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DELAWARE STATE SENATE

139TH GENERAL ASSEMBLY

SENATE BILL NO. 255

AN ACT TO AMEND TITLES 5, 6, 8 AND 12 OF THE DELAWARE CODE
RELATING TO THE DEFINITIONS, POWERS, SUPERVISION, REGULATION
AND FIDUCIARY OBLIGATIONS OF BANKS AND OTHER FINANCIAL
INSTITUTIONS

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF
DELAWARE (Two-thirds of all members elected to each house thereof concurring
therein):

1 Section 1. This Act may be referred to as the "Banking and Financial Services
2 Amendments Act of 1998".

3 Section 2. Amend §101 of Title 5 of the Delaware Code by deleting the text of
4 that section in its entirety and inserting in lieu thereof the following:

5 "For the purpose of this Code and any other laws of this State relating to
6 banks or banking, unless otherwise specifically defined, or unless another intention
7 clearly appears, or unless the context requires a different meaning:

8 (1) 'Affiliate' means a person that directly or indirectly through 1 or
9 more intermediaries, controls or is controlled by or is under common control
10 with, the person specified.

11 (2) 'Automated service branch' means an automated teller machine,
12 cash dispensing machine or other electronic facility located in this State

13 installed or operated by any bank, remote from its main office or any branch
14 office, by which funds may be deposited into or withdrawn from established
15 accounts, advances may be obtained against previously authorized lines of
16 credit, transfers of funds between accounts may be made, loan and other
17 payments may be made or cash may be received or dispensed.

18 (3) 'Bank' means every bank and every corporation conducting a
19 banking business of any kind or plan whose principal place of business is in
20 this State, except a national bank.

21 (4) 'Banking organization' means:

22 a. A bank or bank and trust company organized and
23 existing under the laws of this State;

24 b. A national bank, including a federal savings bank, with
25 its principal office in this State;

26 c. An Edge Act corporation organized pursuant to § 25(a)
27 of the Federal Reserve Act, 12 U.S.C. § 611 et seq., or a state
28 chartered corporation exercising the powers granted thereunder
29 pursuant to an agreement with the Board of Governors of the
30 Federal Reserve System, and maintaining an office in this State;

31 d. A federal branch or agency licensed pursuant to § 4 and
32 § 5 of the International Banking Act of 1978, 12 U.S.C. § 3101 et
33 seq., to maintain an office in this State;

34 e. A foreign bank limited purpose branch or foreign bank
35 agency organized pursuant to Chapter 14 of this title, or a
36 resulting branch in this State of a foreign bank authorized
37 pursuant to Chapter 14 of this title; or

38 f. A resulting branch in this State of an out-of-state bank
39 (as defined in § 795 of this title, and also including branch offices
40 in this State of an out-of-state bank, as defined in § 795 of this
41 title).

42 (5) The terms 'borrowing,' 'deposit' and 'extension of credit' as they
43 relate to the activities of international banking facilities shall have the
44 meanings ascribed to them in pertinent regulations adopted by the Board of
45 Governors of the Federal Reserve System, as such regulations may be
46 amended from time to time.

47 (6) 'Capital stock' means both common stock and preferred stock.

48 (7) 'Commissioner' means the State Bank Commissioner.

49 (8) 'Control' means, directly or indirectly or acting through one or
50 more other persons, to own, control or have the power to vote 25 percent or
51 more of any class of voting securities, to control in any manner the election of
52 a majority of the directors or trustees, or to exercise a controlling influence
53 over the management or policies of a bank, trust company, other financial
54 institution or any other company.

55 (9) 'Financial institution' means any bank, trust company or other
56 institution either licensed under this title or subject to the supervision and
57 regulation of the State Bank Commissioner.

58 (10) 'Foreign bank' means any company organized under the laws of a
59 foreign country, a territory of the United States, Puerto Rico, Guam, American
60 Samoa or the Virgin Islands, which engages in the business of banking, or any
61 subsidiary or affiliate, organized under such laws, of any such company. The
62 term 'foreign bank' includes, without limitation, foreign commercial banks,
63 foreign merchant banks and other foreign institutions that engage in banking
64 activities usual in connection with the business of banking in the countries
65 where such foreign companies are organized or operating.

