

BANKING
DEPARTMENT OF BANKING AND INSURANCE
OFFICE OF DEPOSITORIES

Procedural Rules

Proposed Repeal and New Rule: N.J.A.C. 3:1-2.22

Proposed Amendments: N.J.A.C. 3:1-2.2, 2.4 through 2.8, 2.10, 2.13, 2.14, 2.15 2.16, 2.18, and 2.23

Authorized By: Steven M. Goldman, Acting Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8, 17:1-8.1, 17:1-15e, 17:1C-33 et seq., 17:9A-1 et seq. 17:12B-1 et seq., and 17:16M-1 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2006-125

Submit written comments by June 25, 2006 to:

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The agency proposal follows:

Summary

N.J.A.C. 3:1-2 sets forth the procedural rules for the filing and review of charter applications of depositories, and branch applications of out-of-State banks and out-of-State associations, in accordance with N.J.S.A. 17:9A-1 et seq. and 17:12B-1 et seq.

The rules originally became effective in 1970 and have been amended several times since that time. Based on its experience with these rules, the Department of Banking and Insurance

(Department) has determined that it is reasonable and appropriate to amend the rules to provide more guidance with respect to the filing of certain information required as part of the application process; to codify existing procedures; to streamline the procedures with respect to filings for conversion from a Federally-chartered depository to a State-chartered depository, and for interim charter situations; to revise and clarify the procedures with respect to hearings required to be held on charter applications; and to modify the fee for conversion from a Federal to a New Jersey charter. A summary of the proposed amendments follows.

N.J.A.C. 3:1-2.2(a) is proposed to be amended to revise the time period covered by the economic feasibility study and pro forma balance sheet and profit and loss statement, currently required as part of a charter application, to be three years of operation rather than five years of operation. This change reflects the time period for such reports required under Federal standards. N.J.A.C. 3:1-2.3(a)3 is also proposed to be amended to specifically provide that the biographical information form to be filed shall be in the form of the Federal Financial Institutions Examination Council (FFIEC) Interagency Biographical and Financial Information Report in use at the time of application. The information required includes: personal information (name, address, etc.); employment record; education and professional credentials; business and banking affiliations; legal matters; and financial information. This proposed change also reflects the form of the report required to be filed for charter applications under Federal guidelines, and codifies existing Department practice. Similarly, N.J.A.C. 3:1-2.3(a)9 is proposed to be amended to require applicants to include a business plan in the form of the FFIEC Interagency Model Business Plan Guidelines. These guidelines require that a business plan include a description of the business; a marketing plan; a management plan, provision for records, systems and controls; a financial management plan; and provisions for monitoring and

revising the plan. This proposed change also reflects requirements imposed by applicable Federal regulations and codifies existing Department practice.

Moreover, the rule is proposed to be amended to require that fingerprint cards be provided to reflect the requirements under N.J.S.A. 17:9A-18.1, effective December 24, 2003. The statute permits the Commissioner of Banking and Insurance (Commissioner) to waive the fingerprint criminal history record check where there is evidence that the applicant has had a criminal history record check performed by a Federal regulator. Accordingly, the proposed amendment provides that the fingerprint card is not required where the applicant applies for deposit insurance, as this would entail a criminal history record check by Federal regulators. The fingerprint card requirement also does not apply in the case of interim charter applications pursuant to proposed N.J.A.C. 3:1-2.2(a)10. As discussed below, the Department is proposing amendments whereby interim charters will not be considered charter applications for purposes of this subchapter. Accordingly, the fingerprint card requirement would not apply.

The Department is also proposing new N.J.A.C. 3:1-2.2(d) to provide specific procedures to address so-called “interim charter” situations. Such an application would be for an institution formed solely to exist on an interim basis as part of a merger transaction or company reorganization, where the entity will not be open to the public, the entity is not required to maintain deposit insurance under applicable Federal law, the institution will not be the surviving entity on the transaction and a certificate of authority would not be required to be issued pursuant to State law. Currently, all of the existing filing requirements apply to such applications. The Department has determined that where an entity is formed for an intermediate purpose and will not be the surviving entity, review of all of the submissions required of an applicant for a new charter application is not necessary or appropriate in order to protect the interests of the public.

Accordingly, under the proposed amendment, an applicant for an interim charter will only be required to file a copy of the entity's certificate of incorporation; the merger agreement, if applicable; the subscription agreement from the parent organization, if applicable; the board resolutions approving the transaction and the required filing fee.

The Department is also proposing new N.J.A.C. 3:1-2.2(e) to reflect that personal information and the business plan filed pursuant to N.J.A.C. 3:1-2.2 shall be confidential and shall not be considered a public record for purposes of the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. (OPRA). This reflects the provisions of OPRA at N.J.S.A. 47:1A-1.1 that provide that trade secrets and proprietary, commercial or financial information, and information which, if disclosed, would give an advantage to competitors, is not considered a government record for purposes of that Act, as well as confidentiality provisions set forth in N.J.A.C. 3:3-2.1.

The Department also notes that amendments to N.J.A.C. 3:1-2.3 have been previously proposed (see 38 N.J.R. 5(a)) to delete references to application fees in the rules required for branch applications by State-chartered institutions in accordance with the requirements of the Dedicated Funding Act, N.J.S.A. 17:1C-33 et seq. This statute provides for the assessment of entities subject to oversight and regulation by the Division of Banking in the Department to provide a funding mechanism for the Division's activities. Pursuant to N.J.S.A. 17:1C-45, regulated entities that pay the assessed amounts are exempt from all other fees or charges, except those specified as preserved in the Dedicated Funding Act. For this same reason, the references to filing fees related to the closing of branch offices in N.J.A.C. 3:1-2.15 are proposed to be deleted as no longer necessary.

