

700 Corporation Law for State Banks and Trust Companies

712 Merger with Out-of-State Banks¹

(§§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

1. 2.1 Terms used in this regulation are as defined in §795 of Title 5, **Delaware Code**, unless otherwise noted.

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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.

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