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**.

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