

INSURANCE  
DEPARTMENT OF BANKING AND INSURANCE  
DIVISION OF BANKING

Bank Service Corporations

Readoption with Amendments: N.J.A.C. 3:14

Proposed: March 15, 2004 at 36 N.J.R. 1262(a)

Adopted July 12, 2004 by Holly C. Bakke, Commissioner,  
Department of Banking and Insurance

Filed July 12, 2004 as R. 2004 d.309, **without change.**

Authority: N.J.S.A. 17:1-15e and 17:9A-24.4.

Effective Date: July 12, 2004, Readoption  
August 16, 2004, Amendments.

Expiration Date: July 12, 2009

**Summary** of Public Comment and Agency Response:

The Department received one written comment on the proposal. The comment was received from Frieri Conray & Lombardo, LLC.

COMMENT: The commenter believes that the proposed readoption with amendments will create an undue burden on community banks and savings banks who are struggling to achieve profitability under the current economic climate. The commenter questions the basis for requiring shareholders or customers to directly bear the cost of any examination of a service corporation and suggested that the bank service corporation itself should bear the cost of any examination. The commenter is of the opinion that the proposed amendment could set a dangerous precedent and allow for further assessment of fees on banks that utilize other service companies, such as credit cards or financial service companies.

The commenter contends that the “statute” (sic) is flawed because it does not provide how the examination fees should be divided among various institutional shareholders or customers. Furthermore, the commenter believes that the proposed readoption with amendment does not address the issue whether one minor shareholder should be responsible for the entire cost of the bank service corporation’s examination. The commenter argued that the proposed amendments lack detail or specificity as to how the Department will assess the examination fees, or if it is going to be on a pro-rata basis or not. The commenter suggested that the Department should clarify the amendment and state that the fees should be divided on a pro-rata basis among each of the bank service company’s customers. The commenter also suggested that the Department should consider whether to allow for a clear division by the total amount of customers of the Company or if it should be further divided by the amount of service provided to each customer. The commenter contends that the term “periodic examinations” does not set forth a definitive examination schedule and could allow for numerous requests on banking institutions to pay fees which are inconsistent with the amount of service provided during or in-between those examinations. The commenter finally urged the Department to require the bank service corporations to maintain responsibility for all costs and fees associated with any examination by the Department.

RESPONSE: The Department appreciates the commenter’s remarks and agrees with some of them. The Department is concerned about the fairness of its billing. Therefore, when several depository institutions use a single service corporation, the Department apportions the examination bill among the depository institutions based on the amount of business that each institution does with the service corporation. The issue of whether one shareholder should be responsible for the entire cost of the bank service corporation’s examination does not arise

because banks and savings banks are billed based on their usage of the services provided. This procedure will continue to avoid the potential unfairness alluded to in the commenter's remarks. Given this established policy of apportioning the examination bill, the Department does not think it is necessary to modify the adoption.

The Department also notes the commenter's remarks regarding the disproportionate burden on community and savings banks. Under the Department's standing policy regarding proportional billing described above, banks and savings banks would only be billed to the degree they utilize the services of bank service corporations. Therefore, community and savings banks are treated fairly in relationship to other depository institutions. Furthermore, the Department thinks that the proportionate billing reduces the burden on community and smaller institutions to reasonable levels.

#### **Federal Standards Statement**

The rules readopted with amendments do not impose any greater requirements than those imposed by Federal regulations. The rules readopted with amendments continue to enable bank service corporations to provide services which the Board of Governors of the Federal Reserve System determines by regulation are permissible for a bank holding company pursuant to 12 U.S.C. § 1843(c)(8), and service that a bank holding company could provide to its affiliates pursuant to 12 C.F.R. 225.21(a)(1), 225.22(a)(1) or 225(a)(2).

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 3:14.

Full text of the adopted amendments follows: