

BANKING  
DEPARTMENT OF BANKING AND INSURANCE  
DIVISION OF BANKING

Registrar and Transfer Agents

Proposed Readoption with Amendment: N.J.A.C. 3:12

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

Authority: N.J.S.A. 17:1-8.1, 17:1-15(e), 17:1C-33 et seq. and 17:9A-213.

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

Proposal Number: PRN 2008-10

Submit comments by March 7, 2008 to:

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The agency proposal follows:

**Summary**

Pursuant to N.J.S.A. 52:14B-5.1c, the rules at N.J.A.C. 3:12 Registrar and Transfer Agents will expire on May 31, 2008. The Department of Banking and Insurance has reviewed these rules pertaining to registrars and transfer agents and determined them to be necessary, reasonable and proper for the purpose for which they were promulgated, as required by the Executive Order No. 66 (1978). Therefore, in accordance with N.J.S.A. 52:14B-5.1 the rules are proposed for readoption.

Chapter 12 implements N.J.S.A. 17:9A-213, which provides that the Commissioner establish standards for qualified corporations to act as registrars and transfer agents in the State. Registrars and transfer agents have physical custody of valuable stock certificates and other securities and it is necessary to ensure that they have adequate capital, vault facilities and fidelity insurance to protect the public.

Subchapter 1, General Provisions, sets forth chapter definitions and the effect of the rule on depository institutions.

Subchapter 2 establishes the required reportings and filings with the Department of Banking and Insurance.

N.J.A.C. 3:12-2.1 sets forth the application requirements for qualified corporations prior to transacting business as a registrar, transfer agent or fiscal agent.

N.J.A.C. 3:12-2.2 requires a qualified corporation to provide its most recent financial statement and proof of fidelity insurance to a corporate client when requested.

N.J.A.C. 3:12-2.3 sets forth the requirements for a yearly examination of the qualified corporation by a public accountant or a certified public accountant (public accountants).

N.J.A.C. 3:12-2.4 sets forth the requirements for the filing of an annual report. An amendment is proposed for N.J.A.C. 3:12-2.4 to allow transfer agents for bank holding companies and financial holding companies (holding companies) to submit alternate documents, in lieu of the unqualified audited financial statement prepared by a public accountant and the opinion by a public accountant on the transfer agent's financial statement, sufficiency of internal controls and adequacy of the separation of functions required by N.J.A.C. 3:12-2.4(a)4 and 6. In lieu of those requirements, transfer agents that are owned by holding companies will be required to submit an opinion from the parent holding company's independent auditor indicating an

unqualified opinion as to the parent holding company's financial statements; a letter to the Commissioner of Banking and Insurance attesting that the parent holding company provides and will continue to provide financial support to the transfer agent; and a statement from the parent holding company's internal auditor, who shall be either a certified public accountant or a public accountant, confirming compliance with the verification requirements of N.J.A.C. 3:12-2.3(a) and offering an opinion as to the transfer agent's financial statement, sufficiency of internal controls and adequacy of the separation of functions.

N.J.A.C. 3:12-2.5 sets forth the rules concerning examination of records of qualified corporations by the Commissioner.

Subchapter 3 establishes capital requirements for qualified corporations, including minimum capital requirements, restrictions on new accounts for deficient capitalization, maximum time period for deficient capitalizations and restrictions of capital notes or debentures.

Subchapter 4 sets forth the minimum insurance requirements, including minimum fidelity insurance, adequate mail insurance and an annual review of insurance coverages by the board of directors.

Subchapter 5 sets forth the requirements for the maintenance of a business location in New Jersey and for records maintenance and safekeeping requirements. These requirements include providing a vault, a system for reconstructing records and procedures for safekeeping undeliverable stock certificates and unclaimed cash dividends. Undeliverable stock certificates and unclaimed cash dividends, as well as any other unclaimed personal property shall be subject to existing State escheat laws. Lastly, Subchapter 5 requires a qualified corporation acting as a transfer agent to provide the corporate issuer with a copy of the corporate issuer's transfer transaction journal at least once in a 12-month period.

