

BANKING  
DEPARTMENT OF BANKING AND INSURANCE  
DIVISION OF BANKING

General Provisions  
Foreign Banks  
Certificate of Authority To Do Trust Business

Proposed Amendment: N.J.A.C 3:6-14.1  
Proposed New Rule: N.J.A.C. 3:6-14.3

Authorized By: Donald Bryan, Acting Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8.1 and 1-15, 17:9A-316, 318 and 322.

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

Proposal Number: PRN 2005-125

Submit comments by June 17, 2005 to:

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The agency proposal follows:

**Summary**

The Department of Banking and Insurance (Department) proposes to amend N.J.A.C. 3:6 to add a new section to be codified at N.J.A.C. 3:6-14.3. The proposed new section will set forth the documentation that must be submitted to the Department by a foreign bank in order to obtain or renew a Certificate of Authority to transact trust business in New Jersey. The proposed new rule clarifies what type of statement of financial condition must be submitted by foreign banks as part of the process. In addition, the documents and fees required will be clearly set forth in one

subchapter. The fees listed in the proposed new rule are already codified at N.J.A.C. 3:6-14.1 and 14.2. The proposed new subsection, N.J.A.C. 3:6-14.3(c), will require foreign banks holding a Certificate of Authority to notify the Department of a change in name or cessations of trust operators in New Jersey. In addition, proposed N.J.A.C. 3:6-14.3(d) clarifies which state regulator is to issue a certificate of standing.

Further, the Department proposes to amend N.J.A.C. 3:6-14.1 regarding the biennial fee for a certificate of authority. The rule currently states that the biennial fee period shall commence on April 1, 1983. It further provides for a transitional timeframe ending on April 1, 1991 for a phase-in of a fee increase. As those dates have passed and the phase-in has occurred, the actual current fee is proposed to be the only fee stated in the rules. The rule is proposed to be revised to state that April 1 of each odd numbered year is the start of the biennial fee period. Finally, a minor language change used in referencing the biennial fee is proposed in N.J.A.C. 3:16-14.1.

This rule 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 proposed amendments and new rule will apply to all foreign banks that seek to transact trust business in New Jersey. They will continue to implement the pertinent statutes, policies and practices of the Department involving Certificates of Authority for foreign banks to do trust business.

The proposed amendments and new rule will continue to enable the Department to carry out its mission of requiring foreign banks to make appropriate application to the Department before transacting trust business in this state. The requirements are reasonable and necessary to protect New Jersey consumers. Thus, the proposed amendmenst and new rule will have a beneficial social impact.

### **Economic Impact**

The Department does not expect that the proposed amendments and new rule will have a significant economic impact on foreign banks. The proposed amendments involve the documentation to be submitted to the Department by a foreign bank. The fees for obtaining a Certificate of Authority are already established by N.J.A.C. 3:6-14.1 and 14.2. These fees are nominal and currently have a small economic impact on foreign banks. Further, they should be regarded as a cost of transacting trust business in New Jersey.

The statement of financial condition required in the proposed new rule is a document already prepared by the foreign bank for its primary regulator. The proof of insurance specified in the new rule allows the Department to confirm existing insurance coverage that is required by N.J.S.A. 17:9A-318(2). Internal staff of the foreign bank should be able to compile the necessary documents and forward them to the Department with the appropriate fees in a timely fashion. Foreign banks may employ outside professional assistance from accountants and attorneys for compliance, but such assistance should not be necessary. The costs of this will vary depending on the professional utilized and the services requested.

### **Federal Standards Statement**

A Federal standards analysis is not required because the proposed amendments and new rule are not subject to any Federal requirements or standards.

### **Jobs Impact**

The Department does not believe any jobs will be generated or lost as a result of the proposed amendments and new rule. Foreign banks will use existing staff or retain outside professionals for compliance with the proposed amendment and new rule.

The Department invites commenters to submit any data or studies concerning the jobs impact of the proposed amendments and new rule together with their written comments on other aspects of this proposal.

### **Agriculture Industry Impact**

The Department does not expect any agriculture industry impact from the proposed amendments and new rule.

### **Regulatory Flexibility Analysis**

Some foreign banks may be small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments and new rule will continue to impose recordkeeping, reporting and other compliance requirements on these entities, as discussed in the Summary above. Costs are discussed in the Economic Impact above.

