

**802 Application by an Out-of-state Savings Institution, Out-of-State Savings and Loan Holding Company or Out-of-State Bank Holding Company to Acquire a Delaware Savings Bank or Delaware Savings and Loan Holding Company**  
5 Del.C. §833

Formerly Regulation No.: 5.833.0004

Effective Date: December 11, 1998

## **INSTRUCTIONS**

This Application is to be filed by an “out-of-state savings institution”, “out-of-state savings and loan holding company” or an “out-of-state bank holding company” (as defined in Section 831 of Title 5 of the **Delaware Code**), or subsidiary thereof, for the purpose of acquiring a Delaware savings bank or Delaware savings and loan holding company pursuant to the Savings Bank Acquisition Act (5 **Del. C.** §831 et seq.).

This Application is to be completed, executed and acknowledged by a lawfully empowered officer of the out-of-state savings institution, savings and loan holding company or bank holding company. The completed Application and required exhibits should be filed with the Office of the State Bank Commissioner, Dover, Delaware, in duplicate, accompanied by a non-refundable filing fee made payable to the State of Delaware in the amount of five thousand seven hundred and fifty dollars (\$5,750.00), together with a non-refundable processing fee in the amount of one thousand one hundred and fifty dollars (\$1,150.00) made payable to the Office of the State Bank Commissioner. **THE COMMISSIONER WILL NOT DEEM ANY APPLICATION AS FILED UNTIL THE COMMISSIONER HAS DETERMINED THAT ALL OF THE INFORMATION REQUESTED IN THE APPLICATION HAS BEEN PROVIDED; THAT THE CERTIFICATE HAS BEEN PROPERLY SIGNED AND ACKNOWLEDGED; THAT ALL REQUIRED EXHIBITS ARE ATTACHED; AND THAT ALL FEES HAVE BEEN PAID.**

### **Application Process**

Upon notification by the Commissioner that this Application is deemed as filed, the applicant shall cause to be published in a newspaper of general circulation throughout the State of Delaware, once a week for two (2) consecutive weeks, a notice of its intention to acquire a Delaware savings bank or Delaware savings and loan holding company, and, if applicable, to form an interim savings bank in connection therewith. Such notice shall include the date, time and location of the public hearing on the application as established by the Commissioner. Such notice shall expressly invite members of the public to examine the Application on file with the Office of the State Bank Commissioner and to submit comments regarding the Application to the Office of the State Bank Commissioner. A public hearing will be conducted by the Commissioner or the Commissioner’s designee in accordance with Chapter 101 of Title 29, **Delaware Code**, to review the Application and to take such testimony and to gather such evidence as the Commissioner or the Commissioner’s designee deems necessary to determine whether the proposed acquisition (and, where applicable, the formation of the proposed interim

savings bank) will serve the public convenience and advantage pursuant to the criteria set forth in 5 **Del. C.** §833 (b). When applicable, the Commissioner or his designee will also consider whether a proposed acquisition should be approved even though the acquiring out-of-state savings institution, out-of-state savings and loan holding company or out-of-state bank holding company, or any subsidiary thereof, would control, together with any affiliated insured depository institution, 30 percent or more of the total amount of deposits of insured depository institutions in this State, as provided in 5 **Del. C.** §832(b). 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 the Commissioner's designee shall be borne by the applicant; in all other instances, the expense of such transcription shall be borne by the person requesting it. The Commissioner or the Commissioner's designee will issue preliminary findings of fact and law and make the same available for comment to the applicant and all parties shall have thereafter twenty (20) days to submit in writing to the Commissioner or the Commissioner's designee exceptions, comments and arguments respecting the preliminary findings. If the Commissioner or the Commissioner's designee presides at a hearing conducted pursuant to this regulation and if the decision on the applicant is not adverse to the applicant, the Commissioner or the Commissioner's designee has the right to waive the preliminary findings of fact and law and proceed directly to the entry of a final order.

### **CONFIDENTIAL INFORMATION**

An applicant may request that specific information included in this Application be treated as confidential. Any information or exhibits for which the applicant claims the designation of confidential shall be segregated at the end of the Application as a separate exhibit which the applicant shall designate as "confidential". The Commissioner, in his sole discretion, will 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 this Application which the Commissioner does not designate as "confidential" will be made available for public inspection and copying.

