

BANKING
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING

Bank Service Corporations

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

Authorized By: Steven M. Goldman, 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 2009-233

Submit comments by October 2, 2009 to:

Robert Melillo, Chief
Legislative and Regulatory Affairs
Department of Banking and Insurance
20 West State Street
PO 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 January 8, 2010 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 and is, therefore, proposing to readopt the rules with one amendment.

The rules proposed for readoption with amendment 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 perform bank services, other than the taking of deposits, for their stockholders or other institutions. 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 proposes to amend the definition of “bank service corporation” in N.J.A.C. 3:14-1.1 to include a reference to the New Jersey Department of Treasury, Division of Revenue as this agency now issues Certificates of Authority to do business in this State.

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 amendment 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 amendment will enable the Department to monitor what banking services are being provided and to approve or disapprove proposed new services.

Economic Impact

The readoption with amendment should have 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 amendment 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.

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 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 CFR 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 amendment.

Agriculture Industry Impact

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

Regulatory Flexibility Analysis

The rules proposed for readoption with amendment 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 for re-adoption with amendment 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. As the policy considerations underlying these rules apply regardless of the size of the bank service corporation, no differentiation in compliance requirements is made based on business size.

Smart Growth Impact

The rules proposed for re-adoption with amendment will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The rules proposed for re-adoption with amendment will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rules proposed for re-adoption with amendment concern bank service corporations.

Smart Growth Development Impact

The rules proposed for readoption with amendment will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey because the rules proposed for readoption with amendment concern bank service corporations.

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

Full text of the proposed amendment follows (addition indicated in boldface **thus**):

3:14-1.1 Definitions

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

“Bank service corporation” means:

1. 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 **or the New Jersey Department of Treasury, Division of Revenue** 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. (No change.)