N.J.A.C. 3:1-2.4(c) is proposed to be deleted as no longer necessary. This rule relates to applications by an out-of-State bank to relocate a branch office from a location in this State to

another location in this State. The Department believes that such applications are already covered under N.J.A.C. 3:1-2.4(b). In addition, the Department proposes to delete the requirement in subsection (b) that the Department post notice of an application by an out-of-State bank or association with at least one branch office in this State to establish additional branch offices in this State. The Department does not believe that this provision is necessary insofar as N.J.S.A. 17:9A-20.3 does not require prior notice to the Department of such action, and requires only that notice be provided to trade associations.

The Department is also proposing to revise the hearing procedures set forth in N.J.A.C. 3:1-2.5 to reflect current procedures, minimize confusion and help ensure that all interested persons are afforded an opportunity to present an objection to a charter application pursuant to law.

The rule is proposed to be amended to provide that when a charter application is filed with the Department, the Department shall so advise, in writing, the New Jersey Bankers Association and the New Jersey League of Community Bankers, or their successor organizations. Notice of the application shall also be posted on the Department's website. This reflects the current practice whereby the Department, as a courtesy, has advised the Association and League that a charter application has been filed for informational purposes. However, there has been confusion that this notice constituted notice that the application was complete and thus the timeframes for scheduling a hearing in accordance with N.J.S.A. 17:9A-11 had begun. The proposed change should help eliminate this confusion.

N.J.A.C. 3:1-2.5(b) is amended to provide that the Department shall not send notice to the applicant setting forth the hearing date until the Department finds that a charter application is complete, rather than only when the application is "complete." This also reflects the current

procedure. The Department also proposes to amend the rule to provide that the Department shall advise through a notice, in writing, the New Jersey Bankers Association and New Jersey League of Community Bankers of the hearing date. The rule is also proposed to be amended to provide that the notice provided by the Department shall also advise of the procedures for filing an objection, consistent with the requirements set forth in proposed new N.J.A.C. 3:1-2.5(d)6.

N.J.A.C. 3:1-2.5(d) is proposed to be amended to require that the notice published in newspapers pursuant to N.J.A.C. 3:1-2.5(c) include a statement that an objection to the application may be filed with the Department no later than 10 business days prior to the scheduled hearing date. In addition, the rule is proposed to be amended to provide that the statement shall also list the requirements for an objection to be considered by the Department pursuant to N.J.A.C. 3:1-2.7(b). The Department believes that this will help ensure that interested persons are fully aware of their rights to file an objection, the timeframes within which to do so, and the requirements that must be met for an objection to be considered by the Department set forth at N.J.A.C. 3:1-2.7(b). Other amendments are proposed to be made to this rule to update citations or as a matter of form.

Consistent with the timeframes noted above, N.J.A.C 3:1-2.7(a) is proposed to be amended to provide that an objection to a new charter application must be filed no later than 10 business days prior to the scheduled hearing date. The existing timeframes are tied to the last date of publication of the notice of application or ten business days after the mailed notice from the applicant. These dates may vary and may cause confusion in determining the deadline for a particular objector. Since notice is published on the Department's website, which provides notice to all interested parties worldwide, and the notice will contain the proposed hearing date, the Department believes that it is more appropriate, and will provide more certainty, to provide a

definitive, uniform deadline for the filing of objections prior to the hearing date. The Department is also proposing to amend N.J.A.C. 3:1-2.7(b) to provide the manner by which an objector may file “proof” that the objection and a request for a copy of the application were mailed to the applicant. Other amendments are made to N.J.A.C. 3:1-2.7 as a matter of grammar or form.

The Department also proposes new N.J.A.C. 3:1-2.7(g) to address situations where no objections have been filed on a new charter application. The Department proposes to provide that where a charter application is filed and no objections have been filed, the hearing on that charter application shall not constitute a “contested case” under the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Rather, the hearing shall be an investigative, fact-finding hearing. The proposed amendment also provides that the hearing shall, at the Commissioner’s discretion, be conducted by the Commissioner or his or her designee. The Department believes that, where no objections are filed, no person is “contesting” the charter application and the hearing required under N.J.S.A. 17:9A-11 is akin to an investigative-hearing wherein the Commissioner conducts an investigation to determine whether the requirements for approving the charter application set forth in that statute have been met. By providing that the hearing be an investigative-type hearing, the Commissioner may designate a person to act as a hearing officer to hear the matter and report to him or her a recommendation for consideration and action by the Commissioner. This provides for the most efficient use of the Department’s resources, while ensuring that the hearing on the charter application is done in a timely manner. Moreover, the rights of the applicant to a hearing are not infringed insofar as the applicant continues to be permitted to have a hearing on the application at which the applicant has an opportunity to present oral testimony and answer questions.

The Department proposes to amend N.J.A.C. 3:1-2.8(a) to provide a specific timeframe for objections for branch applications to be filed. The Department is also proposing to delete reference to “communication terminal branch” in N.J.A.C. 3:1-2.8(h), as such entities are no longer considered a branch office. In addition, the Department is proposing other amendments as a matter of form.