APPLICATION FOR AUTHORITY OF AN OUT-OF-STATE SAVINGS INSTITUTION, OUT-OF-STATE SAVINGS AND LOAN HOLDING COMPANY OR OUT-OF-STATE BANK HOLDING COMPANY TO ACQUIRE A DELAWARE SAVINGS BANK OR DELAWARE SAVINGS AND LOAN HOLDING COMPANY

I. Certification

The undersigned, \_\_\_\_\_ (Name and Title)

\_\_\_\_\_  
(Name of out-of-state savings institution, out-of-state savings and loan holding company or out-of-state bank holding company) having first been duly authorized, does hereby make application on behalf of \_\_\_\_\_ to acquire \_\_\_\_\_  
(Name of Delaware Savings Bank or Delaware Savings and Loan Holding Company)

The undersigned acknowledges that he/she has read and is familiar with the provisions of the Savings Bank Acquisition Act of 1987 and all rules and regulations issued in connection therewith; that all of the information provided as part of this Application is, to the best of the knowledge and belief of the undersigned, true and accurate; and that he/she is duly authorized to execute this certification on behalf of the applicant.

\_\_\_\_\_  
WITNESS

\_\_\_\_\_

Sworn to and subscribed before me, a Notary Public of the State of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

- II. Identification of Applicant
  - A. State formal name and state of incorporation of applicant.
  - B. Identify the name and address of a resident of the State of Delaware who is designated as agent of the applicant for the service of any paper, notice or legal process upon applicant in connection with any matter arising out of Subchapter III, Chapter 8, Title 5, **Delaware Code**.
  
- III. Acquisition
  - A. Identify the Delaware savings bank or Delaware savings and loan holding company to be acquired (if a savings and loan holding company, further identify the savings bank subsidiary or subsidiaries of such holding company).
  - B. Describe the method of acquisition of the Delaware savings bank or Delaware savings and loan holding company (enclose as an exhibit to this Application a copy of the acquisition agreement between the applicant and the Delaware savings bank or Delaware savings and loan holding company).
  - C. Indicate whether this Application is the only pending application for the acquisition of a Delaware bank or savings bank or Delaware bank holding company or savings and loan holding company. If not, identify and attach a copy of any other application pending.
  - D. Attach as an exhibit a statement of counsel that the Delaware savings bank or Delaware savings and loan holding company is not prohibited by its articles of incorporation, charter, or legislative act from being acquired.
  - E. If not previously filed, attach as exhibits the most recent statement of income and condition, together with the three most recent annual statements of income and condition of each savings bank subsidiary of the Delaware savings and loan holding company to be acquired filed with the Office of the State Bank Commissioner or, if a federal savings bank, the Office of Thrift Supervision.
  - F. State whether the proposed acquisition has received: (1) the necessary approval of the stockholders of the out-of-state savings institution, out-of-state savings and loan holding company or out-of-state bank holding company and the Delaware savings and loan holding company or Delaware savings bank (if so, attach certified copies of the resolutions of such approval; if not, describe the status of such approval processes); and (2) whether all necessary federal regulatory approvals have been obtained (if so, provide copies of such approvals; if not, describe the status of the application process for such approvals and attach actual or pro forma applications without exhibits except for transmittal correspondence, and any responses from the federal regulatory authorities).
  
- IV. Information regarding formation of interim savings bank (OPTIONAL).

If applicant has applied for a certificate of public convenience and advantage for an interim savings bank from the Office of Thrift Supervision, attach the certificate of public convenience and advantage issued with respect to such interim savings bank. If such certificate has not been issued, provide a copy of the application to form such interim savings bank without exhibits other than the transmittal letter and any responses received from the Office of Thrift Supervision.
  
- V. Information addressing the criteria for approving or disapproving an acquisition provided

for at 5 **Del. C.** §833(b).

A. Financial history of the applicant.

1. Describe in narrative fashion the financial history of the applicant, its affiliates, and its bank, savings bank and 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 out-of-state savings institution operates or where the out-of-state bank holding company or out-of-state savings and loan holding company maintains a bank or savings bank subsidiary, or with the Office of the Comptroller of the Currency or the Office of Thrift Supervision; provided, that such filings shall not be required with respect to any bank or savings bank under the jurisdiction of a bank regulatory authority with whom the State Bank Commissioner shall have entered into a cooperative agreement for the provision of such reports pursuant to the provisions of 5 **Del. C.** §834(4) or any other provision of Title 5.
2. Provide for the past three calendar years, copies of all Form 10-K's and quarterly reports filed on Form 10-Q (or their state equivalents) (if required) with respect to the out-of-state savings institution, out-of-state bank holding company or out-of-state savings and loan holding company, together with all proxy statements, tender offer materials, other disclosure documents, etc., relating to the proposed application (if required), or any other acquisition undertaken by applicant.

