any other applicable law of the State of Delaware; and

3.2.6 Any person if and to the extent that such person is lending money in accordance with, and as authorized by, any applicable law of the United States of America.

3.3 A person shall not be deemed to be transacting the business of lending money within the meaning of **5 Del.C. §2202** and shall not be subject to this regulation or the licensing requirements of the Statute solely because the person is a participating merchant as the term is used in the Statute.

4.0 Qualifications

4.1 An exempt person shall at all times maintain such financial responsibility, experience, character, and general fitness as to command the confidence of the community and to warrant belief that its business will be operated honestly, fairly, and efficiently within the purposes of the Statute.

5.0 Grant of Exemptions

5.1 Upon finding the qualifications of Section 4.0 of this regulation have been met, the Commissioner may grant an exemption to:

5.1.1 Any person whose lending operations are regularly examined, either separately or as part of an examination of an affiliated company, by an agency of the State of Delaware or the United States of America, if that agency regulates banks.

5.1.2 Any person exempt from federal taxation under 26 USC §501(c)(3), as amended.

5.1.3 Any other person whom the Commissioner determines to be inappropriate to include within the coverage of the Statute, including any person whose operations and financial condition are regularly examined by any other agency of the State of Delaware, the United States of America, or another state.

6.0 Nature of Exemption

6.1 An exemption granted pursuant to Section 5.1.1 and 5.1.2 of this regulation shall include at minimum an exemption from the licensing and surety bond requirements of the Statute. The Commissioner may also grant an exemption from any other provision of the Statute that the Commissioner deems appropriate.

6.2 The Commissioner shall determine the nature and extent of any exemption granted pursuant to Section 5.1.3 of this regulation.

7.0 Application of the Statute to Exempt Persons

7.1 Unless the Commissioner specifies otherwise, Subchapter II and Subchapter III of the Statute shall apply to all exempt persons as if they were licensees.

8.0 Expiration

8.1 Except as otherwise provided in this regulation, exemptions shall expire one year from the date granted.

9.0 Application and Renewals

9.1 Any person who desires an exemption from the Statute shall apply to the Commissioner on such forms as the Commissioner may designate.

9.2 An exempt person shall apply for a renewal of the exemption at least 30 days before the expiration of the exemption on such forms as the Commissioner may designate.

10.0 Changed Information

10.1 Exempt persons shall notify the Commissioner within 30 days of any changes in the information contained in the application for its exemption or the renewal thereof.

11.0 Extensions on License Applications

11.1 An exempt person who applies for a license under the Statute before the expiration or revocation of its exemption shall have the exemption automatically extended until a final decision is made on the license application.

12.0 Existing Exemptions

12.1 Existing exemptions shall expire on July 1, 2002.

12.2 Persons with existing exemptions may apply for a renewal of their exemption pursuant to this regulation at any time before June 30, 2002.

12.3 The provisions of all existing exemptions shall remain in effect until the exemption expires pursuant to subsection 12.1 of this regulation.

13.0 Suspension or Revocation

13.1 The Commissioner may suspend or revoke any exemption upon a finding that:

13.1.1 The exempt person has violated any statute, judicial order, administrative order, rule, regulation or other law of the State of Delaware, any other state or the United States of America;

13.1.2 Any fact or condition exists which if it had existed at the time of the application or renewal for the exemption, would have warranted the Commissioner in refusing to issue the exemption or its renewal;

13.1.3 The exempt person has engaged in unfair or deceptive business activities or practices in connection with extensions of credit to consumers. Unfair or deceptive activities and practices include, but are not limited to, the use of tactics which mislead the consumer, misrepresent the consumer transaction or any part thereof, or otherwise create false expectations on the part of the consumer; or

13.1.4 The exempt person does not meet the qualifications specified in Section 4 of this regulation.

13.2 No exemption shall be suspended or revoked except in accordance with the procedures for suspending or revoking a license that are specified in the Statute and in the Delaware Administrative Procedures Act, 29 Del.C. Ch. 101.

13.3 No suspension or revocation of an exemption shall impair or affect the obligation of any preexisting lawful contract between the exempt person and any other person.

14.0 Exemption Denials

14.1 If the Commissioner denies an exemption or the renewal of an exemption, the Commissioner shall promptly send the applicant or exempt person a written order to that effect which states the grounds for the denial. The applicant or exempt person may request that the Commissioner hold a hearing to reconsider that denial, in accordance with the procedures for requesting a hearing on the denial of a license application that are specified in the Statute and in the Delaware Administrative Procedures Act, 29 Del.C. Ch. 101. The Commissioner may extend the term of any exemption whose renewal has been denied until the final resolution of that hearing.

15.0 Fees

15.1 The investigation fee for an application for an exemption shall be \$250.00.

15.2 The investigation fee for renewal of an exemption shall be \$100.00. A renewal application must be submitted more than 30 days in advance of the exemption's expiration.

15.3 A renewal application submitted less than 30 days in advance of the exemption's expiration shall be treated as a new application for an exemption and shall be subject to the investigation fee of \$250.