66 (11) 'Foreign bank agency' means an office in this State of a foreign
67 bank that is exercising the powers authorized by § 1404(a) of this title.

68 (12) 'Foreign bank limited purpose branch' means an office in this
69 State of a foreign bank that is exercising the powers authorized by § 1404(b)
70 of this title.

71 (13) 'Foreign country' means any country other than the United States,
72 and includes any colony, dependency or possession of any such country.

73 (14) 'International banking facility' means a set of asset and liability
74 accounts, segregated on the books and records of a banking organization, that
75 includes only international banking facility deposits, borrowings and
76 extensions of credit.

77 (15) 'International banking transaction' means any of the following
78 transactions, whether engaged in by a banking organization, any foreign
79 branch thereof (established pursuant to § 771 of this title or federal law) or any
80 subsidiary corporation directly or indirectly owned by any banking
81 organization:

82 a. The financing of the exportation from, or the
83 importation into, the United States or between jurisdictions
84 abroad of tangible property or services;

85 b. The financing of the production, preparation, storage or
86 transportation of tangible personal property or services which are
87 identifiable as being directly and solely for export from, or import
88 into, the United States or between jurisdictions abroad;

89 c. The financing of contracts, projects or activities to be
90 performed substantially abroad, except those transactions secured
91 by a mortgage, deed of trust or other lien upon real property
92 located in this State;

93 d. The receipt of deposits or borrowings or the extensions
94 of credit by an international banking facility, except the loan or
95 deposit of funds secured by mortgage, deed of trust or other lien
96 upon real property located in this State;

97 e. The underwriting, distributing and dealing in debt and
98 equity securities outside of the United States and the conduct of
99 any activities permissible to a banking organization described in

100 subsection (4)c. of this section, or any of its subsidiaries, in
101 connection with the transaction of banking or other financial
102 operations; or

103 f. The entering into foreign exchange trading or hedging
104 transactions in connection with the activities described in
105 paragraphs a. through e. of this subdivision.

106 (16) 'National Bank' means a banking association organized under the
107 authority of the United States and having a principal place of business in this
108 State.

109 (17) 'Person' means an individual or a corporation, partnership, trust,
110 association, joint venture, pool, syndicate, sole proprietorship, unincorporated
111 association or any other form of entity not specifically listed herein.

112 (18) 'Representative office' means an office in this State of a foreign
113 bank that is exercising the powers authorized by § 1423 of this title.

114 (19) 'Subsidiary' means any association, corporation, partnership,
115 business trust or other similar organization, having offices and exercising its
116 powers within or without the State, that is controlled by a bank, trust
117 company, other financial institution or any other company through:

118 a. Direct or indirect ownership or control of 25 percent or
119 more of the voting rights;

120 b. Control of the election of majority of the directors; or

121 c. The power, directly or indirectly, to exercise a
122 controlling influence over the management or policies of the
123 organization.

124 (20) 'Trust company' means a trust company or corporation doing a
125 trust company business which has a principal place of business in this State."

126 Section 3. Amend §108 of Title 5 of the Delaware Code by deleting the words
127 "Deputy Commissioner or examiners" and inserting in lieu thereof the words and
128 punctuation "Deputy Commissioners, examiners or compliance reviewers" after the

129 words and punctuation "Commissioner," and before the word "employed" in the first
130 sentence, by deleting the words "subject to supervision or regulation of the
131 Commissioner" from the end of the first sentence, and by inserting between the existing
132 second and third sentences thereof the following new sentence:

133 "For the purposes of this section, an entity shall not be considered supervised or
134 regulated by the Office of the State Bank Commissioner solely because it is
135 exempt under Section 2202 of this title or because it is subject to an escheat
136 examination conducted by the Office of the State Bank Commissioner."

137 Section 4. Amend §121(a)(1) of Title 5 of the Delaware Code by deleting the
138 words and punctuation "safe deposit companies," after the words and punctuation "trust
139 companies," and before the words "building and loan associations".

