

## CHAPTER 14

## BANK SERVICE CORPORATIONS

## Authority

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

## Source and Effective Date

R.1999 d.112, effective April 5, 1999.  
See: 31 N.J.R. 198(a), 31 N.J.R. 851(a).

## Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 14, Bank Service Corporations, expires on October 2, 2004. See: 36 N.J.R. 1262(a).

## Chapter Historical Note

Chapter 14, Bank Service Corporations, was adopted as R.1994 d.117, effective March 7, 1994. See: 26 N.J.R. 3(b), 26 N.J.R. 1223(c). Pursuant to Executive Order No. 66(1978), Chapter 14 expired on March 7, 1999.

Chapter 14, Bank Service Corporations, was adopted as new rules by R.1999 d.112, effective April 5, 1999. See: Source and Effective Date.

## CHAPTER TABLE OF CONTENTS

## SUBCHAPTER 1. BANK SERVICE CORPORATIONS

- 3:14-1.1 Definitions
- 3:14-1.2 Permissible activities
- 3:14-1.3 Authority to engage in bank services
- 3:14-1.4 Standards for approving or disapproving applications
- 3:14-1.5 Services to noninvestors

## SUBCHAPTER 1. BANK SERVICE CORPORATIONS

## 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:

“Affiliate” means an entity related by common control or substantial ownership to a bank holding company, a banking subsidiary of a bank holding company, a bank, a savings bank, a bank service corporation of a bank holding company, bank, or savings bank, or any other non-banking subsidiary of a bank holding company, bank or savings bank.

“Appropriate Federal banking agency” means the Board of Governors of the Federal Reserve System, the local Federal Reserve Bank having jurisdiction, the Federal Deposit Insurance Corporation, or the Office of the Comptroller of the Currency.

“Bank” shall have the meaning of that term in N.J.S.A. 17:9A-1(1).

“Bank services” means:

1. Services such as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices, and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions;

2. Any service, other than deposit taking, that the Board of Governors of the Federal Reserve System determines by regulation to be permissible for a bank holding company pursuant to Section 4(c)(8) of the Bank Holding Company Act (12 U.S.C.A. § 1843(c)(8)), performed at any geographical location, subject to applicable Federal or state branching laws regulating the geographic location of banks to the extent that those laws are applicable to any activity authorized by this paragraph 2;

3. Any service, other than deposit taking, approved for such bank service corporation, or for bank service corporations in general, by the Board of Governors of the Federal Reserve System, or by the appropriate local Federal Reserve Bank;

4. Any service, other than deposit taking, which a bank holding company is authorized to provide to its affiliates pursuant to 12 C.F.R. § 225.21(a)(1), § 225.22(a)(1), or § 225.22(a)(2), provided however that services constituting permitted bank services under this paragraph 4 and which would not constitute permitted bank services under paragraphs 1, 2, or 3 above are provided only to an affiliate of the bank service corporation; and

5. Any service, other than deposit taking, not described in paragraphs 1, 2, 3 or 4 above, and which has been fully described in an application to the Commissioner, which application the Commissioner has approved, or the period during which the Commissioner could disapprove the application as set forth in N.J.A.C. 3:14-1.3(a) has expired.

“Bank service corporation” means 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.

“Banking institution” means a bank organized under the laws of this State or the laws of another state of the United States, a savings bank organized under the laws of this State or under the laws of another state of the United States, and a national bank organized under the laws of the United States.

“Invest” means an advance of funds to a bank service corporation, whether by the subscription to or purchase of

stock, the making of a loan, or otherwise, except a payment for rent earned, goods sold and delivered, or services rendered prior to the making of such payment.

"Person" means individuals, partnerships, corporations, and all other business entities, no matter how designated.

"Savings bank" shall have the meaning of that term in N.J.S.A. 17:9A-1(13).

### 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. Contracting with a bank service corporation for the provision of bank services;

2. Investing in a bank service corporation, except that:

i. No bank shall invest in any one bank service corporation if the total of all the bank's investments in that bank service corporation exceeds, or if the making of such an investment would cause such total to exceed, 10 percent of the bank's unimpaired capital stock and surplus;

ii. No bank shall invest in a bank service corporation if the total of all the bank's investments in bank service corporations exceeds, or if the making of such an investment would cause such total to exceed, 15 percent of the bank's unimpaired capital stock and surplus;

iii. No savings bank shall invest in any one bank service corporation if the total of all the savings bank's investments in that bank service corporation exceeds, or if the making of such an investment would cause such total to exceed, five percent of the surplus of the savings bank;

iv. No savings bank shall invest in a bank service corporation if the total of all the savings bank's investments in bank service corporations exceeds, or if the making of such an investment would cause such total to exceed, 7.5 percent of the surplus of the savings bank; and

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.