See 4 DE Reg 1993 (6/1/01)

2701 Licensed Casher of Checks, Drafts, or Money Orders Operating Regulations

5 Del.C. §2741

Formerly Regulation No.: 5.2741.0001

Effective Date: November 12, 1998

1.0 Maintenance of Operating Regulations for Licensed Casher of Checks, Drafts or Money Orders

1.1 All licensees shall conduct business in compliance with Chapter 27, Title 5, **Delaware Code**, and any regulations issued thereunder. Each office licensed under Chapter 27, Title 5, **Delaware Code**, shall possess copies of all applicable regulations. These regulations include:

1.1.1 Regulation 2701 (formerly 5.2741.0001) - Licensed Casher of Checks, Drafts, or Money Orders Operating Regulations

1.1.2 Regulation 2702 (formerly 5.2743.0002) - Licensed Casher of Checks, Drafts, or Money Orders Posting of the Fee Schedule and Minimum Requirements for Content of Books and Records

1.1.3 Regulation 101 (formerly 5.141.0001.NC) - Retention of Financial Institution Records

1.2 The manager and staff of each office shall familiarize themselves with said regulations. Loss or misplacement of regulation shall be made known to the Office of the State Bank Commissioner and replacements will be furnished. Failure to maintain the aforementioned regulations shall constitute a violation of both 5 Del. C. §2743 and this regulation.

2.0 Examination and Supervisory Assessment Fees

2.1 Cashing of Checks, Drafts, and Money Order licensees shall be subject to examination pursuant to §122 of Title 5 of the **Delaware Code**. The cost of such examinations shall be assessed to the licensee in accordance with §127(a) of Title 5 of the **Delaware Code**. A licensee shall remit payment not later than 30 days after the date of the invoice for the fees for examination. In addition, the Commissioner shall assess annually each licensee a supervisory assessment, due and payable on August 1 of each year, as provided in §127(b) of Title 5 of the **Delaware Code**. Failure of a licensee to remit timely payment of the examination fee or supervisory assessment will result in a penalty of 0.05 percent for each day that the examination fee or supervisory assessment shall remain unpaid after the due date, as provided in §127(a) and §127(b) of Title 5 of the **Delaware Code**.

See 2 DE Reg. 781 (11/01/98)

2702 Licensed Casher of Checks, Drafts, or Money Orders Posting of the Fee Schedule and Minimum Requirements for Content of Books and Records

5 Del.C. §2743

Formerly Regulation No.: 5.2743.0002

Effective Date: November 12, 1998

1.0 The fee schedule set forth in §2742 of Title 5 of the **Delaware Code** shall be conspicuously displayed in a place easily visible to consumers at the licensed location, whether such location be a mobile unit or otherwise.

2.0 Each licensed office shall establish and maintain the following books and records, on a current

basis, at the licensed office. Written approval may be granted for variations which accommodate individual accounting systems, including automated and electronic record processing systems, provided the objectives of this regulation are fulfilled. Requests for such approvals must be in writing and shall provide adequate information about the system as to ensure that the minimum record requirements are satisfied and provide the required data on a current and readily available basis to examiners, when requested:

2.1 Transactions Journal - All transactions involving the cashing of checks, drafts, or money orders shall be entered into this journal. All entries in this journal shall contain the following details:

2.1.1 Date of transaction;

2.1.2 Customer's name;

2.1.3 Customer's address;

2.1.4 Type of identification;

2.1.5 Check, Draft, or Money Order and Item Number;

2.1.6 Amount of item;

2.1.7 Fee paid;

2.1.8 Employee's initials.

Written approval may be granted for the recording of items 2.1.2, 2.1.3, and 2.1.4 in a card file which assigns an identification number to each customer. The identification number may then be recorded in the Transactions Journal in lieu of the customer's name, address, and form of identification.

2.2 Record of Deposits - A copy of each day's deposit made of the checks, drafts, and money orders cashed shall be maintained.

2.3 Summary of Business - A record of daily and monthly totals shall be maintained, to include:

2.3.1 The number of checks, drafts, and money orders cashed;

2.3.2 The aggregate fees received.

2.4 Any licensee operating two or more locations may maintain a consolidated or combined set of books and records, provided such books and records reflect separate figures for each location.

See 2 DE Reg. 781 (11/01/98)

2901 Motor Vehicle Sales Finance Companies Minimum Requirements for Content of Books and Records

5 Del.C. §122(b), §2906(e)

Formerly Regulation No.: 5.2906(e)/122(b).0001

Effective Date: November 12, 1999

1.0 Each licensed office shall establish and maintain the following books and records, on a current basis, either at the office of the licensed broker, or, at a suitable location available within a reasonable time period, upon request. Written approval may be granted for variations which accommodate individual accounting systems, including automated and electronic record processing systems, provided the objectives of this regulation are fulfilled. Requests for such approvals must be in writing and shall

provide adequate information about the system as to ensure that the minimum record requirements are satisfied and provide the required data on a current and readily available basis to examiners, when requested.

1.1 Retail Installment Contract Applicant Register - This shall be a record showing the name of the applicant, identifying file number, date application was filed, name of lender, date of commitment, amount of lender's fee, and date fee was paid. In the case of an applicant denied credit, the register shall contain the name of the applicant, identification number, date application was filed, date application was denied and reason for denial.

1.2 Individual Accounts with Borrowers - A record shall be kept for each borrower and shall include the following:

1.2.1 Name and address of the borrower;

1.2.2 Loan number;

1.2.3 Date of loan;

1.2.4 Total amount of loan;

1.2.5 Total sale price;

1.2.6 Rate of interest charges and the amounts of all charges;

1.2.7 Terms of repayment;

1.2.8 Description of motor vehicle;

1.2.9 Where and to whom hypothecated;

1.2.10 Names of endorsers, comakers, guarantors, or sureties;

1.2.11 The actual date of receipt of payment of principal and charges; and,

1.2.12 Name of assignee or purchaser of retail installment contract.

1.3 File of All Original Paper - (or copies thereof). All obligations and disclosure forms signed by the borrower and taken in connection with loans made shall bear the loan number, shall be maintained in one file, and shall be made available to the examiners when requested. Such file, if applicable, shall include evidence that a retained title or lien was released within the time period prescribed in Regulation 2902 (formerly Regulation No. 5.2906(e).0002, Item (4)).