The Department proposes to delete the reference in N.J.A.C. 3:1-2.10(c) to the Commissioner holding presentations in private to provide that all oral presentations shall be in public without exception, which codifies existing practice.

The Department also proposes to delete the specific time periods set forth in N.J.A.C. 3:1-2.10(d) and (e) for presentations by both the applicant and any objectors at a hearing. The Department believes that it is more appropriate to provide discretion to the presider at the hearing to limit the time for oral presentations as deemed necessary to afford all objectors appearing a reasonable opportunity to present oral testimony, consistent with the need for an orderly hearing to be concluded within one business day.

New N.J.A.C. 3:1-2.13(c) is proposed to provide specifically that meetings called by the Department with the applicant for purposes of clarifying issues raised in an application shall not constitute a “pre-hearing conference” pursuant to N.J.A.C. 3:1-2.13. This codifies existing procedures whereby the Department may pose various questions to an applicant without directing parties to appear formally before the Commissioner.

N.J.A.C. 3:1-2.14 is proposed to be amended to specifically refer to the applicant or objector, as applicable, rather than “other interested persons” in subsection (b), as a matter of form. The Department is also proposing to amend N.J.A.C. 3:1-2.14(c) to provide that questions may be addressed to applicants, objectors and witnesses after their presentations by the presiding

officer or the Department hearing panel. The Department is also proposing to delete the ability of applicants or objectors to pose questions to each other after their presentations. The purpose of the hearing is to obtain information from the applicant and to permit those desirous of doing so to present their views regarding the application. There is no provision in N.J.S.A. 17:9A-11 that permits a hearing to be conducted by the objector or applicant under the Department's auspices. The rule is also proposed to be amended to eliminate the requirement that the applicant or objector shall concisely summarize their positions as unnecessary, and to require that witnesses be sworn. In most hearings conducted by the Department, fact-finding or otherwise, witnesses appearing before the Commissioner, hearing officer or Department hearing panel, have been sworn. This change will help ensure consistency with existing procedures the Department utilizes in other contexts. An amendment is also proposed to set forth that in contested cases cross-examination shall be permitted in accordance with N.J.S.A. 52:14B-10.

The rule is also proposed to be amended to codify the existing requirement that a verbatim transcript shall be made of all hearings conducted at the Department and that the applicant shall arrange for a stenographer for the hearing. The rule is also proposed to be amended to provide that copies of the transcript may be obtained directly from the stenographic service that created the transcript. In the alternative, a copy of the transcript will be available for inspection at the Department's offices. Copies of the transcript shall not be made by the Department. This codifies existing practice and reflects the procedures used by the Department in other hearings. This also recognizes that the transcript is the work product of the entity that created it.

N.J.A.C. 3:1-2.16 is proposed to be amended to correct the addresses for websites set forth for various officially recognized sources as a matter of form.

The Department also proposes to amend N.J.A.C. 3:1-2.18(a) to codify an existing condition for approval of charter applications, specifically that the depository shall file a monthly report with the Department containing information specified in the proposed amendment.

The Department is also proposing to repeal N.J.A.C. 3:1-2.22. This rule deals with procedures for appeals from an existing order of the Commissioner. The Department believes that this rule is not necessary in that procedures for appeals from final agency decisions are set forth in the Rules Governing the Courts of the State of New Jersey at R. 2:2-3(a).

The Department also proposes a new rule at N.J.A.C. 3:1-2.22 to provide specific procedures for applications for conversion from a Federally-chartered depository institution to a State-chartered depository institution. Such applications heretofore have been considered a new charter application, with the commensurate filing and fee requirements. The Department has determined that this procedure is not necessary. The procedure is not expressly required by statute nor is it necessary in order to determine whether the proposed conversion complies with applicable law. These situations involve an existing Federally-chartered entity, in good standing, that has been subject to ongoing review and regulation by an applicable Federal regulator seeking to convert its existing charter to a State charter. The entity is not seeking to commence business but rather to change its chartering agency. In these cases, the Department does not believe that a new charter application is necessary for the Commissioner of Banking and Insurance to determine whether the conversion satisfies the requirements for such conversion(s) set forth in N.J.S.A. 17:9A-149 et seq., 17:12B-224 and 225, and 17:16M-1 et seq., as applicable. For purposes of application requirements and procedures, the Department believes that such applications are more akin to corporate reorganizations. Accordingly, the Department proposes to provide a procedure for an expedited review that meets the specified criteria set forth

in proposed N.J.A.C. 3:1-2.22(b). Where the applicant for a charter conversion does not qualify for an expedited review pursuant to that proposed rule, the applicant would be required to file the information set forth in proposed N.J.A.C. 3:1-2.22(d).

Commensurate with the change in filing procedures reflected in the proposed amendments to N.J.A.C. 3:1-2.22, the Department proposes to amend N.J.A.C. 3:1-2.23 to provide an appropriate fee for the review of an application for conversion of a Federally-chartered depository to a State-chartered depository of \$5,000, and a fee for an expedited review of such an application of \$2,500. In addition, the Department is proposing to provide that applications where the ultimate goal is for conversion from a Federally-chartered savings and loan to a State-chartered savings bank, the required applications shall be considered simultaneously. Under the current statutory framework, such a conversion requires two steps: first, the conversion to a State-chartered savings and loan pursuant to N.J.S.A. 17:12B-224 and 225; and second, conversion from a State savings and loan to a State-savings bank. Insofar as the information required and the standards of review are substantially similar for the two applications, in order to streamline this process, the Department proposes to consider the two applications simultaneously.