If an applicant is not required to file any report under the Securities and Exchange Act of 1934 (15 U.S.C. §78 et seq. as amended), or an equivalent state filing, the applicant shall file information substantially equivalent to the information which would otherwise be contained in such reports in a form reasonably satisfactory to the Bank Commissioner, including the previous three years' statements of condition and a three year income statement, statements of changes in shareholders' equity, all as prepared in accordance with generally accepted accounting principles.

B. Provide a statement in narrative form of a three (3) year business plan of the applicant for the Delaware savings and loan holding company and its savings bank and non-bank subsidiaries, or the Delaware savings bank to be acquired. Such plan should include but is not limited to a description of:

1. In detail, any proposed change during the first year of operation in the products or services offered by the Delaware savings bank or the subsidiary or subsidiaries of the Delaware savings and loan holding company;
2. In detail, any contemplated or proposed change during the first year after the effective date of the acquisition in the executive officers of the Delaware savings bank or the Delaware savings and loan holding company and its savings bank and non-bank subsidiaries, with specific reference to the termination, transfer, or reduction of authority or responsibilities of any such executive officers;
3. Using the current table of organization of the Delaware savings bank or Delaware savings and loan holding company and its savings bank and non-bank subsidiaries, describe proposed changes in levels of employment

- among non-management personnel;
4. Any change in the geographic market to be served by the Delaware savings bank or the subsidiary of the Delaware savings and loan holding company (with specific reference to the opening, closing or expansion of branches);
  5. Additional products or services which the Delaware savings bank or subsidiary of the Delaware savings and loan holding company will provide after the acquisition;
  6. For the next three (3) years, proposed changes in the capitalization of the Delaware savings bank or the Delaware savings and loan holding company and any subsidiary thereof;

With respect to each of the above subject areas, include specific references, if any, to any relevant sections of the acquisition agreement, merger agreement with an interim savings bank, any other agreement or understanding (with any person or party) not incorporated in such acquisition or merger agreements or any exhibits or supplements as to any of such items.

- C. State whether the applicant, or any subsidiary thereof, would control, together with any affiliated insured depository institution (as defined in the Federal Deposit Insurance Act at 12 U.S.C. §1813(c)), 30 percent or more of the total amount of deposits of insured depository institutions in this State after the proposed acquisition. If so, explain why the Application should be approved in accordance with the convenience and needs of the public of this State.
- D. If applicant has acquired or has made application to acquire any other Delaware bank holding company, Delaware savings and loan holding company, Delaware bank, or Delaware savings bank describe in detail the extent to which the acquisition which is the subject of this Application will affect present competition between the savings bank or savings bank subsidiaries of a Delaware savings and loan holding company to be acquired under this Application and the Delaware bank or Delaware savings bank or subsidiary of a Delaware bank holding company or Delaware savings and loan holding company previously acquired or pending acquisition approval.
- E. Describe in detail the activities which applicant proposes for fostering economic development and employment within the State of Delaware. By way of historical background, and as part of such description, include the following information:
  1. With respect to the commercial loan activity of the applicant and the Delaware savings bank or subsidiary of the Delaware savings and loan holding company to be acquired, the total dollar value, and the percentage of total commercial loans outstanding, of the following categories of commercial loans:
    - a. Small business loans (SBA);
    - b. Other small business loans;
    - c. Industrial authority development loans;
    - d. Financing of ESOP's and leveraged buy-outs;
    - e. Financing directly or indirectly of non-profit, community development projects;

- f. Loans in other categories designed to stimulate industrial growth and employment.
- 2. Enclose for both the applicant and/or its subsidiaries and the Delaware savings bank or subsidiaries of the Delaware savings and loan holding company to be acquired copies of the most recent report filed pursuant to the Home Mortgage Disclosure Act, 12 U.S.C. §§2801-9.