1.4 Daily Transaction Record - All transactions involving either the receipt or disbursement of any amount whatsoever shall be entered in this record. Details of disbursements to, or for, the account of borrowers shall be itemized.

1.5 Record of Loans in Litigation and Repossessions - A record of all loans in litigation, repossession, or voluntary surrenders shall be maintained either on the borrower's account record or a litigation record. If a composite record of such loans is not kept, the loans shall be maintained in a separate litigation and repossession file. The litigation and repossession record shall disclose the following information:

1.5.1 Loan number, original amount of loan and unpaid balance;

1.5.2 Description of motor vehicle, attached, replevined, repossessed, or surrendered;

1.5.3 Date and terms of settlement of account or, if after judgement, the date and amount of judgement, pre-judgement balance, current balance, unearned charges credited to borrower's account, and legal costs;

1.5.4 Evidence of the terms of sale if the security was sold after repossession, such evidence including copies of all bids or other offers received together with the purchaser's name and address, price, date of sale and cash or financing terms.

1.5.5 Evidence that notification of the time and place of sale was sent to the borrower;

1.5.6 Evidence of amount paid, if any, to third party reposessors; and,

1.5.7 Records of litigation accounts handled by attorneys or corporate collection centers shall be maintained in the existing (principal or branch) office and should reflect a correct current balance.

1.7 Credit Insurance Claims Register - A credit insurance claims register or file which is a record of all claims submitted by borrowers to the insurer shall disclose the following:

1.7.1 Date of claim;

1.7.2 Amount of claim;

1.7.3 Date and amount of payment by insurer or the date of rejection and the reason therefor;

1.7.4 Borrower's name;

1.7.5 Loan number;

1.7.6 Reason for claim (i.e. death, illness, etc.);

1.7.7 Proof of death;

1.7.8 A copy of the check(s) issued by the insurance company in payment of life, accident, health, or accident and health benefits; and,

1.7.9 A copy of the check(s) issued by the insurance company, or other evidence of credit, which result from pre-payment of the loan or cancellation of the insurance.

1.8 In the event a loan is sold and no servicing performed, only those items listed in item 6 available prior to such sale shall be required.

2902 Motor Vehicle Sales Finance Companies Operating Regulations

5 Del.C. §2906(e)

Formerly Regulation No.: 5.2906(e).0002

Effective Date: November 12, 1999

1.0 Application of Chapter

1.1 Lease Contracts

1.1.1 A lease contract is governed by Chapter 29 of Title 5 of the **Delaware Code**, when all of the following exist:

1.1.1.1 The lessee contracts to pay a sum substantially equivalent or in excess of the value of the motor vehicle for the use of the motor vehicle over the lease term.

1.1.1.2 The lessee is bound to become, or has the option of becoming, the owner of the motor vehicle at some time during, or at the expiration of, the lease contract.

1.1.1.3 The value for which the motor vehicle is to be sold at the end of the lease term is not payable in a single installment (Cash Sale).

1.1.2 A lease contract is not governed by Chapter 29 of Title 5 of the **Delaware Code**, when any one of the contract provisions described in 1.1.1, 1.1.1.1, 1.1.1.2, and 1.1.1.3 is absent.

1.2 For the purposes of Chapter 29 of Title 5 of the **Delaware Code**, all 'motor vehicles' which meet the definition contained in 5 **Del. C.** §2901(1), regardless of whether the intended use is commercial or personal, fall under the auspices of this chapter.

1.3 If a trade-in is involved in a credit sale transaction and the amount of the existing lien exceeds the value of the trade-in, inclusion of the negative equity financing is permissible under Chapter 29, Title 5 of the **Delaware Code**. In a negative equity trade-in transaction where no cash payment is involved licensees must disclose a zero down payment and under no circumstances should the negative equity be disclosed as a negative number as the consumer's down payment. Any negative equity to be financed under the retail installment sale contract should be disclosed under the provisions of §2907(e)(4) and not §2907(e)(2) of Title 5 of the **Delaware Code**.

2.0 Maintenance of Operating Regulations for Motor Vehicle Sales Finance Companies

2.1 All licensees shall conduct business in compliance with Chapter 29 of Title 5 of the **Delaware Code**, and any regulations issued thereunder. Each office licensed under Chapter 29 of Title 5 of the **Delaware Code** shall possess copies of all applicable regulations. These regulations include:

2.1.1 Regulation 2901 (formerly 5.2906(e)/122(b).0001) - Motor Vehicle Sales Finance Companies Minimum Requirements for Content of Books and Records;

2.1.2 Regulation 2902 (formerly 5.2906(e).0002) - Motor Vehicle Sales Finance Companies Operating Regulations;

2.1.3 Regulation 2903 (formerly 5.2906(e).0003) - Report of Delaware Loan Volume Motor Vehicle Installment Contracts;

2.1.4 Regulation 2904 (formerly 5.2111/2210/2906.0006) - Report of Delaware Assets; and

2.1.5 Regulation 101 (formerly 5.141.0001.NC) - Retention of Financial Institution Records.

2.2 The manager and staff of each office shall familiarize themselves with said regulations. Loss or misplacement of regulations shall be made known to the Office of the State Bank Commissioner and replacements will be furnished. Failure to maintain the aforementioned regulations shall constitute a violation of both 5 **Del. C.** §2906(e) and this regulation.

