Office of the Registrar of Regulations,
Legislative Council,
State of Delaware

DEPARTMENT OF STATE
OFFICE OF THE STATE BANKING COMMISSIONER
Statutory Authority: 5 Delaware Code, Section 121(b) (5 Del.C. §121(b))

Notice of Proposed Adoption and Amendment of Regulations of the State Bank Commissioner

PROPOSED

708 Establishment of a Branch Office by a Bank or Trust Company 5 Del.C. §770(a)
714 Establishment of a Mobile Branch Office by a Bank or Trust Company 5 Del.C. §770(c)
1113 Election by a Subsidiary Corporation of a Banking Organization or Trust Company to be Taxed in Accordance with Chapter 19 of Title 30

Summary

The State Bank Commissioner proposes to adopt amended Regulation 708 and new Regulations 714 and 1113. Proposed amended Regulation 708 ("Establishment of a Branch Office by a Bank or Trust Company") is being amended to clarify that it applies only to applications to open traditional branches under § 770(a) of Title 5 and not to mobile branches under § 770(c); that the Commissioner may designate certain portions of such an application as confidential; and that the application will not be deemed filed until it is complete. Proposed new Regulation 714 ("Establishment of a Mobile Branch Office by a Bank or Trust Company") provides a similar structure for applications to establish mobile branches under § 770(c), establishes a procedure for advanced notification to the Commissioner of proposed changes in the manner or area of operation of a mobile branch, and requires the maintenance an operations log for the mobile branch. Proposed new Regulation 1113 ("Election by a Subsidiary Corporation of a Banking Organization or Trust Company to be Taxed in Accordance with Ch. 19 of Title 30") provides for a subsidiary that is not itself a banking organization or trust company to opt out of the bank franchise tax structure as allowed by § 1101(e) of Title 5 of the Delaware Code and includes forms for that election as well as for an annual report to confirm the subsidiary's continued eligibility. The State Bank Commissioner would adopt proposed amended Regulation No. 708 and new Regulations 714 and 1113 on or after August 4, 2004. Other regulations issued by the State Bank Commissioner are not affected by these proposals. The State Bank Commissioner is issuing these regulations in accordance with Title 5 of the Delaware Code.

Comments

Copies of the proposed amended and new regulations are published in the Delaware Register of Regulations. Copies are also on file in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, DE and are available for inspection during regular office hours. Copies are available upon request.

Interested parties are invited to comment or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner as to whether these proposed amended and new regulations should be adopted, rejected or modified. Written materials submitted will be available for public inspection at the above address. Comments must be received before the public hearing scheduled for August 4, 2004.

Public Hearing

A public hearing on the proposed regulations will be held in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, DE on August 4, 2004 commencing at 10:00 a.m.

This notice is issued pursuant to the requirements of Subchapter III of Chapter 11 and Chapter 101 of Title 29 of the Delaware Code.

708 Establishment of a Branch Office by a Bank or Trust Company
5 Del.C. §770(a)

Formerly Regulation No.: 5.770.0009

Proposed

1.0 Scope

1.1 This regulation establishes procedures for the filing of an application to establish a branch office of a bank or trust company pursuant to Section 770(a) of Title 5 of the **Delaware Code** and states the manner in which the State Bank Commissioner (the "Commissioner") will review and act upon such applications. An application to establish a mobile branch office pursuant to Section 770(c) of Title 5 is covered separately under Regulation No. 714.

2.0 Application

2.1 An application pursuant to Section 770(a) of Title 5 of the **Delaware Code** shall be in writing; shall be submitted on such forms the Commissioner may designate from time-to-time for that purpose, and shall include the following:

2.1.1 Name of applying bank or trust company.

2.1.2 Location of proposed branch office, including address.

2.1.3 Explanation of the necessity for the opening of the branch office.

~~2.1.3~~ 2.1.4 ~~The~~ Name, address and phone number of the person(s) to whom inquiries may be directed.

