

BANKING
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING

Bank Service Corporations

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

Authorized By: Holly C. Bakke, Commissioner, Department of Banking and Insurance

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

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

Proposal Number: PRN 2004-86

Submit comments by May 14, 2004 to:

Douglas Wheeler, Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Banking and Insurance
20 West Street
P.O. Box 325
Trenton, NJ 08625-0325
Fax: (609) 292-0896
E-mail: legsregs@dobi.state.nj.us

The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) proposes to readopt N.J.A.C. 3:14, which will expire on October 2, 2004, pursuant to N.J.S.A. 52:14B-5.1c. The Department has reviewed these rules and has determined that they continue to be necessary, reasonable and proper for the purpose for which they were originally promulgated, as required by Executive Order No. 66 (1978), and is therefore proposing to readopt the rules with amendments.

The rules proposed for readoption with amendments implement the statutory scheme contained in N.J.S.A. 17:9A-24 et seq. The rules continue to provide the banking industry with

appropriate standards for the services provided by bank service corporations. The readoption of these rules will continue to provide the necessary regulatory framework by which the Department may monitor and control the activities of bank service corporations via the banking industry.

Bank service corporations are corporations, all of whose stock is owned by one or more banking institutions, which perform bank services, other than the taking of deposits, for their stockholders or other institutions. The Department proposes to amend the definition of “bank service corporation” in N.J.A.C. 3:14-1.1 to include limited liability companies, and to add of definition of this term. A limited liability company means any non-corporate company, partnership, trust, or similar business entity organized under the laws of a state that provide that a member or manager of such a company is not personally liable for a debt, obligation, or liability of the company solely by reason of being, or acting as, a member or manager of such company. The Department also proposes to amend the definition of “person” to include natural persons, sole proprietors and limited liability companies. The Department also proposes to amend N.J.A.C. 3:14-1.2(a)2v, to provide that banks or savings banks bear the costs of periodic examination of bank service corporations in which the bank or savings bank has invested.

The chapter describes those services that bank service corporations may provide without notice to the Commissioner, those services that may be performed only upon notice to the Commissioner, the procedure for filing such notices with the Commissioner, and the standards for approving or disapproving applications.

The chapter also sets forth the specific limitations on the amount of investments in bank service corporations that may be made by banking institutions, and requires banks and savings banks to invest only in those bank service corporations that have agreed in writing to submit to

periodic examinations and regulation by the Department. It also prohibits a bank service corporation from discriminating in providing bank services to nonstockholding banking institutions, except that a bank service corporation may charge nonstockholding banking institutions a price reflecting capital and a reasonable return thereon, and may refuse to provide bank services if the services are available elsewhere at a comparable cost or are beyond the reasonable capacity of the bank service corporation.

The Department's 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 rules proposed for readoption with amendments will have a positive social impact as the rules will continue to give banking institutions flexibility in providing services to their stockholders or customers. The rules proposed for readoption with amendments will enable the Department to monitor what services are being provided and to approve or disapprove proposed new services. The amendments allow bank services corporations to be limited liability companies.. They can pick the form of organization in a more flexible regulatory environment.

Economic Impact

There should be no significant economic impact. The rules proposed for readoption with amendment will continue to give State-chartered institutions parity with Federally chartered institutions regarding activities that can be conducted through bank service corporations. As a result, the rules will continue to help maintain the competitive equality of the State banking

system with the Federal banking system. The rules will also continue to allow State-chartered institutions to operate more efficiently, thereby enhancing their safety and soundness.

The rules proposed for readoption with amendments will maintain the existing regulatory scheme for bank service corporations and will enable the Department to continue to monitor the activities of bank service providers without disruption. The costs of examinations that will be borne by banks or savings banks that have invested in the bank service corporation examined will not have a significant economic impact. The proposed amendment simply clarifies that banks and savings banks bear the cost of examination.