3.0 Examination and Supervisory Assessment Fees

3.1 Motor Vehicle Sales Finance Companies licensees shall be subject to examination pursuant to §122 of Title 5 of the **Delaware Code**. The cost of such examinations shall be assessed to the licensee in accordance with 5 **Del. C.** §127(a). A licensee shall remit payment not later than 30 days after the date of the invoice for the fees for the examination. In addition, the Commissioner shall assess annually each licensee a supervisory assessment fee, due and payable on August 1 of each year, as provided in 5 **Del. C.** §127(b). Failure of a licensee to remit timely payment of the examination fee or supervisory assessment will result in a penalty of 0.05 percent for each day that the examination fee or supervisory assessment shall remain unpaid after the due date, as provided in §127(a) and §127(b) of Title 5 of the **Delaware Code**.

4.0 Security Interest

4.1 A licensee shall take the necessary action(s), to release or satisfy a retained title or a lien created by a retail installment contract, within thirty days of the date the debt secured by the motor vehicle is satisfied or performed.

5.0 Credit Life, Health, and Accident Insurance

5.1 A licensee may request, but not require, an individual borrower to be insured under a life, health, accident, health and accident, or other credit or other permissible insurance policy, whether group or individual.

5.2 Any lender may offer credit life and health insurance to qualified borrowers. Such insurance transactions shall conform to all statutes of the Insurance Code of the State of Delaware, as well as rules and regulations of the Insurance Commissioner, as may from time to time be prescribed.

5.3 Every lender offering credit life and health insurance, whose charges do not conform to those authorized in the Insurance Commissioner's Regulation No. 2501 (formerly regulation 5), shall maintain in each office a copy of a letter filed with the Insurance Commissioner requesting the deviated rate, as well as approval by the Insurance Commissioner of the rate.

5.4 Credit life insurance refunds shall be calculated as of the date of death.

5.5 Credit health insurance payments received by the lender shall be applied to the account for the period the payment actually covers, regardless of the date of receipt. Additional interest charges shall not accrue should payment be received after the payment due date.

5.6 The Office of the State Bank Commissioner shall provide a copy of the Insurance Commissioner's Regulation No. 2501 (formerly regulation 5), and any subsequent applicable regulations promulgated, to each licensee.

6.0 Other Insurance

6.1 Any licensee may require a proof of insurance coverage for any loan secured by a motor vehicle.

6.2 A licensee may offer, but not require, such other insurance products as the State Bank Commissioner may, upon written approval, permit. No such insurance may be offered, after January 1, 1992, without the State Bank Commissioner's written approval. Those insurances offered prior to January 1, 1992 shall not require written approval, provided such insurances were reported to the State Bank Commissioner before February 10, 1993.

7.0 Borrower-Signed Authorization for Insurance

7.1 Any insurance authorized by these Rules and Regulations must be supported by a specific request signed by the borrower. This request shall be attached to, or made a part of, the application documents.

See 3 DE Reg. 653 (11/01/99)

3201 Regulation on the Interpretation of "All Risk" Insurance

5 Del.C. §3209

Formerly Regulation No.: 5.3209(c).0001

Effective Date: May 1, 1993

1.0 This is an interpretative regulation on the use and meaning of "All Risk" as it appears in subsection (c) of section 3209 of Title 5 of the **Delaware Code**.

2.0 An applicant/licensee's insurance policy shall be deemed to meet the statutory mandate of "All Risk" if the policy insures the licensee against claims arising from any loss through any risk (subject to permissible exclusions under the Act) assumed by the licensee in the transportation of money or

valuable. This provision shall not preclude the insurer from establishing certain reasonable conditions precedent to recovery under the policy.

3.0 Reasonable conditions precedent may include conditions which establish prudent standards of performance with which the insured must comply. Conditions which preclude recovery because of the acts of third parties or negligence shall not be deemed to be reasonable.

3301 Procedures Governing Applications to Form and Conduct Business as a Business and Industrial Development Corporation (BIDCO)

Formerly Regulation No.: 5.3311.0001

Effective Date: January 11, 1993

This regulation establishes procedures for the form and content of applications under §3311(b) of Title 5 of the **Delaware Code** for permission to form and conduct Business as a Business and Industrial Development Corporation.

1.0 An application pursuant to §3311(b) of Title 5 of the **Delaware Code** shall be in writing, signed by the President or authorized representative of Applicant (a Delaware Corporation) and shall include the following:

- 1.1 A non-refundable investigation fee;
- 1.2 Name of applicant. Pursuant to §3311(a) of Title 5 of the **Delaware Code**, only a Delaware corporation can apply;
- 1.3 Certificate of Incorporation. To include general business clause under section 3.0;
- 1.4 Board Resolution authorizing applicant to make application on behalf of the corporation.
- 1.5 A detailed business plan setting forth the services to be provided by the proposed Bidco to business firms located within or outside of the State;
- 1.6 Directors-Current financial statements, Officers-Current financial statements and three (3) consecutive years prior;
- 1.7 Resumes for all officers and directors, including information concerning the experience of the management of the proposed Bidco and how such experience relates to the execution of the business plan referred to in item 1.5 of this regulation;
- 1.8 Completed officers and directors questionnaires, questionnaires furnished by the Office of the State Bank Commissioner;
- 1.9 A summary of the geographical business markets of the proposed Bidco;
- 1.10 Location of the proposed main office of the Bidco and any branch offices, or the vicinity thereof, including other offices, whether within or outside of the State (licensee is required to maintain not less than (1) office in this State);
- 1.11 A detailed summary of how the management of the proposed Bidco intends to implement a reasonable and prudent policy for conserving and investing the capital of such Bidco;
- 1.12 A summary of the types of business firms to be assisted by the proposed Bidco;
- 1.13 Three (3) years of detailed financial projections or until such time as profitability is obtained;