A 60-day comment period is provided for this notice of proposal, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed amendments, repeal and new rule will further clarify and codify existing procedures with respect to charter and branch applications, as well as streamline the process with

respect to applications for conversion from a Federally-chartered bank to a State-chartered bank and for interim charters. The proposed amendments clarify the procedures for hearings on charter applications and the timeframes within which objections must be filed, which will benefit applicants and interested parties. In addition, by clarifying and codifying existing procedures, the Department may be in a position to act more expeditiously on charter applications, while ensuring that those desiring to be heard have an opportunity to do so. The proposed repeal eliminates procedures for appeals of decisions of the Commissioner, which are no longer necessary since procedural requirements on appeals from final agency decisions are set forth in the Court Rules as discussed in the Summary above. Deleting these unnecessary rules benefits regulated entities and the public by helping to avoid confusion regarding the proper procedure to utilize for appeals from orders of the Commissioner. Further, as discussed in the Summary above, proposed new N.J.A.C. 3:1-2.22 provides specific procedures for applications for conversion from a Federally-chartered depository institution to a State-chartered depository institution. This will benefit entities seeking to convert their existing charter by providing an appropriate process to enable the Commissioner to determine whether the application satisfies the requirements for conversion set forth in applicable law noted in the Summary above. Accordingly, the Department will continue to be in a position to review all applications to ensure that they are in the public interest, while streamlining the process to eliminate unnecessary procedures, thereby enabling entities to begin serving the public more expeditiously. Finally, these proposed changes may encourage qualifying entities to seek a State charter or branch thereby increasing competition and consumer choice. This, in turn, should benefit the public generally.

Economic Impact

Applicants will be required to bear any costs associated with filing the required information, such as biographical and financial forms and business plans, in the required formats. Entities granted a charter also will be required to bear costs associated with filing monthly reports containing specified information. The Department does not believe that this should result in any undue burden on applicants because the information to be supplied is presently required or is otherwise readily available, as its maintenance is consistent with good business practice. Similarly, depository institutions seeking to convert from a Federal charter to a State will be required to incur costs associated with filing the required information. The Department does not believe that any additional professional services will be required to be utilized to comply with these proposed amendments and new rule.

The Department has proposed streamlined procedures on applications for initial charters from newly formed depositories, proposed a new rule to provide specific streamlined procedures for the conversion by an existing institution from a Federally-chartered to a State-chartered depository, and proposed amendments to address filings for interim charters. Costs to applicants should be commensurately reduced as a result of those procedures. In addition, the fees related to charter conversions are proposed to be reduced. As a result, the costs to applicants who make these types of filings will be reduced. Moreover, by clarifying and codifying the procedural requirements for charter and branch applications, confusion regarding such procedures should be reduced. This, in turn, should reduce costs associated with incorrect or incomplete filings. Accordingly, the overall cost related to the procedures set forth in the rules as proposed to be amended should be reduced.

Although under the proposed amendments the Department would initially collect lower fees from depositories converting from a Federal to a New Jersey charter, subsequent to its conversion such an institution would annually pay the dedicated funding assessments in amounts calculated to offset the cost of its regulation by the Department, as set forth in new N.J.A.C. 3:5 proposed at 38 N.J.R. 20(a).

Federal Standards Statement

Federal requirements and standards are not expressly applicable to the requirements addressed by these proposed amendments, repeal and new rule. The proposed amendments, repeal and new rule relate to charter and branch applications for entities pursuant to Title 17 of the New Jersey Statutes. However, there are commensurate requirements with respect to charter applications under Federal law for Federal charters set forth at 12 U.S.C. §§ 21 et seq., and 12 U.S.C. §§ 1461 et seq. The existing rules, and the proposed amendments, repeal and new rule, attempt to maintain consistency with the requirements applicable to both Federally-chartered and State-chartered institutions, subject to the specific requirements of State law related to charter, branch and conversion applications.

Jobs Impact

The Department does not anticipate that any jobs will be generated or lost as a result of the proposed amendments, repeal and new rule. However, as noted in the Economic Impact above, to the extent the proposed amendments, repeal and new rule provide additional certainty and minimize confusion with respect to the procedural requirements for charter and branch applications, and streamline the process for conversion and interim charter applications, they

may have a positive effect on the business climate in New Jersey as more depositories may seek to enter the State.

The Department invites commenters to submit any data or studies involving the jobs impact of the proposal together with their comments on other aspects of the proposal.

Agriculture Industry Impact

The proposed amendments, repeal and new rule will not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The proposed amendments, repeal and new rule may apply to “small businesses,” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. To the extent the proposed amendments, repeal and new rule apply to small businesses they will apply to depositories domiciled in New Jersey seeking to establish a new branch in New Jersey, to establish an interim chartered institution as part of a reorganization, or to persons and entities seeking to object to a charter or branch application. The affected parties will be required to bear any costs associated with the filing, reporting, and procedural requirements set forth in the proposed amendments and new rule. However, the Department does not believe that the proposed amendments, repeal and new rule will impose any undue burden on small businesses. As noted in the Summary above, the proposed amendments and repeal generally clarify and codify existing procedures with respect to charter and branch applications and hearings thereon, and to appeals from orders of the Commissioner, and eliminate unnecessary filings. The proposed new rule provides a specific procedure for conversions from Federally-chartered to

State-chartered depository institutions, as discussed in the Summary above. Accordingly, as was discussed under Economic Impact above, costs should be reduced. Any additional information to be reported is either currently required to be filed in the format proposed to be codified, or should be readily available, as the maintenance of such information is consistent with good business practice. No new professional services should be required in order to comply with the proposed amendments and new rule.

