

CHAPTER 13
BANK HOLDING COMPANIES

Authority

N.J.S.A. 17:9A-379.

Source and Effective Date

R.1992 d.40, effective January 21, 1992.
See: 23 N.J.R. 2904(a), 24 N.J.R. 229(a).

Executive Order No. 66(1978) Expiration Date

Chapter 13, Bank Holding Companies, expires on January 21, 1997.

Chapter Historical Note

Chapter 13, Bank Holding Companies, became effective November 17, 1986 with Subchapter 1 (R.1986 d.459) and Subchapters 2 and 3 (R.1986 d.458). See: 18 N.J.R. 1434(a), 18 N.J.R. 1763(a), 18 N.J.R. 2324(a), 18 N.J.R. 2325(a). Subchapter 4 was adopted as R.1986 d.475, effective December 15, 1986. See: 18 N.J.R. 1982(a), 18 N.J.R. 2441(a), 19 N.J.R. 289(a). Pursuant to Executive Order No. 66(1978), Chapter 13 expired on November 17, 1991 and was adopted as new rules R.1992 d.40. See: Source and Effective Date.

See section annotations for specific rulemaking activity.

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**SUBCHAPTER 1. BANK HOLDING COMPANY
REGISTRATION**

3:13-1.1 Scope and purpose

This subchapter requires the initial and annual registration of all persons or companies controlling banking institutions located in New Jersey. The subchapter will enable the Commissioner to determine which provisions of the "New Jersey Banking Oversight and Change of Control Act" (N.J.S.A. 17:9A-373) apply to the reporting person or company.

3:13-1.2 Definitions

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

"Bank" shall have the same definition as provided in section 1 of P.L. 1948, c.67 (N.J.S.A. 17:9A-1).

"Banking institution" means a bank or a national banking association having its principal office in this State.

"Bank holding company" means a company which controls a banking institution.

"Commissioner" means the Commissioner of Banking of New Jersey.

"Company" means any corporation, partnership, business trust, association, or similar organization, or any other trust, unless by its terms it must terminate within 25 years or not later than 21 years and 10 months after the death of individuals living on the effective date of the trust, but shall not include any corporation the majority of the shares of which are owned by the United States or by any state.

"Control" of a banking institution means:

1. Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting securities of the bank or banking institution, directly or indirectly, or acting through one or more persons;

2. Control in any manner over the election of a majority of the directors, trustees, general partners or individuals exercising similar functions of the bank or banking institution; or

3. The power to exercise, directly or indirectly, a controlling influence over the management or policies of the bank or banking institution, as determined by the Commissioner after notice and opportunity for hearing.

4. A person which is a bank, as defined in section 1 of P.L. 1957, c.70 (N.J.S.A. 17:9A-344), shall not be deemed to control voting securities or assets of a bank acquired:

i. In good faith in a fiduciary capacity, except where voting securities are held in a trust that constitutes a company; or

ii. In the regular course of securing or collecting a debt previously contracted in good faith which securities are disposed of within a period of two years after the date on which they were acquired or after the enactment of N.J.S.A. 17:9A-373, whichever is later.

5. A person is deemed to control voting securities or assets owned, controlled, or held directly or indirectly:

i. By any subsidiary of the person; or

ii. In a fiduciary capacity, including by pension and profit sharing trusts, for the benefit of the shareholders, members, employees, or individuals serving in similar capacities, of the person or of any of its subsidiaries; or

iii. In a fiduciary capacity for the benefit of the person or any of its subsidiaries.

"Insured banking institution" means a banking institution the deposits of which are insured in accordance with the provisions of the "Federal Deposit Insurance Act," 64 Stat. 873 (12 U.S.C. 1811 et seq.).

"Outstanding shares" means any voting securities, but does not include securities owned by the United States or by a company wholly owned by the United States.

"Subsidiary" means a person or company that is controlled by another person or company.

"United States" means the United States and includes any of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

"Voting securities" means:

1. Shares of common or preferred stock, general or limited partnership shares of interests or similar interests if the shares of interests, by statute, charter, or in any manner, entitled the holder:

i. To vote for or to select directors, trustees, partners, or persons exercising similar functions for the issuing company; or

ii. To vote on or to direct the conduct of the operations or other significant policies of the issuing person;

2. Preferred shares, limited partnership shares or interests, or similar interests are not "voting securities" if:

i. Any voting rights associated with the shares of interests, including the right to select or vote the selection of directors, trustees, or partners or person exercising similar functions,

(1) Are limited solely to the type customarily provided by statute with regard to matters that would significantly and adversely affect the rights or preference of the security or other interest, such as the issuance of additional amounts or classes of senior securities, the modification of the terms of the security or interest, the dissolution of the issuing person, or the payment of dividends by the issuing person when preferred dividends are in arrears; or

(2) Entitle the holder thereof to vote for the election of directors, trustees or partners or persons exercising similar functions only as the result of the failure to pay a dividend or to fulfill an obligation or satisfy a condition specified by the terms of such shares or interests; and

ii. The shares or interests represent an essentially passive investment or financing device and do not otherwise provide the holder with control over the issuing person.