1.14 Evidence that the applicant has, or has firm financing commitments from equity investors or debt sources for, cash or similar liquid assets sufficient to demonstrate that prior to the time such applicant is authorized to transact business as a Bidco, such applicant will have liquid assets available to provide financing assistance to business firms in an amount adequate for such applicant to transact business as a Bidco and in accordance with the business plan;

1.15 Evident that the Bidco has, or will have, a net worth of not less than \$1,000,000 at the time it is licensed to transact business as a Bidco;

1.16 Any market studies which have been conducted by or on behalf of the applicant or as requested by the Commissioner;

1.17 A compensation schedule for all officers and directors for a minimum period of 3 years;

1.18 Name, resume, reference sources, and compensation schedule for any person(s) employed in an advisory capacity for the Bidco, and a description of their purpose(s) and involvement(s) in the affairs of the Bidco; and

1.19 Such other information the applicant may provide to support the application;

1.20 Such other information the Commissioner may require or deem appropriate to the application.

2.0 If, on the basis of the information submitted, the State Bank Commissioner concludes that the application for the proposed Bidco should be approved, he shall issue a findings and decision indicating his intent to approve the license.

3.0 Upon receipt of the Commissioner's Findings and Decision, the applicant should proceed to amend their charter to reflect the word 'Bidco' in their corporate name and amend the Article III to reflect that they intend to conduct the business of, and incidental to, a Bidco.

4.0 Upon receipt of the amended Certificate of Incorporation, and upon the applicant's payment of the appropriate licensing fee, the State Bank Commissioner shall issue a license permitting such applicant to form and conduct business as a Bidco at the address contained on the license.

5.0

5.1 If on the basis of the information submitted or obtained through the investigation process, the State Bank Commissioner proposes to disapprove an application properly made under this regulation, he shall, pursuant to §10131(c) of Title 29 of the **Delaware Code**, give written notice to the applicant of the intended action and the reasons therefor. Such notice shall:

5.1.1 Describe the subject matter of the proceeding and the statutory authority therefor;

5.1.2 Inform the applicant of the proposed action and the reasons therefor;

5.1.3 Inform the applicant that it has a right to demand a hearing on the application at which hearing (a) the applicant would have the right to present relevant evidence, (b) to be represented by counsel, and (c) to appear personally or by other representative; and that the Commissioner is obligated to reach his decision based upon the evidence received; and

5.1.4 Inform the applicant of the period, not less than ten (10) days from the date of such notice, during which it may request a hearing on such application.

5.2 Should the applicant request a hearing under this section, the Commissioner shall fix a date for such hearing and shall provide at least twenty (20) days advance notice of such hearing date to applicant.

3302 Bidco Interpretation of "Prudent Business Manner"

5 Del.C. §3306(b)

Formerly Regulation No.: 5.3324.0002

Effective Date: January 11, 1993

1.0 This is an interpretative regulation on the use, meaning, and intent of "prudent business manner" as it appears in §3324 of Title 5 of the **Delaware Code**.

2.0 The Bidco will be deemed to be conducting business in a prudent business manner provided the officers and directors are found to discharge the duties of their respective positions in good faith, and with the diligence, care, judgement and skill that ordinarily prudent men would exercise under similar circumstances in like positions, consistent with the purposes of the Delaware Bidco Act.

3303 Bidco Main and Alternate Office Locations

5 Del.C. §3306(b)

Formerly Regulation No.: 5.3321.0003

Effective Date: January 11, 1993

1.0 Pursuant to §3321 of Title 5 of the **Delaware Code**, each Bidco shall maintain a main office in the State. Such office shall be designated as the main office and shall be the location at which examinations by the Office of the State Bank Commissioner occur.

2.0 Alternate locations, in or out of the State, may be obtained by providing notice of your intent to establish another location to the Office of the State Bank Commissioner. This notice shall contain, at a minimum:

2.1 The name of the Bidco;

2.2 The address of the alternate location;

2.3 The functions to be performed at this location;

2.4 The personnel/staffing of this location;

2.5 A statement acknowledging the books and records availability requirements set forth in Regulation No. 3306 (formerly 5.3341(a).0006);

2.6 Any such other information the Commissioner may require, or the applicant may choose to provide.

3.0 If, on the basis of the information submitted, the State Bank Commissioner concludes that the request for an alternate location should be approved, the Commissioner shall issue a license permitting such Bidco to conduct the business of, and incidental to, the Bidco at the address contained on the license, in addition to the address for the main office and any other alternate locations which have been or may be approved.