140 Section 5. Amend §127(b) of Title 5 of the Delaware Code by deleting the
141 number "3.5" and inserting in lieu thereof the number "5" after the word "exceed" and
142 before the word "cents" in the fourth sentence thereof, beginning with the words "The
143 assessment" and ending with the words and punctuation "total assets."

144 Section 6. Amend §724 of Title 5 of the Delaware Code by deleting the number
145 "3" and inserting in lieu thereof the number "2" after the word "for" and before the words
146 "successive weeks".

147 Section 7. Amend §725 of Title 5 of the Delaware Code by deleting the word
148 "third" and inserting in lieu thereof the word "second" after the number and words "60
149 days after the" and before the word "publication", and by deleting the number and words
150 "30 days from the date of the third publication" and inserting in lieu thereof the number
151 and words "20 days from the date of the second publication" after the words "before the
152 expiration of" and before the comma.

153 Section 8. Amend §767 of Title 5 of the Delaware Code by deleting existing
154 subsection (e) thereof in its entirety, and by redesignating existing subsection (f) as new
155 subsection (e).

156 Section 9. Amend §777(c) of Title 5 of the Delaware Code by deleting the words
157 "needs and convenience" from the last sentence of that subsection and inserting in lieu
158 thereof the words "convenience and needs".

159 Section 10. Amend §795(6) of Title 5 of the Delaware Code by deleting the
160 reference therein to "§101(1)" and inserting in lieu thereof a reference to "§101".

161 Section 11. Amend §795I(b) by inserting the words and punctuation "a Delaware
162 state bank," after the words "permissible for" and before the words "a bank chartered",
163 and by deleting the words "except to the extent such activities are expressly prohibited by
164 the laws of this State" and inserting in lieu thereof the words "or a branch office of any
165 national bank located in the state where such branch office of the Delaware state bank is
166 located".

167 Section 12. Amend §796 of Title 5 of the Delaware Code by deleting existing
168 subsection (2) thereof and by redesignating existing subsections (3) and (4) as new
169 subsections (2) and (3), respectively.

170 Section 13. Amend §905 of Title 5 of the Delaware Code by deleting the words
171 "on forms furnished" and inserting in lieu thereof the words "according to the form which
172 may be prescribed", and by inserting at the end of that section the following new
173 sentence: "The Commissioner shall have power to call for special reports whenever in
174 the Commissioner's judgment the same are necessary."

175 Section 14. Amend §1101(a) of Title 5 of the Delaware Code by deleting the
176 reference to "§101(7)" in the first sentence of the last paragraph and inserting in lieu
177 thereof a reference to "§101".

178 Section 15. Amend §1101(c) of Title 5 of the Delaware Code by deleting the
179 reference therein to "§101(9)" and inserting in lieu thereof a reference to "§101".

180 Section 16. Amend §1101(d) of Title 5 of the Delaware Code by deleting the
181 reference therein to "§101(9)" and inserting in lieu thereof a reference to "§101".

182 Section 17. Amend §1402(a) of Title 5 of the Delaware Code by inserting the
183 words and punctuation ", except as otherwise provided in Subchapter III of this chapter,"
184 after the words "any part thereof" and before the words "unless such foreign bank".

185 Section 18. Delete existing subsection (c) of §1403 of Title 5 of the Delaware
186 Code, and redesignate existing subsections (d), (e) and (f) of that section as new
187 subsections (c), (d) and (e), respectively.

188 Section 19. Amend §1404 of Title 5 of the Delaware Code by adding thereto a
189 new subsection (c), as follows:

190 "(c) No foreign bank holding a certificate of authority pursuant to this
191 subchapter shall concurrently maintain in this State a federal branch or federal
192 agency pursuant to the International Banking Act of 1978, as amended (12 U.S.C.
193 §3101 et seq.)."

194 Section 20. Amend §1405 of Title 5 of the Delaware Code by adding to the title
195 thereof the words and punctuation "; separate assets" after the word "State" and before the
196 period, and by adding to the text of that section a new subsection (c), as follows:

197 "(c) Each foreign bank holding a certificate of authority pursuant to this
198 subchapter shall keep the assets of its business in this State separate and apart
199 from the assets of its business outside this State."

