

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 701

PROPOSED

PUBLIC NOTICE

**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**

Summary

The State Bank Commissioner proposes to amend Regulation 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). The proposed amendment provides that no application to form a new limited purpose trust company will be approved, unless the new limited purpose trust company will be an affiliate, as defined in Section 773 of Title 5, of a bank, insured institution or bank holding company, as those terms are defined in the federal Bank Holding Company Act, 12 USC 1841, or of any other insured depository institution, as that term is defined in the Federal Deposit Insurance Act, 12 USC 1813, or of any national banking association, chartered in accordance with the National Bank Act and regulated by the Comptroller of the Currency, that is engaged primarily in trust and fiduciary activities. 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 proposal. The State Bank Commissioner is issuing this proposed amended Regulation in accordance with Section 121(b) of 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 July 1, 2019 edition of the Delaware *Register of Regulations*. A copy is also on file in the Office of the State Bank Commissioner, 43 South DuPont Highway, Edgehill Shopping Center, Dover, DE 19901, and is 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 August 2, 2019. Written materials submitted will be available for inspection at the above address.

Adoption of Proposed Amended Regulation

On or after August 2, 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.

**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.: 5.701/774.0004

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

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.
- 1.2 No application to form a new limited purpose trust company will be approved, unless the new limited purpose trust company will be an affiliate, as defined in Section 773 of Title 5 of the Delaware Code, of a bank, insured institution or bank holding company, as those terms are defined in the federal Bank Holding Company Act, 12 USC 1841, or of any other insured depository institution, as that term is defined in the Federal Deposit Insurance Act, 12 USC 1813, or of any national banking association, chartered in accordance with the National

Bank Act and regulated by the Comptroller of the Currency, that is engaged primarily in trust and fiduciary activities.

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; (viii) 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. In the case of a limited purpose trust company, the Commissioner shall review the applicant's compliance with subsection 1.2 of this Regulation. 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 transact business.

2 DE Reg. 1020 (12/01/98)

23 DE Reg. 17 (07/01/19) (Prop.)