4.0 No Bidco licensee shall maintain an office at any other location than that designated on the license(s).

3304 Activities Incidental to the Conduct of a Bidco

5 Del.C. §3306(b)

Formerly Regulation No.: 5.3322(d).0004

Effective Date: January 11, 1993

1.0 Pursuant to §3322(d) of Title 5 of the **Delaware Code**, the activities incidental to the conduct of a Bidco shall include, but not be limited to the following:

1.1 Electronic Data Processing Services

1.2 Investment Advisory Services

1.3 Accounting, Bookkeeping, and Internal Auditing Services

1.4 Personnel Services

1.5 Marketing Analysis Services

1.6 Advertising Services

1.7 Security Services

1.8 Transportation of Valuables Services

1.9 Agent Services for Leasing of real property, business equipment, and business vehicles

1.10 Underwriting and brokerage services for issues of commercial paper, securities and other debt and equity instruments

1.11 Corporate Agent Services

1.12 Employee Benefit Planning Services

1.13 Pension Fund Management Services

2.0 All above activities should only be entered into in full consideration of any license, registration or other requirements thereof.

3305 Bidco Schedule of Investigation and Licensing Fees

5 Del.C. §§3306(b) and 3307

Formerly Regulation No.: 5.3307.0005

Effective Date: January 11, 1993

1.0 Pursuant to §3307, Subchapter I of Chapter 33, Title 5 of the **Delaware Code**, each application submitted for the formation of a Bidco shall be accompanied by a non-refundable investigation fee in the amount of two thousand dollars (\$2,000) payable to and for the use of the Office of the State Bank Commissioner. Each application submitted for the merger or acquisition of a Bidco shall be accompanied by a non-refundable investigation fee in the amount of one thousand dollars (\$1,000) payable to and for the use of the Office of the State Bank Commissioner.

2.0 The licensing fee for each location shall be in the amount of (\$1,000) payable to the Office of the State Bank Commissioner prior to the issuance of a license under Chapter 33 of Title 5 of the **Delaware Code** and upon renewal thereof.

3.0 Bidco licensees shall be subject to examination pursuant to §122, **5 Del. C.** The cost of such examinations shall be assessed to the licensee in accordance with §127(a), **5 Del. C.** In addition to the cost of examination and licensure, the Commissioner shall assess annually each licensee a supervisory assessment fee, as provided in §127(b), **5 Del. C.** In addition, the licensee shall pay or reimburse the fees, costs, and expenses of any third parties retained by the Commissioner to accomplish this purpose.

4.0 The Commissioner may require reimbursement of any other direct costs incurred in the application/regulation/supervision of a Bidco.

3306 Bidco Minimum Requirements for Books, Accounts and Other Records

5 Del.C. §§3306(b) and 3341(a)

Formerly Regulation No.: 5.3341(a).0006

Effective Date: January 11, 1993

1.0 Pursuant to §3341(a) of Title 5 of the **Delaware Code**, each licensee shall:

1.1 Submit a complete copy of their corporate by-laws no later than 30 days from the date of issuance of a license authorizing said corporation to conduct the business of, and incidental to, a Bidco. Subsequent amendments to by-laws should be submitted within 30 days of the amendment.

1.2 Post the license(s) prominently in each place of business of the licensee. The posted license shall appropriately reflect the location of the office. In case such location is to be changed, the licensee shall return the license to the State Bank Commissioner to be endorsed for the location change. Such change and endorsement shall be at no charge.

1.3 Each licensed office shall establish and maintain the following books and records on a current basis, either at the main office of the licensee or at alternate licensed offices, providing the information can be made available at the main office location within a 72 hour period. There may be suitable variations to accommodate individual accounting systems, provided the required data is kept on a current basis and is readily available to the examiners, when requested.

1.3.1 A licensee shall maintain a record of all transactions involving receipt or disbursement of money by that office each day. The record shall identify each transaction; show account numbers and names of the business firms assisted; show amounts disbursed; show amounts received and the distribution of such amounts among principal, interest, and other charges.

1.3.2 For each business firm to which financing assistance is provided, a licensee shall maintain a record containing all of the following information:

1.3.2.1 Business firm's name and address;

1.3.2.2 Loan or account number;

1.3.2.3 Loan or investment date;

1.3.2.4 Loan or investment amount;

1.3.2.5 Rate of charge and/or return on equity provisions;

1.3.2.6 Repayment terms;

1.3.2.7 Indication of management assistance provisions;

1.3.2.8 Description of collateral, if secured;

- 1.3.2.9 Indication of guarantors, if any;
- 1.3.2.10 Description and amount of fees collected from the business firm;
- 1.3.2.11 Dates and amounts of all payments received and cash disbursements made.
- 1.3.2.12 Date to which interest charges are paid, and the unpaid principal balance due;
- 1.3.2.13 A description of any other services provided to the client by the Bidco which are incidental to the conduct of the Bidco, and the fees derived from said services.

1.3.3 For each business firm which qualifies under subsection 1.3.2, the following additional information shall be maintained:

- 1.3.3.1 Applications, credit decisions documentation, and all correspondence;
- 1.3.3.2 Evidence and documentation regarding restructured loans;
- 1.3.3.3 Financial assistance agreements including any participation agreements and plans to exit from the loan or investment at maturity;
- 1.3.3.4 Management assistance agreements including identification of type, frequency, and costs involved;
- 1.3.3.5 Documentation of management assistance provided;
- 1.3.3.6 Loan performance evaluations including an evaluation of cash flows and income projections.

1.3.4 For each business firm to which financing assistance is denied, a licensee shall maintain a record containing all of the following information:

- 1.3.4.1 Business firm's name and address;
- 1.3.4.2 Applications, credit decision documentation and all correspondence.