200 Section 21. Amend §1408 by inserting in the title thereof the words and
201 punctuation "; transfer or assignment of certificate of authority" after the word "business"
202 and before the period, by designating all of the existing text of that section as subsection
203 "(a)" thereof, and by adding thereto a new subsection (b), as follows:

204 "(b) No certificate of authority issued by the Commissioner pursuant to
205 this subchapter shall be transferable or assignable without approval by the
206 Commissioner."

207 Section 22. Amend §1410(a) of Title 5 of the Delaware Code by deleting the
208 words and punctuation ": (1) Is engaging in any activity not permitted by §1404 of this
209 title; (2) is engaging in a manner of business activity constituting a violation of §1403(c)
210 of this title; or (3)" and inserting in lieu thereof the words "is engaging in any activity not
211 permitted by §1404 of this title or" after the word "subchapter" and before the words "is
212 not in a safe and satisfactory condition".

213 Section 23. Amend Subchapter I of Chapter 14 of Title 5 of the Delaware Code
214 by adding thereto a new §1416, as follows:
215 "§1416. Examinations, cooperative agreements, fees.
216 (a) The Commissioner may make such examination of any foreign bank
217 limited purpose branch or foreign bank agency in this State as the Commissioner
218 may deem necessary to determine compliance with the laws of this State and
219 operation in a safe and sound manner. The provisions of this title shall apply to
220 such examinations.
221 (b) The Commissioner, as a home state regulatory authority, may enter
222 into cooperative agreements with the appropriate host state regulatory authorities
223 for the periodic examination of and otherwise to facilitate a single point of contact
224 with respect to any foreign bank limited purpose branch or foreign bank agency in
225 this State and any such other entities operating in other United States
226 jurisdictions. Additionally, the Commissioner, as a host state regulatory
227 authority, may enter into cooperative agreements with the appropriate home state
228 regulatory authorities for the periodic examination of and otherwise to facilitate a
229 single point of contact with respect to any foreign bank limited purpose branch or
230 foreign bank agency operating in this State, and may accept reports of
231 examination and other records from a home state regulatory authority of such
232 entities in lieu of conducting the Commissioner's own examination of such
233 entities operating in this State. The Commissioner, as a home state or host state
234 regulatory authority, may enter into joint actions, including with respect to asset
235 maintenance, pledge of assets, separation of assets and liquidation, with other
236 regulatory authorities with respect to foreign bank limited purpose branches or
237 foreign bank agencies in this State, or may take such actions independently with
238 notice to the appropriate home state or host state regulatory authorities to carry
239 out the Commissioner's responsibilities to assure the safety and soundness of any
240 such entity in this State and to assure compliance with applicable banking laws of
241 this State. For purposes of this subsection, the term 'home state' in reference to a

242 foreign bank has the meaning set forth in section 5(c) of the International Banking
243 Act of 1978, as amended, at 12 U.S.C. §3103(c), and the term 'host state' means a
244 State other than the home state.

245 (c) A foreign bank holding a certificate of authority pursuant to this
246 subchapter may be assessed and, if assessed, shall pay supervisory and
247 examination fees in accordance with the laws of this State and regulations of the
248 Commissioner."

249 Section 24. Amend §1422(b) of Title 5 of the Delaware Code by deleting existing
250 subparagraph (1) thereof in its entirety, and by redesignating existing subparagraphs (2),
251 (3) and (4) as new subparagraphs (1), (2) and (3) thereof, respectively.

252 Section 25. Amend Subchapter II of Chapter 14 of Title 5 of the Delaware Code
253 by adding thereto a new §1426, as follows:

254 "§1426. Applicability of other laws.

255 Every foreign bank holding a license pursuant to this subchapter shall be
256 deemed and held to be subject to this title and any other law or laws of this State
257 making provision for the regulation of banks and trust companies where the same
258 are not inconsistent with the express provisions of this subchapter including,
259 without limitation, §131 and §132 of this title and the provisions of Subchapter I
260 of this chapter for the regulation of foreign banks operating foreign bank limited
261 purpose branches and foreign bank agencies in this State."