### 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. A bank service which is described in paragraphs 1, 2, or 4 of the definition of "bank service," and which will be provided only to an affiliate, may be provided without application or notice to the Commissioner.

2. A bank service which is described in paragraphs 1 or 2 of the definition of "bank service," and which will be provided to a non-affiliate, may be provided if:

i. Written application has been received by the Commissioner which fully describes the bank service to be provided, the type of customer 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; and either

(1) The bank service corporation has received approval in writing from the Commissioner; or

(2) At least 60 calendar days have passed since the receipt of the written application by the Commissioner, during which time the bank service corporation did not receive written notification by the Commissioner that the provision of the bank service to the non-affiliate is disapproved; and

ii. The Commissioner, at his or her discretion, has required and has received any additional information which might be relevant to a decision of whether to approve the application, which may include, but shall not be limited to, the names of the non-affiliates to whom the bank service is to be provided.

3. A bank service which is described in paragraph 3 of the definition of "bank service" may be provided to an affiliate or a non-affiliate if:

i. Written notice has been received by the Commissioner that the service has been approved for such bank service corporation, or for bank service corporations in general, by the Board of Governors of the Federal Reserve System, or by the appropriate local Federal Reserve Bank; and either

(1) The bank service corporation has received approval in writing from the Commissioner; or

(2) At least 60 calendar days have passed since the written notice required to be submitted by (a)3i above has been received by the Commissioner, and during which time the bank service corporation did not receive written notification by the Commissioner that the provision of the bank service is disapproved; and

ii. The Commissioner, at his or her discretion, has required and has received any additional information which might be relevant to a decision to disapprove the bank service, which may include, but shall not be limited to, a description of the bank service to be provided, the names of the non-affiliates to whom the bank service is to be provided, the type of business in which the non-affiliate engages, and any materials which support 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.

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; and either

(1) The bank service corporation has received approval in writing from the Commissioner; or

(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 may consider the application; and

ii. The Commissioner, at his or her discretion, has required and has received any additional materials which might be relevant to a decision of whether to approve the application, which may include, but shall not be limited to, the names of the non-affiliates to whom the bank service is to be provided.

(b) A bank service corporation may engage in a bank service described in paragraphs 2, 3, or 4 of the definition of "bank service", only upon the same terms and subject to the same conditions as are set forth in Federal law.

(c) Nothing in this chapter shall be construed to authorize a bank service corporation to engage in any activity which is reserved to banking institutions or qualified banks pursuant to N.J.S.A. 17:9A-213.

#### **3:14-1.4 Standards for approving or disapproving applications**

(a) In evaluating an application or notice under N.J.A.C. 3:14-1.3, the Commissioner may disapprove the application or bank service if, in his or her judgment:

1. The activity is inappropriate for the bank service corporation or for any affiliate;

2. The activity is unduly risky to the safety and soundness of the bank service corporation or for any affiliate; or

3. The bank service corporation or any affiliate has a substantial problem in any of the following areas:

i. Financial history and condition;

ii. Managerial resources;

iii. Funding and liquidity;

iv. Interest-rate exposure;

v. Concentration of assets; or

vi. Volume of assets classified as substandard, doubtful or loss, or subject to special mention.

#### **3:14-1.5 Services to noninvestors**

(a) A bank service corporation shall not discriminate unreasonably in the provision of any bank services, authorized under N.J.S.A. 17:9A-24.1 et seq. or this chapter, to any banking institution that does not own stock in the bank service corporation on the ground that the nonstockholding banking institution is in competition with a banking institution that owns stock in the bank service corporation, except that:

1. It shall not be considered unreasonable discrimination for a bank service corporation to charge a nonstockholding banking institution a price for providing bank services that reflects the full cost of offering those services, including the cost of capital and a reasonable return thereon; and

2. It shall not be considered unreasonable discrimination for a bank service corporation to refuse to provide bank services to a nonstockholding banking institution if comparable bank services are available to the nonstockholding institution from another person at a comparable cost, or if the providing of bank services to the nonstockholding institution would be beyond the reasonable capacity of the bank service corporation.