1.4 A licensee shall maintain consolidated reports showing its assets, liabilities, income and expenses. The reports shall be consolidated quarterly or at such specific intervals as the Commissioner may otherwise request.

1.5 All written correspondence between the Office of the State Bank Commissioner and the licensee shall be retained by the licensee in a file designated as such and available for review at the main office location.

1.6 All applicable procedural, interpretative, operational or other regulations issued pursuant to this chapter shall be maintained and available for review at the main office location.

3307 Procedure for Approval of Mergers, Acquisitions, and Sale of Assets of a Business Industrial Development Corporation

5 Del.C. §3331

Formerly Regulation No.: 5.3331.0007

Effective Date: January 11, 1993

This regulation establishes procedures for the form and content of requests under §3331, Subchapter IV, Title 5 of the **Delaware Code**, for approval of mergers, acquisitions, and sale of assets of a Business Industrial Development Corporation.

1.0 A request pursuant to §3331, Subchapter IV, Title 5 of the **Delaware Code**, shall be in writing, signed by the President or authorized representative of applicant, and shall include the following:

- 1.1 A non-refundable investigation fee;
- 1.2 Name of applicant. Pursuant to §3331(b), the approval for merger, acquisition, and sale of assets of a Business Industrial Development Corporation with another corporation shall not be granted unless the licensee is the surviving corporation; or, if the licensee is the disappearing corporation, the surviving corporation is also a licensee;
- 1.3 Name of surviving corporation;
- 1.4 Name of disappearing corporation;
- 1.5 Board of resolution authorizing applicant to make application on behalf of the corporation;
- 1.6 An explanation regarding the purpose(s) or reason(s) for the merger, acquisition, and sale of assets of a Business Industrial Development Corporation;
- 1.7 The specific terms of the merger, acquisition, and sale of assets of a Business Industrial Development Corporation, including management changes, stock or other asset sales and the respective prices, location/ relocation, continuation of servicing of disappearing corporation (if Bidco), clients, etc.
- 1.8 If the business plan is to be modified by the merger/acquisition, a detailed amended business plan shall be submitted. This plan shall set forth the services to be provided by the proposed Bidco to business firms located within or outside the State;
- 1.9 Financial statements for all new officers and directors;
- 1.10 Resumes for all new officers and directors, including information concerning the experience of the management of the proposed Bidco and how such experience relates to the execution of the business plan referred to in item (h) of this regulation;
- 1.11 Completed officers and directors questionnaires, questionnaires furnished by the Office of the State Bank Commissioner;
- 1.12 Any amendments to the geographical business markets the Bidco intends to service;
- 1.13 Amendments to the detailed summary of how the management of the proposed Bidco intends to implement a reasonable and prudent policy for conserving and investing the capital of such Bidco;
- 1.14 Amendments to types of business firms to be assisted by the Bidco;
- 1.15 Three (3) years of detailed financial projections or until such time as profitability is obtained;
- 1.16 Evidence that the Bidco has, or will have, a net worth of not less than \$1,000,000 at the time it is licensed to transact business as a Bidco;
- 1.16 Any market studies which have been conducted by or on behalf of the applicant or as requested by the Commissioner, if not previously submitted;
- 1.17 If amended, new names, resumes, reference sources, and compensation schedules for any person(s) employed in an advisory capacity for the Bidco, and a description of their purpose(s) and involvement(s) in the affairs of the Bidco;
- 1.18 Current financial statements for both the surviving and disappearing corporations (within the last quarter);
- 1.19 Such other information the applicant may provide to support the request; and

- 1.20 Such other information the Commissioner may require or deem appropriate to the request.
- 1.21 Where such information required above is unchanged from application for formation on file with the Office of the State Bank Commissioner, such information may be referenced.
- 2.0 If on the basis of the information submitted, the State Bank Commissioner concludes that the request for a merger, acquisition, and sale of assets should be approved, he shall issue a written approval.

3.0

- 3.1 If on the basis of the information submitted or obtained through the investigation process, the State Bank Commissioner proposes to disapprove request for merger, acquisition, and sale of assets, he shall, pursuant to §10131(c) of Title 29 of the **Delaware Code**, give written notice to the applicant of the intended action and the reasons therefor. Such notice shall:
 - 3.1.1 Describe the subject matter of the proceeding and the statutory authority therefor;
 - 3.1.2 Inform the applicant of the proposed action and the reasons therefor;
 - 3.1.3 Inform the applicant that it has a right to demand a hearing on the application at which hearing (a) the applicant would have the right to present relevant evidence, (b) to be represented by counsel, and (c) to appear personally or by other representative; and that the Commissioner is obligated to reach his decision based upon the evidence received; and
 - 3.1.4 Inform the applicant of the period, not less than ten days from the date of such notice, during which it may request a hearing on such application.
- 3.2 Should the applicant request a hearing under this section, the Commissioner shall fix a date for such hearing and shall provide at least twenty (20) days advance notice of such hearing date to applicant.

3308 Bidco Procedure for Approval of Additional Incidental Activities

5 Del.C. §3322(d)

Formerly Regulation No.: 5.3322(d).0008

Effective Date: January 11, 1993

This regulation establishes procedures for the form and content of requests of approval of additional incidental activities not set forth in Regulation No. 3304 (formerly 5.3322(d).0004), pursuant to §3322(d) of Title 5 of the **Delaware Code**.

