

700 Corporation Law for State Banks and Trust Companies

713 Incidental Powers

5 Del.C. §761(a)(17)

Formerly Regulation No.: 5.761.0017

Effective Date: June 11, 2001

1.0 Purpose and Scope

- 1.1 This regulation specifies certain activities that are within the scope of the powers incident to a banking corporation under 5 Del.C. §761(a)(17) and also establishes the procedure for a bank to exercise its powers under that section by engaging in those and other activities, either directly or through a subsidiary.
- 1.2 This regulation is not intended to limit, restrict or define any other powers granted to a bank or any of its subsidiaries by any other Delaware statute, legislative charter, or regulation.

2.0 Definitions

“**Bank**” means any bank as defined by 5 Del.C. §101 that is established pursuant to 5 Del.C. Chapter 7, or pursuant to any other law of this State if the bank is entitled to amend its charter or certificate of incorporation in accordance with 5 Del.C. §749.

“**Commissioner**” means the State Bank Commissioner.

3.0 Specified Activities

- 3.1 Any bank that desires to exercise its incidental powers under 5 Del.C. §761(a)(17) by engaging in any of the following specified activities, either directly or through a subsidiary, shall notify the Commissioner in writing before commencing that activity:
 - 3.1.1 Any activity that is permissible for a national bank as principal.
 - 3.1.2 Any activity that is permissible for a bank holding company pursuant to Section 4(c)(8) of the Bank Holding Company Act of 1956, as amended (12 USC §1843(c)(8)).
 - 3.1.3 Any activity that is permissible in accordance with Part 362.3 of the Rules and Regulations of the Federal Deposit Insurance Corporation (the “FDIC”) (12 CFR §362.3), which implements provisions of Section 24 of the Federal Deposit Insurance Act (12 USC §1831a), other than activities that are otherwise specifically limited or prohibited under Delaware law.
 - 3.1.4 The provision of travel agency services. Banks chartered by the Delaware General Assembly before 1933 traditionally provided travel agency services to their customers, in reliance on the broad grants of agency power typically conferred by their charters. Delaware bank customers historically relied upon Delaware banks as providers of travel agency services, and continue to look to Delaware banks for such services. Accordingly, the Commissioner has concluded that travel agency services constituted part of the generally accepted business of banking when Delaware’s Corporation Law for State Banks and Trust Companies was enacted in 1933, and that the provision of travel agency services continues to be authorized by the powers incident to a banking corporation pursuant to 5 Del.C. §761(a)(17).
 - 3.1.5 The provision of general management consulting services. Many banks chartered by the Delaware General Assembly before 1933 were given broad powers to act in a fiduciary capacity, and the fulfillment of fiduciary duties in the context of banking affairs ordinarily involves the provision by banks of disinterested advice on many business and financial matters. Accordingly, the Commissioner has concluded that general management consulting services constituted part of the generally accepted business of banking when Delaware’s Corporation Law for State Banks and Trust Companies was enacted in 1933, and that the provision of general management consulting services continues to be

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authorized by the powers incident to a banking corporation pursuant to 5 **Del.C.** §761(a)(17).

- 3.2 Any bank that desires to exercise its incidental powers under 5 **Del.C.** §761(a)(17) by engaging in any of the following specified activities through a subsidiary shall notify the Commissioner in writing before commencing that activity:
- 3.2.1 Any activity that is permissible for a financial subsidiary of a national bank pursuant to Section 5136A of the Revised Statutes of the United States, as amended (12 USC §24a), other than activities that are otherwise specifically limited or prohibited under Delaware law;
- 3.2.2 Any activity that is permissible in accordance with Part 362.3 or Part 362.4 of the Rules and Regulations of the FDIC (12 CFR §362.3 or §362.4), which implement provisions of Section 24 of the Federal Deposit Insurance Act (12 USC §1831a), other than activities that are otherwise specifically limited or prohibited under Delaware law.
- 3.3 If the Commissioner does not object in writing to the proposed activity within 30 days of receiving the notice, the bank may then exercise its incidental powers by engaging in the specified activity described in the notice. The Commissioner may also permit the bank to engage in the specified activity before the end of the 30-day notice period.
- 3.4 The Commissioner may require the bank to conduct the specified activity only through a subsidiary, and may also impose any conditions related to the conduct of that activity that are necessary or appropriate for the bank's safety and soundness, as the Commissioner may determine.
- 3.5 If the Commissioner objects in writing to the proposed activity within 30 days of receiving the bank's notice, the bank may not engage in that activity either directly or through a subsidiary, until the Commissioner issues a written order approving such activity.
- 3.6 The bank or its subsidiary may submit an application to the Commissioner seeking approval of the proposed activity. The Commissioner has discretion to require any additional information deemed necessary and the application shall not be considered complete until such additional information is provided. Within 30 days of receiving the completed application, the Commissioner shall issue an order approving or disapproving the application.

4.0 Other Activities

- 4.1 A bank may apply to the Commissioner for permission to exercise its incidental powers under 5 **Del.C.** §761(a)(17) by engaging, either directly or through a subsidiary, in any activity that is not specified in Section 3.0 of this regulation.
- 4.1.1 The bank's application must describe the proposed activity in detail and demonstrate that the activity is within the powers, rights, privileges and franchises incident to a banking corporation, and is also necessary and proper to the transaction of the business of the corporation within the meaning of 5 **Del.C.** §761(a)(17).
- 4.1.2 Upon receipt of the application, the Commissioner may require additional information appropriate to evaluate the request, and the application shall not be considered complete until such additional information is received.
- 4.1.3 Within 30 days of receiving the completed application, the Commissioner shall issue a written order approving or disapproving the bank's application. In issuing that order, the Commissioner shall consider all information that the bank has provided as well as the bank's general financial condition and performance.
- 4.1.4 The Commissioner may require that the activity be conducted only through a subsidiary, and may also impose any conditions related to the conduct of the activity that are necessary or appropriate to the bank's safety and soundness, as the Commissioner may determine.