

**1500 Credit Card Institutions**

**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 3.2 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

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**TITLE 5 BANKING**  
**DELAWARE ADMINISTRATIVE CODE**

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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 3.0 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 8.0 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.