

BANKING
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING

Bank Holding Companies
Application; Objections to Acquisitions- Hearings

Proposed Amendment: N.J.A.C 3:13-1.2

Proposed New Rules: N.J.A.C. 3:13-1.3

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

Authority: N.J.S.A. 17:1-8, 8.1 and 15e, 17:9A-8.1 et seq., 17:9A-382 et seq., and 52:14F-8.

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

Proposal Number: PRN 2008-105

Submit comments by June 6, 2008 to:

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The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) proposes to amend its rules governing acquisitions of New Jersey banks and bank holding companies.

Subchapter 1 sets forth the procedures for a person seeking to acquire a New Jersey bank or New Jersey bank holding company. A new rule at N.J.A.C. 3:13-1.3 is proposed to provide regulations and procedures where there is an objection to an acquisition transaction.

The proposed new rule sets forth what must be provided to the Department by an objector, the time and manner for an applicant to respond and the time for additional comments by the objector. They also set out the procedures for a formal hearing and the handling of an application when there are no objections.

The proposal also seeks to amend N.J.A.C. 3:13-1.2(d) regarding the content of the notice of the Department's acceptance of a complete application to acquire a New Jersey bank or bank holding company that an applicant is required to publish by N.J.A.C. 3:13-1.2. It should be noted that, in accordance with Department practice, the term "acceptance" of an application only indicates that the Department has received a complete application and does not denote any substantive approval of it. The Department has based these proposed amended requirements and procedures on those that currently exist for the handling of charter and branch applications.

A 60-day comment period is provided 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 and new rules apply to all persons seeking to acquire control of a New Jersey bank or a New Jersey bank holding company. They make clear to all such persons what the procedures and requirements are for publication of the notice of the Department's acceptance of the application to acquire control as complete, the submission of objections to the application and the conduct of hearings. Clearly setting out this process in the proposed amendment and new rule will have a beneficial social impact on New Jersey banks, New Jersey bank holding companies, their shareholders, officers and directors as well as

consumers of New Jersey banks and the general public, as parties interested in the proposed acquisition will be better informed of the application review process and of the procedures governing the filing of objections to acquisition applications. With the method and timing applicable to the filing of objections being clearly set out, additional relevant information contained in conforming objections from a wider variety of sources may be brought to the attention of the Department and be considered by the Commissioner in his deliberations on an application. This will facilitate a more comprehensive review of such applications and better assure that decisions on such applications comport with the public interest. Thus, the amendment and new rule would have a beneficial social impact.

Economic Impact

It is not expected that the proposed amendment and new rule will have a significant negative economic impact on those controlling, seeking to control or objecting to those seeking to control New Jersey banks and New Jersey bank holding companies. The proposed procedures and requirements proposed to be included in the rules are common business requirements, are reasonable and anticipated commercial procedures and are similar to those already in place for bank charter and branch applications submitted to the Department. (See N.J.A.C. 3:1-2.7 and 2.8) Some applicants or objectors may use professionals such as attorneys, accountants or business consultants. The cost of this will vary based on the time spent and rates charged by the retained professionals.

Federal Standards Statement

The proposed amendment and new rule are consistent with and do not exceed the requirements of 12 U.S.C. §§1841 et seq. and the rules promulgated thereunder at 12 CFR §§225.1 et seq. Therefore, no Federal standards analysis is required.

Jobs Impact

The Department does not anticipate that any jobs will be generated or lost as a result of the proposed amendment and new rule. Those seeking to control a New Jersey bank or New Jersey bank holding company will use existing staff for compliance with the proposed amendment and new rule. Some of those seeking to control New Jersey banks or New Jersey bank holding companies may employ professional services to meet the application, reporting and other compliance requirements.

The Department invites commenters to submit any data or studies concerning the jobs impact of the proposed amendment 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 amendment and new rule.

Regulatory Flexibility Analysis

Some persons who control or seek to control New Jersey banks or New Jersey bank holding companies may be small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment and new rule impose compliance

requirements on these entities. The compliance requirements include what is required to be contained in the public notice of the Department's acceptance of the application as complete, the procedures and requirements when there is an objection and the conduct of hearings. The costs for compliance, including the possible employment of professional services, are set out in Economic Impact above.

The Department believes that these requirements are generally mandated pursuant to the applicable statutes. They also follow the general procedures for handling applications, objections to transactions and related hearings established for bank charters and branch applications. These requirements are not unduly burdensome. The purpose of these rules is to assure the financial integrity of New Jersey banks and New Jersey bank holding companies and in turn to protect the consumers who use those establishments and persons who invest in them. Thus, the purpose of these requirements does not vary based upon business size. Accordingly, no differentiation in compliance requirements based on business size is provided.

Smart Growth Impact

The proposed amendment 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**; deletion indicated in brackets [thus]):

3:13-1.2 Application

(a) - (c) (No change.)

(d) The notices required by (b) and (c) above shall contain the following:

1. - 2. (No change.)

3. The name and address of the New Jersey Bank or New Jersey Bank Holding Company to be acquired; [and]

4. The date the Department accepted the application [.] **and**

5. The following statement:

“An individual, bank, savings bank or savings and loan association may object to any acquisition and may request that an oral presentation be conducted. All such objections and requests must be in writing and filed within 10 calendar days of the date of the Department’s publication of notice of its acceptance of the application on its website at www.njdobi.org. Individuals or financial institutions interested in perfecting an objection or a request for oral presentation should immediately consult the Department’s website regarding the date of the publication of that notice and comply with the Department’s procedural rules on this issue located at N.J.A.C. 3:13-1.3.”

(e) (No change.)

3:13-1.3 [(Reserved)] **Objections to acquisitions; hearings**

(a) An objection to an acquisition, if any, shall be filed with the Department no later than 10 business days after publication of the notice of the Department’s acceptance of the change of control application on the Department’s website.

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

1. A summary of the reasons for the objection;
 2. A recitation of the facts supporting the objection, including relevant economic or financial data;
 3. Comments, if any, as to why the change of control would be detrimental to the safety and soundness of the New Jersey bank or bank holding company, and comments, if any, as to why the change of control would have a significantly adverse impact on the objector or on the convenience and needs of the community or communities in this State that are served by the New Jersey bank or bank holding company;
 4. An indication as to whether the objector intends to appear personally at the hearing. A fee of \$750.00 shall accompany a notice of intent to appear at a hearing, except that a non-profit public interest objector or an objector whose interest is as a member of the public shall include a \$100.00 fee; and
 5. 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 objections 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, except for personal financial data. 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 determine not to consider the objection of any objector who does not comply with this section.

(e) The Commissioner may extend any time period set forth in this section to allow for the filing or supplementing of an objection and/or for consideration of an objection. The Commissioner may request any other information that he or she deems necessary.

(f) A formal hearing, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, shall be held on all change of control applications where an objection(s) has been filed in accordance with this section. Only those objectors who comply with this section shall be permitted to present oral argument and testimony at the hearing. The Commissioner may determine to conduct the hearing directly and individually or transmit the matter to the Office of Administrative Law.

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

(h) The application shall proceed in accordance with N.J.A.C. 3:1-2.9, 2.10, 2.11, 2.13 and 2.14.

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