The proposed amendments, repeal and new rule do not provide any different reporting, recordkeeping or other compliance requirements based on business size. The proposed amendments and new rule establish procedures that will enable the Commissioner to properly evaluate a charter or branch application consistent with N.J.S.A. 17:9A-1 et seq. or 17:12B-1 et seq., as well as procedures for hearings provided for in those statutes. The proposed repeal eliminates an unnecessary and duplicative procedure for appealing a decision of the Commissioner. The procedural requirements applicable to such appeals are addressed in R. 2:2-3(a). The standards for review and approval of charter, branch and conversion applications do not vary based on business size. These reviews are intended to enable the Commissioner to determine whether an application for an initial charter or a conversion satisfies the applicable statutory standards, including ensuring that approval of such an application is not against the interest of the public. These goals do not vary based on business size. Accordingly, in order to effectuate these goals and the intent of the Legislature as expressed in the aforementioned statutes, the proposed amendments do not provide any differentiation in compliance requirements based on business size.

Smart Growth Impact

The proposed amendments, repeal and new rule will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the rule proposed for repeal may found in the New Jersey Administrative Code at N.J.A.C. 3:3-2.22.

Full text of the proposed amendments and new rule follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 2. PROCEDURAL RULES

3:1-2.2 Charter applications

(a) [Every] **With the exception of applications made by entities as described in (d) below, every** applicant for a depository charter is required to file with the Department the following data in addition to the statutorily required certification of incorporation and affidavits required by [N.J.A.C] **N.J.S.A.** 17:9A-9, 17:12B-14 and 17:12B-246:

1. An economic feasibility study delineating the proposed trade area to be served by the applicant, as well as yearly deposit estimates for the first [five] **three** years of operation;

2. A pro forma balance sheet and profit and loss statement which shall project the financial condition and net income or loss of the depository on an annual basis for a period of [five] **three** years and shall indicate the anticipated break-even date, and a business plan for the depository;

3. [Departmental forms completed by each incorporator and prospective officer and director containing biographical and financial information] **Biographical forms for each director, in the form of the Federal Financial Institutions Examination Council Interagency Biographical and Financial Information Report in use at the time of application, incorporated herein by reference. Copies of the report may be obtained on the FDIC website at www.fdic.gov,** and authorizations by such persons for background checks;

4. - 8. (No change.)

9. A business plan in the form of the Federal Financial Institutions Examination Council Interagency Model Business Plan Guidelines in use at the time of

application, incorporated herein by reference. Copies of the Guidelines may be obtained on the FDIC website at www.fdic.gov;

10. Fingerprint cards in a form obtained from the Department, except where the applicant applies for deposit insurance or in the case of an interim charter application pursuant to (d) below;

[9.] **11.** (No change in text.)

[10.] **12.** Any changes in (a)1 through [9] **11** above.

(b) - (c) (No change.)

(d) Where a charter application is made for an institution formed solely to exist on an interim basis as part of a merger transaction or company reorganization, and the entity will not be open to the public, is not required to maintain deposit insurance under applicable Federal law, a certificate of authority is not required to be issued pursuant to State law and the institution will not be the surviving entity in the transaction, the following shall be filed with the Department:

1. The entity's executed certificate of incorporation;

2. If applicable, the executed merger agreement pursuant to N.J.S.A. 17:9A-134;

3. If applicable, the executed subscription agreement from the parent organization;

4. A certified copy of the board resolutions approving the transaction;
and

5. The filing fee required by N.J.A.C. 3:1-2.23(a)1.

(e) Pursuant to N.J.A.C. 3:3-2.1, personal information and the business plan filed pursuant to this section shall be confidential and shall not be subject to public inspection or copying pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

3:1-2.4 Branch application of out-of-State banks and out-of-State associations

(a) (No change.)

(b) An out-of-State bank or out-of-State association, that has at least one branch office in this State, may establish additional branch offices in this State by filing a notice with the Department, so long as the out-of-State bank or out-of-State association is adequately capitalized, will be adequately capitalized and managed after the branch is established and has achieved sufficient compliance with the Community Reinvestment Act. [The Department shall post the notice on the Department's website at www.njdobi.org within a week of receipt. In addition, the] **The** out-of-State bank or out-of-State association shall send notice to the New Jersey Bankers Association, **and** the New Jersey League of Community Bankers, [and/] or their successor organizations, if any , for publication in their weekly bulletins.

[(c) An application by an out-of-State bank or out-of-State association to relocate a branch office from a location in this State to another location in this State shall contain the following items:

1. A copy of the application filed with the home state regulator and with the appropriate Federal regulator;
2. The required filing fee; and
3. All other documentation required of a specific applicant by the Commissioner or which the applicant wishes the Department to consider.]

3:1-2.5 Charter applications; notice and publication

(a) When a charter application is filed with the Department, the Department shall so advise, in writing, the New Jersey Bankers Association, and the New Jersey League of Community Bankers, or their successor organizations, if any. Notice of receipt of the application shall also be posted on the Department's website at www.njdobi.org.