262 Section 26. Amend Chapter 14 of Title 5 of the Delaware Code by adding at the
263 end thereof a new Subchapter III, as follows:

264 "Subchapter III. Merger of Delaware Banks and Foreign Banks;

265 Resulting Branch Offices of Foreign Banks

266 §1430. Scope.

267 This subchapter deals with the conditions under which Delaware banks
268 may merge with or into foreign banks, and under which foreign banks may
269 operate resulting branch offices in this State.

270 §1431. Definitions.

271 (a) 'Branch office', 'Delaware bank', 'Delaware state bank', 'existing
272 Delaware bank', 'merger', 'merging bank', 'out-of-state bank' and 'resulting'
273 shall have the meanings ascribed to them in §795 of this title.

274 (b) 'Home state' in reference to a foreign bank has the meaning set forth
275 in section 5(c) of the International Banking Act of 1978, as amended, at 12 U.S.C.
276 §3103(c).

277 (c) 'Out-of-state foreign bank' means a foreign bank whose home state is
278 a state other than this State.

279 §1432. Authority for merger.

280 An existing Delaware bank may merge with or into an out-of-state foreign
281 bank, and an out-of-state foreign bank may merge with or into a Delaware bank,
282 in substantially the same manner and under substantially the same terms and
283 conditions as an existing Delaware bank may merge with or into an out-of-state
284 bank, or an out-of-state bank may merge with or into a Delaware bank, pursuant
285 to Subchapter VII of Chapter 7 of this title.

286 §1433. Authority for interstate branch offices of out-of-state foreign banks.

287 (a) The place of business or main office and all branch offices of a
288 merging existing Delaware bank may continue as resulting branch offices of the
289 out-of-state foreign bank.

290 (b) An out-of-state foreign bank with resulting branch offices in this State
291 may open additional branch offices in this State in such manner as the
292 Commissioner shall prescribe by regulation.

293 (c) Nothing in this subchapter shall be deemed to permit interstate
294 branching either through the original establishment of a branch office in this State
295 by an out-of-state foreign bank or through acquisition of a branch office in this
296 State by an out-of-state foreign bank, without merger with a Delaware bank as
297 provided in this subchapter.

298 §1434. Powers.

299 An out-of-state foreign bank which establishes one or more branch offices
300 in this State in accordance with this subchapter may conduct any activities at such
301 branch office or offices that are authorized under the laws of this State for
302 Delaware state banks or pursuant to the laws of the home state of such out-of-state
303 foreign bank to the extent that such activities are permissible in this State for a
304 branch office of an out-of-state national bank.

305 §1435. Authorized agency activities.

306 A resulting branch office in this State of an out-of-state foreign bank may
307 exercise agency activities as provided in Subchapter VIII of Chapter 7 of this title.

308 §1436. Applicability of other laws.

309 Every foreign bank operating a resulting branch office in this State
310 pursuant to this subchapter shall be deemed and held to be subject to this title and
311 any other law or laws of this State making provision for the regulation of banks
312 and trust companies where the same are not inconsistent with the express
313 provisions of this subchapter including, without limitation, §131 and §132 of this
314 title, the provisions of Subchapter VII of Chapter 7 of this title for the regulation
315 of out-of-state banks operating resulting branch offices in this State, and the
316 provisions of Subchapter I of this chapter for the regulation of foreign banks
317 operating foreign bank limited purpose branches and foreign bank agencies in this
318 State."

319 Section 27. Amend §1662(b) of Title 5 of the Delaware Code by deleting existing
320 subparagraph (5) thereof in its entirety, and by redesignating existing subparagraph (6) as
321 new subparagraph (5).

322 Section 28. Amend §2102(a)(1) of Title 5 of the Delaware Code by inserting the
323 words and punctuation "out-of-state state or national bank," after the words and
324 punctuation "banking organization," and before the words "state or federal savings bank".

325 Section 29. Amend §2901(4) of Title 5 of the Delaware Code by inserting the
326 words and punctuation ", if any," after the words "finance charge" and before the words
327 "shall together" in the last sentence thereof.