2.2 The Commissioner may designate portions of the application as non-public and confidential.

2.3 The Commissioner will not deem any application to be filed until the Commissioner has determined that all of the information and documents required by the application have been provided, that the application has been properly executed, and that all fees have been paid.

3.0 Fee

The application shall be accompanied by a non-refundable investigation fee of two hundred and fifty dollars ($250.00). Checks shall be made payable to the Office of the State Bank Commissioner.

4.0 Notice

4.1 Upon notification by the Commissioner that the application conforms to the requirements for applications pursuant to Section 770(a) of Title 5 of the **Delaware Code** and this regulation, the applicant shall cause a single notice of such application to be published in at least two Delaware newspapers of general circulation. The notice shall provide a brief synopsis of the application and state that interested persons may present their views in writing to the Office of the State Bank Commissioner, and shall be in a form to be approved by the Commissioner before publication.

5.0 Additional Information, Investigation and Hearing

5.1 In addition to the documents filed in accordance with this regulation, the Commissioner ~~at his~~ has discretion ~~may~~ to require additional information, conduct an investigation, or hold a public hearing in accordance with the Administrative Procedures Act, Chapter 101 of Title 29 of the **Delaware Code**.

6.0 Decision

6.1 No earlier than 20 days after publication of the notice described in Section 4 of this regulation, the Commissioner shall issue a written order approving or disapproving the application. In determining whether to approve the application, the Commissioner shall consider the convenience of the public of this State, and whether there is good and sufficient reason that the bank or trust company should have the branch office.

7.0 Certificate of Authority

7.1 A Certificate of Authority shall be issued by the Commissioner for each approved branch office.

8.0 Time to Open Approved Branch Office

8.1 Branch offices approved in accordance with Section 770(a) of Title 5 of the **Delaware Code** and this regulation shall open within one year of the date when the Commissioner issues the Certificate of Authority. The Commissioner may upon review of the application for such branch office extend the initial opening date to a date greater than one year~~, if by his review he determines~~ upon a determination that the proposed completion date will exceed one year. In no such instance shall the initial opening date exceed the planned completion date by more than ninety (90) days. Any Certificate of Authority issued by the Commissioner shall be void and of no effect at the

expiration of the initial opening date prescribed on approval of the branch office unless ~~the branch~~ that office is actually opened for business. Unavoidable delay in opening the branch office due to construction problems ~~or controls~~ or other matters beyond the control of the bank or trust company may be taken into consideration and the Commissioner may extend the Certificate of Authority for periods of six months in the event of such circumstances.

714 Establishment of a Mobile Branch Office by a Bank or Trust Company
5 Del.C. §770(c)

Proposed

1.0 Scope

1.1 This regulation establishes procedures for the filing of an application to establish a mobile branch office of a bank or trust company pursuant to Section 770(c) of Title 5 of the **Delaware Code** and states the manner in which the State Bank Commissioner (the "Commissioner") will review and act upon such applications. An application to establish a branch office pursuant to Section 770(a) of Title 5 that is not a mobile branch is covered separately under Regulation No. 708.

2.0 Application

2.1 An application pursuant to Section 770(c) of Title 5 of the **Delaware Code** shall be in writing; shall be submitted on such form as the Commissioner may designate from time-to-time for that purpose, and shall include the following:

2.1.1 Name of applying bank or trust company.
2.1.2 The area in which the mobile branch office will operate.
2.1.3 The manner of operation of the mobile branch office.
2.1.4 An explanation of the necessity for the opening of the mobile branch office.
2.1.5 Name, address and phone number of the person(s) to whom inquiries may be directed.

2.2 The Commissioner may designate portions of the applications as non-public and confidential.

2.3 The Commissioner will not deem any application to be filed until the Commissioner has determined that all of the information and documents required by the application have been provided, that the application has been properly executed, and that all fees have been paid.

3.0 Fee

3.1 The application shall be accompanied by a non-refundable investigation fee of two hundred and fifty dollars ($250.00). Checks shall be made payable to the Office of the State Bank Commissioner.