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

### **Social Impact**

The rules proposed for readoption have a beneficial social impact by ensuring that entities that have custody of valuable stocks and securities are adequately capitalized, insured and have secure vaults in which to store the stocks and securities they are holding. The proposed amendment should benefit the parent holding companies of transfer agents by eliminating or reducing duplicative requirements.

### **Economic Impact**

The rules proposed for readoption require the Commissioner to set capital requirements for entities seeking to become qualified corporations. The impact of this requirement is that only companies with significant financial resources may act as qualified corporations. The rules also provide that qualified corporations be adequately insured. Although there is a cost to maintain such insurance, the amount of insurance required has not been changed in the rules proposed for readoption.

In addition, the costs of filing annual reports have not been raised in the rules proposed for readoption. The Department believes these costs to be minimal and the report is necessary to ensure that qualified corporations continue to meet the capital and insurance requirements. The annual report filing fee remains \$100.00 and the application fee is unchanged at \$250.00. The

readoption of these rules will have no economic effect on the general public or the public regulated.

The proposed amendment should have a positive economic effect on parent holding companies of transfer agents by minimizing the usage of outside public auditors.

### **Federal Standards Statement**

There are no Federal standards that apply to the subject matter of these rules proposed for readoption with amendment. Therefore, no Federal standards analysis is required.

### **Jobs Impact**

The Department does not anticipate that the rules proposed for readoption and amendment will result in the generation or loss of jobs. No changes in the requirements to be a registrar or transfer agent are being proposed.

### **Agriculture Industry Impact**

The Department does not expect any agriculture industry impact as a result of the rules proposed for readoption and amendment.

### **Regulatory Flexibility Analysis**

The rules proposed for readoption impose reporting, recordkeeping and other compliance requirements on “small businesses.” The Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., defines “small business” as any business resident in this State that employs fewer than 100

employees full-time, is independently owned and operated and is not dominant in the field. Many of the entities affected by the rules proposed for readoption are small businesses.

The rules proposed for readoption require that qualified corporations file an annual report with the Department. This report includes most of the information required from applicants and ensures that the entity continues to meet the qualifications to act as a Registrar and Transfer Agent. The use of accountants is a necessary cost of business to ensure the financial adequacy and compliance of the qualified corporations. The proposed amendment allows for the use of a holding company's internal auditor for part of the annual report of transfer agents that are owned by holding companies, thereby minimizing the costs associated with a full examination by an independent audit firm.

The rules proposed for readoption include compliance requirements whereby qualified corporations must disclose their most recent financial information upon request by a client and provide the corporate issuer with a copy of its transfer transaction journal at least once a year. Qualified corporations are also required to maintain a system for the reconstruction of a stockholder ledger, a record of all items held in safekeeping and unclaimed cash dividends. These compliance requirements are good basic business practices and should not require the hiring of professionals. No separate standard for small businesses would be appropriate.

The rules proposed for readoption require that applicants demonstrate that they have a secure vault for the storage of stocks and securities. This implements N.J.S.A. 17:9A-213, which states that an adequate vault facility is one of the three criteria for registration as a qualified corporation. The safe storage of stocks and securities is the reason for the existence of registrar and transfer agents, and no different requirements based on business size can be made with respect to this or the other policies being implemented by these rules.

### **Smart Growth Impact**

The rules proposed for readoption and amendment have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:12.

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

3:12-2.4 Filing of annual report

(a) [As of] **On or before** April 1 of each year, each qualified corporation shall file an annual report on a form approved by the Commissioner containing the following:

1. -7. (No change.)

(b) (No change.)

**(c) A transfer agent owned by a bank holding company or financial holding company as defined by the Bank Holding Company Act of 1956, 12 U.S.C.S. § 1841 may submit in lieu of (a)4 and 6 above, the following:**

**1. An unqualified opinion from the parent holding company's independent auditor as to the parent holding company's financial statement for the year to which the annual report pertains;**

**2. A letter to the Commissioner of Banking and Insurance attesting that the parent holding company provides and will continue to provide financial support to the transfer agent; and**

**3. A statement from the parent holding company's internal auditor, who shall be either a certified public accountant or a public accountant, confirming compliance with the verification requirements of N.J.A.C. 3:12-2.3(a) and offering an opinion as to the transfer agent's financial statement, sufficiency of internal controls and adequacy of the separation of functions.**

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