Federal Standards Statement

The rules proposed for readoption with amendment do not impose any greater requirements than those imposed by Federal regulations. The rules proposed for readoption 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 any 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 225.22(a)(2).

Jobs Impact

The Department does not anticipate that any jobs will be lost or generated as a result of the rules proposed for readoption with amendments.

Agriculture Industry Impact

The Department does not expect any agriculture industry impact from the rules proposed for readoption with amendments.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments will apply to “small businesses” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Bank service corporations are required to submit notices or applications prior to providing banking services in certain instances. The Department does not believe that outside professional services or resources are required to make the submissions. The information contained in the notices or applications is essential when making decisions regarding the providing of these services, and to the effective oversight of bank service corporations by the Department. The rules proposed by readoption with amendments impose no additional reporting or recordkeeping requirements. Banks or savings banks which have invested in bank service corporations would be required to bear the costs of departmental examinations of those corporations. However, this cost is minimal and reasonable when compared to the regulatory benefit that is generated as a result of such examinations.

Furthermore, most of the limitations on investments set forth in N.J.A.C. 3:14-1.2 continue to mirror the limitations in the N.J.S.A. 17:9A-24.4. The Department continues to believe that the additional provision in that section that prohibits banks and savings banks from investing in service corporations unless that service corporation has submitted to the jurisdiction of the Department is essential to proper oversight of the financial conditions of banking

institutions. Accordingly, no differentiation in compliance requirements is made based on business size.

Smart Growth Impact

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

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

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

3:14-1.1 Definitions

The following words and terms shall have the following meanings when used in this subchapter, unless the context clearly indicates otherwise:

...

“Bank service corporation” means

- 1.** [a]**A** corporation which is organized under Title 14 or Title 14A of the statutes of this State, or which is organized under a general incorporation statute of another state of the United States and which has a Certificate of Authority from the New Jersey Secretary of State to transact business in this State, to

perform bank services, and all of whose capital stock is owned by one or more banking institutions **or**

2. A limited liability company as defined in this chapter.

...

“Limited liability company” means any non-corporate company, partnership, trust, or similar business entity organized under the law of a State (as defined in section 3 of the Federal Deposit Insurance Act) that provides that a member or manager of such company is not personally liable for a debt, obligation, or liability of the company solely by reason of being, or acting as a member or manager of such company and all of whose ownership interest is held by banking institution.

“Person” means [individuals] **natural persons, sole proprietors, limited liability companies,** partnerships, corporations, and all other business entities, no matter how designated.

...

3:14-1.2 Permissible activities

(a) Subject to N.J.A.C. 3:14-1.3, a banking institution may engage in the following activities:

1. (No change.)
2. Investing in a bank service corporation, except that:
 - i.-iv. (No change.)
 - v. No bank or savings bank shall invest in a bank service corporation unless that bank service corporation has agreed in writing to submit to periodic

examinations and to regulation by the Department. **The costs of such examination shall be borne by the bank or savings bank.**

3:14-1.3 Authority to engage in bank services

(a) A bank service corporation may provide a bank service to a banking institution, an affiliate of a banking institution, or other person, or to combinations or multiples of the above, subject to the limitations set forth in this section.

1. – 3. (No change.)

4. A bank service which is described in paragraph 5 of the definition of “bank service”, may be provided to an affiliate or non affiliate if:

i. Written application has been received by the Commissioner which fully describes the bank service to be provided, the types of customers to whom the bank service is to be provided, the type of business in which the non-affiliate engages, and any information which supports the conclusion that the provision of the bank service is in the financial interest of the bank service corporation or affiliates of the bank service corporation.

(1) (No change.)

(2) At least 90 calendar days have passed since the Commissioner’s receipt of the application, during which time the bank service corporation has not received written notification by the Commissioner that the provision of the bank service is disapproved, provided, however, that the Commissioner may make reasonable extensions of the period during which [it] **he or she** may consider the application; and

ii. (No change.)

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

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