3:13-1.3 Initial registration

(a) Any person or company not initially registered with the Department of Banking and which subsequently acquires control of a banking institution after the effective date of this subchapter shall register with the Department of Banking within 30 days of such acquisition.

(b) Registration shall be on forms prescribed by the Commissioner of Banking and shall require submission of the following information:

1. Name of the person or bank holding company;
2. Mailing address of the person or bank holding company;
3. Location of the bank holding company's principal office;
4. Registered agent of the bank holding company;
5. Chief executive officer of the bank holding company;
6. Name and address of any person or company, which controls the bank holding company;
7. List of banking institution subsidiaries;
8. List of subsidiary bank holding companies.

Amended by R.1992 d.40, effective January 21, 1992.

See: 23 N.J.R. 2904(a), 24 N.J.R. 229(a).

Deleted (a); redesignated (b)-(c) as (a)-(b) without change.

3:13-1.4 Annual registration

(a) Each bank holding company shall annually file a "Bank Holding Company Registration Form" with the Department. The information required shall be as of December 31 of each year and the form shall be filed by January 15 of the following year.

(b) Any person, other than a bank holding company, who controls a banking institution shall annually file a "Bank Holding Company Registration Form for Individuals" with the Department. The information required shall be as of December 31 of each year and the form shall be filed by January 15 of the following year.

3:13-1.5 Notification of change

(a) Any registered bank holding company which acquires control of a banking institution or divests itself of a controlled banking institution shall notify the Commissioner within 30 days after the consummation of the transaction.

(b) Any registered person which acquires control of a banking institution or divests himself of a controlled banking institution shall notify the Commissioner within 30 days after the consummation of the transaction.

3:13-1.6 Registration fee

A filing fee of \$50.00 shall accompany each registration form and each notification of change submitted to the Department.

SUBCHAPTER 2. BANK HOLDING COMPANY REPORTING

3:13-2.1 Purpose and scope

This subchapter requires filing of financial reports by all persons or companies controlling banking institutions located in New Jersey. The subchapter will enable the Commissioner to monitor the activities of individuals and companies that control New Jersey banks. The first reports to be filed pursuant to the provisions of these rules shall be for the period ending December 31, 1986.

3:13-2.2 Definitions

The words and terms defined at N.J.A.C. 3:13-1.2, when used in this subchapter, shall have the meanings set forth in N.J.A.C. 3:13-1.2, unless the context clearly indicates otherwise.

New Rule, R.1992 d.40, effective January 21, 1992.
See: 23 N.J.R. 2904(a), 24 N.J.R. 229(a).

Old section 3:13-2.2, "Reporting for bank holding companies", reclassified to 3:13-2.3 without change.

3:13-2.3 Reporting for bank holding companies

(a) Each bank holding company which is required to file with the Federal Reserve System form FR Y-9C entitled "Consolidated Financial Statements for Bank Holding Companies with total consolidated assets of \$150,000,000 or more or with more than one subsidiary bank," shall concurrently file a copy of its June 30 and December 31 report with the Commissioner of Banking. A filing fee of \$50.00 shall accompany the submitted report.

(b) Each bank holding company which is required to file with the Federal Reserve System form FR Y-9LP entitled "Parent Company Only Financial Statements for Bank Holding Companies with total consolidated assets of \$150,000,000 or more with more than one subsidiary bank" shall concurrently file a copy of its June 30 and December 31 report with the Commissioner of Banking. A \$50.00 filing fee shall accompany the submitted report.

(c) Each bank holding company which is required to file with the Federal Reserve System form FR Y-9SP entitled "Parent Company Only Financial Statements for One Bank Holding Company with total consolidated assets of less than \$150,000,000" shall concurrently file a copy of this report with the Commissioner of Banking. A filing fee of \$50.00 shall accompany the submitted report.

(d) Each bank holding company which is required to file with the Federal Reserve System form FR Y-6 entitled "Annual Report of Bank Holding Companies" shall concurrently file a copy of this report with the Commissioner of Banking. The copy of FR Y-6 filed with the Commissioner of Banking shall include the required copy of the bank holding company's annual report to shareholders or the required copy of form 10K to the Securities and Exchange Commission. A filing fee of \$100.00 shall accompany the submitted report.

(e) Each bank holding company which is required to file with the Federal Reserve System form FR Y-6A entitled "Bank Holding Company Report Changes in Investments or Activities" shall concurrently file a copy of this report with the Commissioner of Banking. A filing fee of \$50.00 shall accompany the submitted report.