The proposed amendments and new rule will continue to require foreign banks to operate in a manner that is responsible to the industry, their customers and the general public, and to

supply, information to the Department that is essential to its ability to effectively screen applicants for certificates of authority and enforce the provisions of the laws applicable to foreign banks transacting trust business in this State. The Department does not believe that these requirements are unduly burdensome. Moreover, they are consistent with prudent banking practices. The purpose of these requirements does not vary based upon business size. Accordingly, no differentiation based on business size is provided.

### **Smart Growth Impact**

The proposed amendments and new rule will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

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

#### SUBCHAPTER 14. FOREIGN BANKS

##### 3:6-14.1 Biennial fee

The certificate of authority or certificate of renewal of a certificate of authority for a foreign bank shall run from the date of issuance to the end of the biennial period. When the initial certificate is issued in the second year of the biennial certificate period, the certificate fee shall be an amount equal to one-half of the fee for the biennial certificate period. The [first] biennial period shall commence as of April 1[, 1983] **of each odd numbered year.** [Certificates issued during the period April 1, 1982 to April 1, 1983 will bear a fee equal to one-half of the

\$800 biennial fee. For the biennial period commencing April 1, 1991, the] **The** biennial fee [will] **shall** be \$1,000. [Certificates issued during the period April 1, 1990 to April 1, 1991 will bear a fee equal to one half of the \$1,000 biennial fee.]

**3:6-14.3 Certificate of authority to transact trust business**

**(a) A foreign bank seeking to obtain or to renew a certificate of authority to transact trust business in this State pursuant to N.J.S.A. 17:9A-316 and 318 shall submit the following:**

**1. A Consolidated Report of Condition, as required by the Federal or state regulator of the bank, indicating the bank's financial condition as of the close of business on the December 31<sup>st</sup> immediately prior to the application. This condition shall be deemed satisfied if the report is filed by the bank with its Federal or state regulator and adequate provision is made for the New Jersey Department of Banking and Insurance to have access to that filing;**

**2. The fee required by N.J.A.C. 3:6-14.2(a)2 for filing a statement of financial condition. This fee may be waived if the Department obtains the financial statement from another regulator via the internet;**

**3. The biennial fee required by N.J.A.C. 3:6-14.1;**

**4. Proof of current insurance coverage consisting of a copy of the insurance policy covering the trust activities conducted or to be conducted by the foreign bank in New Jersey;**

(b) A foreign bank seeking its initial certificate of authority shall also submit the following:

1. A copy of its certificate of incorporation, and all amendments thereto, certified by its president or a vice president and attested under its corporate seal by its secretary, an assistant secretary, its cashier or an assistant cashier;

2. A certificate executed by its president or a vice president and attested under its corporate seal by its secretary, an assistant secretary, its cashier or an assistant cashier, affirming that, so long as it shall have a New Jersey certificate of authority it will:

i. Comply with all the requirements of the laws of this State applicable to the transaction of its trust business in this State; and

ii. Promptly following adoption, submit to the Commissioner a copy of each amendment or other change in its certificate of incorporation, certified and attested as provided in (b) above

3. A power of attorney, executed by its president or vice president and attested under its corporate seal by its secretary, an assistant secretary, its cashier or an assistant cashier, authorizing the Commissioner and his or her successors in office to accept service of process upon the foreign bank in any action or proceeding against it affecting or relating to any estate or trust administered under the laws of this State. Such power of attorney shall provide that any such service of process upon the Commissioner shall have the same force and validity as if served directly upon the foreign bank, and that the authority therein granted shall be irrevocable and shall continue in force indefinitely, notwithstanding the expiration, revocation or surrender of the certificate of authority or the non-renewal thereof; and

4. A letter written by its home state regulator or an attorney opinion letter, confirming that a qualified bank, as defined in N.J.S.A. 17:9A-1(12), is permitted to transact trust business in the jurisdiction in which the foreign bank has its principal office without conditions or restrictions that are significantly more burdensome than those imposed upon foreign banks seeking to transact trust business in New Jersey.

(c) The holder of a certificate of authority shall notify the Department within 30 days of a change of name of the institution or of the decision of the institution to cease trust operations in New Jersey.

(d) A foreign bank that holds a valid certificate of authority from the Department shall be authorized to have a certificate of standing issued by the Department when such a document is requested by a third party. A qualified bank, as defined in N.J.S.A. 17:9A-1(12), shall obtain its certificate of standing or other authorization to conduct trust business in another jurisdiction from the home state regulator of the qualified bank.