4.0 Notice

4.1 Upon notification by the Commissioner that the application conforms to the requirements for applications pursuant to Section 770(c) of Title 5 of the **Delaware Code** and this regulation, the applicant shall cause a single notice of such application to be published in at least two Delaware newspapers of general circulation. The notice shall provide a brief synopsis of the application and state that interested persons may present their views in writing to the Office of the State Bank Commissioner, and shall be in a form to be approved by the Commissioner before publication.

5.0 Additional Information, Investigation and Hearing

5.1 In addition to the documents filed in accordance with this regulation, the Commissioner has discretion to require additional information, conduct an investigation, or hold a public hearing in accordance with the Administrative Procedures Act, Chapter 101 of Title 29 of the **Delaware Code**.

6.0 Decision

6.1 No earlier than 20 days after publication of the notice described in Section 4 of this regulation, the Commissioner shall issue a written order approving or disapproving the application. In determining whether to approve the application, the Commissioner shall consider the convenience of the public of this State, and whether there is good and sufficient reason that the bank or trust company should have the mobile branch office.

7.0 Certificate of Authority

7.1 A Certificate of Authority shall be issued by the Commissioner for each approved mobile branch office.

8.0 Time to Open Approved Mobile Branch Office

8.1 Mobile branch offices approved in accordance with Section 770(c) of Title 5 of the **Delaware Code** and this regulation shall open within one year of the date when the Commissioner issued the Certificate of Authority. The Commissioner may upon review of the application for such mobile branch office extend the initial opening date to a date greater than one year upon a determination that the proposed completion date will exceed one year. In no such instance shall the initial opening date exceed the planned completion date by more than ninety (90) days. Any Certificate of Authority issued by the Commissioner shall be void and of no effect at the expiration of the initial opening date prescribed on approval of the mobile branch office unless the mobile branch is actually opened for business. Unavoidable delay in opening the mobile branch office due to construction problems or other matters beyond the control of the bank or trust company may be taken into consideration and the Commissioner may extend the Certificate of Authority for periods of six months in the event of such circumstances.

9.0 Changes in Manner or Area of Operation

9.1 A bank or trust company that is operating an approved mobile branch office shall notify the Commissioner, in writing, in advance of any change in the manner or area of operation of the mobile branch office. Any such change shall be deemed approved unless the Commissioner notifies the bank or trust company otherwise with 20 days of the Commissioner's receipt of that notice. The Commissioner may decline to approve any of the changes, or may direct the bank or trust company to submit a new application in accordance with this regulation.

10.0 Operations Log

After the mobile branch begins operations, the bank or trust company operating that branch must maintain a log of operations, indicating the date, specific location, and a description of each stop (e.g., office, store, residence).

1113 Election by a Subsidiary Corporation of a Banking Organization or Trust Company to be Taxed in Accordance with Chapter 19 of Title 30

Proposed

1.0 Qualifications for Election

Pursuant to 5 **Del.C.** §1101(e), a subsidiary corporation of a banking organization or trust company may elect to be taxed in accordance with Chapter 19 of Title 30 if the subsidiary is not itself a banking organization or trust company, if the subsidiary is not described in §1902(b)(8) of Title 30, and if the subsidiary is not engaged in the sale, distribution, underwriting of, or dealing in, securities.

2.0 Effect

If a valid election is made, the electing subsidiary shall not be considered a subsidiary corporation of its parent banking organization or trust company for the purposes of Chapter 11 of Title 5, and the income of the electing subsidiary shall be excluded from the taxable income of its parent banking organization or trust company for the tax year involved.

3.0 Filing

An electing subsidiary shall make this election by filing the original of Form A under this regulation with the State Bank Commissioner; 555 E. Loockerman Street; Suite 210; Dover, DE, 19901 and a copy with the Delaware Division of Revenue; 820 N. French Street; Wilmington, DE 19801.

4.0 Reporting Requirements

Every year, an electing subsidiary shall file with the State Bank Commissioner on or before the date that its Delaware State Income Tax Return is due (1) Form B under this regulation, and (2) a copy of its Delaware State Income Return as filed with the Delaware Division of Revenue.