[(a)] **(b)** When **the Department finds that** a charter application is complete, the Department shall send notice to the applicant setting forth a hearing date. The Department shall also post notice of the hearing on the Department's website **at www.njdobi.org** within [a] **one** week of sending the notice. In addition, the Department shall [send notice to] **advise through a notice, electronically or in writing,** the New Jersey Bankers Association, and the New Jersey League of Community Bankers, [and/]or their successor organizations, if any, [for publication in their weekly bulletins.] **of the hearing date. The notice shall also contain a statement that an objection, if any, shall be filed with the Department no later than 10 business days prior to the scheduled hearing date and list the requirements for an objection to be considered by the Department as set forth at N.J.A.C. 3:1-2.7(b).**

[(b)] **(c)** (No change in text.)

[(c)] **(d)** The notice shall contain the following:

1. - 3. (No change.)

4. The amount of capital stock and surplus, or the amount of capital deposits, whichever is applicable; [and]

5. The hearing date[s.]; **and**

6. A listing of the requirements for an objection to be considered by the Department as set forth at N.J.A.C. 3:1-2.7(b) and a statement indicating that any

objections to the application must be filed with the Department no later than 10 business days prior to the scheduled hearing date.

[(d)] **(e)** The incorporators shall cause a copy of the notice in the form prescribed in [(b)] **(d)** above to be forwarded to the chief executive officer of every banking institution having an office within five miles of the proposed location, and to such other offices as the Commissioner shall designate, not more than 10 calendar days after formal notification of the formal hearing date and at least three weeks before the scheduled hearing. Regarding applications of savings and loan associations, the incorporators shall also cause a copy of the notice in the form prescribed by [(b)] **(d)** above to be forwarded to the chief executive officer of every savings and loan association having an office within the county where the principal office of the State association is to be located, if not within five miles.

3:1-2.6 Branch applications; notice and publication

(a) When a branch application is accepted, the Department shall send notice to the applicant and shall also post notice of the acceptance on the Department's website at www.njdoabi.org. The Department shall also advise, in writing, the New Jersey Bankers Association, and the New Jersey League of Community Bankers, [and/]or their successor organizations, if any, of the acceptance of the application. Each notice shall contain the following:

1. - 5. (No change.)

(b) (No change.)

3:1-2.7 Charter applications; objections and hearings

(a) An objection to a new charter application of a depository [must] **, if any, shall** be filed in the Department [within five] **no later than 10** business days [from the last day of publication or notice of application or within 10 business days after receiving mailed notice from the applicant as provided in these rules, whichever is later] **prior to the scheduled hearing date.**

(b) To be considered by the Commissioner, an objection shall be in writing and **shall** contain:

1. - 3. (No change.)

4. An indication as to whether the objector [will object] **intends to appear personally** at the charter hearing. A fee of \$750.00 shall accompany a notice of intent to appear at a charter hearing, except that a non-profit public interest objector shall instead include a \$100.00 fee; and

5. [Proof] **A certification** that the objection **containing the information set forth in (b)1 through 4 above** and a request for a copy of the application were mailed **or delivered** to the applicant, **and proof of mailing or delivery to the applicant of the objection and request.**

(c) Upon receipt of notice that an objection has been filed, an applicant shall, within five calendar days, forward and deliver to the objector copies of the application and all supportive data submitted relative to the application. The applicant shall file with the Commissioner proof of delivery to and receipt by the objector of this data. Within seven days after receiving this data, the objector may then file additional comments with the Department regarding matters contained in the application, and shall send copies of all comments to the applicant.

(d) The Commissioner may [dismiss] **determine not to consider** the objection of any objector not complying with this section[, and may consider noncompliance by an applicant when considering the charter application].

(e) (No change.)

(f) A formal hearing, pursuant to the Administrative Procedure[s] Act, N.J.S.A. 52:14B-1 et seq., shall be held on all charter applications **where an objection(s) has been filed in accordance with this rule**. Only those objectors which comply with this section shall be permitted to appear at the hearing.

(g) Where no complying objections have been filed, the hearing on the charter application shall not constitute a “contested case” under the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The hearing shall be an investigative, fact-finding hearing. The hearing shall, at the Commissioner’s discretion, be conducted by the Commissioner or his or her designee who shall report to the Commissioner and advise him or her on the matter delegated. The Commissioner shall make a determination or issue an order, based upon that advice and report, as he or she shall, in his or her discretion determine, and that determination or order shall have the same force and effect as if the Commissioner had conducted the hearing personally, and shall constitute a final agency decision.

3:1-2.8 Branch applications; objections and oral presentations

(a) An objection to a branch application must be filed with the Department within 10 days of the publication of the notice prescribed by N.J.A.C. 3:1-2.6(a) on the Department's website, or 30 days after that day if an extension is requested in writing within the 10-day period. An objection to a mini-branch application must be filed within 20 days after publication. An

objection to an application to branch accepted as expedited as provided in N.J.A.C. 3:1-2.3(g) shall be filed not later than [the time set forth in the notice published pursuant to N.J.A.C. 3:1-2.6] **10 days after publication of the notice as set forth above.**

(b) An objection shall be in writing and contain:

1. - 3. (No change.)