328 Section 30. Amend §2901 of Title 5 of the Delaware Code by redesignating
329 existing subsection (13) as new subsection (14) thereof, and by inserting a new subsection
330 (13), as follows:

331 "(13) 'Licensee' means a holder of a license issued by the State Bank
332 Commissioner pursuant to this chapter."

333 Section 31. Amend §2902 of Title 5 of the Delaware Code by adding thereto a
334 new subsection (g), as follows:

335 "(g) Upon written request, the Commissioner may in the Commissioner's
336 discretion grant conditional approval for an acquired licensee to conduct its
337 business under its existing license for a period not to exceed 60 days in cases
338 where the control of the licensee changes and where a new application for
339 licensure has been filed in accordance with this section."

340 Section 32. Amend §2911(b) of Title 5 of the Delaware Code by deleting the
341 reference therein to "§2906 or 2907" and inserting in lieu thereof a reference to "§§2907,
342 2908 or 2909".

343 Section 33. Amend Chapter 29 of Title 5 of the Delaware Code by adding thereto
344 a new §2914, as follows:

345 "§2914 Surety Bonds and Irrevocable Letters of Credit.

346 (a) Surety Bonds.

347 (1) Every licensee shall file with the Commissioner, in a form
348 satisfactory to the Commissioner, an original corporate surety bond, with surety
349 provided by a corporation authorized to transact business in this State, in the
350 principal sum of \$25,000.

351 (2) No bond shall be accepted unless the following requirements
352 are satisfied:

353 (i) The term of the bond shall be commensurate with the
354 license period or continuous;

355 (ii) The expiration date of the bond shall not be earlier than
356 midnight of the date on which the license expires; and

357 (iii) The bond shall run to the State, for the benefit of the
358 Office of the State Bank Commissioner and for the benefit of all consumers
359 injured by any wrongful act, omission, default, fraud or misrepresentation by a
360 licensee in the course of its activity as a licensee. Compensation under the bond
361 shall be for amounts which represent actual losses and shall not be payable for
362 claims made by business creditors, third-party service providers, agents or persons
363 otherwise in the employ of the licensee. Surety claims shall be paid to the Office
364 of the State Bank Commissioner by the insurer not later than 90 days after receipt
365 of a claim. Claims paid after 90 days shall be subject to daily interest at the legal
366 rate. The aggregate liability of the surety on the bond, exclusive of any interest
367 which accrues for payments made after 90 days, shall in no event exceed the
368 amount of such bond.

369 (3) If the licensee changes its surety company or the bond is
370 otherwise amended, the licensee shall immediately provide the Commissioner
371 with the amended original copy of the surety bond. No cancellation of an existing
372 bond by a surety shall be effective unless written notice of its intention to cancel
373 is filed with the Commissioner at least thirty (30) days before the date upon which
374 cancellation shall take effect.

375 (4) The Commissioner may require potential claimants to provide
376 such documentation and affirmations as the Commissioner shall determine to be
377 necessary and appropriate. In the event the Commissioner determines that
378 multiple consumers have been injured by a licensee, the Commissioner shall
379 cause a notice to be published for the purpose of identifying all relevant claims.

380 (5) When a surety company receives a claim against the bond of a
381 licensee, it shall immediately notify the Commissioner and shall not pay any
382 claim unless and until it receives notice to do so from the Commissioner.

383 (6) The Commissioner shall have a period of two calendar years
384 after the effective date of cancellation or termination of the surety bond by the
385 insurer to submit claims to the insurer.

386 (b) Irrevocable Letters of Credit.

387 In lieu of requiring the filing of a surety bond, the Commissioner
388 may, at the Commissioner's discretion, accept from a licensee an irrevocable
389 letter of credit.

390 (1) Such irrevocable letter of credit shall be provided by an
391 insured depository institution (as defined in the Federal Deposit Insurance Act at
392 12 U.S.C. §1813(c)) acceptable to the Commissioner, in a form satisfactory to the
393 Commissioner in the principal sum of \$25,000.