5.0 Termination of Election

An election under this regulation remains in effect until terminated. An electing subsidiary may terminate its election by filing a notice to that effect with the State Bank Commissioner and the Delaware Division of Revenue.

FORM A

Election of a Subsidiary Corporation to be Taxed in Accordance with Chapter 19 of Title 30

The subsidiary corporation identified below hereby elects to be taxed in accordance with Chapter 19 of Title 30 of the Delaware Code.

1. (a) Name and address of subsidiary corporation:

_____

_____

_____

(b) State of incorporation of subsidiary corporation: _____

(c) Federal Employer Identification Number of subsidiary corporation:

_____

2. (a) Name and principal place of business of subsidiary corporation's parent banking organization or trust company:

_____

_____

_____

(b) Percentage of outstanding voting shares of subsidiary corporation owned by parent banking organization or trust company: _____

3. Is the subsidiary corporation engaged in the sale, distribution, underwriting of, or dealing in, securities?
____ yes ____ no

4. Are the activities of the subsidiary corporation within this state confined to the maintenance and management of its intangible investments or of the intangible investments of corporations or business trusts registered as investment companies under the Investment Company Act of 1940 as amended (15 USC 80a-1 et seq.) and the collection and distribution of the income from such investments or from tangible property physically located outside this State within the meaning of 30 **Del.C.** § 1902(b)(8)? ____ yes ____ no

5. Is the subsidiary corporation a banking organization or trust company as defined by 5 **Del.C.** §101? ____ yes
____ no

6. Describe the principal activities of the subsidiary corporation:

_____

_____

_____

7. Effective date of election: _____

The undersigned hereby certifies that the undersigned is duly authorized on behalf of the subsidiary corporation to make an election to be taxed under 30 **Del.C**. Ch. 19 and that all statements herein are true and correct to the best of the undersign's knowledge and belief.

_____

Date Signature of President, Treasurer or Other Proper Officer Title

_____ _____

Print Name Phone No.

_____

_____

_____

Print Address

Mail or deliver original completed form to:
Office of the State Bank Commissioner
555 E. Loockerman Street, Suite 210
Dover, DE 19901

Mail or deliver copy to:
Delaware Division of Revenue
820 N. French Street
Wilmington, DE 19801.

FORM B

Annual Report of a Subsidiary Corporation Electing to be Taxed in Accordance with Chapter 19 of Title 30

Tax Year _____

1. (a) Name and address of subsidiary corporation:

_____

_____

_____

(b) Federal Employer Identification Number of subsidiary corporation:

_____

2. (a) Name and address of parent banking organization or trust company:

_____

_____

_____

(b) Percentage of outstanding voting shares of subsidiary corporation owned by parent banking organization or trust company: _____

3. Is the subsidiary corporation engaged in the sale, distribution, underwriting of, or dealing in, securities?
____ yes ____ no

4. Are the activities of the subsidiary corporation within this state confined to the maintenance and management of its intangible investments or of the intangible investments of corporations or business trusts registered as investment companies under the Investment Company Act of 1940 as amended (15 USC 80a-1 et seq.) and the collection and distribution of the income from such investments or from tangible property physically located outside this State within the meaning of 30 **Del.C.** § 1902(b)(8)? ____ yes ____ no

5. Is the subsidiary corporation a banking organization or trust company as defined by 5 **Del.C.** §101? ____ yes
____ no

Attach copy of the subsidiary corporation's Delaware Income Tax Return for the tax year listed above.

The undersigned hereby certifies that the undersigned is duly authorized on behalf of the subsidiary corporation to make this return and that all statements herein are true and correct to the best of the undersign's knowledge and belief.

_____ _____

Date	Signature of President, Treasurer or Other Proper Officer	Title

_____ _____

Print Name Phone No.

_____

_____

_____

Print Address

Mail or deliver original completed form to:
Office of the State Bank Commissioner
555 E. Loockerman Street, Suite 210
Dover, DE 19901

8 DE Reg. 68 (7/1/04)