4. An indication as to whether the objector [applies] **requests** to have a branch hearing. A fee of \$750.00 shall accompany an application for a branch hearing, except that a non-profit public interest objector shall instead include a \$100.00 fee. If it is later determined that an oral presentation will not be held, the fee will be returned to each of the objectors requesting an oral presentation; and

5. (No change.)

(c) - (d) (No change.)

(e) The applying depository may file an answer to any substantial objection [until] **within** 15 days after receipt of written notice from the Commissioner that such protest is considered substantial by furnishing four copies of the answer to the Commissioner.

(f) The Department may grant a request for oral presentation on [applications for] branch applications only if:

1. The objector requesting the oral presentation has filed and perfected an objection and oral presentation request **in accordance with this section;** and

2. The **Commissioner finds that the** objector requesting the oral presentation has presented sufficient reasons indicating that it is necessary and warranted and that the matter cannot be resolved on the papers.

(g) (No change.)

(h) There shall ordinarily be no oral presentations on minibranch, [communication terminal branch,] auxiliary or limited facility branch office applications.

3:1-2.9 Insufficiency of data in support of application; hearing

(a) (No change.)

(b) All papers required to be filed [must] **shall** be received in the Department by close of business on the date due. If the due date falls on a weekend or holiday then the filing [must] **shall** be effected by close of business on the very next business day. Upon good cause shown, extensions of time within which to file must be considered if requested in writing with notice to all parties at least five days prior to due date.

(c) (No change.)

3:1-2.10 Oral presentations

(a) - (b) (No change.)

(c) Every oral presentation shall be open to the public [unless the Commissioner shall determine that a private presentation would be in the public interest].

[(d) Oral presentations on all applications, shall be strictly limited to a total of seven hours. The applicant shall be limited to three hours to present information in support of its application. The objectors shall be limited to two hours for the presentation of affirmative and rebuttal information. A shorter or longer time may be prescribed by the Department with prior notice to all parties.

(e) When multiple objectors appear through separate counsel, each shall be afforded a pro rata portion of the time allotted to objectors, unless otherwise agreed upon by all objectors.]

(d) The hearing officer, if designated by the Commissioner pursuant to N.J.A.C. 3:1-2.7(g), or where an oral presentation is conducted pursuant to N.J.A.C. 3:1-2.8, may limit the time for any oral presentation as deemed necessary to afford all objectors appearing an opportunity to present oral testimony, consistent with the need for an orderly hearing to be concluded within one business day.

3:1-2.13 Prehearing conference

(a) Prior to any hearing, or oral presentation, the [presiding] **hearing** officer may, in his or her discretion, direct all parties and counsel to appear before him or her for a prehearing conference for any or all of the following purposes:

1. - 3. (No change.)

(b) Such conference, in the discretion of the [presiding] **hearing** officer, need not be recorded, but the [presiding] **hearing** officer shall enter in the record an order signed by the parties which recites the results of the conference. Such order, a copy of which shall be furnished to each party, shall include the [presiding] **hearing** officer's rulings upon matters considered at the conference, together with appropriate directions, if any, to the parties; and such order shall control the subsequent course of the proceedings unless notified at the oral presentation for good cause shown by appropriate order of the [presiding] **hearing** officer.

(c) Meetings called by the Department with the applicant for purposes of clarifying issues raised in an application shall not constitute a “prehearing conference” pursuant to (a) and (b) above.

3:1-2.14 Procedure for oral presentation

(a) Both applicant and objector may raise issues and present information only if same have been affirmatively raised in the application, the objection, or the comprehensive objection. All other matters will be excluded unless the [person presiding] **hearing officer, if designated,** rules otherwise, and then only for good cause shown.

(b) All studies, reports or the like may be offered only if previously submitted to the Department and [other interested persons] **the applicant or objector, as applicable,** pursuant to the [presiding person's] **hearing officer's** direction.

(c) The applicant and the objector shall each be permitted to make an opening statement, stating precisely what information they will present. The applicant and participants may then present witnesses, materials and data. Questions may be addressed to the applicants, objectors and witnesses after each of their presentations by the [presiding] **hearing officer or Department hearing panel.** [, applicant or objector The applicant and objector shall then concisely summarize their positions]. Witnesses shall [not] be sworn. **Cross-examination shall be permitted in contested cases in accordance with N.J.S.A. 52:14B-10.**

(d) **A verbatim transcript shall be made of all hearings conducted at the Department. The applicant shall arrange for a stenographer for the hearing.** The applicant and objectors shall bear a pro rata share of the transcript costs for the transcripts required by the [department] **Department** and all other regulatory agencies requesting same. **Copies of the transcript may be obtained directly from the stenographic service that created the transcript. In the alternative, a copy of the transcript will be available for inspection at the Department's offices. Copies of the transcript shall not be made by the Department.**

3:1-2.15 Closing of branch offices

(a) (No change.)

(b) If a bank, savings bank or savings and loan association acquires a branch or deposits of a branch from the Federal Deposit Insurance Corporation or has an option to purchase a branch, and closes it within 180 days, or if it sells a branch to another depository which operates the office as a branch, it may comply with this rule by filing a Certificate of Discontinuance with the Commissioner [along with the required fee].

(c) (No change.)