394 (2) No irrevocable letter of credit shall be accepted unless the
395 following requirements are satisfied:

396 (i) The irrevocable letter of credit shall run to the State, for
397 the benefit of the Office of the State Bank Commissioner and for the benefit of all
398 consumers injured by the wrongful act, omission, default, fraud or
399 misrepresentation by a licensee in the course of its activity as a licensee.

400 Compensation under the irrevocable letter of credit shall be for amounts which
401 represent actual losses and shall not be payable for claims made by business
402 creditors, third-party service providers, agents or persons otherwise in the employ
403 of the licensee. The aggregate liability of the insured depository institution
404 issuing the irrevocable letter of credit shall in no event exceed the amount of such
405 irrevocable letter of credit; and

406 (ii) Draws upon such irrevocable letter of credit shall be
407 available by sight drafts thereunder, in amounts determined by the Commissioner,
408 up to the aggregate amount of the irrevocable letter of credit. Such drafts shall be
409 paid in accordance with §5-112(1) of Title 6 of the Delaware Code.

410 (3) The Commissioner may require potential claimants to provide
411 such documentation and affirmations as the Commissioner shall determine to be
412 necessary and appropriate. In the event the Commissioner determines that
413 multiple consumers have been injured by a licensee, the Commissioner shall
414 cause a notice to be published for the purpose of identifying all relevant claims.

415 (4) The Commissioner may refuse release of an irrevocable letter
416 of credit, following the surrender of a license, up to two (2) years after the
417 effective date of such termination of licensure.”

418 Section 34. Delete §2303 of Title 6 of the Delaware Code.

419 Section 35. Amend §379(a) of Title 8 of the Delaware Code by inserting the
420 words and number "or in Chapter 14" after the words and numbers "except as otherwise
421 provided in subchapter VII of Chapter 7" and before the words and number "of Title 5."

422 Section 36. Amend §3573 of Title 12 of the Delaware Code by deleting existing
423 subsection (2) thereof in its entirety and by redesignating existing subsection (3) thereof
424 as new subsection (2).

425 Section 37. Section 36 of this Act shall apply to trust instruments becoming
426 irrevocable on or after July 9, 1997.

427 Section 38. If any provision of this Act or the application of any section or part
428 thereof to any person or circumstance is held invalid, such invalidity shall not affect other
429 provisions or applications of this Act that can be given effect without the invalid
430 provision or application.

431 Section 39. The sections, other than section 36, of this Act shall be effective upon
432 its enactment into law.

SYNOPSIS

This Act continues the practice of amending the State's laws on banking and financial services to keep them current and to maintain their national preeminence.

Section 1. Provides a title for the Act.

Section 2. Amends §101 of Title 5 of the Delaware Code by reorganizing the definitions in that section in alphabetical order and updating the definitions of "control" and "subsidiary" to conform to federal law and "banking organization" to include resulting branches of foreign banks.

Section 3. Amends §108 of Title 5 of the Delaware Code by clarifying the prohibited relationships of the State Bank Commissioner, deputy commissioners, examiners and compliance reviewers with supervised institutions.

Section 4. Amends §121(a)(1) of Title 5 of the Delaware Code by deleting an obsolete reference to "safe deposit companies" from the list of institutions supervised by the State Bank Commissioner.

Section 5. Amends §127(b) of Title 5 of the Delaware Code by increasing from 3.5 to 5 cents per \$1,000 of total assets the maximum limit on assessments on institutions

supervised by the State Bank Commissioner. These assessments fund the operations of the Office of the State Bank Commissioner (the "OSBC"), and the cap has not been changed in about 20 years. An increase in the limit was recommended by the Conference of State Bank Supervisors when the OSBC was accredited in 1996, in order to bring the OSBC's funding mechanism in line with the practice in other states. The annual supervisory assessments made by the OSBC will continue to be based on the OSBC's budget as approved by the General Assembly and the Governor, and will continue to be subject to review by the Council on Banking.

Sections 6-7. Amend §724 and §725 of Title 5 of the Delaware Code by streamlining the public notice process for the formation of new banks and trust companies. The notice will be published for two successive weeks, rather than the current three, and the hearing may be held as early as 20 days from the date of the second publication, rather than the current 30 days from the date of the third publication.

