

DEPARTMENT OF STATE
OFFICE OF THE STATE BANK COMMISSIONER
Statutory Authority: 5 Delaware Code, Section 121(b) (5 **Del.C.** §121(b))
5 **DE Admin. Code** 102

PROPOSED

PUBLIC NOTICE

102 Procedures Governing the Creation and Existence of an Interim Bank

Summary

The State Bank Commissioner proposes to amend Regulation 102 - Procedures Governing the Creation and Existence of an Interim Bank. The proposed amendments to the Regulation would add an additional permissible purpose for the formation of an interim bank and, a technical amendment, which removes a reference to the former Regulation number. This proposed amendment is not substantially likely to impose additional costs or burdens upon individuals and/or small businesses. Other Regulations issued by the State Bank Commissioner are not affected by this proposed amendment. The State Bank Commissioner is issuing this proposed amended Regulation in accordance with Title 5 of the Delaware Code. This Notice is issued pursuant to the requirements of Title 29 of the Delaware Code, Chapter 11, Subchapter III, Chapter 101, Subchapter II, and Chapter 104, Sections 10404A(b)(1) and 10404B(b)(1).

Comments

A copy of the proposed amended Regulation is being published in the December 1, 2018 edition of the Delaware *Register of Regulations*. Copies are also on file in the Office of the State Bank Commissioner, 43 South DuPont Highway, Edgehill Shopping Center, Dover, DE 19901 and are available for inspection during regular office hours. Copies are available upon request.

Interested parties may offer comments on the proposed amended Regulation or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner at the above address as to whether the proposed amended Regulation should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before January 3, 2019. Written materials submitted will be available for inspection at the above address.

Adoption of Proposed Amended Regulations

On or after January 3, 2019, following review of the public comment, the State Bank Commissioner will determine whether to adopt the proposed amended Regulation, or make additional changes because of the public comments received.

102 Procedures Governing the Creation and Existence of an Interim Bank

Formerly Regulation No.: 5.121.0002

Effective Date: ~~December 11, 1998~~ XX/XX/XXXX

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**.

2.1.4 The merger or reorganization of one or more Insured Banks to result in a Delaware State Bank.

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~~ The purpose for forming an Interim Bank;
- 5.1.1.2 ~~the~~ The proposed name of the Interim Bank;
- 5.1.1.3 ~~the~~ The name and address of the incorporators; and
- 5.1.1.4 ~~the~~ 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~~ The Interim Bank Agreement;
- 5.1.2.2 a A copy of the proposed Articles of Association of the Interim Bank;
- 5.1.2.3 a 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**).

2 DE Reg. 1021 (12/01/98)

22 DE Reg. 456 (12/01/18) (Prop.)