(d) Notice requirements for closing of branch offices are as follows:

1. Beginning within 10 calendar days after notification [of] **to** the Department, the bank, savings bank or savings and loan association shall publish notice of the proposed closing once a week for two successive weeks in a newspaper designated by the Commissioner, which is published and circulated in the municipality in which said branch is to be closed, or if there be no such newspaper, then in a newspaper of general circulation in the municipality. The institution shall include in the notice the name of the institution, the location of the branch office which will be closed and the prospective date of closing, the location of the depository's nearest branch office, and a statement indicating that all comments to the closing of the branch may be made to the institution and to the Department of Banking, along with the mailing address of the Department and the institution.

2. - 4. (No change.)

(e) (No change.)

(f) The Commissioner may suspend the notice requirements [on] **of** this rule in the event of an emergency or a supervisory merger or acquisition, or when otherwise in the public interest.

(g) (No change.)

3:1-2.16 Officially recognized data sources

(a) The Department shall take official notice of one or more of the following data sources to test the accuracy of data submitted in connection with applications and objections, to resolve factual discrepancies and to weigh the accuracy, reasonableness and applicability of documentary and oral evidence before it:

1. - 18. (No change.)

19. Thomson Financial Publishing, 4709 W. Gulf Road, Skokie, IL 60076, [www.tpf.com] www.tfp.com, Polk's World Bank Directory (published semiannually);

20. - 23. (No change.)

(b) - (c) (No change.)

3:1-2.18 Charter applications; conditions for approval

(a) The Commissioner shall condition approval of a charter application by a depository on the following factors:

1. - 4. (No change.)

5. For the first three years after issuance of the certificate of authority, the depository shall maintain:

i. A tier I capital-to-assets ratio, as that ratio is defined in 12 C.F.R. § 325.2(k), that is at least eight percent of the bank's total assets unless prior written consent has been received from the Commissioner permitting a lower ratio; and

ii. A fully funded reserve; [and]

6. The depository shall, during the period from the date of the decision approving the charter application until the date of the commencement of business, provide a monthly report to the Chief Examiner of Applications by the 10th calendar day of the month following the month being reported. The report shall include the following:

i. The depository's progress at raising capital;

ii. The depository's progress with respect to the construction of its facilities;

iii. A status report with respect to acquiring staffing and filling executive positions;

iv. A status report with respect to any other regulatory approvals that the depository is seeking;

v. A status report that summarizes the depository's monthly and total expenditures to date; and

vi. Any other matters that management deems relevant; and

[6.] **7.** (No change in text.)

3:1-2.22 Charter conversions

(a) Applications for conversion from a Federally-chartered depository institution to a State-chartered institution shall not be considered a charter application for

purposes of this subchapter. Applications for such a conversion shall be filed in accordance with the requirements set forth in (b) through (d) below.

(b) A Federally-chartered depository that directly or through a predecessor bank, savings bank or association by merger or other reorganization has been in business for at least three years, and which is well capitalized, adequately managed, and if applicable, has received in its most recent examination under the Community Reinvestment Act of 1977, 12 U.S.C. §§2901 et seq., a rating of not less than "satisfactory record of meeting community credit needs," or its equivalent, may apply for expedited approval for conversion by filing for such expedited approval with the Commissioner. The application shall include the required filing fee and shall contain:

1. A certification by the depository, in a form specified by the Commissioner, that includes the following:

i. A statement that the depository meets the criteria set forth in (b) above;

ii. The amount of the required filing fee;

iii. A statement that the depository is entitled to request expedited processing and does request such processing;

iv. The executed certificate of incorporation;

v. A copy of the applicant's business plan for the next succeeding three year period, in the form of the Interagency Model Business Plan Guidelines in use at the time of application, incorporated herein by reference. Copies of the Guidelines may be obtained on the FDIC website at www.fdic.gov;

vi. A plan of conversion;

vii. Biographical forms for each director, in the form of the Interagency Biographical and Financial Information Report in use at the time of application, incorporated herein by reference. Copies of the report may be obtained on the FDIC website at www.fdic.gov. The financial information set forth in the form shall not be required;

viii. Certification from the depository that it has complied with and meets each of the requirements set forth in N.J.S.A. 17:9A-150, 17:12B-224 and 225, and 17:16M-1 et seq., as applicable, with a certification as to each item individually; and

ix. A certified copy of the resolution of the board of directors approving the conversion.

(c) The Commissioner shall issue a decision on an accepted application for expedited processing within 60 days after receipt of a completed application by the Commissioner. For good cause shown, the Commissioner may, prior to the expiration of the 60-day period, and upon written notice to the applicant, extend the time for issuing a decision an additional 60 days.

(d) Where the conversion application does not qualify for an expedited review pursuant to (b) above, the applicant shall file the following information:

1. All of the information required in (b) above;
2. A pro forma balance sheet and profit and loss statement which shall project the financial condition and net income or loss of the depository on an annual basis for a period of three years; and
3. A copy of the application filed with the applicable Federal regulator for the conversion.

(e) A Federally-chartered savings association seeking ultimately to convert to State-chartered savings bank may file the application for such conversion required under N.J.A.C. 3:32-2 contemporaneously with the application required in this section. The Department shall review and consider the two applications simultaneously.

3:1-2.23 Fees; banks and savings banks

(a) A bank or savings bank shall pay to the Commissioner for use of the State the following fees:

1. - 22. (No change.)

23. For filing for conversion of a Federally-chartered bank to a State-chartered bank\$5,000

i. In the alternative, for an expedited review.....\$2,500

(b) – (d) (No change.)