Section 8. Amends §767 of Title 5 of the Delaware Code by deleting an outdated restriction on the exercise in Delaware of insurance powers of Delaware state-chartered banks owned by out-of-state bank holding companies.

Section 9. Amends §777(c) of Title 5 of the Delaware Code by correcting the phrase "needs and convenience" to "convenience and needs", which is a widely used term of art in banking legislation.

Sections 10, 14-16. Amend §§795(6), 1101(a), 1101(c) and 1101(d) of Title 5 of the Delaware Code to conform cross-references in those sections to definitions in §101.

Section 11. Amends §795I(b) of Title 5 of the Delaware Code by conforming the powers of out-of-state branches of Delaware state-chartered banks to the powers now permitted under federal law.

Section 12. Amends §796 of Title 5 of the Delaware Code by deleting an unnecessary definition of "bank holding company."

Section 13. Amends §905 of Title 5 of the Delaware Code by clarifying that call reports filed with the State Bank Commissioner need not necessarily be on forms furnished by the Commissioner, and that the Commissioner may call for special reports from national banks, federal savings associations and out-of-state banks.

Section 17-26. Amend the Foreign Banking Development Act, codified in Chapter 14 of Title 5 of the Delaware Code, by: providing for interstate cooperation with respect to the examination of foreign bank branches, limited purpose branches, agencies and representative offices in Delaware; specifying that the assets of the foreign bank's business in Delaware shall be kept separate from the foreign bank's other assets; conforming Delaware's law on foreign banking to the federal law by providing that foreign banks with United States branches may engage in interstate branching by merger with Delaware banks in the same manner as out-of-state banks, as authorized by the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994; eliminating outdated requirements relating to the number and operation of foreign bank offices in Delaware; and making other technical and conforming changes.

Section 27. Amends §1662(b) of Title 5 of the Delaware Code by deleting an outdated restriction on the exercise in Delaware of insurance powers of Delaware state-chartered savings banks owned by out-of-state bank holding companies.

Section 28. Amends §2102(a)(1) of Title 5 of the Delaware Code by exempting out-of-state state and national banks from the licensing requirements of Chapter 21 ("Mortgage Loan Brokers"). This corrects an inadvertent omission of out-of-state state and national banks from the list of exempt entities; §2102(a)(1) already exempts any

banking organization, state or federal savings bank or savings and loan association, credit union, licensed lender or insurance company.

Section 29. Amends §2901(4) of Title 5 of the Delaware Code by clarifying that a separate finance charge is not a necessary element of a retail installment transaction covered by the provisions of Chapter 29 ("Financing the Sale of Motor Vehicles").

Sections 30-31. Amend §§2901 and 2902 of Title 5 of the Delaware Code by, respectively, adding a definition of "licensee" and providing that the Commissioner may grant conditional approval for an acquired licensee to conduct its business under its existing license for up to 60 days while a new license application is pending.

Section 32. Amends §2911(b) of Title 5 of the Delaware Code by correcting the cross-reference to "§2906 or 2907" to "§§2907, 2908 or 2909".

Section 33. Amends Chapter 29 of Title 5 of the Delaware Code to protect consumers by adding a new §2914 to require every licensee under Chapter 29 to provide a \$25,000 surety bond or irrevocable letter of credit.

Section 34. Amends Chapter 23 ("Interest") of Title 5 of the Delaware Code by deleting §2303, which is an outdated section relating to a previously deleted chapter of Title 5 of the Delaware Code dealing with small loans.

Section 35. Amends §379(a) of Title 8 of the Delaware Code to clarify that the denial of banking powers to foreign corporations contained in that section does not apply to foreign banks operating in the State in accordance with Chapter 14 of Title 5.

Section 36-37. Amend §3573 of Title 12 of the Delaware Code by clarifying that section to facilitate estate planning through the use of qualified disposition trusts.

Section 38. Provides for the severability of the provisions in the Act.

Section 39. Provides that all Sections, other than Section 36, of the act shall become effectively upon its enactment into law.

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