
TITLE 5 BANKING
DELAWARE ADMINISTRATIVE CODE

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DEPARTMENT OF STATE
OFFICE OF THE STATE BANK COMMISSIONER
800 Acquisition of Interests in Banking Institutions; Bank Holding Companies

801 Application to Become a Delaware Bank Holding Company
5 Del.C. §852

Effective Date: October 11, 2020

1.0 Scope of Regulation

This regulation establishes procedures governing the creation of a Delaware bank holding company. A bank holding company with bank subsidiaries in Delaware whose operations are principally conducted within this state is required to become a Delaware bank holding company. A bank holding company is deemed to be principally conducting operations in Delaware when the total deposits of all bank subsidiaries in this State are greater than in any other state (See 5 Del.C. §851(3)). Except as provided in §852(a), no bank holding company other than a Delaware bank holding company may own a Delaware bank.

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2.0 Application

- 2.1 Notice of Intent to become a Delaware Bank Holding Company constitutes an application. Said Notice of Intent shall be filed in duplicate with the Office of the State Bank Commissioner. The Notice of Intent shall include:
- 2.1.1 Name of Applicant and address of principal office.
 - 2.1.2 The State in which the Applicant is (or will be) incorporated. If the Applicant is incorporated outside of the State of Delaware, identify the name and address of a resident of Delaware designated as the Applicant's agent for the service of any paper or notice of legal process.
 - 2.1.3 If applicable, the corporate title and the address of the bank to be acquired; the number of voting shares to be acquired; and the percentage of said shares this number represents.
 - 2.1.4 The name, address and telephone number of the person(s) to whom inquiries may be directed.
 - 2.1.5 The Notice of Intent shall include the following exhibits:
 - 2.1.5.1 A copy of the Resolution by the Board of Directors of the Applicant authorizing the establishment of a Delaware bank holding company.
 - 2.1.5.2 A description of the Applicant and the transaction.
 - 2.1.5.3 A description of the financial and managerial resources of the proposed Delaware bank holding company.
 - 2.1.5.4 The future prospects of the bank holding company and the bank whose assets or shares it will acquire, if applicable, to include a statement in narrative form of a three (3) year business plan of the Applicant for the proposed bank holding company and, if applicable, the bank to be acquired.
 - 2.1.5.5 The financial history of the Applicant:
 - 2.1.5.5.1 Provide a narrative description of the financial history of the Applicant and its bank and deposit taking non-bank subsidiaries over the past three (3) years. Include as exhibits all annual statements of income and condition filed with the bank regulatory authority or authorities in each state where the bank holding company maintains a bank subsidiary or, in the case of a national bank, with the Comptroller of the Currency; provided that such filings shall not be required with respect to any bank subsidiary under the jurisdiction of the Delaware State Bank Commissioner.
 - 2.1.5.5.2 Provide for the past three calendar years, copies of all Form 10-Ks.
 - 2.1.5.5.3 Describe regulatory action taken or anticipated or any agreements in lieu thereof entered into with a regulatory agency, either federal or state, with regard to any bank subsidiary within the holding company.
 - 2.1.5.6 The effects of the proposed acquisition on competition in Delaware.

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- 2.1.5.7 Describe how this transaction will better meet the needs and convenience of the public in the State of Delaware.
- 2.1.5.8 A copy of the application filed with the Board of Governors of the Federal Reserve System to become a Bank Holding Company.

3.0 Publication

- 3.1 A proposed form of public notice shall be filed at the time the Notice of Intent (Application) is submitted for the Commissioner's approval. Said public notice shall include: the name and address of the Applicant, the subject matter of the application, the name and address of the bank to be acquired, and a statement indicating: a) for a period of 20 days commencing with the second date of publication, interested parties may submit written comments to the State Bank Commissioner at 1110 Forrest Avenue, Dover, Delaware 19904; and b) the application is on file in the Office of the State Bank Commissioner and the non-confidential portions thereof will be available for examination by interested parties during regular office hours.
- 3.2 Upon written notice from the Commissioner that the proposed public notice is satisfactory, the Applicant shall cause said public notice to be published once a week for two consecutive weeks in a newspaper of general circulation in the community in which the head office of the bank of which shares are to be acquired is located. An affidavit of publication shall be submitted to the Commissioner for the record.

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4.0 Additional Information

Upon review and consideration of the application, the Commissioner may require any additional information deemed necessary.

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5.0 Confidential Information

An Applicant may request that specific information included in the Notice of Intent be treated as confidential. Any information or exhibits of which the applicant claims the designation of confidential shall be segregated at the end of the application as a separate exhibit designated as "confidential". The Commissioner, in his sole discretion, shall determine whether any or all of the information for which the "confidential" designation is requested by the Applicant meets the criteria for confidentiality set forth in 29 **Del.C.** §10112(b)(4). All portions of the Notice of Intent which the Commissioner does not designate as "confidential" shall be made available for public inspection and copying in the manner provided by law with the exception of the copy of the Application filed with the Federal Reserve.

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6.0 Fees

The Notice of Intent (Application) shall be accompanied by a filing fee in the amount of five thousand seven hundred and fifty dollars (\$5,750.00) for the use of the State and a non-refundable processing fee in the amount of one thousand one hundred and fifty dollars (\$1,150.00). Checks shall be made payable to the Office of the State Bank Commissioner.

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7.0 Hearing

If, after the twenty (20) day comment period, the Commissioner determines a public hearing should be conducted, such determination shall be made within ten (10) days after the conclusion of the 20-day comment period. Notice fixing the time, place and date for the holding of a hearing on the application shall be published at least twenty (20) days prior to the day it is to be held. The hearing shall be conducted in accordance with Chapter 101 of Title 29 of the **Delaware Code**.

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8.0 Findings and Decision of the Commissioner

The Findings and Decision approving or disapproving the Application will be issued in accordance with Chapter 101 of Title 29, **Delaware Code**.

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2 DE Reg. 297 (08/13/98)
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