1.0 The request for approval to conduct additional incidental activities shall be in writing to the State Bank Commissioner and shall contain, at a minimum:

- 1.1 The name of the Bidco and an authorized signature of a representative designated to make the request on behalf of the Bidco;
- 1.2 A complete explanation of the activity(s) in which the Bidco desires to engage;
- 1.3 An explanation as to why such activity(s) is necessary or convenient to carry on the business of, or that is reasonably related to the business of, providing financing assistance and management assistance to business firms of the Bidco;
- 1.4 An explanation as to what experience or expertise will be brought to bear in this area;
- 1.5 Such other information the applicant may provide to support the request;

- 1.6 Such other information the Commissioner may require or deem appropriate to the request.
- 2.0 If, on the basis of the information submitted, the State Bank Commissioner concludes that the request should be approved, he shall issue a written approval for such activity(s), such approvals may be conditional in nature.
- 3.0 If on the basis of the information submitted or obtained through the investigation process, the State Bank Commissioner proposes to disapprove an application properly made under this regulation, he shall, pursuant to §10131(c) of Title 29 of the **Delaware Code**, give written notice to the applicant of the intended action and the reasons therefor. Such notice shall:
 - 3.1 Describe the subject matter of the proceeding and the statutory authority therefor;
 - 3.2 Inform the applicant of the proposed action and the reasons therefor;
 - 3.3 Inform the applicant that it has a right to demand a hearing on the application at which hearing (a) the applicant would have the right to present relevant evidence, (b) to be represented by counsel, and (c) to appear personally or by other representative; and that the Commissioner is obligated to reach his decision based upon the evidence received; and
 - 3.4 Inform the applicant of the period, not less than ten (10) days from the date of such notice, during which it may request a hearing on such application.
 - 3.5 Should the applicant request a hearing under this section, the Commissioner shall fix a date for such hearing and shall provide at least twenty (20) days advance notice of such hearing date to applicant.

3401 Preneed Funeral Contracts Regulations Governing Revocable and Irrevocable Trust Agreements

5 Del.C. §§3404 and 3409

Formerly Regulation No.: 5.3404/3409.0001

Effective Effective Date: November 12, 1999

1.0 Annual Statements

1.1 At least once, annually, a licensee shall mail or deliver, to each party for whom such licensee holds a preneed funeral contract, a statement containing, at a minimum, the following information:

1.1.1 the previous balance in the trust account or the beginning balance for the statement period;

1.1.2 the number and amounts of payments received for the statement period;

1.1.3 the amount of accrued interest for the statement period;

1.1.4 the "ending" or total account balance for the statement period; and

1.1.5 the name and address of the financial institutions where the trust deposit is held.

2.0 Disclosure Requirements for the Irrevocable Trust Document

2.1 The trust document establishing the irrevocable trust permitted by Section 3404 of Title 5 of the **Delaware Code** shall contain, at a minimum, the following mandatory provisions:

2.1.1 A provision which expressly identifies the trust as irrevocable for the lifetime of the beneficiary;

2.1.2 A provision for the disposition of trust funds to an alternate trustee upon discontinuation of business or inability to provide goods or services by the original

trustee in accordance with the terms of the trust or a provision for the transfer of trust funds, to a new trustee, at the consumer's election;

2.1.3 A provision that in the event funds paid into the trust are inadequate, at the time of the death of the beneficiary, to cover anticipated funeral expenses, the trustee shall contribute all trust funds toward payment of the actual funeral expenses for the funeral of the beneficiary;

2.1.4 A provision that in the event the sum held by the trust exceeds the total actual costs of the goods and services for the funeral of the beneficiary, the excess funds shall be paid to the estate of the beneficiary;

2.1.5 A provision that the trustee may, from time to time, accept periodic monetary contributions to the trust, provided that the principal sum contributed, exclusive of interest earned, shall not exceed \$10,000;

2.1.6 A provision which shall state "In no event shall the principal amount of the trust exceed \$10,000 plus interest."

2 DE Reg. 295 (8/1/98)

3 DE Reg. 653 (11/1/99)

3402 Surety Bond or Irrevocable Letter of Credit

5 Del.C. §3409

Effective Date: November 11, 2007

1.0 A licensee shall file with the State Bank Commissioner (the "Commissioner") an original corporate surety bond or an irrevocable letter of credit in a form satisfactory to the Commissioner in accordance with 5 Del.C. §3411.

2.0 A licensee shall obtain a surety bond or irrevocable letter of credit in a minimum amount in accordance with the following table based upon the maximum dollar value of the trust funds it held as a trustee during the twelve month period ending October 31 that precedes the calendar year for which the bond or irrevocable letter of credit is effective:

Maximum Dollar Value of Trust Funds Held by Licensee	Minimum Required Amount of Surety Bond or Irrevocable Letter of Credit
not more than \$50,000	\$50,000
\$50,001 - \$75,000	\$75,000
\$75,001 - \$100,000	\$100,000
\$100,001 - \$125,000	\$125,000
\$125,001 - \$150,000	\$150,000
\$150,001 - \$175,000	\$175,000
\$175,001 and over	\$200,000

3.0 The Commissioner may require a licensee to obtain a larger surety bond or irrevocable letter of credit based upon the licensee's individual circumstances.

4.0 A licensee that obtains a surety bond or irrevocable letter of credit that is effective for more than one year shall review on November 1 of each year the dollar value of the trust funds it held during the previous twelve month period to ensure that the minimum required amount for its surety bond or irrevocable letter of credit is maintained for the following calendar year.

11 DE Reg. 693 (11-01-07)(Final)