(f) Each bank holding company which is required to file with the Federal Reserve System form FR Y-11I entitled "Annual Report of Selected Financial Data for Non-Bank Subsidiaries of Bank Holding Companies" shall concurrently file a copy of this report with the Commissioner of Banking. A filing fee of \$50.00 shall accompany the submitted report.

(g) Each bank holding company which is required to file with the Federal Reserve System form FR Y-11Q entitled "Combined Financial Statement of Non-Bank Subsidiaries of Bank Holding Companies" shall concurrently file a copy of its June 30 and December 31 report with the Commissioner of Banking. A filing fee of \$50.00 shall accompany the submitted report.

(h) Each bank holding company which is required to file with the Federal Reserve System form FR Y-11AS entitled "Annual Supplement to the Combined Financial Statements of Non-Bank Subsidiaries of Bank Holding Companies" shall concurrently file a copy of this report with the Commissioner of Banking. A filing fee of \$50.00 shall accompany the submitted report.

(i) Each bank holding company which is not required to file with the Federal Reserve System shall:

1. If the bank holding company is required to file a form 10K with the Securities and Exchange Commission, the bank holding company shall concurrently file a copy of this report with the Commissioner of Banking; or

2. If the bank holding company is not required to file a form 10K with the Securities and Exchange Commission, the bank holding company shall annually, on or before April 30 of each year, file with the Commissioner of Banking the following information on forms provided by the Department of Banking:

- i. Name and address of the company;
 - ii. Names and addresses of principal officers;
 - iii. Names and addresses of controlling shareholders of the company;
 - iv. A summary of material business activities and affiliations during the past five years;
 - v. A description of pending legal or administrative proceedings in which the company is a party;
 - vi. A statement of assets and liabilities of the company for each of the five preceding fiscal years, together with related statements of income and sources and applications of funds for each of those fiscal years; and
3. Submit a filing fee of \$100.00 with the filed report.

Amended by R.1988 d.149, effective April 4, 1988.
See: 20 N.J.R. 127(b), 20 N.J.R. 777(a).

In (a), (b) and (g), specified June 30 and December 31 reports.
Recodified from 3:13-2.2 by R.1992 d.40, effective January 21, 1992.
See: 23 N.J.R. 2904(a), 24 N.J.R. 229(a).

3:13-2.4 Reporting for persons other than bank holding companies

(a) Each person who controls a bank or bank holding company shall annually file with the Commissioner of Banking, on or before April 30 of each year, the following information on forms provided by the Department of Banking:

1. Name and address of the person;
2. A resume of material business activities and affiliations during the past five years;
3. A description of pending legal or administrative proceedings in which the person is a party and any criminal indictment or conviction of the individual issued by a state or federal court;

4. A statement of assets and liabilities of the person for each of the five preceding fiscal years, together with related statements of income and sources and applications of funds for each of those fiscal years;

5. A filing fee of \$100.00.

Recodified from 3:13-2.3 by R.1992 d.40, effective January 21, 1992.
See: 23 N.J.R. 2904(a), 24 N.J.R. 229(a).

SUBCHAPTER 3. BANK HOLDING COMPANY EXAMINATIONS

3:13-3.1 Examination charges

The Commissioner may examine any company which controls a bank, and shall charge for any such examination a per diem per person examination charge in an amount set forth in N.J.A.C. 3:1-6.6.

Amended by R.1992 d.40, effective January 21, 1992.
See: 23 N.J.R. 2904(a), 24 N.J.R. 229(a).

Revised text; section was "Purpose and scope".

3:13-3.2 (Reserved)

Emergency Amendment, R.1989 d.407, effective July 3, 1989 (expired September 1, 1989).

See: 21 N.J.R. 1986(a), 21 N.J.R. 2398(a).

Per diem changed to \$260.00.

Adopted Concurrent Proposal, R.1989 d.510, effective August 31, 1989.

See: 21 N.J.R. 2398(a), 21 N.J.R. 3082(a).

Provisions of emergency amendment R.1989 d.407 readopted without change.

Repealed by R.1991 d.195, effective April 15, 1991.

See: 23 N.J.R. 254(a), 23 N.J.R. 1125(a).

Section was "Per diem per person examination charge".

SUBCHAPTER 4. DETERMINATION OF ELIGIBILITY OF PROPOSED INTERSTATE ACQUISITION

3:13-4.1 Purpose and scope

This subchapter requires an out-of-state bank holding company, which desires to acquire and retain control of a bank or banks located in New Jersey, to file an application with the Department of Banking. The application will contain sufficient information for the Commissioner to determine that the applicant is an eligible bank holding company located in a state which the Commissioner has found to be an eligible state which has reciprocal legislation in effect, has deposits within the prescribed deposit limitations and, therefore, the applicant would be eligible to proceed with obtaining all necessary approvals relative to the proposed acquisition. The determination shall also reflect any limitations or restrictions that shall be placed upon the out-of-state bank holding company's acquisition of banks or bank holding companies located in this State.